UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re CELESTICA INC. SEC. LITIG.

MEMORANDUM DECISION AND ORDER

07 Civ. 0312 (GBD)

GEORGE B. DANIELS, United States District Judge:

Lead Plaintiffs New Orleans Employees' Retirement System, Drywall Acoustic Lathing and Insulation Local 675 Pension Fund (collectively, "Plaintiffs") bring this securities fraud class action pursuant to the Securities Exchange Act of 1934 against defendants Celestica Inc. ("Celestica" or the "Company"), its former Chief Executive Officer Stephen W. Delaney, and its former Chief Financial Officer Anthony P. Puppi (collectively, "Defendants"), on behalf of themselves and all persons and entities who purchased or otherwise acquired Celestica common stock between January 27, 2005, and January 30, 2007 (the "Class Period").[1] Plaintiffs claim that throughout the Class Period, Defendants disseminated materially false and misleading statements concerning Celestica's earnings, profitability, and financial outlook, thereby artificially inflating the price of Celestica's shares. In particular, Defendants allegedly recklessly misrepresented the rising volume of unsold inventory in Celestica's North American facilities.

Defendants moved for summary judgment dismissal of all claims in Plaintiffs' Consolidated Class Action Complaint ("Complaint"). Plaintiffs moved for partial summary judgment in their favor as to the issues of materiality, class-wide reliance, and class-wide damages.

Defendants' motion for summary judgment is DENIED in its entirety.

[1] Plaintiffs assert two claims: (1) Count One alleges securities fraud against all Defendants in violation of Section § 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b) ("§ 10(b)") and Rule 10b–5 promulgated thereunder, 17 C.F.R. § 240.10b–5 ("Rule 10b–5"); and (2) Count Two alleges control person liability against the individual defendants under § 20(a) of the Exchange Act, 15 U.S.C. § 78t(a) ("§ 20(a)").

Plaintiffs' motion for summary judgment as to the issues of materiality and loss causation is DENIED.

Plaintiffs' motion for summary judgment as to the issue of class-wide reliance is GRANTED.

Allegations

Plaintiffs allege that Defendants made numerous material misstatements and omissions during the Class Period with respect to Defendants' corporate restructuring plan for Celestica (the "Restructuring"), operations at Celestica's Monterrey, Mexico facility ("CMX"), the relationships Celestica had with its customers, and Celestica's financial disclosures and inventory, thereby artificially inflating the price of Celestica's shares.

The Complaint alleges that Defendants' fraudulent scheme hinged on reporting inflated financial results, which rendered an appearance that Celestica was more profitable and the Restructuring more successful than in reality. To accomplish this, Defendants allegedly: (i) manipulated Celestica's inventory resulting in the overstatement of earnings; (ii) understated operating expenses through the manipulation of Celestica's books; (iii) overstated revenues by booking phony sales; and (iv) understated the true cost of the announced Restructuring by as much as sixty-eight percent of what Defendants had previously told investors.

Plaintiffs allege that had Defendants complied with generally accepted accounting principles ("GAAP") and taken the required charges to properly reflect Celestica's financial conditions, earnings during the Class Period would have been reduced by at least $116 million. Plaintiffs further allege that, as a result of the failed Restructuring and the resulting inefficiencies, Celestica lost four of its ten key customers. Defendants allegedly failed to disclose the loss of these customers to its investors, and instead continued to characterize the Restructuring as a success.

Factual Background[2]

On January 27, 2005, the beginning of the Class Period, Defendants announced the Restructuring during their quarterly earnings conference call. See Lead Plaintiffs' Counter-Statement of Material Disputed Facts in Opposition to Defendants' Motion for Summary Judgment ("POSOF") ¶¶ 14-18. Specifically, CEO Delaney expressed his expectation that the plan to "consolidate operations" would "accelerate [Celestica's] path to returns that are greater than [its] cost of capital," and stated that the Restructuring would generate "between 125 and 150 or so million dollars of [annual] savings." Id. ¶¶ 14-18. In responding to an analyst's question as to whether the Company needed to implement the Restructuring to achieve or exceed a 3.5 percent operating margin, CFO Puppi stated, "I hope to exceed that frankly, but we needed to do this restructuring in order to get further marketing expansion from where we are right now." Id. ¶ 17. Puppi also stated that Celestica would see benefits associated with the Restructuring "in the 'second quarter of '06.'" Id. ¶ 18. Analysts and investors reacted with enthusiasm, driving Celestica's stock price up by nearly 6% in the days following the Restructuring announcement.

During Defendants' April 21, 2005 quarterly earnings conference call, Delaney stated that the Restructuring was "progressing as planned with cost reductions expected to show up in the second half of this year." Id. ¶ 34. On May 4, 2005, Defendants published their Q1 2005 financial results, in which they estimated that the Restructuring would cause them to take charges of between $225 and $275 million. Id. ¶ 36.

Defendants made further statements about the Restructuring in their Q3 2005 earnings conference call on October 20, 2005. Delaney again stated that the Restructuring was proceeding as planned, and that no further restructuring would be necessary. Id. ¶¶ 81, 83. Celestica forecasted in

[2] The following facts are undisputed, except where indicated.

its Q3 financial results that the Restructuring charges would amount to between $225 and $275 million. Id. ¶ 88.

In a January 26, 2006 press release discussing Celestica's Q4 2005 earnings, Delaney acknowledged that transfers of business into CMX were hurting profitability, but that the Company "ha[d] deployed the necessary resources to restore efficiencies by the second quarter." Id. ¶ 139. Defendants again represented in the press release that the expected range of the Restructuring charges was $225 to $275 million. Id. ¶ 139.

