UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re GENWORTH FINANCIAL, INC. SECURITIES LITIGATION	Master File No. 1:14-cv-02392-AKH
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	LEAD PLAINTIFFS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

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I. Introduction

Lead Plaintiffs have established each of the prerequisites for class certification by a preponderance of the evidence, including that Genworth securities traded in an efficient market, and are thus entitled to the *Basic* fraud-on-the-market presumption of reliance. *See* Lead Plaintiffs' Memorandum of Law in Support of Motion for Class Certification (Dkt. No. 92) ("Pltfs.' Brf.") at 16-21. Defendants do not dispute that the majority of the Rule 23 requirements are satisfied, including numerosity, common legal and factual issues, the adequacy of proposed Class Counsel, and the superiority of a class action to fairly and efficiently adjudicate this matter. Defendants also do not dispute Lead Plaintiffs' proof of market efficiency, nor do they attempt to rebut the *Basic* presumption of reliance by showing a total absence of price impact from their statements and omissions, conceding predominance. Defendants' Memorandum of Law in Opposition to Lead Plaintiffs' Motion for Class Certification (Dkt. No. 107) ("Defs.' Opp.") at 16-17. Defendants only quibble with the adequacy and typicality of Proposed Class Representatives using arguments that have been categorically rejected by courts in this District and elsewhere. *Id.* at 17-20. Plaintiffs' motion should be granted.

Defendants' opposition to class certification primarily rehashes arguments from their motion to dismiss and motion for reconsideration. *Id*. at 5-16. Notwithstanding the fact that the Court has denied both motions, Defendants ask this Court to disregard relevant legal standards at class certification and focus on merits-based issues instead. *Id.* These inquiries are inappropriate at class certification. This is neither summary judgment nor trial. "[T]he office of a Rule 23(b)(3) certification ruling is not to adjudicate the case; rather, it is to select the 'metho[d]' best suited to adjudication of the controversy 'fairly and efficiently.'" *Amgen Inc. v. Conn. Ret. Plans & Tr.*

Funds, __ U.S. __, 133 S. Ct. 1184, 1191 (2013).[1] The factual issues Defendants raise are equally applicable to each member of the proposed Class and should not be decided at this stage.

Defendants' opposition also improperly raises thinly-disguised merits issues that have no bearing on class certification, arguing that Lead Plaintiffs have not supported the start date of their proposed Class Period because they have not yet "***proven***" one of the elements of Rule 10b-5, scienter. Defs.' Opp. at 5-16. This Court has already held that the Complaint alleges actionable misrepresentations and scienter, holding that (just as now) "Defendants' arguments that Plaintiffs' proofs will fail are premature." Order Denying Motion to Dismiss (Dkt. No. 53) ("MTD Order") at 2. Even if the Court considered these factual issues, Lead Plaintiffs have already at this early stage in discovery uncovered evidence supporting the merits of the case, which of course is common to all members of the proposed Class. Moreover, Defendants' argument that Lead Plaintiffs have not supported the start date of their proposed Class Period because they have not yet "***proven***" one of the elements of Rule 10b-5, scienter, is irrelevant at class certification.

Defendants' few arguments actually related to class certification – relegated to the end of their opposition brief – fare no better, and each contradicts well-established precedent in this Circuit. Defendants argue that (i) the post-Class Period purchases by Proposed Class Representatives Hialeah and New Bedford subject them to unique defenses, (ii) the proposed Class definition improperly includes options purchasers and starts the Class Period a day early, and (iii) the proposed class certification order is deficient in that it fails to include factual findings. Defs.' Opp. at 17-23. Defendants' arguments fail for several reasons.

[1] Citations and footnotes are omitted, emphasis is added unless otherwise specified, and all paragraph references ("¶__" and "¶¶__") are to the Second Amended Class Action Complaint (Dkt. No. 42) ("Complaint").

First, Lead Plaintiffs' post-Class Period purchases do not defeat adequacy because courts in this District (and elsewhere) frequently and properly appoint class representatives who make post-Class Period purchases. The record here compels the same result because Hialeah and New Bedford purchased Genworth stock during the Class Period in ignorance of any non-public information and their interests are aligned with other traders in Genworth securities who suffered losses as a result of the alleged fraud. Courts do not find that such post-Class Period purchases cause unique defenses because investors may purchase securities once inflation attributable to the fraud is removed.

