

requirements of the PSLRA were satisfied. [Dkt. Nos. 43, 53] I specifically cited paragraph 91 of the second amended complaint, which alleges false statements made by Defendants during the third quarter earnings call on November 4, 2011, such as:

[T]he 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." [Dkt. No. 53 at 2]

I also found that paragraph 92 sufficiently alleged that the statements were false and misleading, asserting that Genworth was already experiencing in Queensland "an economic downturn that particularly affected small business owners, driving an increase in claims of \$100 million-\$125 million" that "exceeded the allotted reserves." I concluded that the complaint adequately and plausibly alleged the material allegations of a securities fraud action. [Dkt. No. 53 at 2-3]

On January 22, 2016, Defendants moved for reconsideration of the denial of their motion to dismiss. [Dkt. No. 87]

II. Motion for Reconsideration

Defendants allege the confidential witnesses, now identified as Glenn Meacham and Robert Mullins, have recanted statements attributed to them in the second amended complaint. However, the new evidence of recantation presented by the Defendants, a deposition of Glenn Meacham and a declaration by Robert Mullins, is not sufficiently persuasive to lead me to reconsider my denial of the motion to dismiss.

In his deposition, Meacham was questioned extensively about the allegations in the complaint. Though Meacham's testimony was, at times, inconsistent, the testimony does not

constitute a recantation, and retains sufficient credibility and plausibility to satisfy pleading requirements of good faith. The same is the case with the declaration of witness Mullins. *See, e.g., City of Pontiac Gen. Employees' Ret. Sys. v. Lockheed Martin Corp.*, 952 F. Supp. 2d 633, 637-38 (S.D.N.Y. 2013) (“[T]he only statement attributed to the CWs in the Amended Complaint that the Court found clearly inaccurate was the result, not of any mis-reporting by [the confidential witness], but of mis-drafting by counsel. . . Fortunately, the Court relied on other evidence as well in denying the motion.”).

Defendants’ evidence of recantations is insufficient. *Cf. City of Livonia Employees' Ret. Sys. & Local 295/Local 851 v. Boeing Co.*, 711 F.3d 754, 762 (7th Cir. 2013) (“The plaintiffs’ lawyers had made confident assurances in their complaints about a confidential source—their only barrier to dismissal of their suit—even though none of the lawyers had spoken to the source and their investigator had acknowledged that she couldn’t verify what (according to her) he had told her.”); *In re Pfizer Inc. Sec. Litig.*, No. 04 CIV. 9866 LTS HBP, 2012 WL 983554, at *5 (S.D.N.Y. Mar. 22, 2012) (“Moreover, the record on the instant motion is not so stark as that apparently before the *Boeing* Court. . . . [T]he [*Boeing*] court was persuaded that counsel had made fundamental factual misrepresentations, and [. . .] there was no evidence connecting the corroborating details proffered in the complaint to the individual to whom the confidential statements were attributed.”).

III. Conclusion

The Clerk will mark the motion for reconsideration terminated. [Dkt. No. 87]
The argument scheduled for March 10, 2016 is canceled.

SO ORDERED

Dated:

March 3, 2016
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge