**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| IN RE GENWORTH FINANCIAL, INC. SECURITIES LITIGATION | Case No. 14-CV-02392 (AKH) |

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION PURSUANT TO FED. R. CIV. P. 54(b) FOR RECONSIDERATION OF THE COURT'S JUNE 16, 2015 ORDER DENYING DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

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Defendants Genworth Financial, Inc. ("Genworth") Michael D. Fraizer ("Fraizer") and Martin P. Klein ("Klein") (collectively, "Defendants") respectfully move the Court pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and the Court's inherent power to alter its own orders, to reconsider its June 16, 2015 Opinion and Order denying Defendants' Rule 12(b)(6) Motion (Dkt. 53 (the "June 16 Order")), and to dismiss Plaintiffs' Second Amended Complaint with prejudice.

**PRELIMINARY STATEMENT**

The U.S. Second and Seventh Circuit Courts of Appeal have instructed that a court's gatekeeping responsibilities under the PSLRA and the Federal Rules of Civil Procedure extend beyond the initial denial of a motion to dismiss where, as here, the denial was premised on erroneous and recanted allegations of confidential witnesses Plaintiffs put before the Court. Simply put, Plaintiffs misused the "evidence" provided by two so-called "confidential witnesses"—whose purported allegations lie at the heart of the Second Amended Complaint (the "SAC")—both to evade the stringent pleading requirements of the PSLRA and Fed. R. Civ. P. 9(b), and to initiate costly discovery to which Plaintiffs otherwise were not entitled. Both of these "confidential witnesses" now have recanted the key statements the SAC attributes to them, including the specific allegations that the Court cited in denying Defendants' motion to dismiss the SAC. In this circumstance, both the Second and Seventh Circuits—the only federal Circuit Courts to have addressed the issue—have agreed that the proper course is for the District Court to consider the new evidence and enter a dismissal with prejudice.

Initially, in an Order dated March 25, 2015, this Court *sua sponte* dismissed Plaintiffs' Amended Complaint, ruling that "it fails to plead a coherent claim for relief satisfying the demands of the PSLRA[,] and Rules 8(a)(2) and 9(b) of the" FRCP. (Dkt. 41 at 3). This Court further held that any second amended complaint "must 'specify each statement alleged to have

been misleading,' and 'the reason or reasons why,' but plainly and clearly…. [and] must allege… with 'particularity,' the facts giving rise to a strong inference that the defendant acted with *scienter*. 15 U.S.C. §78u-4(b)(2)." (*Id.*).

Substantially all of the new "facts" Plaintiffs pled in support of their scienter allegations in the SAC were previously contained in the Amended Complaint. In the SAC, however, Plaintiffs for the first time attribute these "facts" to the statements purportedly made by two former Genworth employees: "CW1" Glenn Meacham ("Mr. Meacham") and "CW2" Robert Mullins ("Mr. Mullins"; collectively, Mr. Meacham and Mr. Mullins are referred to as the "CWs"). The Court squarely relied upon these alleged "facts" in denying Defendants' motion to dismiss the SAC. (June 16 Order at 2-3, citing SAC ¶¶ 64-65, 92). Specifically, the Court credited Mr. Meacham's alleged statements that, at an internal Leadership and Management ("L&M") meeting held in December 2011, senior Genworth executives presented a PowerPoint showing that Genworth's Australian Mortgage Insurance unit ("AU MI") saw "'an increase in claims of $100-$125 million' that 'exceeded the allotted reserves,'" and that the senior executives said at that same L&M meeting that AU MI "had had a poor quarter due to increased claims… and that claims were exceeding allotted reserves." (*Id.*).

The Court also noted Mr. Mullins' alleged statements that there were internal Genworth reports showing "a significant increase in delinquencies" throughout 2011. (*Id.*). Relying on the CWs' allegations, the Court held that the SAC adequately alleged that Defendants "willfully suppressed" this alleged contemporaneous, internally disclosed financial information concerning Genworth's "mounting claims and losses" in its 3Q and/or 4Q 2011 publicly disclosed financial results, and instead reported a "loss ratio figure [that] was materially understated." (*Id.*). The

Court concluded that "[t]he facts as alleged, which I must accept as true, give rise to a strong inference of scienter." (*Id.*).

Plaintiffs' CW-based allegations have now come undone. In late December 2015, each of the two CWs provided either a sworn statement (Mr. Mullins) or deposition testimony (Mr. Meacham) in which he denied, recanted or contradicted all of the above material factual statements that Plaintiffs attributed to him and on which the Court relied.

Mr. Meacham, who worked solely as an IT manager in the U.S. during his tenure at Genworth, conceded that he had no firsthand knowledge of, or involvement with, the substantive matters at issue here. Although he was represented at his deposition by counsel proffered and paid for by Plaintiffs, Mr. Meacham recanted and disavowed the substance of the central allegations the SAC attributes to him:

- He could not recall whether there was an L&M meeting in December 2011, and admitted that he has no basis to dispute Genworth's sworn statement in its interrogatory responses that there was no such L&M meeting at all in December of 2011. (Ex. A, Deposition of Glenn Meacham ("Meacham Tr."), at 185:2-5; 186:8-:187:22).[1]
- He could not confirm or remember seeing a PowerPoint slide at any time in 2011 showing a $100-$125 million increase in claims in Australia. (*Id*. at 227:19-229:10; 328:10-21).
- He could not testify that anyone at Genworth said, "at any time in 2011," that AU MI "had a poor quarter due to increased claims," or that claims were exceeding AU MI's allotted loss reserves. (*Id*. at 323:5-324:5).
- He conceded that there was no L&M meeting where Genworth disclosed financial results to its employees prior to their being publicly reported (*Id*. at 147:23-148:18); and
- He testified that **he had no personal knowledge**, or any other reason to believe, that the information Genworth reported in its quarterly and annual financial statements was false. (*Id*. at 232:17-233:3).

[1] "Ex. __" refers to the exhibits attached to the January 21, 2016 Transmittal Affidavit of Reid L. Ashinoff.

Mr. Mullins, the former Chief Operations Officer of AU MI, swore under oath in his December 23, 2015 declaration ("Mullins Decl.") that he did ***not*** tell Plaintiffs that there were "internal reports showing increasing delinquencies in Australia" throughout 2011. (Ex. B). Rather than "confirming" to Plaintiffs' counsel that "the L&M meetings were led by [Jerome] Upton [the COO of Genworth's International MI Division during the relevant period]" (SAC ¶ 68), Mr. Mullins affirmed that **to this day he does know what L&M meetings are**. Mr. Mullins thus denies making the statements alleged in the SAC, and he further swears that he corrected Plaintiffs' misimpressions and incorrect attributions—corrections that Plaintiffs clearly ignored.

