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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

JAMES M. KELLEY, et. al.,

Plaintiffs and Appellants,

v.

RAMBUS, INC. et. al.,

Defendants and Respondents.

H037343

(Santa Clara County

Super. Ct. No. CV122444)

Plaintiffs James M. Kelley, Miki W. Larsson, and Douglas B. Kelley appeal from a judgment dismissing their action against Rambus, Inc.; PricewaterhouseCoopers LLP (PwC), an outside auditor for Rambus; and Daniel Zwarn, a PwC partner. Plaintiffs contend that the superior court erred in sustaining defendants' demurrers to their complaint because they had viable claims for securities fraud. We agree with the superior court, however, that *res judicata* barred each of plaintiffs' causes of action, as their claims had already been adjudicated in a federal case that had been dismissed in a final judgment. We must therefore affirm the superior court's judgment of dismissal.

*Background*

*1. The Federal Action*

On March 1, 2007, plaintiffs James Kelley and Miki Larsson filed a complaint in the United States District Court for the Northern District of California against Rambus,

certain officers and directors of Rambus, and PwC. The complaint alleged that defendants had colluded to backdate grants of stock options to Rambus officers and employees, and concealed that conduct from the public and the SEC. The complaint asserted violations of several provisions of the federal Securities Exchange Act of 1934 ("Securities Act"), sections 25400-25403 of the California Corporations Code for "[i]nsider selling," sections 1709 and 1710 of the Civil Code, and sections 17200 and 17500 of the Business and Professions Code. Also included were common law claims of fraud, aiding and abetting fraud, aiding and abetting negligent misrepresentation, and breach of fiduciary duty under both California and Delaware law.

Plaintiff Douglas Kelley filed his own complaint on May 8, 2007, containing the same causes of action. The Kelley-Larsson complaint was amended three times thereafter, and Douglas Kelley amended his once, until on May 21, 2007, the district court ordered plaintiffs to obtain leave before filing any further amended complaints. The three plaintiffs filed a Consolidated Complaint on July 24, 2007, which the district court dismissed with leave to amend on October 15, 2007. Plaintiffs' Consolidated Amended Complaint, filed one month later, was dismissed in April 2008, this time with leave to amend as to only two provisions of the Securities Act. Plaintiffs' next pleading, filed one month after that order, contained all the allegations that had been dismissed; consequently, the court struck that entire pleading the next day. The "Second (revised) Consolidated Amended Complaint" followed in June 2008, alleging violations of sections 18(a) and 14(a) of the Securities Act (section 18(a) claim and section 14(a) claim), through not only the options backdating but also the concealment of that act by false proxy statements and misstatements and omissions in SEC filings.

At a hearing in September 2008 plaintiffs informed the district court of "new evidence" obtained in the course of a shareholder derivative action, which they believed had a significant impact on both their own private action and a separate shareholder class action. The court, however, expressed the opinion that the "litigation misconduct"

plaintiffs were raising was more appropriately addressed in the shareholders' litigation. It was a serious allegation, the court observed, but it was "extraneous" to the questions presented in the current case.

On December 9, 2008, the district court filed its final order of dismissal. The section 14(a) claim, which was based on allegations of fraud, failed to allege a material misstatement or omission in the proxy statements by any of the defendants, reliance on those statements, or an "essential link" between a challenged proxy statement and *subsequent* "loss-generating corporate action." The section 18(a) claim was also defeated because plaintiffs were "highly suspicious" of the option backdating long before they filed the action, yet they failed to meet the applicable one-year statute of limitations (15 U.S.C. § 78i-(e)). Addressing the substance of the latter claim, the court found that it would "strain credulity to say that Defendants would not have been at least negligent in failing to detect and disclose the vast diversion of cash allegedly accomplished by the backdating." Nevertheless, plaintiffs' allegations of actual reliance and causation were inadequate, and no further amendment would permit plaintiffs "*truthfully* to plead actual reliance or loss causation."

The district court thus found both of the Securities Act claims deficient. After determining that further amendment would be not only futile but prejudicial to defendants, the court entered judgment for defendants. Plaintiffs' appeal to the Ninth Circuit Court of Appeals was unsuccessful. That court upheld all of the lower court's rulings, not only on the Securities Act claims but also on the common-law claims of fraud and negligent misrepresentation, which lacked adequate allegations of reliance as well as sufficient particularity to meet the pleading requirements of Federal Rules of Civil Procedure section 9(b).

