IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE: K12 SECURITIES LITIGATION	Case No. 1:20-cv-01419 Hon. Liam O'Grady

MEMORANDUM OPINION & ORDER

Before the Court is Defendants' Motion to Dismiss for Failure to State a Claim. Dkt. 34. For the reasons set forth below, Defendants' Motion is **GRANTED**.

I. BACKGROUND

Plaintiffs have filed a federal securities class action against K12 Inc.; K12's Chief Executive Officer, Nathaniel A. Davis; and K12's Chief Financial Officer, Timothy Medina. Dkt. 31 at 1. The lawsuit is filed on behalf of all persons and entities, other than Defendants, that purchased or otherwise acquired K12 securities between April 27, 2020 and September 18, 2020, both dates inclusive. Plaintiffs seek to recover damages and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, against the Company, its CEO, and its CFO. Dkt. 31 at 2.

K12, now known as Stride, Inc., is a Delaware company headquartered in Herndon, Virginia. K12 is a technology-based education company that provides proprietary and third-party educational curriculum, teacher training, administrative support, information technology support,

software systems and educational services. The company operates virtual learnings systems worldwide. Dkt. 31 at 2. In the company's fiscal year ending in June 2020 ("FY20"), K12 partner schools enrolled approximately 134,000 students across the country, and K12 generated just over $1 billion in revenues. Dkt. 35 at 10.

Beginning in March 2020, the global COVID-19 pandemic forced school districts across the country to close in-class instruction and shift all learning activities to online and blended instruction. Dkt. 31 at 2. The onset of the COVID-19 pandemic provides the backdrop to Plaintiffs' class action here. K12 – a technology-based education company – recognized the unique opportunity to revamp itself by seizing a large stake in the rapidly growing market for online education. Almost immediately following the nationwide closure of in-class instruction, K12 embarked on a campaign to convince the market that it was well positioned and technologically capable to accommodate and service the surge of students, parents, and teachers who were turning to online education. *See* Dkt. 31 at 3. As a result of the pandemic and this campaign, the start of the 2020-21 school year yielded a 48.6% year-over-year increase in student enrollments at K12's full-service schools. Dkt. 35 at 11. On July 15, 2020, K12 common shares traded around $43 per share. By August 5, 2020, the price of K12 shares increased to an all-time high closing price of $51.60 per share. This surge was unmatched by any of K12's competitors. Dkt. 31 at 3. Additionally, K12 offered free trial access to its online curriculum, platforms, and training. By April 2020, more than 70,000 students, teachers, and families had signed up for K12's complimentary programming. *See* Dkt. 35 at 10.

Plaintiffs claim that, in the process of revamping itself to meet the growing market demand resulting from the COVID-19 pandemic, K12 made materially false and misleading statements about the Company's business and operations. Specifically, Plaintiffs allege that

"Defendants made false and/or misleading statements and/or failed to disclose to investors that: (i) the Company did not have a signed contract with Miami-Dade County Public Schools; (ii) K12 lacked the technological capabilities, infrastructures, and expertise to support the increased demand for virtual and blended education necessitated by the global pandemic; (iii) K12 lacked adequate cybersecurity protocols and protections to prevent and mitigate cyberattacks; and (iv) K12 was unable to provide the necessary levels of training to teachers, students, and parents." Dkt. 31 at 7.

In their Motion to Dismiss, Defendants claim (i) that Plaintiffs almost exclusively challenge statements that are inactionable as a matter of law because the majority of these statements are "mere puffery." Other statements are subjective opinions or forward-looking projections which are insulated from liability under the safe harbor of the Private Securities Litigation Reform Act of 1995 (PSLRA). Dkt. 35 at 8-9. Defendant's further argue (ii) that the Plaintiffs' Amended Complaint lacks particularized allegations "giving rise to a strong inference" that Defendants acted with scienter – that is "a mental state embracing intent to deceive, manipulate, or defraud." Dkt. 35 at 9.

II. DISCUSSION

Plaintiffs have filed this action under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder. A successful claim under Section 10(b) requires a stringent showing. To successfully make a claim under Section 10(b), a plaintiff must adequately plead "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) a reliance upon the misrepresentation or omission; (5) economic loss; (6) loss causation."