These sworn disavowals eliminate the factual support for Plaintiffs' otherwise conclusory, unsupported assertions that AU MI sustained over $100 million in claims losses in either 3Q or 4Q 2011, and that Defendants knowingly and "willfully suppressed" that information (*i.e.* with scienter) in their public disclosures. The CWs' sworn statements reveal not only wholesale recantations of the "facts" in Plaintiffs' pleading, but also failings in their investigation, which enabled them to evade the stringent pleading requirements of the PSLRA, and to commence discovery to which they are not entitled. Stripped of the CWs, the SAC is nothing more than the First Amended Complaint that this Court previously found to be insufficient and dismissed.

Only two federal Circuit courts have addressed this precise situation in a securities fraud class action governed by the PSLRA, where confidential witnesses under oath recant and disavow the allegations attributed to them in an amended complaint. In *Campo v. Sears Holdings Corp.*, 371 Fed. Appx. 212 (2d Cir. 2010), *affirming* 635 F. Supp. 2d 323 (S.D.N.Y. 2005) ("*Campo*"), a unanimous Second Circuit affirmed Southern District Judge Lewis Kaplan's

Rule 12(b)(6) dismissal based on subsequent sworn confidential witness statements recanting and contradicting the factual allegations attributed to them. Likewise, the Seventh Circuit, in a 2013 opinion by Judge Richard Posner, unanimously affirmed the Rule 54(b) reconsideration and Rule 12(b)(6) dismissal with prejudice by the District Court of an amended complaint, after sworn statements of the confidential witness revealed, like here, that he had no personal knowledge to make, did not make, and/or could not corroborate, the statements the plaintiffs had attributed to him. *City of Livonia Employees' Ret. Sys. v. The Boeing Co.*, 711 F. 3d 754 (7th Cir. 2013), *affirming* No. 09 C 7143, 2011 WL 824604 (N.D. Ill. Mar. 7, 2011) ("*Boeing*"). As Judge Posner held in *Boeing*, "The only thing that persuaded the district judge not to dismiss the second amended complaint, having dismissed the first one for failure to state a claim under the [PSLRA], was the allegation that the plaintiffs had a confidential source . . . that would have contradicted the officials' public statements about the 787-8's development schedule. Without evidence from the confidential source, then, the first dismissal stood, its validity unassailable." *Boeing*, 711 F.3d at 761

Critically, both appellate panels also expressly overruled plaintiffs' procedural challenges to the District Courts' consideration of the confidential witnesses' sworn evidence on a revisited motion to dismiss. Both the Second and Seventh Circuits made clear that a District Court can, and should, consider sworn recantations by confidential witnesses to halt any further progress of an insufficient 10b-5 class complaint that should never have passed the hurdle of a Rule12(b)(6) motion to dismiss. *Campo* and *Boeing* thus reaffirm the District Court's importance as gate-keeper under the PSLRA—a role intended to ensure, *inter alia*, that deficient claims do not initiate a burdensome discovery process that can create hydraulic pressure on a corporate defendant. This Court is thus obliged to reconsider the SAC's clearly deficient scienter

allegations, as well as the allegations that Genworth misrepresented its 3Q and 4Q 2011 financial results, given the troubling false portrayals of evidence in the SAC.

For all of the reasons set forth herein, Defendants' motion for reconsideration should be granted, and upon reconsideration, the SAC should be dismissed with prejudice.

## STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

### I. MARCH 2015: THE COURT SUA SPONTE DISMISSES PLAINTIFFS' AMENDED COMPLAINT

On October 3, 2014, Plaintiffs filed a 73 page, 149 paragraph Amended Complaint (the "FAC"). Plaintiffs alleged, *inter alia*:

- Defendants held quarterly L&M Meetings that were led by Jerome Upton and Kevin Schneider (FAC ¶ 111); During a December 2011 L&M Meeting, either Schneider or Upton revealed that AU MI recently had a poor quarter due to increased claims which led to miscalculating of reserves (*id.*); and
- A PowerPoint presentation at the December 2011 L&M Meeting showed an increase in claims for the quarter in AU MI equaling around $100 to $125 million (*id.*).

The FAC did not specifically attribute any allegations to so-called "confidential witnesses."

On March 25, 2015, the Court dismissed the FAC, holding that its allegations failed to satisfy both the scienter pleading requirements of the PSLRA, 15 U.S.C. §78u-4, as well as Rules 8(a)(2) and 9(b) of the Federal Rules of Civil Procedure. (Dkt. No. 41, at 3). The Court granted Plaintiffs leave to file a second amended complaint, but expressly cautioned Plaintiffs that their:

> Second Amended Complaint must allege, 'with respect to each act or omission' that is false and misleading, and with 'particularity,' the facts giving rise to a strong inference that the defendant acted with *scienter*. 15 U.S.C. §78u-4(b)(2). The showing must be specific to the company as well as to each of the two individual defendants.

*Id.* at 3-4.

## II. APRIL 2015: VIRTUALLY ALL OF THE KEY SCIENTER ALLEGATIONS IN THE SAC ARE BASED ON ALLEGED "FACTS" SUPPLIED BY THE CWS

On April 17, 2015, Plaintiffs filed the SAC, which largely repeated the same factual allegations contained in the FAC (including the allegations referenced above). For the first time, however, Plaintiffs attributed their scienter-related facts to two former Genworth employees to whom Plaintiffs referred as "Confidential Witnesses." Specifically, the SAC attributes the following statements to the CWs:

- CW1 [Meacham] recalled seeing a PowerPoint presentation made at a December 2011 L&M meeting showing that claims in Australia had increased by $100 to $125 million. (SAC ¶ 65).
- "CW1 described the IPO as being very important to Genworth and that the intent to having it occur in the first half of 2012 was a topic at each [quarterly L&M] meeting[], where it was frequently discussed. CW1 stated that this changed by the quarterly meeting that was held in either early or mid-December 2011. According to CW1, at this meeting, either Schneider or Upton . . . [stated] that the Australian MI unit had had a poor quarter due to increased claims, leading to miscalculating of reserves, and that claims were exceeding the allotted reserves." (*Id.*, ¶¶ 63-64).
- "CW2 [Mullins] confirmed the L&M meetings were led by Upton and that they reviewed updates on the different global MI units. CW2 also recalled that throughout 2011, there were internal reports showing an increase in delinquencies in Australia." (*Id.* ¶ 68).