## 2. *The State Court Action*

Plaintiffs did not wait for the conclusion of the federal case to initiate their action in state court. On September 11, 2008, the day before the hearing on the Second

(revised) Consolidated Amended Complaint, plaintiffs filed the instant action in superior court. As they had in the July 2007 Consolidated Complaint in federal court, plaintiffs pleaded causes of action for violating sections 25400-25504.2 of the Corporations Code, common-law fraud, and negligent misrepresentation.

Rambus demurred to this complaint on res judicata grounds. Both the corporate and individual defendants moved to dismiss this complaint on the same grounds. Alternatively, Rambus and PwC asked the superior court to stay the proceedings until the federal action was concluded. The court granted the stay "in the interests of substantial justice." In its ruling the court noted that the complaint in the state action alleged "many of the same state law claims originally [pleaded] in their federal action and based on the same nucleus of operative facts." The demurrers to the complaint were deemed moot because plaintiffs had already filed their first amended complaint.

The first amended complaint, filed under seal, made the same Corporations Code allegations (this time adding several individual defendants and calling all of them the "Backdating Scheme Defendants"). This pleading asserted causes of action for violations of Corporations Code sections 25400, 25403, and 25500 against Rambus and the grantors of the backdated options; violations of Corporations Code sections 25402, 25501, 25504, and 25504.1 against Rambus, the individual defendants, and PwC; and violation of Corporations Code section 25504.2 against PwC and Zwarn.

In alleging common-law fraud, the first amended complaint separated the alleged wrongs into "financial" fraud against the Backdating Scheme Defendants and "RDRAM" fraud against the "RDRAM Scheme Defendants." The "RDRAM Scheme" pertained to Rambus memory technology that was used in Intel's PC products. According to the complaint, Rambus executives subsequently learned that Intel had lost its commitment to RDRAM and "intended to compete with and replace Rambus in its next generation products." These defendants concealed this information from shareholders and granted executives and employees backdated stock options before the public could learn the news

about the "impending failure of RDRAM." The RDRAM defendants then engaged in insider trading by cashing in their stock.

On October 4, 2010, following the Ninth Circuit affirmance of the district court's judgment, plaintiffs obtained leave (over defense objections) to file a Second Amended Complaint (SAC). This pleading, filed November 1, 2010 (also under seal), asserted the same causes of action as in the first amended complaint, with additional allegations of reliance, specific identification of individual defendants, specific identification of names and dates pertaining to individual defendants' stock sales, and additional details pertaining to Rambus's and PwC's wrongdoing.<sup>1</sup>

The SAC also included a new cause of action, titled "Extrinsic Fraud On the Federal Court Cover Up Scheme." In this cause of action, which was asserted against the CEO and several directors of Rambus, along with PwC and Zwarn, plaintiffs alleged that in connection with a federal "derivatives class action" by the shareholders against Rambus, these defendants submitted an "intentionally false and misleading" report derived from an internal investigation of the shareholders' claims by a purportedly independent Special Litigation Committee (SLC). The "fraudulent SLC report" contributed to the settlement of the "shareholders class action" and thus a "huge reduction in damages" in that case. Plaintiffs subsequently added specified defendants to the first, fourth, fifth, and sixth causes of action in the SAC.

On December 2, 2010, the Rambus defendants filed a demurrer to the SAC, asserting that res judicata and collateral estoppel barred the state action, as the claims were all based on the same claims as in the federal case, which had reached a final

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<sup>1</sup> The cause of action for negligent misrepresentation, alleged in the first amended complaint against the perpetrators of the concealed "options backdating scheme," was modified in the SAC to accuse the "RDRAM Defendants" of concealing the failure of RDRAM while granting themselves backdated stock options and then trading them on the inside information.

judgment. PwC and Zwarn likewise demurred on the same day, also on res judicata grounds, with the additional argument that the allegations pleaded under Corporations Code sections 25504.1 and 25504.2 failed to state any viable claim. In the course of their opposition, plaintiffs abandoned the second and third causes of action.