In the Company's Q4 2005 earnings conference call that same day, Delaney acknowledged "higher costs" in the Americas region that Celestica had incurred "to support the major program transfers that occurred" in that region, but said the Company remained "comfortable and excited with the prospects for [the Americas] region" for the remainder of the year. Id. ¶ 140. Delaney also stated that "the biggest challenges [were] behind the Company," and that he expected to improve the Company's operating margins to the Company's 3.5 percent target by the second quarter of 2006. Id. ¶ 141. Delaney continued, "[w]e understand the problems that we caused for ourselves relative to transfer planning," but maintained that Celestica "ha[d] our arms around the mistakes that we made . . . ." Id. ¶ 144. The Company's stock price immediately declined 3.70%. See Exhibits to Lead Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment ("POSJ") 109, Coffman Opening Rpt., ¶¶ 124-34; POSOF ¶ 147.

Celestica announced its Q2 2006 financial results on July 27, 2006. POSOF ¶ 238. In a press release on that date, Delaney stated, "[w]ith a backdrop of . . . improved efficiencies in our high-growth facilities, . . . and the completion of our restructuring activities, we are confident in . . . stronger margins through 2006." Id. ¶ 238. In the same press release, Celestica stated, "[T]he anticipated improvement in adjusted earnings is being driven by continued benefits from our restructuring activities and increased efficiencies in our Mexico and European operations." Id. ¶

239. In its Q2 2006 financial results, Defendants stated that charges associated with the Restructuring would range from $247.3 to $272.4 million. Id. ¶ 245.

The Company also conducted an earnings conference call on October 26, 2006 with analysts, during which Delaney and Puppi mentioned in general terms that there were problems in Mexico, but stressed that "Mexico is getting better every day." Id. ¶ 291. Defendants disclosed that Celestica's gross margins were adversely impacted by a $6 million inventory charge, relating to a physical inventory variance at an unnamed site in the Americas. Delaney emphasized that he did not "foresee taking any more [inventory] charges," as the Company had made a "series of changes" to prevent reoccurrence. Id. ¶ 293. Puppi further assured investors that this inventory variance had no impact on the effectiveness of the Company's internal controls under Sarbanes-Oxley. Celestica stock immediately fell 13.46%. POSJ 109, Coffman Opening Rpt. ¶¶ 135-60; POSOF ¶ 296.

On November 27, 2006, Celestica announced the "resignation" of Delaney as CEO. Celestica's stock dropped 4.44% following the announcement. POSJ 109, Coffman Opening Rpt. ¶¶ 161-67; POSOF ¶ 312. Gerald Schwartz, Celestica's controlling shareholder, confirmed that Delaney was fired by Celestica's Board of Directors. POSOF ¶ 313, POSJ 223 at 74:12-77:11.6.

On December 12, 2006, Celestica revised its earnings guidance due to key customer desertions and the impact of an inventory write-down at CMX. Celestica's stock declined 12.17%. POSJ 109, Coffman Opening Rpt. ¶¶ 168-76; POSOF ¶ 324.

On January 30, 2007, Celestica announced its Q406 earnings. In a press release, the Company stated:

> We expected to complete these restructuring actions by the end of 2006, however, in light of our operating results and in the course of preparing our 2007 plan in the fourth quarter of 2006, we have identified additional restructuring actions necessary to return the Americas and Europe to profitability.

POSOF ¶ 335. CEO Muhlhauser discussed the Restructuring in the same press release, where he announced the need for "an additional $60 to $80 million of restructuring charges, $40 million of which has been recorded in the fourth quarter, with the remaining charges to be incurred during 2007." Id. ¶ 336.

On January 31, 2007, the last day of the Class Period, Celestica revealed the "perfect storm" that caused the full extent of problems at CMX and with the Restructuring. The Company also announced the resignation of Puppi as CFO. On that day, Celestica stock dropped 22.90%. POSJ 109, Coffman Opening Rpt. ¶¶ 177-88; POSOF ¶ 339.

Throughout the Class Period, Delaney and Puppi signed Certifications for financial results pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002 ("SOX Certifications"). POSOF ¶ 32, 37, 58, 89, 175, 203, 246, 302.

Motion for Summary Judgment

Summary judgment is permissible "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "An issue of fact is genuine 'if the evidence is such that a jury could return a verdict for the nonmoving party.'" Gayle v. Gonyea, 313 F.3d 677, 682 (2d Cir. 2002) (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986)). A fact is material when "it 'might affect the outcome of the suit under the governing law.'" Id. (quoting Anderson, 477 U.S. at 248).

The party seeking summary judgment has the burden of demonstrating that no genuine issue of material fact exists. See Marvel Characters, Inc. v. Simon, 310 F.3d 280, 286 (2d Cir. 2002). In turn, to defeat a motion for summary judgment, the non-moving party must raise a genuine issue of material fact. To do so, it "'must do more than simply show that there is some metaphysical doubt as to the material facts,'" Caldarola v. Calabrese, 298 F.3d 156, 160 (2d Cir. 2002) (quoting

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)), and it "may not rely on conclusory allegations or unsubstantiated speculation." Fujitsu Ltd. v. Fed. Express Corp., 247 F.3d 423, 428 (2d Cir. 2002) (citations and quotations omitted). Rather, the non-moving party must produce admissible evidence that supports its pleadings. See First Nat'l Bank of Arizona v. Cities Serv. Co., 391 U.S. 253, 289-90 (1968). In this regard, "[t]he 'mere existence of a scintilla of evidence' supporting the non-movant's case is also insufficient to defeat summary judgment." Niagara Mohawk Power Corp. v. Jones Chem., Inc., 315 F.3d 171, 175 (2d Cir. 2003) (quoting Anderson, 477 U.S. at 252).