Matrixx Initiatives, Inc. v. Siracusano, 563 U.S. 27, 37-38 (2011); *Maguire Fin. v. PowerSecure Int'l*, 876 F.3d 541, 546 (4th Cir. 2017).

The Private Securities Litigation Reform Act (PSLRA) of 1995 imposes additional rules on securities class action lawsuits. "Exacting pleading requirements are among the control measures Congress included in the PSLRA. The PSLRA requires plaintiffs to state with particularity both the facts constituting the alleged violation, and the facts evidencing scienter." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). To make a claim under § 10(b) of the Securities Exchange Act, plaintiffs must "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U.S.C. § 78u-4(b)(2). Scienter under § 10(b) requires "a mental state embracing intent to deceive, manipulate, or defraud." *Tellabs*, 551 U.S. at 319. The Supreme Court has instructed that, "to determine whether a complaint's scienter allegations can survive threshold inspection for sufficiency, a court governed by § 21D(b)(2) [of the PSLRA] must engage in a comparative evaluation; it must consider, not only inferences urged by the plaintiff… but also competing inferences rationally drawn from the facts alleged… An inference of scienter must be more than merely plausible or reasonable – it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent." *Id.* at 314. *See also In re Triangle Capital Corporation Securities Litigation*, 988 F.3d 743, 751 (4th Cir. 2021) (internal citations omitted).

Plaintiffs do not adequately meet these heightened pleading requirements imposed by the PSLRA. In their Amended Complaint, Plaintiffs both fail to state with particularity the facts constituting the alleged violation, and also fail to state the facts evidencing scienter. *See Tellabs*, 551 U.S. at 319.

First, Plaintiffs fail to state with particularity the facts constituting the alleged violations. While Plaintiffs marshal many statements made by Defendants throughout the class period, Plaintiffs fail to back up their allegations that these statements constitute securities fraud. As Defendants correctly indicate, the majority of the statements that Plaintiffs point to are merely complaints over sufficiency – sufficient technological capabilities, sufficient cybersecurity protocols, and sufficient levels of training to teachers, students, and parents. Plaintiffs never allege that Defendants did not have these systems in place; rather, they merely allege that these systems were not sufficient to meet demand. What's more, Plaintiffs' allegation that Defendants fraudulently touted the not yet fully executed Miami-Dade contract is similarly unsupported. Defendants statements about this contract are generic, and Plaintiffs do not state with particularity how these claims constitute securities fraud.

Second, Plaintiffs fail to allege that Defendants acted with scienter – that is with the intent to "deceive, manipulate, or defraud." *See Tellabs*, 551 U.S. at 319. A comparative evaluation does not lead the factfinder to believe that the intent to defraud is at least as compelling as a nonfraudulent intent. *See id.* Indeed, one is led to believe that K12's statements were benevolent – that they were in fact trying to meet the increased market demand during the unprecedented and unforeseeable event of the COVID-19 pandemic – even if they ultimately fell short.

Furthermore, under the statutory safe harbor provision of the PSLRA, a forward-looking statement is not actionable as a matter of law if it is (1) couched in "meaningful cautionary" terms or (2) the plaintiff fails to plead particularized facts demonstrating that it was made with "actual knowledge" of falsity. 15 U.S.C. § 78u-5(c). Many of K12's statements at issue are forward-looking, and thus protected by the statutory safe harbor provision of the PSLRA. While

several of Defendants' statements may have been, at worst, overly optimistic or sloppy, Plaintiffs fail to allege throughout that Defendants spoke with any actual knowledge of falsity. *See* 15 U.S.C. §78u-5(c).

III. CONCLUSION

For the reasons set forth above, Plaintiffs Amended Complaint is **DISMISSED WITHOUT PREJUDICE** as Plaintiffs' Amended Complaint was filed before Plaintiffs had the benefit of Defendants' Motion to Dismiss. Plaintiffs may replead and file a Second Amended Complaint, provided that the complaint complies with Federal Rule of Civil Procedure 11(b) and is not futile.

It is **SO ORDERED.**

September 16, 2021
Alexandria, Virginia

Liam O'Grady
United States District Judge