On May 12, 2011, the superior court sustained defendants' demurrers. The court determined that this action was based on the same claims that either were litigated or could have been litigated in the federal action. Addressing the new cause of action for extrinsic fraud, the court found this to be a collateral attack on a final judgment, without any allegation that plaintiffs were deprived of an opportunity to present the claim in the shareholders' derivative action. Finally, plaintiffs had failed to state a sufficient claim against PwC and Zwarn because they had not alleged either intent to deceive or defraud or "transactional privity" between them and the individual insider-selling defendants. On June 15, 2011, the court entered judgment dismissing the entire action with prejudice.

#### *Discussion*

Representing themselves on appeal (as they did below), plaintiffs contend that the superior court erred by dismissing their sixth cause of action for extrinsic fraud, incorrectly applied res judicata to their claims of RDRAM fraud, and improperly exempted PwC and Zwarn from liability for both backdating fraud (fourth cause of action) and extrinsic fraud. The court should not have dismissed their first cause of action, they add, because it alleged insider trading, which was not part of any of the federal complaints and thus was not previously litigated and dismissed or even mentioned by the district court. Moreover, plaintiffs argue, "transactional privity" is not required to establish liability under Corporations Code section 25500.

#### *1. General Principles of Res Judicata*

"As generally understood, '[t]he doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy.' [Citation.] The doctrine 'has a double aspect.' [Citation.] 'In its primary aspect,'

commonly known as claim preclusion, it 'operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. [Citation.]' 'In its secondary aspect,' commonly known as collateral estoppel, '[t]he prior judgment . . . "operates" ' in 'a second suit . . . based on a different cause of action . . . "as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action." [Citation.]' (*Ibid.*) 'The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]' " (*People v. Barragan* (2004) 32 Cal.4th 236, 252-253, quoting *Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 556 [italics omitted]; see also *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896-897 (*Mycogen*), quoting *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

"California law defines a cause of action 'by focusing on the "primary right" at stake: if two actions involve the same injury to the plaintiff and the same wrong by the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery. [Citations.] A cause of action is based upon the nature of a plaintiff's injury. The cause of action, as it appears in the complaint when properly pleaded, will therefore always be the *facts* from which the plaintiff's primary right and the defendant's corresponding primary duty have arisen, together with the facts [that] constitute the defendant's delict or act of wrong. [Citation.]' [Citation.]" (*Tensor Group v. City of Glendale* (1993) 14 Cal.App.4th 154, 160.)

" 'In California the phrase "cause of action" is often used indiscriminately . . . to mean counts which state [according to different legal theories] the same cause of action. . . .' [Citation.] But for purposes of applying the doctrine of *res judicata*, the

phrase 'cause of action' has a more precise meaning: The cause of action is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced. [Citation.] As we explained in *Slater v. Blackwood* [(1975)] 15 Cal.3d [791,] at page 795: "[T]he "cause of action" is based upon the harm suffered, as opposed to the particular theory asserted by the litigant. [Citation.] Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief. "Hence a judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though he presents a different *legal ground* for relief." [Citations.]" Thus, under the primary rights theory, the determinative factor is the harm suffered. When two actions involving the same parties seek compensation for the same harm, they generally involve the same primary right." (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 798; see also *Crowley v. Katleman* (1994) 8 Cal.4th 666, 681-682 [explaining distinction between primary right and legal theory and from remedy sought].)<sup>2</sup>

"The fact that different forms of relief are sought in the two lawsuits is irrelevant, for if the rule were otherwise, "litigation finally would end only when a party ran out of counsel whose knowledge and imagination could conceive of different theories of relief based upon the same factual background." . . . Obviously, if it is actually raised by proper pleadings and treated as an issue in the cause, it is conclusively determined by the first

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<sup>2</sup> Federal courts "utilize a transactional analysis; i.e., two suits constitute a single cause of action if they both arise from the same 'transactional nucleus of facts' [citation] or a single 'core of operative facts.' . . . Where, as here, an action is filed in a California state court and the defendant claims the suit is barred by a final federal judgment, California law will determine the res judicata effect of the prior federal court judgment on the basis of whether the federal and state actions involve the same primary right." (*Gamble v. General Foods Corp.* (1991) 229 Cal.App.3d 893, 898.) Our Supreme Court has affirmed that we apply the "primary right" theory to the analysis of a cause of action for claim preclusion purposes. (*Mycogen, supra*, 28 Cal.4th at p. 904.) Nevertheless, the result here is the same under either analysis.

judgment. But the rule goes further. If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it *could have been raised*, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is res judicata on matters which were raised or could have been raised, on matters litigated or litigable.' [Citation.]" (*Interinsurance Exchange of the Auto. Club v. Superior Court* (1989) 209 Cal.App.3d 177, 181-182, italics added.)