The allegations attributed to the CWs were the only factual support for Plaintiffs' scienter theory that Genworth senior executives knew about but suppressed these internal actual quarterly financial results which allegedly contradicted its publicly released financial statements. Thereafter, in response to Defendants motion to dismiss the SAC, Plaintiffs' papers in opposition (Dkt. No. 51) relied heavily on the alleged CW statements.[2] The purported "December 2011 L&M Meeting," and the allegation that a PowerPoint shown at that meeting reflected that AU MI

[2] Specifically, Plaintiffs cited and referred to the alleged $100-$125 million quarterly increase in claims, and that the "claims were exceeding the allotted reserves" allegation, 13 times in the SAC, and 19 times in their memorandum of law.

had suffered an unexpected $100 to $125 million quarterly increase in claims, permeated Plaintiffs' motion papers. (*See, e.g.*, Dkt. No. 51, at 17 ("CW1's account establishes that Defendants had access to information directly contradicting their statements that the Australian MI unit was stable, and that no market conditions existed to jeopardize the IPO."); *Id.* at 22 ("[E]ven if Defendants' statements that the IPO was 'on track' could be viewed as mere opinion, Defendants had no basis for that opinion given the information internally disclosed in the December 2011 L&M meeting."); *Id.* at 25 ("CW1's [recalls] that claims in the Australia MI unit outstripped [] reserves, with claims reaching a record $100-125 million . . . ."); *Id.* at 35 n.16 (citing a "huge divergence from what was publicly represented and what was presented internally ($100-$125 million in claims).")).

Plaintiffs also relied heavily on Mr. Mullins' purported statement that AU MI's delinquencies were increasing throughout 2011. Plaintiffs allege that this was not publicly disclosed by Genworth. *See, e.g., id.* at 22.

## III. JUNE 2015: THE COURT DENIES GENWORTH'S MOTION TO DISMISS THE SAC, RELYING HEAVILY ON THE NEW CW ALLEGATIONS

On June 16, 2015, the Court denied Defendants' motion to dismiss the SAC, holding that the new facts alleged—the statements attributed to the CWs—gave rise to a strong inference of scienter. Specifically, the Court accepted as true the confidential witnesses' statements that AU MI: (1) was experiencing a significant undisclosed increase in delinquencies and claims losses; and (2) had experienced an undisclosed $100 to $125 million increase in claims that purportedly exceeded AU MI's allotted reserves. (June 16 Order, at 2-3). Supported by these CW allegations, the Court found that the SAC adequately alleged scienter, *i.e.* that the company and its two most senior executives "willfully suppressed" that information in 2011. (*Id.*)

Significantly, in dismissing the FAC, the Court previously decided that these same allegations—without specific attribution to the CWs—did not support a "strong inference" of scienter.

## IV. DECEMBER 2015: THE CONFIDENTIAL WITNESSES RECANT THE SCIENTER ALLEGATIONS ATTRIBUTED TO THEM

Defendants' counsel attempted to contact the CWs in October 2015. Mr. Mullins, who was represented by independent counsel, provided a sworn declaration on December 23, 2015 in which he disavowed many of the allegations attributed to him in the SAC. (Ex. B). Mr. Meacham did not respond to Defendants' counsel's attempts to contact him. Defendants subpoenaed him and, on December 22, 2015, took his deposition.

### A. Mr. Meacham Disavows the Alleged Material "Facts" Plaintiffs Attribute to Him In The SAC

Mr. Meacham, a former Genworth IT manager, concedes that he is "CW1." (Meacham Tr. 23:24-25:12; 312:20-22). Throughout Mr. Meacham's tenure at Genworth, his responsibilities related solely to IT. (*Id*. at 27:11-17). Mr. Meacham was (i) not involved in the company's financial reporting (*id*. at 152:11-153:8); (ii) "never" privy to the company's financial results prior to their public disclosure (*Id*. at 147:23-148:18, 150:10-14); and (iii) not familiar with the AU MI's loss reserving process, nor does he know how reserves were calculated. (*Id.* at 199:12-24). Mr. Meacham also had no involvement with the announced IPO at issue in the SAC. (*Id*. at 177:23-178:23).

Notwithstanding Mr. Meacham's glaring lack of relevant knowledge, Plaintiffs utilized his unfounded assertions as the centerpiece of the SAC. (*See* SAC, ¶¶ 64-65). At his deposition Mr. Meacham either recanted or disavowed these core allegations.

1. Mr. Meacham Recanted His "Recollection" that a December 2011 PowerPoint Presentation Showed a $100-$125 Million Increase in Claims

The key allegation attributed to Mr. Meacham is that he "recalled a PowerPoint presentation [shown in a December 2011 'L&M' meeting,] showing the increase in claims in Australia equaling around *$100-125 million*, and that this never had happened before to the Australian unit." ((SAC, ¶65) (emphasis in original); *see also* June 16 Order, pp. 2-3, citing SAC ¶¶ 64-65, 92)). Plaintiffs contend that Mr. Meacham's purported "recollection" of this internal presentation—which, Mr. Meacham testified, "would had to have" referred to the company's performance in 3Q 2011 (Meacham Tr., 193:16-194:3)—contravened Genworth's public statements in late 2011-early 2012. (*See, e.g.*, SAC ¶ 92).

Mr. Meacham has disavowed this "recollection." Mr. Meacham admitted that he was "not sure" there even was an "L&M" meeting in December 2011. (Meacham Tr., 185:2-5). Mr. Meacham admitted that he has "no reason to dispute" Genworth's sworn interrogatory response that there was **no** such meeting in December 2011. (Id. at 186:15-187:22). Mr. Meacham then conceded that he may not have seen such a PowerPoint **at *any time* in 2011**, and that **he may *never* have seen** a slide showing a $100-$125 million increase in claims:

> Q. So sitting here today, can you say under oath that you saw a PowerPoint slide any time in 2011 that showed an increase in claims in Australia equaling around 100 to 125 million?
>
> [A]. I don't have -- I have not been presented anything that says that now.
>
> * * *
>
> Q. [I]s it possible that you didn't see that slide in 2011, that perhaps you saw it at some other time? Could it have been in 2012?
>
> A. It's possible. I – I can't state for – for certainty.
>
> * * *

> Q. [I]s it possible that you didn't see a slide with -- showing an increase in claims equaling around 100 to 125 million, that perhaps it was some other number?
>
> A. Possible, yes.
>
> **Q. Okay. I mean, sitting here today, do you actually remember seeing a slide with those numbers, 100 to 125 million, in 2011?**
>
> **A. This is what I stated last year when I was asked the question…. Sitting here today, no.**

(*Id*. at 227:19-229:10; *see also id*. at 249:9-252:4) (emphasis added).

