

Genworth, through subsidiaries, provided insurance and wealth management services in 25 countries. (*Id.* at 2.) The complaint focuses on its subsidiary operating in Australia, and a plan for an IPO for a 40% public ownership of that subsidiary. (*Id.* at 2-10.) The complaint alleges mounting claims and losses in 2011 calling for a substantial increase in loss reserves, but the company, and its two most senior executives, willfully suppressed that information. (*Id.*) On April 17, 2012, the complaint alleges, Genworth was compelled to disclose the true facts, and the postponement of the IPO. (*Id.* at 9.) The complaint alleges that the value of Genworth's common stock plunged 23% as a result of the disclosure. (*Id.* at 10.)

DISCUSSION

The Second Amended Complaint adequately and plausibly alleges the material allegations of a securities fraud action. Reference to a few of its allegations will show that. Defendants' arguments that Plaintiffs' proofs will fail are premature at this point of the lawsuit.

Paragraph 91, for example, alleges details of false statements made by defendants Fraizer and Klein, for themselves and for Genworth: the 2011 flood events in Queensland, and higher interest rates and living costs, an elevated currency, and lower consumer spending are being absorbed in Genworth's loss ratios; housing markets in Canada and Australia are sound overall; and in Australia, "the loss ratio remained flat at 48% sequentially, reflecting the slower recovery in Queensland from flooding earlier in the year and continued pressure from higher interest rates, increased living costs, lower consumer spending, and a strong Aussie dollar, which impacts tourism and exports."

Paragraph 92 alleges that the statements were false and misleading. In Queensland, for example, Genworth was experiencing "a significant increase in delinquencies

and claims,” and “an economic downturn that particularly affected small business owners, driving an increase in claims of \$100 million-\$125 million” that “exceeded the allotted reserves.” Thus, “the reported loss ration figure was . . . materially understated.”

Paragraph 124 alleges reliance of plaintiff and the class members based on a Genworth’s failure to disclose material facts. *See Affiliated Ute v. United States*, 406 U.S. 128, 152-54 (1972). Paragraph 128 alleges that the misstatements were of existing facts, not forward-looking predictions. Paragraph 133 alleges loss causation adequately. Paragraph 139 alleges personal and wrongful knowledge on the part of the individual defendants, as “high-level executives and/or directors” of Genworth who, “by virtue of his responsibilities and activities as a senior officer . . . was privy to and participated in the creation, development and reporting” of Genworth’s false and misleading statements.

Defendants’ motion to dismiss is denied. The facts as alleged, which I must accept as true, give rise to a strong inference of scienter, regardless of the refutations set out in defendants’ brief. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322-23, 326 (2007); *see also ECA & Local 134 IBEW Joint Pension Trust of Chi. v. JP Morgan Chase Co.*, 553 F. 3d 187, 198 (2d Cir. 2009). Although the statements which Defendants contend are protected by the safe harbor contain some forward-looking language, they are statements of current condition, and are therefore not protected by the safe-harbor defense. *See New Orleans Employees Retirement System v. Celestica, Inc.*, 455 Fed.Appx 10, 15 (2d Cir. 2011).

The Clerk will mark docket number 43 as terminated. The parties will attend to initial disclosures and recommend a case management plan at a conference to be held Friday, July 24, 2015, at 10:00 a.m.

SO ORDERED.

Dated: New York, New York
June 15, 2015

A handwritten signature in black ink, appearing to read 'Alvin K. Hellerstein', written over a horizontal line.

ALVIN K. HELLERSTEIN
United States District Judge