## 2. Application of Res Judicata to the SAC

Plaintiffs' brief consists primarily of rearguing the merits of their extrinsic fraud claim without directly discussing res judicata, the basis of the court's dismissal. Their only effort to address this doctrine is by contending that different primary rights were involved in the federal and state actions, and that defendants' failure to object to the state court action constituted "tacit agreement to California claim splitting." Plaintiffs further argue that the court confused the allegations of backdating fraud with those of RDRAM fraud; the latter, they maintain, had never been litigated or even asserted and therefore was not barred by res judicata in either of its aspects. None of plaintiffs' arguments, however, can overcome the application of res judicata to the SAC.

The most comprehensive of plaintiffs' federal complaints—the Consolidated Amended Complaint—asserted a set of facts that at their core alleged illegal conduct arising from the backdating of stock options at Rambus. "The backdating practices materially affected the income statements, the tax deferred assets, the amount of shareholder equity, the assertions and representations as of adequate internal controls, 162(m) tax deductions for incentive stock option (ISO) grants and executive compensation disclosures by grants in each of the Rambus[s] 10-K statements which were all materially false because in violation of Generally Accepted Accounting Principles (GAAP), the defendants, inter alia, understated expenses for the reporting period by

failing to expense the in-the-money amount of the backdated grants. The company . . . thereby materially understated expenses and materially overstated net income." Every one of Rambus's public filings, including 10-Q and 10-K statements, proxy statements, and "other SEC filings and press releases containing financial results[,] was materially misstated and omitted material disclosures because of the backdating of options in the same period and prior periods as well." PwC contributed to the damage from the backdating because it had lost its independence from Rambus and, in performing its audits with "gross negligence," "failed miserably to detect or report the huge financial fraud at Rambus despite the fact that PwC was fully aware of the material impact of stock options grants on the financial statements of Rambus." Plaintiffs further accused PwC of making misrepresentations about the adequacy and reliability of Rambus's internal controls, thus enabling the Rambus defendants to continue its illegal backdating practices.

The first four counts of the Consolidated Amended Complaint, which alleged violations of the Securities Act, complained of conduct resulting from the improper backdating—namely, exercising of the options, selling stock at inflated prices without disclosing the circumstances to the public, concealment of the backdated options in proxy statements, and liability of certain individual defendants by virtue of their positions and participation in the granting of backdated options. The fifth count, for common law fraud, restated the "falsity of the financial and proxy statements, which were false, inter alia, because of Rambus[s] backdating." The sixth count, for negligent misrepresentation, was asserted against PwC for issuing unqualified audit opinions that resulted from negligent audits, during which PwC failed to discover the backdated options practices.

Plaintiffs' first three causes of action in the SAC asserted violations of the Corporations Code resulting from the issuance and exercise of backdated stock options. The first cause of action, they now contend, should not have been dismissed because it

was concerned with insider trading and was not in any of the complaints in federal court. This assertion is clearly incorrect. Plaintiffs' first joint pleading in the district court, the Consolidated Complaint, asserted in Count 6 that the "Insider selling Defendants" violated Corporations Code sections 25401, 25402, and 25500 (by participating in a violation of section 25400). Count 7 of that pleading asserted a violation of Corporations Code section 25403 against PwC. Both counts were based on Rambus's "backdating scheme." Likewise, the first cause of action of the SAC alleged the violation of Corporations Code sections 25400, 25403, and 25500, arising from the omission of material facts regarding the "backdating scheme" in public reports of Rambus's financial condition and internal controls. It further alleged that plaintiffs "would not have purchased Rambus stock at the prices that they paid and/or at all, had they known the true facts regarding the Company's fraudulent backdating scheme and the true facts regarding the Company's financial condition and lack of internal controls." Only the specific allegations of reliance are new. This does not constitute a new cause of action, much less one that could not have been raised earlier.

Plaintiffs do not challenge the court's dismissal of the second and third causes of action of the SAC, since, as noted earlier, they abandoned those claims. The fourth cause of action for common law fraud was clearly reminiscent of the federal complaint: it alleged "materially false and misleading statements" that withheld "the highly adverse material fact that Rambus was involved in a long-term backdating scheme and that it was historically unprofitable."