Second, the proposed Class definition is proper. Courts frequently and properly certify classes that included traders of stocks ***and*** options. And Defendants' argument that the proposed start date of the Class Period is a day early contradicts controlling case law. Well-established precedent in this Circuit, *In re IBM Corporate Sec. Litig.*, 163 F.3d 102, 107 (2d Cir. 1998), is clear that only statements made ***during*** the Class Period are actionable. Therefore, the Class Period must begin on the day Defendants first made false and misleading statements, November 3, 2011, not the following trading day.

Third, Defendants' argument with respect to Lead Plaintiffs' proposed order (Dkt. No. 91-1) is unsupported by any authority. Defendants cite no Second Circuit precedent, no federal statute, and no federal rule that requires Lead Plaintiffs to set forth factual findings or a "rigorous analysis" in their proposed order.

Accordingly, Lead Plaintiffs have satisfied the requirements of Rule 23, and their motion for class certification should be granted in its entirety.

II. Lead Plaintiffs Have Satisfied the Requirements for Class Certification Under Rule 23, Which Does Not Involve an Adjudication of the Merits of Their Claims

Defendants concede that Lead Plaintiffs have established most of the elements of Rule 23. Defendants' primary challenge to class certification is that Lead Plaintiffs have not substantiated the start date for their proposed Class Period because they have not yet "***proven***" that Defendants made actionable misrepresentations or omissions ***with scienter*** on November 3, 2011. Defs.' Opp. at 3-17. Scienter is a merits question that is common to the Class and nothing in Rule 23, nor the case law interpreting Rule 23, require Lead Plaintiffs to prove it at this stage in order to certify the Class. The law is actually the exact opposite. *See In re Bank of Am. Corp. Sec.*, 281 F.R.D. 134, 140 (S.D.N.Y. 2012) (Castel, J.) ("[C]lass certification 'is emphatically not an opportunity for a second round of review, at a higher standard no less, of the substantive merits of plaintiffs' underlying claims.'") (quoting *DeMarco v. Robertson Stephens Inc.*, 228 F.R.D. 468 (S.D.N.Y. 2005) (Lynch, J.)).

The only question before the Court at class certification is "'whether the requirements of Rule 23 are met.'" *See In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 133 (2d Cir. 2001) (quoting *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974)). "Merits questions may be considered to the extent – but only to the extent – that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen*, 133 S. Ct. at 1194-95. Indeed, the Second Circuit has "emphasized that district courts retain 'ample discretion' to limit discovery and 'the extent of the hearing' on Rule 23 issues 'in order to assure that a class certification motion does not become a pretext for a partial trial of the merits.'" *Teamsters Local 445 Freight Div. Pension Fund v. Bombardier, Inc.*, 546 F.3d 196, 204 (2d Cir. 2008); *accord Katz v. Image Innovations Holdings, Inc.*, No. 06 Civ. 3707 (JGK), 2010 U.S. Dist. LEXIS 73929, at *7 (S.D.N.Y. July 22,

2010) (Koeltl, J.) ("A motion for class certification should not . . . become a mini-trial on the merits.") (citing *Eisen*, 417 U.S. at 177-78).

Here, Lead Plaintiffs have demonstrated that the prerequisites for certification under Rule 23 have been met. Pltfs.' Brf. at 16-21. Defendants' regurgitation of merits arguments in class certification briefing from their motion to dismiss and motion for reconsideration, both of which have been denied, should be disregarded.

A. Whether Lead Plaintiffs Can Prove Scienter in Order to Substantiate the Start of the Class Period Is Irrelevant at Class Certification

Defendants argue that, at the class certification stage, Lead Plaintiffs must "prove by a ***preponderance of the evidence***" whether Defendants' November 3, 2011 false and misleading statements were made ***with scienter*** in order to substantiate the start date of their proposed Class Period. Defs.' Opp. at. 3-17. Not so.