In recanting on his recollection, Mr. Meacham expressly disavowed Paragraph 92 of the SAC, which, this Court determined in its June 16 Order, alleged an actionable misstatement under the PSLRA. ( June 16 Order, at 2-3). Mr. Meacham was shown SAC Paragraph 92 and testified as follows:

> Q. (BY MR. KATTAN) Okay. Just take out . . . the second amended complaint, Paragraph 92. All right. Paragraph 92 says that "Statements regarding the Australian MI unit's financials and the Australian market were false and misleading because of defendants' failure to disclose that the Australian MI unit was experiencing deteriorating economic conditions in Queensland leading to a significant increase in delinquencies and claims." Then it goes on to say, "Fraizer's statement that 'Australia is transitioning as expected, absorbing the loss pressures coming from the early 2011 Queensland flood events' including the low consumer spending on small business owners, is false and misleading because Fraizer failed to disclose that the coastal Queensland region was . . . experiencing an economic downturn that particularly affected small business owners, driving an increase in claims of 100 to $125 million." You see where I was just reading?
>
> A. Yes.
>
> Q. And, again, that reference to an increase in claims of 100 to $125 million was in reference to the PowerPoint that you originally told the plaintiffs' investigator that you recalled seeing in December of 2011, right?
>
> [Objection omitted]
>
> A. Correct.

> Q. **[A]m I correct that, in fact, you cannot recall seeing any such PowerPoint reflecting those numbers, meaning an increase in claims of 100 to $125 million, at any time in 2011, correct?**
>
> [Objections omitted]
>
> **A. Yes.**
>
> **Q. Yes, I'm correct?**
>
> **A. Yes.**

(Meacham Tr., 327:4-328:21) (emphasis added).

To confirm that Mr. Meacham had not seen the PowerPoint slide in question at any time near or around December 2011, Mr. Meacham was shown the PowerPoints from ***all*** of Genworth's quarterly L&M meetings held between August 1, 2011-February 2012. Mr. Meacham conceded that the slide did not appear in any of those presentations. (*Id.* at 219:21-220:4; 222:6-11; 223:4-9; 286:10-14). Mr. Meacham testified that he had no reason to believe there were any other L&M meetings in that period. (*Id.* at 225:2-18).

Mr. Meacham also disavowed Plaintiffs' other allegations concerning the purported December 2011 PowerPoint. The SAC alleges that "CW1 observed that the loans affected by the flooding were mostly in Queensland, and were predominantly secondary/vacation homes and not primary residences. According to CW1, Genworth… factored those conditions into calculating risk and reserves." (SAC, ¶65). Mr. Meacham admitted that he never saw any such information in a PowerPoint presentation, and that the information he claims to have recalled was his "opinion," possibly based on his own independent research—not something any Genworth senior executive ever said to his knowledge. (Meacham Tr., 272:4-273:23; *see also* 316:17-317:10).

Recognizing that Mr. Meacham's recantations undermine the SAC's viability, Plaintiffs will no doubt argue—as they did (improperly) at Mr. Meacham's deposition—that Mr. Meacham's testimony was unfairly elicited only after repeated inquiries, and was influenced by

documents "selected" by Genworth's counsel. (*Id*. at 333:13-334:9). Nonsense. Mr. Meacham was shown the PowerPoint slides in Defendants' possession used at the L&M meetings between August 2011-February 2012, both to test his alleged assertions, and to give Mr. Meacham every opportunity to corroborate his "recollection" of a December 2011 PowerPoint reflecting a $100-$125 million increase in claims. **Moreover, Mr. Meacham was asked several times, independent of any document, whether he could swear to having seen the PowerPoint described in the complaint "at any time in 2011." He could not.** The fact that he could not do so is not indicative of a failing of Defendants' counsel, but rather the insufficiency of the SAC which is reliant on the imperfect, four-year old "recollection" of a witness with no firsthand knowledge of the events relevant to the case.

2. Mr. Meacham Recanted the Assertion that, in December 2011, Genworth Senior Management Stated that AU MI Had a "Poor Quarter" in which "Claims Were Exceeding the Allotted Reserves"

Plaintiffs also claim that Genworth knowingly misrepresented in 3Q and/or 4Q2011 its intent to move forward with a partial IPO of AU MI, based in large part on Mr. Meacham's assertion that, at the purported December 2011 L&M meeting, "either Schneider or Upton," stated that AU MI "had had a poor quarter due to increased claims, leading to miscalculating of reserves, and that claims were exceeding the allotted reserves." (SAC, ¶64). Mr. Meacham, however, directly disavowed these allegations too:

> Q. (BY MR. KATTAN) And you can't say under oath here today that Mr. Upton or Mr. Schneider or anyone else at the company said at any time in 2011 that claims paid for the Australian MI unit were exceeding reserves for that unit[,] correct?
>
> [Objections omitted]
>
> A. No.[3]

[3] To avoid any misinterpretation, Mr. Meacham later clarified that he could not say that **anyone**

> [Attorney colloquy omitted]
>
> Q. Nor can you say under oath here today that Mr. Upton or Mr. Schneider or anyone else at the company said **at any time in 2011** that the Australian MI unit had a poor quarter due to increased claims leading to a miscalculation of reserves, correct?
>
> [Objections omitted].
>
> A. Correct.

(*Id*. at 323:5-324:5). (emphasis added)

Not only could Mr. Meacham not recall Mr. Schneider or Mr. Upton making the alleged statements concerning uncertainty over the AU MI IPO due to that unit's "poor quarter" in 2011, Mr. Meacham also could not testify to any L&M meeting at which Mr. Upton made a presentation concerning AU MI's financials in either 2011 or 2012. (*Id.* at 287:9-16.) That concession is critical, because, as Mr. Meacham was forced to acknowledge—and contrary to the allegations in the SAC—Mr. Schneider was the head of Genworth's **United States** MI business until **May 2012**. (*Id*. at 114:7-115:9). Mr. Meacham admitted that he did not know whether Mr. Schneider had anything to do with Genworth's decision to try to launch an IPO of its **Australian** business. (*Id*. at 127:17-128:16).

