IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ASHLEY PIERRELOUIS, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	**No. 18 C 4473**
v.	)	**Judge Jorge L. Alonso**
GOGO, INC., MICHAEL J. SMALL, NORMAN SMAGLEY, BARRY ROWAN, and JOHN WADE,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Lead plaintiff Daniel Rogers[1] has filed a Third Amended Class Action Complaint for Violation of the Federal Securities Laws ("Third Amended Complaint"), asserting violations of sections 10(b) and 20(a) of the Securities Exchange Act and Rule 10b-5 of the Securities Exchange Commission ("SEC"). Defendants, Gogo, Inc. ("Gogo"), Michael J. Small, Norman Smagley, Barry Rowan, and John Wade, move to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim under Rule 8, Rule 9(b), and the Private Securities Litigation Reform Act of 1995 ("PSLRA"). For the following reasons, the motion is denied.

BACKGROUND

The Court assumes familiarity with its previous decision in this case, in which it granted defendants' motion to dismiss plaintiff's amended complaint for failure to state a claim. *Pierrelouis v. Gogo, Inc.*, 414 F. Supp. 3d 1164, 1176-77 (N.D. Ill. 2019). Since then, plaintiff has

[1] This class action was initially brought by the above-captioned plaintiff, but class members Maria Zingas and Daniel Rogers, among others, moved for appointment as lead plaintiffs. After the other movants withdrew, the Court granted Zingas and Rogers's motions and appointed them as co-lead plaintiffs. (Oct. 10, 2018 Order, ECF No. 41.) Zingas became unable to continue serving as a lead plaintiff (*see* Lead Pl.'s Mem. In Supp. Of Mot. For Leave to Amend at 1 n.1, ECF No. 98), leaving Rogers as the sole lead plaintiff.

twice repleaded, but the core of the complaint has not changed. As before, plaintiff alleges that, during the class period between February 27, 2017 and May 4, 2018, defendants—Gogo and several of its executives—made certain false and misleading public statements about the reliability of Gogo's in-flight internet connectivity services and its impact on Gogo's financial picture. According to plaintiff, Gogo installed its new "2Ku" antenna-and-satellite-based in-flight wifi systems on numerous partner airplanes before and during the class period, although defendants knew that the 2Ku systems sometimes did not work after the airplanes had been sprayed with de-icing fluid. As a result, plaintiff alleges, defendants knew that Gogo would be unable to hit its service availability targets during periods of winter weather unless it made costly modifications to its 2Ku systems, which would hurt the company's financial performance. Nevertheless, according to plaintiff, defendants concealed the de-icing issue from investors for months, and then, even after disclosing it in February 2018, still concealed its true seriousness, until Gogo's new CEO finally disclosed the extent of the problem in May 2018. The May 2018 disclosure caused Gogo's allegedly artificially inflated stock price to plummet, to the detriment of plaintiff and other investors.

The Court described these allegations in more detail in its prior opinion, *see id.* at 1168-70, and, apart from the above brief summary, it will not repeat that description here. In the present Third Amended Complaint, plaintiff's core allegations are the same, but he includes new allegations about the 2Ku system's importance to Gogo's business prospects and about Gogo employees' attempts to assess and correct the de-icing problem.

According to plaintiff, Gogo's financial future was heavily dependent on the success of the 2Ku system. Investors perceived Gogo as a company that needed to make capital expenditures in the short term in order to achieve profitability in the long term. That meant that Gogo needed to

spend heavily to install its systems on more and more aircraft so that it could reach more customers. Additionally, the improved bandwidth of the new 2Ku satellite system, as compared with the old air-to-ground system, was meant to attract more passengers per flight and increase average revenue per aircraft, a key accounting metric. Analysts perceived Gogo's ability to (a) contract with airline partners to install its systems on new planes and then (b) successfully and efficiently install its systems on the resulting "backlog" of planes as crucial to its fortunes. Gogo had incurred significant debt to finance 2Ku installations and buy satellite capacity, and it continued to borrow throughout the class period for the same purpose, expecting that it its investment would pay off with revenue growth as soon as the 2Ku installations were complete. In light of the expectations of analysts and investors and the increased debt, plaintiff alleges, any disruption to the rollout of the 2Ku product or to the installation of 2Ku systems on Gogo's backlog of partner airplanes would have had a significant impact on Gogo's financial position.