Scienter is irrelevant to the class certification analysis because it is a merits question common to the Class – the claims of the Class will rise and fall on this issue. *See, e.g.*, *Basic Inc. v. Levinson*, 485 U.S. 224, 242 (1988) (Rule 10b-5 cases "require[] resolution of several common questions of law and fact concerning the falsity or misleading nature of . . . public statements . . . , the presence or absence of scienter, and the materiality of the misrepresentations, if any"); *In re Salomon Analyst Metromedia Litig.*, 236 F.R.D. 208, 218 (S.D.N.Y. 2006) (Lynch, J.) ("It is beyond dispute, for example, that in determining whether defendants made false representations or omitted material facts, with scienter, and in connection with the purchase or sale of securities . . . common issues will predominate over individual ones.") (citing *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005)), *vacated on other grounds*, 544 F.3d 474 (2d Cir. 2008); *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 11 Civ. 3658 (SAS), 2013 U.S. Dist. LEXIS 98330, at *7 (S.D.N.Y. July 11, 2013)

(Scheindlin, J.) (in certifying the class, the court concluded that "[c]ourts routinely find the elements of scienter, materiality and causation to be common questions in federal securities cases").[2]

Not one case that Defendants cite requires Lead Plaintiffs, at the class certification stage, to prove scienter or substantiate the Class Period's start date – much less by a preponderance of the evidence. Defs.' Opp. at 3-17. Defendants' contentions, moreover, conflict with Rule 23's admonition to issue a class certification order "[a]t an early practicable time after a person sues" – precluding the possibility that a plaintiff would have amassed sufficient evidence to prove scienter at class certification. Fed. R. Civ. P. 23(c)(1)(A). The cases Defendants cite where courts adjusted the proposed start date of a class period at class certification involved correcting the date the alleged misstatement was made or addressing public statements that were not addressed at the motion to dismiss. Defs.' Opp. at 3-17.[3]

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[2] To the extent that Defendants argue Lead Plaintiffs have not satisfied predominance (*see* Defs.' Opp. at 12), Defendants are wrong. The factual issues Defendants raise regarding the sufficiency of Lead Plaintiffs' proof that the November 3, 2011 statements were made with scienter apply to the Class as a whole and are not subject only to individualized proof. *See Brown v. Kelly*, 609 F.3d 467, 483 (2d Cir. 2010) (finding that "'[t]he predominance requirement is met if the plaintiff can establish that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, . . . predominate over those issues that are subject only to individualized proof'"); *In re NYSE Specialists Sec. Litig.*, 260 F.R.D. 55, 77 (S.D.N.Y. 2009) (Sweet, J.) (certifying the class upon finding that the plaintiff "will be able to prove scienter on a class-wide basis").

[3] *See, e.g.*, *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 99 (D. Conn. 2010) (certifying a class beginning on February 1, 2001 because "[t]he earliest SNSA press release containing one of the allegedly false or misleading statements upon which Plaintiffs' claims are based was issued on February 1, 2001"); *Lumen v. Anderson*, 280 F.R.D. 451, 455 (W.D. Mo. 2012) ("Plaintiffs also propose a beginning date . . . based on public statements made in April and July 2008 – statements that were not specifically pled as connected to the Adams debt until after I issued the November 2010 ruling. Therefore, unlike the November 2008 statements I have already considered, the April and June statements have not been held to be sufficient to maintain a cause of action."). Here, there is no question that Defendants issued Genworth's 3Q11 financial results on November 3, 2011 (*see* Defs.' Opp. at 22) and that the Court already considered those statements and held them to be actionable (*see* MTD Order at 1-2).

Lead Plaintiffs have shown that the requirements of Rule 23 have been met. Pltfs.' Brf. at 16-21. No more is required at this stage of the litigation. Any further proof of scienter or the Class Period's start date will be an appropriate issue at summary judgment or trial – not now.