Mr. Meacham further testified that no one from Genworth said, at any meeting Mr. Meacham attended in November or December 2011, that the IPO either was no longer going forward, or that it may not go forward. (*Id.* at 209:2-7).

3. Mr. Meacham Disavowed Any Knowledge Regarding How and When Defendant Mr. Fraizer Received Financial Information Concerning AU MI

Mr. Meacham also recanted the assertions in SAC Paragraph 66, in which he allegedly "noted" that financial information concerning AU MI "was likely being provided to Mr. Fraizer

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at the company stated that AU MI's claims were exceeding its loss reserves in 2011. (*Id*. at 326:21-327:3).

much more frequently than monthly or quarterly." Mr. Meacham conceded that he did not know how financial information concerning AU MI was provided to Mr. Fraizer in 2011 or 2012. (*Id.* at 280:19-23; 281:17-282:5). Nor was he aware of any specific information concerning AU MI that was provided to Mr. Fraizer more than monthly or quarterly. (*Id.* at 282:19-283:3). And he admitted that, SAC Paragraph 66 is nothing more than a statement of Mr. Meacham's "opinion", and not a statement of fact. (*Id.* at 283:11-284:8).

4. Mr. Meacham Did Not Assert, and He Has No Reason to Believe, that Genworth Intentionally Misrepresented Its Financial Results

In SAC Paragraph 62, Plaintiffs rely on Mr. Meacham to allege that Genworth held its "L&M" meetings at which the company discussed its financial performance "before the Company publicly announced quarterly results." As Mr. Meacham testified, that allegation is patently false, as there was "never" an L&M meeting where Genworth disclosed financial results that had not already been publicly reported. (Meacham Tr., at 147:23-148:18) Moreover, Mr. Meacham testified that he has no knowledge or reason to believe that Genworth ever reported false information in its financial statements, (Meacham Tr., 232:17-233:3), and further emphasized that he is "[a]bsolutely not" trying "to accuse Genworth of misreporting their financials," and has "no reason" to "accus[e] the company of willfully" making misstatements in their public disclosures. (*Id.* at 241:24-243:24).

**B. Mr. Mullins' Sworn Declaration Also Disavows the Alleged "Facts" the SAC Attributes to Him**

Like Mr. Meacham, Mr. Mullins both denies key factual allegations attributed to him, and denies making statements the SAC attributes to him to Plaintiffs counsel or their investigator. (Mullins Decl. ¶ 8). Moreover, in his sworn declaration, Mr. Mullins states that **he told Plaintiffs that certain information attributed to him that later appeared in the SAC**

**was inaccurate**. *Id.* Plaintiffs nonetheless included this information in the SAC and falsely attributed it to him. *Id.*

Mr. Mullins denies saying there were "throughout 2011 [i]nternal reports showing increasing delinquencies in Australia"—one of the allegations on which the Court relied. (*Id.* ¶ 10). The only support for that allegation in the SAC are statements attributed to Mr. Mullins. (SAC ¶ 68). Plaintiffs rely heavily on this misattributed allegation, and repeat and/or rely on it multiple times in the SAC, including in ¶¶ 36, 40, 79, 81, 82, 89, 92, 95, 97, 98, 100, 107, 108 and 132, and in their opposition to Defendants' motion to dismiss. (*See, e.g.*, Dkt. 51, at 22). Plaintiffs thus misled the Court, which specifically relied on that allegation in denying Defendants' Motion To Dismiss. (June 16 Order, at 2-3, citing SAC ¶ 92, which in turn cites to the purported statement made by Mr. Mullins at SAC ¶ 68). Absent Mr. Mullins's support, this allegation is nothing more than the kind of generalized and unsupported statement found in the FAC, which, the Court held, did not satisfy Plaintiffs' heightened and stringent scienter pleading obligation.

Mr. Mullins also denies having any firsthand knowledge about what information was purportedly provided to defendant Michael Fraizer, Genworth's CEO. (Mullins Decl. ¶ 8). This directly contravenes the SAC's allegation, misattributed to Mr. Mullins, that reports containing information about delinquencies, market trends and discrepancies between prior trend forecasts and actual experience were provided to Mr. Fraizer on a monthly basis (SAC ¶ 70), and that higher level executive calls were held following the monthly "international call." (*Id.*, ¶ 72).

Mr. Mullins further swears that he did not tell Plaintiffs either that there was "certainly evidence" that the economic conditions in Australia were deteriorating prior to the IPO, or that he confirmed that Mr. Upton led L&M meetings. (Mullins Decl. ¶¶ 13 and 9, respectively). To

the contrary, Mr. Mullins directed Plaintiffs to the public record to conduct their own investigation of the economic conditions in Australia and denies even knowing what L&M meetings are. *Id.*

## ARGUMENT

### I. THE ONLY TWO ON POINT FEDERAL COURT OF APPEALS DECISIONS HAVE AFFIRMED THE USE OF SWORN CONFIDENTIAL WITNESS RECANTATIONS IN RECONSIDERING AND REVERSING AN ORDER DENYING A RULE 12(B)(6) MOTION TO DISMISS

In all relevant respects, the procedural posture, and factual and legal (including PSLRA) issues, addressed by the Second Circuit (and District Court) in *Campo* and the Seventh Circuit (and District Court) in *Boeing*, are precisely the same as those Defendants raise in this motion. Those decisions instruct that it is the right practice for a district court to reconsider, under the Federal Rules and the PSLRA, the denial of a Rule 12(b)(6) motion, where the denial of the motion was predicated on alleged statements of confidential witnesses who thereafter recanted their alleged statements under oath. Notably, in *Campo* and *Boeing*, the confidential witnesses who later recanted were proffered by one of the same plaintiffs' firms in this case.

#### A. *Campo*

In *Campo*, Judge Sprizzo initially had denied the defendants' motions to dismiss, holding that the plaintiffs had adequately pled scienter based on purported confidential witness allegations. 635 F. Supp. 2d at 330, n.54. The Court ordered the defendants to depose the confidential witnesses, however, "in order to determine whether they supported the allegations in the Complaint and whether he should have granted defendants' motion to dismiss." *Id.* As in this case, the confidential witnesses' sworn statements revealed that the information they provided was unreliable, because the confidential witnesses—as here-—did not have personal knowledge of the scienter allegations plaintiffs attributed to them in the complaint. *Id.* at 335 ("plaintiffs

rely in large part on the supposed personal knowledge of three confidential witnesses. These individuals do not, however, support plaintiffs' allegation.").