In determining whether a genuine issue of material fact exists, the court must construe the evidence in the light most favorable to the non-moving party and draw all inferences in that party's favor. See Niagara Mohawk, 315 F.3d at 175. Accordingly, the court's task is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson, 477 U.S. at 249. Summary judgment is therefore inappropriate "if there is any evidence in the record that could reasonably support a jury's verdict for the non-moving party." Marvel, 310 F.3d at 286 (citations and quotations omitted).

As noted, Plaintiffs' principal securities fraud claims are brought pursuant to section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b). The SEC rule implementing the statute, Rule 10b–5, prohibits "mak[ing] any untrue statement of a material fact or [omitting] to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b–5(b) (2008). To state a claim based on a misrepresentation or omission in violation of Rule 10b–5, plaintiffs must allege that a defendant "(1) made misstatements or omissions of material fact; (2) with scienter; (3) in connection with the purchase or sale of securities; (4) upon which plaintiffs relied; and (5) that plaintiffs' reliance was the proximate cause of their injury." Lentell v. Merrill Lynch & Co., 396 F.3d 161, 172 (2d Cir.

2005) (quoting In re IBM Corp. Sec. Litig., 163 F.3d 102, 106 (2d Cir. 1998) (internal quotation marks omitted)), cert. denied, 546 U.S. 935 (2005).

Defendants have moved for summary judgment dismissal of Plaintiffs' section 10(b) claims on the basis that Plaintiffs have failed to raise a triable issue of fact as to whether Defendants made false statements or omissions concerning Celestica's restructuring, inventory, customers, or CMX operations. Defendants also argue that Plaintiffs have failed to adduce evidence that Celestica's financial disclosures during the Class Period were false or misleading. Lastly, Defendants claim that there is insufficient evidence as to Defendants' scienter.

Plaintiffs have raised triable issues of fact as to whether the statements made by Defendants were materially false and misleading, and whether Defendants acted with scienter. Defendants' motion for summary judgment is accordingly denied.[3]

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[3] Plaintiffs have also moved for class certification pursuant to Federal Rule of Civil Procedure 23. ECF No. 184. This Court denied Plaintiffs' prior motion for class certification that included as class members foreign persons or entities who purchased Celestica common stock in Canada on the Toronto Stock Exchange ("TSX"). See ECF No. 172 (citing Robert Morrison v. Nat'l Bank Ltd., 130 S. Ct. 2869, 2887 (2010) ("Like the United States, foreign countries regulate their domestic securities exchanges and securities transactions occurring within their territorial jurisdiction.")). Plaintiffs' renewed motion, which includes as class members only those persons who purchased or acquired Celestica's common stock on a U.S. stock exchange during the Class Period, is granted. Defendants' opposition to class certification on the basis that the named Plaintiffs are inadequate class representatives is without merit. See ECF No. 207 at 19-25. Rule 23(a) mandates that parties seeking to certify a class demonstrate that the named plaintiffs will "fairly and adequately" represent that class. Fed. R. Civ. P. 23(a)(4). Courts generally interpret this requirement to mean that named plaintiffs must be similarly situated to the proposed class in terms of interests and injury (Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 625-26 (1997)), and they may have no interests adverse to those of the putative class. See In re Literary Works in Elec. Databases Copyright Litig., 654 F.3d 242, 249 (2d Cir. 2011). Plaintiffs have demonstrated that the proposed class representatives, New Orleans Employees' Retirement System, Drywall Acoustic Lathing and Insulation Local 675 Pension Fund, are similarly situated non-extraterritorial purchasers of Celestica common stock and are free of any interests antagonistic to the class. Plaintiffs have also demonstrated that the proposed class satisfies the predominance and superiority requirements of Rule 23(b)(3). See ECF No. 187 at 17-23; see also Amchem, 521 U.S. at 625 ("Predominance is a test readily met in certain cases alleging . . . securities fraud . . ."); Wagner v. Barrick Gold Corp., 251 F.R.D. 112, 120 (S.D.N.Y. 2008) (as a general matter, "securities suits such as this easily satisfy the superiority requirement . . ."). Plaintiffs' motion for class certification is accordingly granted and Labaton Sucharow LLP is appointed counsel for the class.

Defendants have moved for summary judgment to delineate the Class Period as beginning on January 26, 2006, the date on which Celestica held an earnings call and disclosed to investors that the Company had experienced operational problems at CMX in 4Q05. See Def. Mot. at 70-72. Delineation of the start date of Plaintiffs' potential class period is largely pertinent to the assessment of damages and should be addressed at trial through the parties' submission of evidence and this Court's instructions to the jury. Defendants' motion to delineate the start of the class period as a matter of law is accordingly denied.

False Statements or Omissions of Material Fact

Plaintiffs allege that Defendants consistently received information concerning the increasing levels of obsolete inventory at CMX that was inconsistent with their public statements during the Class Period.[4] Plaintiffs have submitted evidence that both Delaney and Puppi participated in Celestica Monthly Operating Review ("MOR") conference calls where they, senior management, and plant managers discussed the operational metrics for the key Restructuring facilities. These discussions sometimes concerned failures in Mexico's supply chain management and levels of obsolete inventory. For example:

> Michael Homer's (Celestica President of the Americas Region) notes to a September 2005 MOR state: "Overall (very high level) concern on CMX [Supply Chain Management]. . . . Overall, Tony P[uppi] sees the Americas as a slow train wreck in the happening." POSOF ¶ 73; POSJ 60.
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> On April 20, 2006, Celestica's Director of SCM distributed to Delaney and Puppi, "the base data for the E&O." Puppi had requested the information after observing that "Obsolete inventories grew by $11m sequentially to $51.4m at end of march. . . . These results concern me especially in a demand rich environment, which puts more priority on getting these down now." POSOF ¶ 192, POSJ 149.
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> Puppi testified that, as of April 2006, "some of our largest customers had [] significantly more inventory than the plan would have targeted. . . . 60 percent, 63 percent, 42 percent [off plan] is not pretty . . . those are big variances. . . . [I]f you added up all the customers inside Mexico, they were off by 48 percent. Too much inventory . . . It is not pretty—it's not a good thing." POSOF ¶ 205; POSJ 11 at 142:2-143:08.
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> The October 16, 2006 MOR was also attended by Delaney and Puppi. Delaney related that there were "no positive developments on inventory; demand supply process not fixing the problem," Celestica "ha[s] yet to hit an inventory forecast; we are not meeting requirements and commitments regarding turns or cash flow; there is a big gap between what we promised and what we are delivering"; and that there is "an almost infinite level of inventory" at CMX. POSOF ¶ 275, POSJ 204.