B. The November 3, 2011 Statements that Lead Plaintiffs Allege Are False and Misleading Relate to Genworth's Issuance of 3Q11 Financial Results Were Upheld by This Court and Have Been Substantiated Even Based on the Current, Very Limited Record

Key to Defendants' position that Lead Plaintiffs have not substantiated the start date of the Class Period is their assertion that the November 3, 2011 statements Lead Plaintiffs allege are false and misleading relate only to the announcement of the IPO. Defs.' Opp. at 7-9. Defendants are mistaken. Lead Plaintiffs allege that Defendants' false and misleading statements on November 3, 2011 related to Genworth's 3Q11 financial results – including the earnings per share, net income and loss ratio – based on the increasing delinquencies and claims from the Queensland region during the Class Period. *See* ¶89. Since Defendants are wrong that Lead Plaintiffs allege that the November 3, 2011 statements relate only to the announcement of the IPO, Defendants' irrelevant merits-based arguments based on a mischaracterization of the Complaint (*see* Defs.' Opp. at 5-17) should be rejected.

Defendants' argument also ignores the Court's order denying Defendants' motion to dismiss. This Court specifically held that the alleged actionable statements included "false statements of Genworth's income and assets" – including "'the loss ratio [that had] remained flat at 48% sequentially'" revealed in the November 3, 2011 press release and reiterated during the November 4, 2011 conference call – and omissions that were "willfully suppressed" relating to "mounting claims and losses in 2011." MTD Order at 1-2. And in upholding those "material allegations of a securities fraud action," this Court dismissed Defendants' arguments that they were forward-looking and protected by the safe harbor. *Id.* This Court again found that the alleged false statements include the

loss ratio of 48% in denying Defendants' Motion for Reconsideration. Dkt. No. 112 (Order Denying Motion for Reconsideration) at 2.

Defendants should not be permitted to redo their motion to dismiss, particularly their arguments regarding statements being forward-looking or based on fraud-by-hindsight (Defs.' Opp. at 8 n.4, 14-16). *See Bank of Am.*, 281 F.R.D. at 140 ("[C]lass certification 'is emphatically not an opportunity for a second round of review, at a higher standard no less, of the substantive merits of plaintiffs' underlying claims.'") (quoting *DeMarco*, 228 F.R.D. 468). Nor should Defendants be permitted to re-raise merits-based arguments from their motion for reconsideration.

Even if the Court were to reconsider the sufficiency of the Complaint's allegations or to prematurely weigh the evidence Lead Plaintiffs currently have to support their claims, Defendants' factual arguments regarding the credibility of the confidential witnesses referenced in the Complaint fail. First, as more fully discussed in Lead Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Reconsideration, neither witness recanted. Dkt. No. 98 at 1-4, 14-24. Indeed, both witnesses confirmed the accuracy of the information attributed to them in the Complaint on multiple occasions. *Id.* Accordingly, the allegations of the Complaint still stand, including that Defendants' November 3, 2011 misrepresentations and omissions were made with knowledge of the increased rate of claims in 3Q11. *See* Dkt. No. 112.[4]

Second, Lead Plaintiffs have already uncovered evidence supporting the Complaint's allegations that Genworth Australia's financial results issued on November 3, 2011 were false and

[4] *See also* ¶64 ("According to CW1, at this meeting, either Schneider or Upton fielded the question as to whether the IPO was still planned for in the early part of 2012. The response was 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."); Declaration of Douglas R. Britton in Further Support of Lead Plaintiffs' Motion for Class Certification filed herewith ("Britton Reply Decl."), Ex. 8 at 183:23-185:9, 202:13-204:10 (confirming that "poor quarter" referred to 3Q11 and that meeting occurred in early or mid-December 2011).

misleading since Defendants knew about the increasing delinquencies in the 2007 and 2008 vintages of mortgages. For example, an internal PowerPoint presentation dated June 2011 that was recently produced by third-party The Goldman Sachs Group, Inc. ("Goldman Sachs") revealed [redacted] Britton Reply Decl., Ex. 9 at GS-GENSDNY-00006002, 6011. The presentation also confirmed the [redacted] *Id.* at GS-GENSDNY-00006003, 6007. Further discovery will undoubtedly expose additional evidence supporting Lead Plaintiffs' claims.