In reconsidering defendants' motion to dismiss following the depositions, Judge Lewis Kaplan, to whom the case was transferred following Judge Sprizzo's passing, effectively struck any allegations that relied on disavowed confidential witness testimony, stating "[w]ith respect to allegations derived from confidential witnesses, the Court considers only those allegations that later were corroborated by those witnesses in depositions." *Id.* at 330. Because the complaint, stripped of the discredited confidential witness allegations, consisted of "general and unsupported" allegations of scienter, the Court dismissed it with prejudice for failing to satisfy the heightened pleading standard of the PSLRA. *Id.* at 335-36.

The Second Circuit unanimously affirmed Judge Kaplan's decision, holding that in light of the confidential witnesses' disavowals of the allegations attributed to them, Plaintiffs had failed adequately to allege scienter:

> Plaintiffs' contention that they have alleged scienter by demonstrating defendants' conscious misbehavior or recklessness is similarly unavailing. Relying heavily on the personal knowledge of confidential witnesses, plaintiffs contend that they have alleged that [the individual defendants] knew or should have known the true value of Kmart's real estate because they had access to Real Estate Marketing Strategy ("REMS") reports that contained "non-public detailed information concerning the value of Kmart's leaseholds."
>
> * * *
>
> [N]either of the confidential witnesses who are former Kmart real estate executives offered testimony supporting plaintiffs' allegations that the REMS reports contained information regarding the value of Kmart's leaseholds…. Confidential witness 1 ("CW1") testified that the REMS reports, which did not identify leasehold values for particular stores, were not used to determine the value of Kmart's real estate. Indeed, he noted that one "c[ould] make no assumption on value based on the data contained in [such] report[s]."….
>
> * * *

> CW 1 [also] admitted that he had no knowledge of whether [the individual defendants] actually accessed or reviewed the reports. . . . and had no personal knowledge of [their] opinions regarding the value of Kmart's real estate. Further, CW1 expressly disclaimed the allegation, attributed to him in the complaint, that, "based on information obtained from REMS reports as to the leasehold value of each store location were prepared for senior executives of Kmart."

371 Fed.Appx. at 216-217.

Based on these CW recantations, the Second Circuit held that "the confidential witness testimony discussed precludes us from concluding that an inference of scienter is 'cogent and at least as compelling as [the] opposing inference.'" (*Id.*) "Accordingly, we conclude that plaintiffs' complaint fails to give rise to a strong inference of scienter and that dismissal of the section 10(b) and Rule 10b-5 claims was proper." (*Id.*)

The Second Circuit also expressly overruled plaintiffs' procedural objection to the Court's consideration of sworn confidential witness testimony on a second Rule 12(b)(6) motion to dismiss. The Second Circuit held, alternatively, that plaintiffs' objection was untimely, and also:

> We conclude that [plaintiffs' objection] lacks merit. The anonymity of the sources of plaintiffs' factual allegations concerning scienter frustrates the requirement, announced in *Tellabs*, that a court weigh competing inferences to determine whether a complaint gives rise to an inference of scienter that is "cogent and at least as compelling as any opposing inference of nonfraudulent intent." … Because Fed.R.Civ.P. 11 requires that there be a good faith basis for the factual and legal contentions contained in a pleading, the district court's use of the confidential witnesses' testimony to test the good faith basis of plaintiffs' compliance with *Tellabs* was permissible.

*Id.* at 216, n.4.

**B. *Boeing***

Two years after *Campo*, the soundness of the Second Circuit's reasoning was reaffirmed by the District Court and Seventh Circuit Court of Appeals in *Boeing*. The *Boeing* decisions faced a procedural posture in all relevant respects identical to this case. The District Court in

*Boeing*, like the Court here, initially dismissed plaintiffs' amended complaint. 2011 WL 824604, at *1. Subsequently, the plaintiffs filed a second amended complaint, in which they added allegations based on assertions made by a "confidential" source. *Id.* at *5. Expressly relying on those new allegations, the District Court in *Boeing*, as this Court did here, held that plaintiffs had adequately pled scienter and denied defendants' motion to dismiss. *Id.*

Subsequently, in discovery, the plaintiffs identified their purported confidential source. He was deposed and provided a declaration to defendants' counsel, which established that he did not work at Boeing during the relevant time period, and had no personal knowledge of the facts attributed to him. *Id*. Based on the confidential witness's sworn statements, defendants moved under Rule 54(b) to reconsider the Court's prior denial of their Rule 12(b)(6) motion to dismiss as a result of "manifest factual errors of fact." *Id.* at *4. The District Court granted the defendants' motion and dismissed the complaint, holding:

> Material facts concerning the confidential source's position and personal knowledge were misrepresented by plaintiffs. As a result, the two orders denying dismissal relied on false information concerning [the confidential witness'] position and his personal knowledge. This was manifest factual error.

*Id*. at *5.

Critically, the District Court also rejected Plaintiffs' argument that considering the confidential witness's sworn testimony was improper on a motion to dismiss. The Court explained **that "[i]t matters not whether, as plaintiffs argue, [the confidential witness] told their investigators the truth, but he is lying now for ulterior motives," because the factual basis for the complaint's scienter allegations was now "at best unreliable,"** and that had these facts been "disclosed while the dismissal motions were pending, … [t]he second amended complaint would have been dismissed." *Id*. at *4 (emphasis added).

The Seventh Circuit, in an opinion by Judge Posner, unanimously affirmed the dismissal, holding:

> **The only thing that persuaded the district judge not to dismiss the second amended complaint, having dismissed the first one for failure to state a claim under the [PSLRA], was the allegation that the plaintiffs had a confidential source** who was a high ranking Boeing engineer with access not only to the results of the 787-8 wing-stress tests but also to internal emails between the engineers who conducted the tests and high-ranking officials of Boeing **that would have contradicted the officials' public statements about the 787-8's development schedule.**
>
> **Without evidence from the confidential source, then, the first dismissal stood, its validity unassailable.**

*Boeing*, 711 F.3d at 761 (emphasis added). Judge Posner's reasoning is directly applicable here. "Without evidence from" the CWs, nothing about the SAC differs from Plaintiffs' FAC, which, this Court dismissed because it did not adequately plead scienter.