Implicitly recognizing the duplication of these allegations from their federal complaints, plaintiffs nonetheless protest that this time, *PwC and Zwarn* are charged with "backdating fraud" and therefore the fourth cause of action against *them* is not precluded. Plaintiffs are incorrect. The Consolidated Amended Complaint asserted PwC's "misrepresentations that Rambus had adequate controls" and its failure to discover Rambus's false and misleading statements while reporting "nothing wrong." The fourth

cause of action of the SAC duplicates the allegations of the Consolidated Amended Complaint by asserting that PwC "knew and/or was recklessly disregarding the backdating scheme," and then submitted "false and misleading" audit opinions and "internal control opinions" attesting to the fairness and truth of Rambus's financial statements and the adequacy of Rambus's internal controls. These facts were alleged in the abandoned third cause of action and incorporated by reference into the fourth cause of action. That additional detail was not specifically delineated in the fourth cause of action regarding PwC is attributable to plaintiffs' addition of PwC and Zwarn in a subsequent amendment.

Clearly the same primary rights, based on the same core facts, were alleged in the federal and state pleadings. The only difference plaintiffs suggest is that in the federal action PwC was charged with negligence rather than fraud. This is a difference in theory, which, as explained earlier, does not afford plaintiffs an escape from the preclusive effect of res judicata. And even if plaintiffs' rationale were viable, their assertion of fraud by PwC and Zwarn is an allegation that clearly "could have been raised" in the course of the federal litigation. (*Interinsurance Exchange of the Auto. Club v. Superior Court, supra*, 209 Cal.App.3d at p. 182.)

Plaintiffs proffer a similar argument with respect to the sixth cause of action for extrinsic fraud on the federal court in connection with the SLC report submitted in the course of the derivatives action. The SLC report was the product of an investigation into the alleged backdating fraud and concomitant false public filings. According to the SAC, "one purpose of the fraudulent SLC report was to shield certain officers and directors of Rambus that were the [*sic*] responsible for the fraudulent backdating at Rambus. [A]nother purpose was to take over the derivatives lawsuit and limit damages in the shareholders class action and the private lawsuits in the federal court," including "plaintiffs' private case that included *identical causes of action*." Another purpose,

according to plaintiffs, was to preclude other litigants' access to evidence derived from the underlying "Internal Investigation that purported to be independent."

Plaintiffs had already called the district court's attention to this issue at a hearing on September 12, 2008. The district court advised plaintiffs that if misconduct or irregularity had occurred, it concerned the shareholders' case and was "extraneous" to the case before the court. The district court acknowledged the new contention in its December 2008 dismissal order, noting that plaintiffs' new information did not materially affect its disposition. Additional evidence plaintiffs had proffered was likewise immaterial in the court's view, though it offered "no opinion as to whether Plaintiffs successfully might seek relief from the judgment" under the Federal Rules of Civil Procedure.<sup>3</sup>

These allegations were also raised in plaintiffs' appeal to the Ninth Circuit Court of Appeals following the district court's dismissal of the federal action with prejudice. Plaintiffs stated that Rambus "lied" in the SLC report, thus leading to the settlement of both the "Derivatives Class Action" and the "Shareholders class action." Plaintiffs represented to the appellate court that they could not have raised the issue earlier because they had not obtained the necessary evidence demonstrating this fraud until October of 2008.

Although the Ninth Circuit did not directly reject plaintiffs' contention, the district court did address it; plaintiffs acknowledged as much in the SAC by speculating that the district court "opted t[o] go along with the SLC Report because it was the result of a multimillion Internal Investigation that purported to be independent." Plaintiffs thus had the opportunity to litigate this claim, and even though they did not directly assert a

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<sup>3</sup> The district court's characterization of the new evidence is just as apt in the context of the state court action; it consisted of supplementary facts relevant to the existing fraud allegations and offered nothing directly helpful in establishing defendants' potential liability in the state case.

distinct cause of action for "extrinsic fraud" in federal court, they did complain of this conduct in that forum, as it was relevant to their overall allegations of backdating fraud. As discussed earlier, "all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date." (*Mycogen, supra*, 28 Cal.4th at p. 897.) Plaintiffs do not suggest any other basis for finding res judicata inapplicable here.<sup>4</sup>