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[4] In the electronic manufacturing services industry ("EMS"), inventory levels are a key metric of current and future performance. Generally, in the EMS business, production runs for particular products are short. Importantly, the majority of product components are unique not only to certain customers, but also to specific products. Once a production run is complete, excess parts are generally not usable in other products and are therefore rendered Excess and Obsolete Inventory ("E&O").

Plaintiffs argue that Celestica's inventory control problems, and consequently growing inventories, had negative operational and cash-flow implications that were not disclosed until late 2006. On December 12, 2006, Celestica revised its public earnings guidance to reflect "an expected net charge of between $0.08 to $0.12 resulting predominantly from an increase in inventory provisions at the Monterrey, Mexico facility." POSOF ¶ 323.[5] According to a Celestica management presentation, 37% of the December 2006 inventory write-down was attributed to "Unable to prove to customer," with an additional 23% attributable to Celestica's own "Stock Accuracy." POSOF ¶ 322; POSJ 227, at 451. The remaining 21 percent was attributed to "[o]ther" in the pie-chart. Id. Plaintiffs argue that Defendants should have made a reserve adjustment months prior to the eventual decision and announcement in December 2006 and claim to have adduced clear evidence of a contemporaneously-known material understatement of Celestica's inventory reserves.

In support of this claim, Plaintiffs first argue that Celestica's inventory write-down should have been announced earlier because the Company knew that its negotiations with customers Panasonic, Radisys, and Alcatel for E&O putbacks were going to fail. Of the $34 million reserve increase that Celestica arrived at in the fourth quarter of 2006, Celestica attributed $23 million to the failure of put-back claims to three customers: Panasonic, Radisys, and Alcatel. Plaintiffs contend that Defendants knew, prior to December of 2006, of specific disputes that pertained to each of these customers. In support of this argument, Plaintiffs submit a series of Celestica emails that discuss these disputes. See Pl. Opp'n at 42-43 (citing POSOF ¶ 282, POSJ 209; POSOF ¶ 311; POSJ 222; POSOF ¶ 264; POSJ 176).[6] Plaintiffs argue that Defendants' omission of these disputes,

[5] As noted supra, the Company also announced on October 26, 2006, that Celestica's gross margins were adversely impacted by a $6 million inventory charge.

[6] For example, Plaintiffs argue that at least as early as October 23, 2006, senior management – President Worldwide Sales (soon to be CEO) Muhlhauser and EVP Worldwide Operations Rowan – knew Celestica had "had little cooperation regarding our request for E&O recovery from Panasonic," that the negotiation was "without any progress or

and failure to adjust earnings guidance in light of these disputes, rendered Celestica's financial statements materially false and misleading.

In further argument, Plaintiffs allege that Celestica did not carry enough reserves at its CMX facility. See Pl. Opp'n at 44-48. While corporate policy called for a higher reserve level of 50% of E&O, CMX deviated from that policy. See PSOF ¶ 11. Plaintiffs allege that the inventory reserve "judgments" Celestica used in its CMX facility were incorrect, as they forecasted an ability to recover 95% of CMX's E&O through put-backs – resulting in a projected loss, for which the Company held an inventory reserve, of only 5% of E&O. See POSOF ¶ 330. Plaintiffs argue that the 5% figure was inaccurate because it was applied across all of CMX's customers, whereas an individualized, customer-by-customer assessment of E&O would have revealed that much more than a 5% inventory reserve was necessary.[7]

Plaintiffs also argue that there is evidence that Defendants knew that the Company's E&O inventory reserves were understated. See Pl. Opp'n at 46. In support of their argument, Plaintiffs point to Celestica emails that discussed the potential inaccuracy of the Company's E&O reserve judgments. For example, Frank Binder, VP of Finance, testified that he engaged in "a lot" of communication with CFO Puppi over the course of "many, many months" during the Class Period regarding the Company's E&O reserves:

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agreement," and that the "financial/inventory risk" of this "major issue" amounted to "$17M of E&O in addition to the $6M from Q3." Pl. Opp'n at 43 (citing POSOF ¶ 282, POSJ 209).

[7] For example, Plaintiffs cite to an October 13, 2006 email from Controller Peter Bar seeking clarification on the Company's inventory reserves:

> Can you pls send me your inventory provision analysis. I need to know how you ended up with a reserve of $5.3M that is adequate . . . If I just apply the corporate policy rates, it would imply you are underprovided by $16M . . . I am surprised that your total reserve went down from $6.1M at 6/30 to $5.3M at 9/30. POSOF ¶ 271; POSJ 201.

Bar also wrote to Frank Binder, VP of Finance for the Americas region and Paul Nicoletti, Celestica Corporate Treasurer, on December 13, 2006, that "I feel that we are not all following the inventory reserve percentages as closely as we should." He stated that "we got caught big time," and had to increase the inventory reserve to the "level required to meet a proper valuation of our inventory." This increase revealed "a material misstatement in the inventory itself" and "also caus[ed] us to preannounce for the quarter [Q4 2006]." POSOF ¶ 329.

