

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Amy J. St. Eve	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 4356	DATE	3/9/2004
CASE TITLE	Johnson vs. Tellabs, Inc., et al		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 - FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] Defendants' Rule 59(e) motion to alter or amend judgment to clarify certain of the findings in the court's February 19, 2004 Memorandum Opinion and Order is granted.

Amy J. St. Eve

- (11) [For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	<p align="center">THW</p> <p align="center">courtroom deputy's initials</p>	<p align="center">MAR 10 2004</p> <p align="center">date docketed</p> <p align="center"><i>JHP</i></p> <p align="center">docketing deputy initials</p> <p align="center">date mailed notice</p> <p align="center">mailing deputy initials</p>	<p>Document Number</p> <p align="center" style="font-size: 2em;">95</p>
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ORDER

Defendant Tellabs has moved pursuant to Federal Rule of Civil Procedure 59(e) to clarify certain of the Court's findings in its February 19, 2004 opinion dismissing this case with prejudice. *See Johnson v. Tellabs, Inc.*, 2004 WL 324752 (N.D. Ill. Feb. 19, 2004). Specifically, Defendant seeks clarification that the company Tellabs was dismissed from the case. Defendant's motion is granted.

The company Tellabs is dismissed from the case with respect to both the projection at issue and the alleged misrepresentations. Regarding the December 12, 2000 projection, a forward-looking statement is actionable against a corporation if it was "made by or with the approval of an executive officer of that entity," and it was "made or approved by such officer with actual knowledge by that officer that the statement was false or misleading." 15 U.S.C. § 78u-5(c)(1)(B)(ii). Because Plaintiffs failed to plead that any of the Individual Defendants had actual knowledge that the December 12, 2000 projection was false and misleading, they failed to allege Tellabs' liability as well.

With respect to the alleged misrepresentations, only the knowledge obtained by corporate employees acting within the scope of their employment can be imputed to the corporation. *United States v. One Parcel of Land*, 965 F.2d 311, 315 (7th Cir.1992). As discussed in the Court's February 19, 2004 opinion, Plaintiffs did not sufficiently allege that any of the Individual Defendants acting within their scope of duties had the requisite scienter regarding the alleged misrepresentations. Accordingly, they did not sufficiently allege scienter on the part of Tellabs. *See In re Ramp Networks, Inc. Sec. Litig.*, 201 F.Supp. 2d 1051, 1080 (N.D. Cal. 2002).

Amy J. [Signature]