III. Lead Plaintiffs' Additional Post-Class Period Purchases Do Not Render Them Atypical or Inadequate Class Representatives

Defendants do not dispute that with respect to adequacy, Hialeah and New Bedford are knowledgeable about this litigation, have overseen the action and supervised counsel, understand their fiduciary obligation to the Class, and are willing to represent the entire Class. Defendants' argument that Lead Plaintiffs' trading in Genworth common stock after the end of the Class Period defeats typicality or adequacy is one that courts routinely reject. Hialeah and New Bedford purchased 21,800 and 18,650 shares of Genworth during the Class Period, suffering over $74,702 and $62,126 in losses, respectively, when the truth about Genworth's Australian business and the IPO hit the market. Dkt. No. 11, Ex. 2. Defendants do not dispute this, nor do they contest that each Class member's claims (including those of Hialeah and New Bedford) arise from Defendants' fraudulent conduct. Defs.' Opp. at 17-20. Defendants only argue that Hialeah and New Bedford's

post-Class Period purchases of Genworth securities subject them to unique defenses. *See* Defs.' Opp. at 18-20. Neither the law nor the facts support Defendants' position.

Judge Rakoff previously explained why the precise argument Defendants raise now does not defeat typicality or adequacy:

> "***[T]he fact that a putative class representative purchased additional shares in reliance on the integrity of the market after the disclosure of corrective information has no bearing on whether or not [the representative] relied on the integrity of the market during the class period, that is, before the information at issue was corrected or changed***. In other words, the fact that an investor purchased additional shares upon learning the new information does not mean that he or she did not rely on the integrity of the market in purchasing shares before the new information was known. The post-disclosure purchase of the additional shares therefore will not necessarily present individual issues of reliance that render the investor atypical or inadequate to represent class members who did not purchase such additional shares."

In re Monster Worldwide, Inc. Sec. Litig., 251 F.R.D. 132, 135 (S.D.N.Y. 2008) (quoting *Salomon*, 236 F.R.D. at 216).

Courts in this District routinely follow Judge Rakoff's reasoning that a proposed class representative who purchased securities after the close of the class period is not rendered atypical or inadequate under Rule 23(a). *See, e.g.*, *In re Petrobras Sec. Litig.*, No. 14-cv-9662 (JSR), 2016 U.S. Dist. LEXIS 12286, at *16 (S.D.N.Y. Feb. 2, 2016) (Rakoff, J.) ("post-disclosure purchases" are irrelevant to the typicality inquiry); *In re Moody's Corp. Sec. Litig.*, 274 F.R.D. 480, 488 (S.D.N.Y. 2011) (Daniels, J.) (proposed class representative who made post-class period purchases was adequate because "[t]he decision to purchase shares after a fraud is revealed does not necessarily give rise to . . . an inference" "that he did not rely on the alleged misrepresentations in his initial purchasing decisions"); *In re Am. Int'l Grp., Inc. Sec. Litig.*, 265 F.R.D. 157, 168-69 (S.D.N.Y. 2010) (Batts, J.) (rejecting argument that proposed class representatives who made additional post-disclosure purchases were not typical where, as here, "the price of [the defendant company's] stock

had declined to incorporate the latest information in those [corrective] disclosures" and "there is no evidence that Lead Plaintiffs were aware of further, undisclosed frauds"), *vacated in part on other grounds*, 689 F.3d 229 (2d Cir. 2012); *City of Livonia Emps.' Ret. Sys. v. Wyeth*, 284 F.R.D. 173, 179 (S.D.N.Y. 2012) (Sullivan, J.) (rejecting typicality argument based on post-class period purchases and finding that the proposed class representative's "post-disclosure purchases do not present a class conflict sufficient to defeat Plaintiffs' motion for class certification").[5]