Plaintiffs' contention that the superior court conflated backdating fraud with RDRAM fraud is also unavailing. Plaintiffs maintain that the court confused the two claims and failed to realize that RDRAM fraud was not alleged in the federal action. As the superior court observed, however, plaintiffs did raise RDRAM fraud in the federal case. The Consolidated Complaint alleged that the price of Rambus securities was "highly dependent on the market's perception that Intel supported Rambus RDRAM. It is now known that by 1998 Rambus knew that RDRAM was unpopular with the DRAM Manufacturers and might never achieve dominant market share." Rambus executives "were fully aware that they were losing Intel's commitment to RDRAM by the middle of 1999. This fact was not disclosed to the public shareholders and it was a very adverse material fact. Had this been known publicly by 2000 the perception of a DRAM monopoly would not have taken hold." Plaintiffs referred specifically to a false statement by one executive that RDRAM was expected to dominate the industry, even though "Rambus knew that Intel was moving away from them as early as 1997." In addition, plaintiffs alleged, the members of the "Compensation/Audit committee" were aware that Intel was "pulling away from RDRAM as the desktop memory standard," yet they

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<sup>4</sup> Because res judicata bars this cause of action, it is unnecessary to address plaintiffs' arguments directed at the merits (namely, whether they adequately alleged extrinsic fraud, including the elements of scienter and intent), their assertion that the superior court conflated extrinsic fraud with intrinsic fraud, or their assertion that the court confused the derivative action (to which they were not parties) with the shareholders class action.

" 'willfully and intentionally' chose to conceal the materially adverse non-public information over many years." Plaintiffs directly alleged that defendants "intentionally and fraudulently concealed material facts from the DRAM industry" and allowed the public to believe that Rambus had a monopoly, thereby inflating the Rambus stock. Had Rambus disclosed its knowledge that Intel was moving away from RDRAM for the PC market, plaintiffs would not have invested in Rambus.

Similarly, in the Consolidated Amended Complaint plaintiffs alleged that they had justifiably relied on financial statements indicating Rambus's profitability, based in part on Intel's selection of RDRAM for the PC market. Plaintiffs would not have invested in Rambus if they had known of an October 1999 letter Rambus had concealed, which indicated that Intel intended to support a competitor to RDRAM. Plaintiffs specifically attributed part of their losses to the "*undisclosed abandonment of RDRAM* by Intel."

Clearly plaintiffs had the opportunity to allege RDRAM fraud in the federal case and did so. That it was not segregated in its own count, as it was in the SAC, is of no consequence.

Finally plaintiffs complain that after being restricted to a 50-page limit in their federal pleading, they should not be penalized for failing to make all of their claims in that forum. "Sometimes," they explain, "this is simply not possible." They further assert (without discussion) that the first, fifth, sixth, and seventh causes of action are new and therefore not subject to any "claim splitting" prohibition.

As we have already concluded, however, the identified causes of action are not new. We further observe that most of plaintiffs' argument is directed at the superior court, which was "fully informed about the federal case and accepted the complaint as properly submitted." The only suggestion of "tacit agreement" by *defendants* is plaintiffs' claim that defendants knew that it was impossible for plaintiffs to make all their claims in federal court because of the pleading limit. Plaintiffs submit no authority relieving them of the obligation to bring all their claims in one forum merely because they are unable to

be as concise as the judge in that forum requires. As sympathetic as we may be for the procedural dilemma they experienced, the doctrine of *res judicata* is based on sound policy and cannot be lightly disregarded. Its application "benefits both the parties and the courts because it 'seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in *judicial administration*.'" (*Mycogen Corp. v. Monsanto Co.*, *supra*, 28 Cal.4th at p. 897.) More specifically, "[t]he California Supreme Court has held that the rule against [claim] splitting is based on two principles, as follows: (1) The defendant should be protected against vexatious litigation; and (2) it is against public policy to permit litigants to consume the time of the courts by relitigating matters already judicially determined, or by asserting claims which properly should have been settled in some prior action. [Citation.]" (*Phillips v. Western Pac. R. Co.* (1971) 22 Cal.App.3d 441, 444.) We see no reason for deviating from these established tenets in the procedural circumstances presented.

*Disposition*

The judgment of dismissal is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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GROVER, J. \*

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\* Judge of the Monterey County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.