## II. RULE 54(b) PROVIDES FOR RECONSIDERATION OF RULE 12(b)(6) MOTIONS BASED UPON MISTAKES OF FACT AND FALSELY ASSUMED FACTS UPON WHICH A COURT RELIED IN RULING UPON THE MOTION

Rule 54(b) properly should be used to reconsider the denial in this case of Defendants' motion to dismiss, *see, e.g.*, *Boeing*, *supra*, 2011 WL 824604, at *3 ("It is beyond question that before final judgment is entered on all issues, Rule 54(b) authorizes reconsideration of interlocutory orders at any time.") (collecting cases); *Parmar v. Jeetish Imports, Inc.*, 180 F.3d 401, 402 (2d Cir. 1999) (stating that denial of defendant's motion to dismiss, like "[a]ll interlocutory orders remain subject to modification or adjustment prior to the entry of a final judgment.") (citing Rule 54(b)).

Following the on-point decisions and guiding appellate authority in *Campo* and *Boeing*, this Court should reconsider its June 16 Order, and has broad discretion to reverse its Rule 12(b)(6) denial of Genworth's motion to dismiss, "as justice requires," particularly here in the context of a PSLRA claim where the District Court must act as the gatekeeper to enforce the

statute's heightened pleading requirements. *Belmont Holdings Corp. v. SunTrust Banks, Inc.*, 896 F. Supp. 2d 1210, 1223 (D. Ga. 2012). Under Rule 54(b), "any order or other decision… that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties… may be revised at any time before the entry of a judgment." Fed. R. Civ. P. 54(b). *Catskill Dev., L.L.C. v. ParkPlace Entm't Corp.*, 217 F. Supp. 2d 423, 428 (S.D.N.Y. 2002); *see also Richman v. W.L. Gore & Assocs., Inc.*, 988 F. Supp. 753, 755 (S.D.N.Y. 1997)

A motion for reconsideration generally is appropriate where, as here, a party discovers "new evidence, or a need is shown to correct a clear error or to prevent manifest injustice." *Catskill Dev.*, 217 F. Supp. 2d at 429; *see also Applera Corp. v. MJ Research, Inc.*, 404 F. Supp. 2d 422, 423-24 (D. Conn. 2005) (a motion for reconsideration gives the Court an opportunity to "correct manifest errors of law or fact or to consider newly discovered evidence").

The district court in *Belmont Holdings Corp. v. Sun Trust Banks, Inc.*, *supra*, relying on *Boeing*, granted reconsideration under Rule 54(b) of its denial of defendants' motion to dismiss in precisely the same situation facing the Court here:

> In the securities litigation context, where there is a higher scienter pleading standard under the PSLRA, a district court may reconsider an order denying a motion to dismiss, even where the defendant relies upon extrinsic evidence outside the pleadings, when a manifest factual error was made by the court based on "fraud [by the plaintiff], carelessness by [plaintiff's] counsel [in making its factual allegations], or by the court's own misperception of the facts…. **This is especially true where the plaintiff does not, and cannot, dispute the existence of the "false information concerning [a confidential witness'] position and his personal knowledge" upon which the district court erroneously relied when ruling on the original motion to dismiss.**

896 F. Supp. 2d at 1223 (emphasis added) (bracketed text in original), *quoting Boeing*, 2011 WL 824604, at *4 (holding that where a party presents "evidence of manifest factual errors," a court may evaluate and determine "whether its dismissal orders were procured by fraud, carelessness by counsel, or by the court's own misperception of the facts").

*Belmont*'s logic also applies foursquare to this case. Genworth has now put before the Court "evidence of manifest factual errors" in the form of the CWs' sworn recantations and disavowals of the very allegations of scienter on which the Court premised its decision.

## III. AS IN *BOEING*, WITHOUT THE CW ALLEGATIONS, THE SAC IS NOTHING MORE THAN THE FAC WHICH THE COURT HAS ALREADY FOUND FAILS TO PLEAD SCIENTER ADEQUATELY

This Court's obligation to account for the CWs' recantations (even on a motion to dismiss) reflects the importance of its gate-keeping function, as prescribed by Congress and the U.S. Supreme Court, over private securities law actions. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007) (stating that securities actions, "if not adequately contained, can be employed abusively to impose substantial costs on companies and individuals whose conduct conforms to the law"). The PSLRA imposes heightened pleading standards concerning scienter, and a stay on discovery to prevent the filing of a complaint to initiate a "fishing expedition" in search of sustainable claims. *See Novak v. Kasaks*, 216 F.3d 300 (2d Cir. 2000) (noting "significant evidence of abuse in private securities lawsuits," including "the routine filing of lawsuits against issuers of securities… whenever there is a significant change in an issuer's stock price, without regard to any underlying culpability of the issuer," and "the abuse of the discovery process is to impose costs so burdensome that it is often economical for the victimized party to settle"). As the Second and Seventh Circuit have made clear, Plaintiffs cannot be permitted to evade the PSLRA's controls through the improper use of the CWs.

Given the CWs' disavowal of the allegations Plaintiffs attribute to them, the SAC is insufficient as a matter of law because, like the FAC this Court dismissed, it fails to adequately plead a "strong inference" of scienter, as the PSLRA requires. 15 U.S.C. § 78u-4(b)(2); *ECA & Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 198 (2d Cir. 2009). Scienter allegations are given close scrutiny in the Second Circuit, especially on a

motion to dismiss. *See, e.g.*, *Rombach v. Chang*, 355 F.3d 164, 171 (2d Cir. 2004) (fraud allegations must meet particularity standards, *inter alia*, to "safeguard a defendant's reputation from improvident charges of wrongdoing"); *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 99 (2d Cir. 2007). The "inference of scienter must be more than merely 'reasonable' or 'permissible'—it must be cogent and compelling, thus strong in light of other explanations." *Tellabs, Inc.*, 551 U.S. at 324.