The cases Defendants cite are factually inapposite, generally featuring proposed representatives who possessed non-public information or who were shown to otherwise not make purchases in reliance on the integrity of the market. The facts in each case are completely inapplicable to the facts of this case and Lead Plaintiffs' trading history. *See Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 903 F.2d 176, 179 (2d Cir. 1990) (proposed representative had "notice of, and ha[d] investigated, the alleged fraud" before it was known to other investors); *Landry v. Price Waterhouse Chartered Accountants*, 123 F.R.D. 474, 475-76 (S.D.N.Y. 1989) (Edelstein, J.) (proposed representatives made purchases "based on non-public information and recommendations from friends and associates"); *Rocco v. Nam Tai Elecs., Inc.*, 245 F.R.D. 131, 136 (S.D.N.Y. 2007) (Sprizzo, J.) (proposed representative knew about a second alleged "fraud [that] has [n]ever been publicly corrected" and "[a]bsent a public disclosure of a correction, not only would there be no corresponding drop in stock price attributable to that correction, but the class affected by the inventory fraud would, presumably, still be open"); *Kline v. Wolf*, 702 F.2d 400, 401 (2d Cir. 1983) (proposed representative's purchase occurred before

[5] In cases alleging multiple corrective disclosures, courts in this District have found a proposed class representative typical and adequate even where "it purchased a large percentage" of shares after the initial corrective disclosure. *See In re Pfizer Sec. Litig.*, 282 F.R.D. 38, 46 (S.D.N.Y. 2012) (Swain, J.).

defendants' alleged misrepresentations were printed and publicly disseminated); *Berwecky v. Bear, Stearns & Co.*, 197 F.R.D. 65, 69 (S.D.N.Y. 2000) (Sprizzo, J.) (proposed representatives purchased stock only after "allegations of fraudulent behavior by A.R. Baron became public knowledge," but not before); *George v. China Auto. Sys., Inc.*, No. 11 Civ. 7533 (KBF), 2013 U.S. Dist. LEXIS 93698 (S.D.N.Y. July 3, 2013) (Forrest, J.) (proposed representatives were in-and-out traders, not institutional investors, and had profited on some transactions).

Nothing about Hialeah and New Bedford's purchases of Genworth securities render them atypical or inadequate under the framework set forth by the Supreme Court in *Basic*, 485 U.S. at 248-49, and *Halliburton Co. v. Erica P. John Fund, Inc.*, __ U.S. __, 134 S. Ct. 2398, 2408 (2014), because they were ***not*** "aware that the stock's price was tainted by fraud." *Id.* Rather, both are institutional investors whose purchases of Genworth securities were based on Defendants' ***public*** statements in ignorance of ***any*** fraud, demonstrating that they possess the ***same*** interest and suffered the ***same*** injury as all of the other Class members. They are the very type of institutional investors that the PSLRA encourages to serve as class representatives. *See, e.g.*, *In re Petrobras Sec. Litig.*, 104 F. Supp. 3d 618, 625 (S.D.N.Y. 2015) (Rakoff, J.) (recognizing "the PSLRA's 'statutory preference for institutional lead plaintiffs'"); *Topping v. Deloitte Touche Tohmatsu CPA, Ltd.*, 95 F. Supp. 3d 607, 617 n.10 (S.D.N.Y. 2015) ("'[I]ncreasing the role of institutional investors in class actions will ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions.'") (quoting H.R. Conf. Rep. No. 104-369, at 34 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 733).

IV. Lead Plaintiffs' Proposed Class Definition and Order Is Proper

Defendants argue that as a "technical matter," Lead Plaintiffs' proposed Class definition is "overbroad" because it includes options purchasers and begins the Class Period one day early and

that their proposed order is deficient because it includes no "factual findings" and fails the "rigorous analysis" requirement based on *St. Stephen's Sch. v. PricewaterhouseCoopers Accountants N.V.*, 570 F. App'x 37, 39 (2d Cir. 2014), and *In re Initial Pub. Offering Sec. Litig.*, 471 F.3d 24, 42 (2d Cir. 2006). Defs.' Opp. at 2, 20-23. Defendants are, again, mistaken.

A. The Proposed Class Properly Includes Call Option Purchasers and Put Option Sellers, the Interests of Whom Hialeah and New Bedford May Also Represent

Contrary to Defendants' argument (Defs.' Opp. at 20-21), certifying a Class comprised of all traders in Genworth securities – including derivative securities whose value depends on the underlying stock, such as options – is proper. First, as Lead Plaintiffs already established, and Defendants do not dispute, call option purchasers and put option sellers are entitled to the *Basic* presumption because "'"[t]he market price for options is directly responsive . . . to changes in the market price of the underlying stock, and to information affecting that price."'" Pltfs.' Brf. at 21 n.12. As Judge Brient explained in *In re Oxford Health Plans, Inc. Sec. Litig.*, 191 F.R.D. 369 (S.D.N.Y. 2000), all investors "have at their foundation an assumption that there is an efficient public market, not adversely distorted by material misrepresentation or omission," and "all the claims in this action [alleging violations of §§10(b), 20(a), 20A and Rule 10b-5], including those of investors involved in options trading, arise out of the same common nucleus of fact, rely on the same statutory provisions, invoke loss causation, and are otherwise substantially similar." *Id.* at 376 (certifying a class of stock purchasers, call option purchasers and put option sellers). "While there may be discrepancies by and among the claims of the class and those of the proposed class representatives, [the] 'mere existence of individualized factual questions with respect to the class representative's claim will not bar certification.'" *Id.* (quoting *Gary Plastic*, 903 F.2d at 180).

Second, the law does not require Hialeah and New Bedford to have purchased every kind of security to represent a class of traders in all Genworth securities. Courts in this District and elsewhere have held that a class comprised of purchasers of different types of securities of the same issuer may properly be certified with a class representative who only purchased one type of security. *See In re Saxon Sec. Litig.*, No. 82 Civ. 3103, 1984 U.S. Dist. LEXIS 19223, at *18-*19 (S.D.N.Y. Feb. 23, 1984) (Lowe, J.) (appointing a stockholder to represent a class of stockholders and debenture holders); *Endo v. Albertine*, 147 F.R.D. 164, 167 (N.D. Ill. 1993) (appointing as class representatives purchasers of common stock to represent a class of purchasers of debentures, notes and common stock).[6] "'"[T]he fact that plaintiffs might have different types of securities does not require a separate class or co-lead plaintiffs because lead plaintiffs need not satisfy all elements of standing with respect to the entire lawsuit under the PSLRA."'" *Freudenberg*, 2008 U.S. Dist. LEXIS 62767, at *19; *see also Hevesi v. Citigroup Inc.*, 366 F.3d 70, 82 (2d Cir. 2004) ("[B]ecause the PSLRA mandates that courts must choose a party who has, among other things, the largest financial stake in the outcome of the case, it is inevitable that, in some cases, the lead plaintiff will not have standing to sue on every claim."). The Second Circuit in *Hevesi* explicitly rejected the argument that Defendants assert it held – that "at least one named plaintiff must have standing to sue on every type of security at issue in a 10b-5 case" (Defs.' Opp. at 21). 366 F.3d at 82. The *Hevesi* court actually held that "the Underwriters propose that we adopt a *per se* rule that a class may not be

[6] *See also Freudenberg v. E*Trade Fin. Corp.*, No. 07 Civ. 8538, 2008 U.S. Dist. LEXIS 62767, at *16-*19 (S.D.N.Y. July 17, 2008) (Sweet, J.) ("In light of the Securities Exchange Act's broad definition of 'security,' courts have appointed as lead plaintiffs purchasers of . . . one type of securities to represent purchasers of other types of securities of the same issuer where the interests of those purchasers are aligned.") (collecting cases).

certified where a lead plaintiff does not have standing to bring ***every*** available claim . . . This *per se* rule has little to recommend it." *Id.* (emphasis in original).[7]

"'[T]he test, ultimately, is whether the class representative will promote the interests of the class as he protects his own.'" *Oxford Health*, 191 F.R.D. at 376. Hialeah and New Bedford have already testified that they will do so. *See* Dkt. No. 93, Ex. 3 at 143:13-23, 157:15-21; Dkt. No. 93, Ex. 2 at 114:17-24, 121:25-122:15. And as highlighted by Defendants, the proposed Class that Hialeah and New Bedford would represent logically would not include put option purchasers who incurred no losses when the truth was revealed on April 17, 2012. Defs.' Opp. at 21-22. Rather, the proposed Class would include put option sellers, call option purchasers and stock purchasers – the interests of whom ***are aligned*** with Hialeah and New Bedford because they were all misled and then damaged by the ***same*** statements issued by the ***same*** Defendants and their claims will require the ***same*** evidentiary proof. *See Oxford Health*, 191 F.R.D. at 376 ("No purchaser of securities regardless of trading methodology or strategy would knowingly trade where material information has been misstated or withheld by an issuer.").[8]

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[7] The other cases Defendants cite for their position are irrelevant because, unlike the stocks and options at issue here, the value of the different securities in those cases were not inter-dependent, undermining an alleged interest. *See Abu Dhabi Commercial Bank v. Morgan Stanley & Co.*, 651 F. Supp. 2d 155, 163, (S.D.N.Y. 2009) ("notes issued by a structured investment vehicle"); *N.J. Carpenters Health Fund v. DLJ Mortg. Capital, Inc.*, No. 08 Civ 5653(PAC), 2010 WL 1473288, at *1 (S.D.N.Y. Mar. 29, 2010) ("mortgage-backed securities, issued in the form of pass-through certificates") (*rev'd in part by N.J. Carpenters Health Fund v. DLJ Mortg. Capital, Inc.*, No. 08 Civ. 5653(PAC), 2013 WL 357615, at *7 (S.D.N.Y. Jan. 23, 2013), which held that a plaintiff had standing to assert claims in securities it did not purchase but which shared "a similar set of concerns regarding the underwriting guidelines disclosures in the offering materials").

[8] The only case Defendants cite in support of their position that stock and options cannot be "'lumped' together and included in a class, on the assumption . . . that owners' interests are aligned" (Defs.' Opp. at 21), *In re Bank of Am. Corp. Sec., Derivative, & ERISA Litig.*, No. 09 MD 2058(PKC), 2011 WL 3211472, at *13 (S.D.N.Y. Jul. 29, 2011), is misplaced because there, standing was being analyzed in the Rule 12(b)(6) context, rather than the typicality analysis for class certification in Rule 23.

B. Beginning the Class Period on November 3, 2011, When Defendants First Made False and Misleading Statements, Is Proper

Defendants' argument that the Class Period should begin on November 4, 2011 (Defs.' Opp. at 22) would limit the actionable statements in this case and thus should be rejected. In the Second Circuit, "[a] defendant . . . is liable only for those statements made during the class period." *IBM*, 163 F.3d at 107; *accord In re Facebook, Inc., IPO & Sec. & Derivative Litig.*, 986 F. Supp. 2d 428, 464 (S.D.N.Y. 2013) (Sweet, J.) ("[T]he Second Circuit has found pre-Class Period statements to be inactionable."); *In re Refco, Inc. Sec. Litig.*, 503 F. Supp. 2d 611, 643 (S.D.N.Y. 2007) (Lynch, J.) ("[P]re-class-period statements . . . cannot themselves give rise to liability."). Beginning the Class Period on November 4, 2011 not only renders the November 3, 2011 misstatements and omissions inactionable, but also excludes the after-hours traders in Genworth securities who relied on those misrepresentations and omissions, suffered losses and should thus be included in the proposed Class. Because Defendants reported Genworth's 3Q11 financial results on November 3, 2011 – as they concede (Defs.' Opp. at 22) – the proposed Class Period properly begins on November 3, 2011.

C. Lead Plaintiffs' Proposed Order Is Sufficient

Lastly, Defendants object to Lead Plaintiffs' proposed order because it includes no factual findings, arguing that without such findings, the Court will fail the "rigorous analysis" component of class certification. Defs.' Opp. at 22-23. Defendants' objection is baseless. The authority Defendants cite pertains to the requirements under Rule 23 for the Court (*see id.*), not for the movants, and it requires a "rigorous analysis," not a "rigorous order." *Id.* Defendants have cited no precedent, statute or rule that requires Lead Plaintiffs to include in a proposed class certification order the findings of fact that the Court will undoubtedly make at either the hearing or in a separate opinion. Accordingly, the proposed class certification order is adequate.

V. Conclusion

Based on the foregoing, Lead Plaintiffs respectfully request that the Class be certified, Hialeah and New Bedford be appointed Class Representatives, and Robbins Geller and Labaton Sucharow be appointed as Class Counsel.

DATED: March 4, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 4, 2016.

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