According to plaintiff, several former employees have confirmed that Gogo discovered the de-icing problem in the winter of 2016-2017, recognized its seriousness, and began to make an extensive, concerted effort to correct it by the start of the class period in February 2017. The first of these former employees, identified only as "FE-1," served as Director of Aircraft Engineering. FE-1 recalls that multiple planes began to have connectivity problems in December 2016 and January 2017. An airline partner grounded one plane so that engineers from ThinKom, the company that designed the 2Ku system, could inspect it. The ThinKom engineers determined that the problem was caused by de-icing fluid leaking into the "radome," the compartment that housed the 2Ku system's antennas. FE-1 recalled that the problem affected a dozen planes that winter, and the outages appeared on an outage list that was circulated to everyone in management.

Based on these developments, FE-1 recalled, Gogo engineers began working on a solution to the problem in February 2017. Gogo obtained an old airplane fuselage, affixed a 2Ku system to it, installed a camera in the radome, and sprayed it with de-icing fluid to determine how and where the fluid penetrated the radome. This testing revealed that the fluid leaked in under the rubber seal between the radome and the fuselage. Gogo continued to install the 2Ku systems on new airplanes while it sought a remedy for this problem. By October 2017, when FE-1 left the company, Gogo had managed to engineer a couple of repair procedures, but the repairs took about three days to implement, which was difficult to arrange with the airlines.

FE-2 served as a Project Engineer who oversaw installations of 2Ku systems, and he recalled that Gogo discovered the de-icing problem when cold weather arrived in the latter part of 2016. However, Gogo continued to install 2Ku systems on new airplanes, not wanting to disrupt its aggressive installation schedule. FE-2 was involved in the installations of supplemental equipment to address the de-icing problem, following an effort by a "fully coordinated, integrated product team comprised of people with subject matter expertise" to develop a fix to the problem. (3d Am. Compl. ¶ 77, ECF No. 101.) Gogo began to roll out its remedy for the de-icing problem in the spring or summer of 2017, after months of testing. FE-2 recalled that the de-icing fluid was a big concern that had reached the attention of many executives, given the importance of the 2Ku product for the company and the sophistication of the equipment. As FE-2 explained, "when you're putting stuff on an airplane, even if you're drilling one hole, there are about three dozen people at the company that know about that one hole." (*Id.* ¶ 79.)

FE-3 joined Gogo in February 2017 as "Director – Airline Technical Operations." (*Id.* ¶ 42.) At that time, Gogo was working on finding a solution to the de-icing problem. During FE-3's first few months at the company, fixing the de-icing problem before winter set in again was a

priority for Gogo, and everyone was aware of what was going on, including defendant John Wade, Gogo's chief operating officer during the class period. FE-3 recalled attending weekly meetings at which the de-icing problem was discussed. Wade also attended these meetings.

FE-4 worked at Gogo from 2013 to May 2017, advancing to the role of "Senior VP, Airline Technical Operations." (*Id.* ¶ 43.) He recalls learning of the 2Ku problems in the winter of 2016-2017, and that Gogo was still working on assessing and fixing the problem when he left the company.

FE-5 worked at Gogo from 2014 to May 2017, advancing to the role of "Director, Aircraft Certification and Compliance." (*Id.* ¶ 44.) He recalls that the 2Ku system was having problems in the winter of 2016-2017. He learned of them because his team served as liaison between Gogo and the FAA for obtaining "Supplemental Type Certificates" or "STCs." Any modification to the outside of an airplane must receive an STC, which the FAA defines as "a type certificate . . . issued when an applicant has received FAA approval to modify an aeronautical product from its original design." (3d Am. Compl. ¶ 92.) Gogo was required to obtain an STC for each type of aircraft on which it installed 2Ku systems, and indeed even for different configurations of the same aircraft type. This was a time-consuming, multi-step process that could take months or even years. In the case of the 2Ku system, according to FE-5, the STC application required testing the equipment under different environmental conditions and against different contaminants that the equipment might encounter once it was in use. Gogo's airline partners would have to supply specific parts for testing. Before FE-5 left the company in May 2017, his team had been involved in internal discussions at Gogo about whether the company's attempts to address the de-icing issue would require a new STC. FE-5 told members of the department tracking the functionality of the 2Ku system that he could not say whether a fix would require a new STC until after he saw the design

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