> [T]he discussions I had with Tony . . . were around the judgment calls that we were making . . . , because if those judgments were incorrect in a substantial way, our provisions were going to be incorrect . . . . [T]he discussions I had with Tony is increasingly I thought that the judgments that the product managers were making, which we were relying on, were inaccurate. . . . [T]he judgments we used to set the inventory levels were incorrect. And they were becoming more incorrect as time went on. POSOF ¶ 321; POSJ 10 at 147:19-148:18.

Further, in March 2006, corporate finance employee Donna Singh compiled, and presented to CFO Puppi, Celestica inventory reserve data from which she had drawn the conclusion that "the reserves do not appear to be reasonable." POSOF ¶ 164; POSJ 125. Puppi recognized the urgency of the situation: "I met with Donna on the reserve analysis and there is lots to do [and] questions." POSOF ¶ 167; POSJ 128. On April 2, 2006, Binder stated to Puppi that CMX had a "low level of reserves for the amount of obsolete inventory on hand," and exhibited "[n]o apparent scrutiny or process to ensure all balance sheet risks are covered." POSOF ¶ 179; POSJ 135. In turn, on April 11, 2006, Puppi informed Celestica's highest-ranking executives, including CEO Delaney, that CMX had adopted a "very aggressive reserve posture." POSOF ¶ 183; POSJ 140.

Plaintiffs also allege that Defendants manipulated the timing of inventory shipments and receipts at quarter-end, making the Company appear more efficient and cash-rich than it was. As evidence of the alleged fraud, Plaintiffs allege that Celestica delayed inventory receipts in order to manipulate inventory levels. For example, CMX management reported that the site had "pushed out around $11M [worth of production] from first week of April to second and third week of April to avoid receiving the components in March." POSOF ¶ 13; POSJ 16.

In addition, Plaintiffs allege that Celestica did not timely record and report inventory that the Company actually had on hand. For instance, on October 25, 2005, Celestica's EVP of Worldwide Operations noted that "we only have a couple of weeks to impact the cash generation in the current quarter" and recommended that, "to drive the inventory down" and address the Company's "crisis on cash," Celestica should "shut off the [shipping] docks [or] reschedule." POSOF ¶ 87; POSJ 67.

Plaintiffs further allege that quarter-end manipulations were not limited to "gatekeeping" incoming components; Plaintiffs claim that the evidence also shows Celestica made shipments to its customers around quarter-end with the intent of manipulating its financial statements. For instance, Plaintiffs note that Lucent – a key customer of Celestica – was "often flexible with special buys at qtr-end to address CLS's inventory concerns." POSOF ¶ 340; POSJ 242. Lucent also described "moving short-term Excess material back and forth between companies." Id. Similarly, Celestica Corporate Treasurer Paul Nicoletti told CEO Craig Muhlhauser and CFO Puppi that "sites are shipping as much as possible in order to hit inventory numbers." POSOF ¶ 34; POSJ 239.

1. A Reasonable Jury Could Find that Defendants Made Misstatements or Omissions of Material Fact

In support of its motion for summary judgment, Defendants' primary argument is that Plaintiffs "cannot prove that Defendants made false statements or omissions concerning Celestica's Inventory." Def. Mem. at 43. In the first instance, Defendants claim that Plaintiffs have not offered sufficient evidence to quantify or explain with particularity in what way Defendants' statements were false. Defendants argue that prior to 4Q06, Plaintiffs have not identified a specific quarter where Celestica's inventory numbers or inventory reserves were misstated by any quantifiable number. Id. at 47. Further, Defendants argue that Plaintiffs have adduced no evidence that Celestica was aware prior to 4Q06 that its inventory levels were inaccurate or that inventory reserves were insufficient. Id.

In addition, Defendants argue that Plaintiffs cannot demonstrate that Celestica intentionally manipulated inventory levels. Id. at 48. In support of their position, Defendants contend that Plaintiffs' allegations are inconsistent with Celestica's accounting policy, under which inventory belongs to Celestica and must be kept on Celestica's books until the finished product or parts leave Celestica's docks. Thus, Defendants claim that holding inventory in parking lots or shipping it to employees' garages would have no effect on Celestica's financial statements. Id. at 49. In addition, Defendants argue that the testimony of Plaintiffs' confidential witnesses contradicts the financial manipulation allegations. See Def. Opp'n at 49-52 (citing, e.g., testimony of Ron Cosper, CW3, in which he repudiated the statements attributed to him in the Complaint with regard to the alleged manipulation scheme).

Viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could find that Celestica overvalued its inventory by failing to record appropriate E&O reserves, and as a result issued materially false and misleading financial statements that artificially inflated Celestica's reported earnings. As noted supra, on December 12, 2006, Celestica revised its public earnings guidance to reflect "an expected net charge of between $0.08 to $0.12 resulting predominantly from an increase in inventory provisions at the Monterrey, Mexico facility." POSOF ¶ 324. Defendants claim that this charge was needed only because "in late November 2006 some customers reduced orders significantly, and [E&O] negations began to deteriorate and, for the first time, there arose the possibility that Celestica would need to take an inventory provision on E&O inventory at CMX." Def. Mem. at 46. However, Plaintiffs have presented evidence that the necessity of this reserve reassessment was known prior to the December 12, 2006 disclosure.

Celestica's public statements throughout the Class Period did not take into account Celestica's inability to put back E&O and did not disclose the rising levels of E&O. Instead, Celestica's reported inventory reflected an expected 95 percent recovery of the value of the obsolete inventory for each of the accounts, a calculation VP of Finance, Frank Binder, referred to as "incorrect in a substantial way," and "becoming more incorrect as time went on." POSOF ¶ 321; POSJ 10 at 147:19-148:18. A reasonable juror could find that the use of such incorrect reserves resulted in a material overstatement in Celestica's inventory value, operating income, and earnings.[8]

[8] As noted supra, Plaintiffs have also put forth evidence that Defendants did not timely record and report inventory that the Company had on hand and manipulated the timing of inventory shipments to make the Company appear more profitable than it was.

Moreover, Plaintiffs have presented evidence that Defendants disseminated earnings guidance for Q4 that did not account for future reserve increases associated with the likely write-downs for Panasonic, Radisys, and Alcatel inventory. Until December 2006, Defendants did not disclose these risks. Accordingly, Plaintiffs have demonstrated that there is a material issue of fact with respect to whether Celestica's public statements concerning the Company's inventory levels, including its financial statements, were materially false and misleading.[9]

2. A reasonable Jury Could Find that Defendants Acted with Scienter[10]

To qualify as a strong inference of scienter, evidence of fraudulent intent must be "cogent and at least as compelling as any opposing inference of nonfraudulent intent." Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 314 (2007). Courts must "consider the complaint in its entirety," inquiring "whether all of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation, meets that standard." Id. at 323. This may be satisfied by showing either (1) both a motive and opportunity to commit fraud, or (2) by strong circumstantial evidence of conscious misbehavior or recklessness. See ATSI Commc'n Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 99 (2d Cir. 2007).

In order to raise a strong inference of scienter through "motive and opportunity" to defraud, plaintiffs must allege that a defendant "benefitted in some concrete and personal way from the purported fraud." Novak v. Kasaks, 216 F.3d 300, 307–08 (2d Cir. 2000). Motives that are common to most corporate officers, such as the desire for the corporation to appear profitable and

[9] In addition, Plaintiffs have put forth evidence that Celestica's internal controls over financial reporting were materially weak and overridden in violation of GAAP standards. For example, throughout the Class Period, the Company's internal audit department rated CMX's inventory management controls as "Unsatisfactory" – a classification that went undisclosed to investors. POSOF ¶ 8, POSJ 8.

[10] On October 14, 2010, this Court granted Defendants' motion to dismiss the Complaint on the basis that Plaintiffs had failed to adequately allege scienter. ECF No. 60. Plaintiffs appealed, and the Court of Appeals for the Second Circuit reversed and remanded the case, finding that Plaintiffs' allegations were sufficient to establish the individual defendants' scienter. ECF No. 67.

the desire to keep stock prices high to increase officer compensation, do not constitute "motive" for purposes of this inquiry. Id. at 307; Kalnit v. Eichler, 264 F.3d 131, 139 (2d Cir. 2001). Rather, the "motive" showing is generally met when corporate insiders allegedly make a misrepresentation in order to sell their own shares at a profit. Novak, 216 F.3d at 308.

In this case, Plaintiffs have not attempted to prove scienter through motive and opportunity, but instead argue that the facts demonstrate strong circumstantial evidence of conscious misbehavior or recklessness. If plaintiffs cannot make the "motive" showing, then they can raise a strong inference of scienter under the "strong circumstantial evidence" prong, "though the strength of the circumstantial allegations must be correspondingly greater" if there is no motive. Kalnit, 264 F.3d at 142 (quoting Beck v. Mfrs. Hanover Trust Co., 820 F.2d 46, 50 (2d Cir. 1987), overruled on other grounds by United States v. Indelicato, 865 F.2d 1370 (2d Cir. 1989) (en banc)).

At least four circumstances may give rise to a strong inference of the requisite scienter: where the complaint sufficiently alleges that the defendants (1) "benefitted in a concrete and personal way from the purported fraud"; (2) "engaged in deliberately illegal behavior"; (3) "knew facts or had access to information suggesting that their public statements were not accurate"; or (4) "failed to check information they had a duty to monitor." Novak, 216 F.3d at 311; see also Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital, Inc., 531 F.3d 190, 195 (2d Cir. 2008).

The fact-intensive nature of a scienter inquiry often militates against granting judgment as a matter of law. See RMED Int'l, Inc. v. Sloan's Supermarkets, Inc., 207 F. Supp. 2d 292, 298 (S.D.N.Y. 2002); see also Wechsler v. Steinberg, 733 F.2d 1054, 1058-59 (2d Cir. 1984) ("Issues of motive and intent are usually inappropriate for disposition on summary judgment."); In re Columbia Sec. Litig., 155 F.R.D. 466, 479 (S.D.N.Y. 1994) ("Resolution of the question of scienter, as with any issue of motive or intent, generally requires examination of a witness's demeanor and credibility and is thus . . . inappropriate for disposition on summary judgment.").

Plaintiffs have raised triable issues of fact as to whether Defendants acted with scienter. In particular, Plaintiffs have presented evidence that Delaney and Puppi recklessly misrepresented the rising volume of unsold inventory in Celestica's North American facilities. See ATSI Commc'ns, Inc., 493 F.3d at 99 (holding that plaintiffs may meet PSLRA's standard for scienter "by alleging facts ... constituting strong circumstantial evidence of conscious misbehavior or recklessness"); see also ECA & Local 134 IBEW Joint Pension Trust of Chi. v. JP Morgan Chase Co., 553 F.3d 187, 198–99 (2d Cir. 2009) (holding that if plaintiffs cannot show defendants had motive and opportunity to commit fraud, they can "raise a strong inference of scienter under the strong circumstantial evidence prong, though the strength of the circumstantial allegations must be correspondingly greater if there is no motive" (internal quotation marks omitted)).

As noted supra, Delaney and Puppi participated in MOR conference calls in which they discussed the rising levels of obsolete inventory. Further, Frank Binder, the VP of Finance for the Americas region, testified that he engaged in frequent communication with Puppi over the course of "many, many months" during the Class Period, regarding the rising level of obsolete inventory and the inadequacy of the Company's E&O reserves. Further, other Celestica employees, such as corporate finance employee Donna Singh, informed Puppi that the E&O reserves were incorrect. In addition, Puppi put Celestica's highest-ranking executives, including Delaney, on notice that CMX had adopted an aggressive reserve policy that was inconsistent with company-wide guidelines. POSOF ¶ 183; POSJ 140.

Furthermore, that Delaney and Puppi were informed about the inventory buildup and subpar inventory management in Celestica's North American facilities is consistent with Plaintiffs' theory of the underlying fraud. Plaintiffs have presented evidence that Delaney and Puppi ordered and executed the Restructuring and that Delaney received reports as to its progress. Moreover, Delaney and Puppi had reason to focus on Celestica's inventory levels: inventory, especially when taken in relation to the Company's overall sales, was key to measuring Celestica's financial performance and was a subject about which investors and analysts inquired.

Thus, Plaintiffs have not only presented evidence that Delaney and Puppi received information about the inventory buildup in Celestica's North American plants, but also have put forth evidence that Delaney and Puppi were alert to information concerning increases in the Company's unsold inventory, a fact that reinforces the inference of scienter. See In re Scholastic Corp. Sec. Litig., 252 F.3d at 76–77 (stating that pleaded facts establishing significance of inventory levels to company's financial performance supported allegation that defendants acted recklessly when they failed publicly to acknowledge company's decreased sales and increased returns).[11]

Accordingly, viewing the evidence in the light most favorable to Plaintiffs, there is a genuine issue of material fact as to Defendants' scienter.[12]

3. A reasonable Jury Could Find that the Alleged Misstatements Were Material

Defendants argue that the alleged misstatements were not material because Plaintiffs have failed to present sufficient evidence that any of the alleged false statements or omissions had a

[11] Moreover, the evidence is sufficient to raise a triable issue of fact as to corporate scienter on behalf of Celestica. See Teamsters Local 445 Freight Div. Pension Fund, 531 F.3d at195 ("In most cases, the most straightforward way to raise such an inference for a corporate defendant will be to plead it for an individual defendant.").

[12] In further support of dismissal, Defendants invoke the PSLRA's "safe harbor," which shields a person from liability "with respect to any forward-looking statement ... [that is] identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement." 15 U.S.C. § 78u–5(c)(1)(A)(i). Defendants also argue that their statements were non-actionable "puffery." See Def. Opp'n at 26 (citing Rombach v. Chang, 355 F.3d 164, 174 (2d Cir. 2004) ("expressions of puffery ... do not give rise to securities violations.")). Although some of Defendants' statements were arguably forward-looking or mere puffery, others reported on past or present circumstances and were contradicted by existing historical facts. Specifically, when asked directly about the company's inventory levels, Defendants responded either that Celestica was managing its inventory well or that any inventory problems were aberrations. In sum, Defendants "did more than just offer rosy predictions"; they allegedly stated that present inventory was under control or omitted it as a contributor to the company's costs, despite recklessly disregarding that the opposite was true. Novak, 216 F.3d at 315. Thus, Defendants cannot obtain dismissal under the PSLRA safe harbor or on the basis that their statements were puffery.

significant impact on the Company as a whole. A misrepresentation or omission is "material" under Section 10(b) when there is a "substantial likelihood" that it "would have been viewed by the reasonable investor as having significantly altered the total mix of information made available." Basic Inc. v. Levinson, 485 U.S. 224, 231–32 (1988) (quoting TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)). The "total mix" of information available to investors is assessed at the time the statement was made or the fact omitted, and includes all information reasonably available to investors at that time. Gebhardt v. ConAgra Foods, Inc., 335 F.3d 824, 831 (8th Cir. 2003); see also Beleson v. Schwartz, 419 F. App'x 38, 40 (2d Cir. 2011).

Plaintiffs have raised a triable issue of fact as to the materiality of the alleged misstatements and omissions. Plaintiffs have presented evidence that Celestica had to take a $30 million charge as a result of the increase in inventory provisions at CMX. Further, the Company immediately sustained a precipitous decrease in share price after disclosing the true state of its inventory. See ECA & Local 134 IBEW Joint Pension Trust of Chi., 553 F.3d at 204–05; SEC Staff Accounting Bulletin No. 99, 64 Fed. Reg. 45150, 45152 (1999). Misstatements of income, such as Celestica's net earnings statements based on incorrect inventory valuations, can be material "because earnings reports are among the pieces of data that investors find most relevant to their investment decisions." Ganino v. Citizens Utils. Co., 228 F.3d 154, 164 (2d Cir. 2000) (internal quotation marks omitted). The evidence is sufficient for a reasonable jury to find that Celestica's inventory accounting was relevant to investors' investment decisions, defeating Defendants' immateriality argument.[13] Defendants' motion for summary judgment is accordingly denied.[14]

There are Material Issues of Fact as to Loss Causation

Plaintiffs have moved for summary judgment as to the issue of loss causation.[15] In support of their motion, Plaintiffs argue that there is no genuine issue of material fact that four corrective disclosures caused Plaintiffs to incur economic losses. Plaintiffs rely on the expert opinion of Chad Coffman, CFA, to show that at least a portion of the new information disclosed on January 27, 2006; October 27, 2006; December 12, 2006; and January 31, 2007, was corrective and caused a percentage of the share price declines on those dates. See Pl. Mem. at 33-34.

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[13] Although Plaintiffs have raised triable issues of fact with respect to materiality, they have not demonstrated that the alleged misstatements were material as a matter of law. See Pl. Mem. at 24-32 (moving for summary judgment in their favor as to the issue of materiality). "The issue of materiality may be characterized as a mixed question of law and fact, involving as it does the application of a legal standard to a particular set of facts." TSC Indus., Inc.,426 U.S at 450. In considering whether summary judgment is appropriate, a court "must bear in mind that the underlying objective facts ... are merely the starting point for the ultimate determination of materiality. The determination requires delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him, and these assessments are peculiarly ones for the trier of fact." Id. Only if the established omissions are "so obviously important to an investor, that reasonable minds cannot differ on the question of materiality" is the ultimate issue of materiality appropriately resolved "as a matter of law" by summary judgment. Id. Construing the evidence in the light most favorable to Defendants, triable issues of facts exist as to whether Defendants' statements or omissions were materially false or misleading. See TSC Indus., Inc., 426 U.S. at 453. Plaintiffs' motion for summary judgment with respect to materiality is accordingly denied.

[14] Plaintiffs have also raised triable issues of fact with respect to other categories of allegedly false and misleading statements. See Def. Mem. at 28-36, 53-54 (arguing that Plaintiffs cannot prove that Defendants made false statements or omissions concerning Celestica's restructuring, customers, and CMX operations). Plaintiffs have put forth evidence that Defendants consistently made public projections with respect to the cost, duration, and profit margins of the Restructuring, despite knowing that the Company would need to incur additional restructuring charges in order to meet public projections. See Pl. Opp'n at 26-34. In addition, Plaintiffs have presented evidence that Defendants made false statements concerning customer satisfaction during the Class Period. For example, Plaintiffs have submitted evidence that Defendants affirmatively stated that Celestica did not expect any major shifts in its existing top customers, despite knowing that it was on the verge of losing several of its top customers. Id. at 50-58.

[15] Plaintiffs also moved for summary judgment with respect to class-wide reliance based on the fraud on the market presumption. See Pl. Mem. at 32-33. The Supreme Court in Basic held that a plaintiff is entitled to a rebuttable presumption ("fraud on the market presumption" or "Basic presumption") that he or she relied on the market price of a particular security. See Basic, 485 U.S. 224, 241–42. Defendants opposed Plaintiffs' motion on the basis that the Supreme Court's decision in Halliburton Co. v. Erica P. John Fund, Inc., 134 S. Ct. 2398 (2014), might overrule Basic and change the law regarding the fraud on the market presumption. See Def. Opp'n at 21 ("The Court should reserve judgment on plaintiffs' motion for partial summary judgment on market efficiency because that presumption is currently under review by the Supreme Court."). The Court in Halliburton left Basic undisturbed and upheld the fraud on the market presumption. See Halliburton at 2407—2413. Plaintiffs, having put forth unrebutted evidence that Celestica securities traded on an efficient market, are entitled to the application of the fraud on the market presumption. Summary judgment is accordingly granted in Plaintiffs favor on the issue of class-wide reliance.

In response, Defendants argue that there is a material issue of fact as to whether the alleged fraud caused *any* of the financial loss to Celestica investors. In particular, Defendants contend that Coffman's loss causation analysis is unreliable, and is at odds with the expert opinion of Dr. Vinita M. Juneja. Defendants argue, based on Dr. Vinita's analysis, that Coffman's event study: (1) fails to adjust for the effect of the peer stock movements throughout the entire Class Period; and (2) does not properly disaggregate the impact of confounding news and uses a flawed methodology for deriving the impact on the stock price of each news item. As a result, Defendants argue that the Coffman study is insufficient evidence of loss causation.

To establish a prima facie claim for federal securities fraud under Section 10(b) and Rule 10b–5, a plaintiff bears "the burden of proving that the act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages." 15 U.S.C. § 78u–4(b)(4). "Loss causation ... is the causal link between the alleged misconduct and the economic harm ultimately suffered by the plaintiff." Emergent Capital Inv. Mgmt., LLC v. Stonepath Grp., Inc., 343 F.3d 189, 197 (2d Cir. 2003); accord Dura Pharm., Inc. v. Broudo, 544 U.S. 336, 342 (2005). The Second Circuit has recognized that loss causation may be established by demonstrating either: (1) that "the market reacted negatively to a corrective disclosure, which revealed an alleged misstatement's falsity, or disclosed that allegedly material information had been omitted", In re AOL Time Warner, Inc. Sec. Litig., 503 F. Supp. 2d 666, 677 (S.D.N.Y. 2007); or (2) that "the loss was foreseeable and caused by the materialization of the risk concealed by the fraudulent statement," ATSI Commc'ns, Inc., 493 F.3d at 107.

The parties have presented conflicting evidence of loss causation, and ask this Court to draw conflicting inferences and give different degrees of weight to different pieces of that evidence. However, viewing the evidence in the light most favorable to Defendants, a reasonable jury could determine that Plaintiffs have failed to establish loss causation. With respect to Coffman's event study, a reasonably jury could discount the study in light of the competing expert opinion testimony of Dr. Juneja. Accordingly, Defendants motion for summary judgment as to the issue of loss causation is denied.[16]

Conclusion

Defendants' motion for summary judgment is DENIED in its entirety.

Plaintiffs' motion for summary judgment as to the issues of materiality and loss causation is DENIED.

Plaintiffs' motion for summary judgment as to the issue of class-wide reliance is GRANTED.

The Clerk of Court is directed to close the motions at ECF Nos. 137, 139, 184, 200, and 202.

Dated: August 20, 2014
New York, New York

SO ORDERED.

George B. Daniels

GEORGE B. DANIELS
United States District Judge

[16] Defendants argue that because they have offered a competing expert opinion, they are entitled to summary judgment in their favor as to loss causation. As Defendants themselves point out, the general rule is that courts should not grant summary judgment when the parties produce competing expert analyses. See Def. Opp'n at 15 (citing In re Blech Sec. Litig., No. 94 Civ. 7696 RWS, 2002 WL 31356498, at *1 (S.D.N.Y. Oct. 7, 2002). Dr. Juneja's competing expert opinion is insufficient to demonstrate that there is no triable issue of fact as to loss causation. Notably, Dr. Juneja did not perform her own event study, but only offered a critique of Coffman's study. Defendants' cross-motion for summary judgment is accordingly denied.