Moreover, the Second Circuit has long "refused to allow plaintiffs to proceed with allegations of 'fraud by hindsight,'" which is precisely what the SAC does now that it lacks any plausible allegations that Genworth executives made statements at internal meetings in late 2011 that were at odds with the company's contemporaneous and subsequent public disclosures. *Novak v. Kasaks*, 216 F.3d 300, 309 (2d Cir. 2000); *Slayton v. Am. Express Co.*, 604 F.3d 758, 776 (2d Cir. 2010). Where, as here, plaintiffs urge a court to infer scienter from contradictory information in the defendants' possession, the complaint must allege "what specific contradictory information the [defendants] received" and "when they received it." *Local No. 38 IBEW v. Am. Express Co.*, 724 F. Supp. 2d 447, 461 (S.D.N.Y. 2010). Without the CWs' assertions, Plaintiffs cannot "identify specific contradictory information that was available to the . . . Defendants at the time they made their misleading statements." *Pa. Pub. Sch. Emp. Ret. Sys. v. Bank of Am. Corp.*, 874 F. Supp. 2d 341, 358 (S.D.N.Y. 2012); *In re PetroChina Co. Ltd. Sec. Litig.*, -- F.Supp. 3d. --, 2015 WL 4619797, at *17 (S.D.N.Y. 2015) ("Plaintiffs must do more than allege that the Individual Defendants had or should have had knowledge of certain facts contrary to their public statements simply by virtue of their high-level positions.").

In its June 16 Order, the Court found the SAC satisfied the PSLRA's requirements because it specifically described information allegedly available to Genworth or its officers that

contradicted its public statements, including an alleged 2011 presentation detailing an undisclosed increase in claims totaling "$100-$125 million" that "exceeded the allotted reserves." (June 16 Order, p. 3 (quoting SAC ¶ 92)). In light of Mr. Meacham's testimony, however, Plaintiffs' allegations concerning contradictory information available to Genworth and its officers are gossamer. Mr. Meacham admitted that he could not recall seeing any such PowerPoint. (Meacham Tr. 227:19-229:10). He likewise could not swear that anyone at Genworth stated at any time in 2011 that claims had exceeded AU MI's allotted reserves. (*Id.* at 323:5-323:24; 326:21-327:3).

Similarly, Mr. Mullins also flatly denies having told Plaintiffs that there were any "internal reports" showing "an increase in delinquencies in Australia throughout 2011." (Mullins Decl., ¶ 10). (SAC ¶ 68).

The CWs' sworn recantations—which render their unsworn SAC allegations to the contrary valueless—have stripped the SAC of any particularized facts to serve as the basis for Plaintiffs' scienter theory. The SAC, like the dismissed FAC, is nothing more than a bare conclusory assertion of "fraud by hindsight" insufficient under the PSLRA.

## IV. PLAINTIFFS' INADEQUATE INVESTIGATIONS OF THE STATEMENTS ATTRIBUTED TO THE CWS RESULTED IN FALSE INFORMATION BEING PUT BEFORE THE COURT, REQUIRING DISMISSAL WITH PREJUDICE

Plaintiffs' counsel's interviews and crediting of the CWs, and their failure to vet properly the information Plaintiffs attribute to the CWs in the SAC, caused false and inaccurate information to be presented to the Court, and provides this Court with an additional basis for dismissing the SAC. "Representations in a filing in a federal district court that are not grounded in an 'inquiry reasonable under the circumstances," violates FRCP Rule 11(b) and 11(b)(3). *Boeing*, 711 F.3d at 762. Plaintiffs' counsel's work with these CWs appears to fall short of this standard.

Plaintiffs' counsel's "investigation" here is also troubling given that the *Boeing* court and others have previously criticized them for the exact same conduct. *Boeing*, 711 F.3d at 762 (citing cases in which Robbins Geller Rudman & Dowd LLP has been "criticized for misleading allegations, concerning confidential sources, made to stave off dismissal of a securities-fraud case," and criticizing the firm's "recidivism"), citing *Campo*, 371 Fed. Appx. at 216-17; *Belmont Holdings Corp.*, 2012 WL 4096146, at *16-18; *Applestein v. Medivation, Inc.*, 861 F. Supp. 2d 1030, 1037-39 (N.D. Cal. 2012); see also *In re Millennial Media, Inc. Securities Litig.*, No. 14 Civ. 7923, 2015 WL 3443918, at *5-6 (S.D.N.Y. May 29, 2015) (criticizing Labaton Sucharow for failing to take "proper care to verify the statements attributed to the CWs before the FAC was filed").

According to Mr. Mullins, Plaintiffs misattributed information and statements to him even after he corrected Plaintiffs' apparent misunderstanding of what he had told them. (Mullins Dec. ¶¶ 3, 7). Plaintiffs also did not ask Mr. Mullins to review the statements the SAC attributes to him before they filed it. (*Id*. ¶ 6). Mr. Meacham likewise does not recall receiving the FAC or SAC before Plaintiffs filed either one. (Meacham Tr., 76:19-24). He also informed Plaintiffs' investigator that certain of his so-called recollections were merely statements of "opinion," yet Plaintiffs presented those allegations as though they were facts. (*Id*. at 284:4-17; 316:6-317:13).

While the SAC portrays Mr. Meacham as having intimate knowledge of defendant Mr. Fraizer's, Mr. Upton's and Mr. Schneider's work in Australia because "it was his responsibility to support them from an IT perspective when they went overseas," (SAC, ¶61), Mr. Meacham admitted that he "never provided IT support to Fraizer," and he had no "firsthand knowledge" as to whether or when any of the three executives traveled to Australia in 2011. (Meacham Tr., 117:14-16; 126:7-24). And, as set forth above, he had no knowledge of or involvement with the

substantive matters at issue. Plaintiffs should have conducted a more thorough investigation of Mr. Meacham's statements, given his clear lack of direct personal knowledge of, or involvement in, any of the substantive matters in this case. Plaintiffs failure to investigate with greater rigor is all the more troubling because Mr. Meacham had clear motive to harm Genworth because he felt he was improperly fired by the company. (*Id*. at 28:16-30:5).

Finally, even though the *Boeing* court expressly criticized Robins Geller for relying on confidential witness allegations where none of the firm's attorneys spoke directly with the source, *Boeing*, 711 F.3d at 762, Mr. Meacham testified that he never spoke to anyone who identified themselves to him as an attorney. (Meacham Tr: 91:5-9); *see also In re Millennial Media, Inc. Securities Litig.*, 2015 WL 3443918, at *5-6 (criticizing Labaton Sucharow's "practice" of relying on confidential witness statements without having an attorney speak directly with the witness to confirm the accuracy of witness's statements).

## CONCLUSION

For all of the foregoing reasons, Genworth respectfully requests that the Court reconsider its June 16 Order, and, upon reconsideration, enter an order dismissing the SAC with prejudice.

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