UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PABLO GRECO, GALESSI HOLDING CORP., and JUAN PABLO DI BENEDETTO, *individually and on behalf of all others similarly situated*,

Lead Plaintiffs,

-against-

QUDIAN INC., MIN LUO, and CARL YEUNG,

Defendants.

1:20-cv-577-GHW

MEMORANDUM OPINION AND ORDER

GREGORY H. WOODS, United States District Judge:

Defendant Qudian, Inc. is a leading provider of micro-loans to consumers in China. In June 2019, Qudian raised its guidance for its total non-GAAP net income for the year from 3.5 billion renminbi to 4.5 billion renminbi. Qudian attributed the increase to its strong early results and confidence in its ability to grow through the second half of the year. Not long after Qudian raised its guidance, the company's performance plummeted. By the time the smoke settled, Qudian missed not only its increased guidance, but its initial guidance as well—Qudian's non-GAAP net income for 2019 was 3.4 billion renminbi.

The lead plaintiffs in this action, Juan Pablo di Benedetto, Galessi Holding Corp., and Pablo Greco (together, "Lead Plaintiffs"), brought this securities class action on behalf of themselves and other similarly situated investors who purchased or otherwise acquired Qudian securities between December 13, 2018 and January 15, 2020 (the "Class Period"). Lead Plaintiffs allege that Defendants made a number of false and misleading statements and omissions, including by misrepresenting that Qudian's business was compliant with China's regulations, and by misrepresenting that Qudian was experiencing significant growth while remaining conservative in its lending practices. Lead Plaintiffs allege that Defendants violated Section 10(b) of the Securities

Exchange Act of 1934 and Rule 10b-5, and that Min Luo and Carl Yeung violated Section 20(a) of the Exchange Act.

For the reasons that follow, Lead Plaintiffs have not plausibly alleged that Defendants made materially false or misleading statements with a wrongful state of mind. Therefore, Defendants' motion to dismiss the amended complaint is GRANTED.

I. BACKGROUND

A. Facts[1]

1. Qudian

Qudian was founded in 2014 and is "a leading provider of online small consumer credit products in China." Am. Compl., Dkt. No. 44, ¶¶ 24, 28. Almost all of Qudian's transactions are conducted through mobile phones—potential borrowers apply for small amounts of credit on their phones and receive approval within seconds. *Id.* ¶ 28. Qudian's average loan size is less than $300 and has a duration of less than a year. *Id.* Qudian states that it "target[s] the large and growing number of creditworthy borrowers in China who we believe are of emerging prime credit quality but have limited credit history and access to traditional consumer credit from banks or other lenders." *Id.* ¶ 33. Over 80% of Qudian's active borrowers are between 18 and 35 years old. *Id.* Qudian was a private company until October 18, 2017, when the company went public with an initial public offering that listed Qudian's American Depositary Shares ("ADS") on the New York Stock Exchange. *Id.* ¶ 29. Luo is the founder of Qudian and serves as the CEO and chairman of Qudian's board of directors. *Id.* ¶ 24. Yeung was Qudian's CFO. *Id.* ¶ 25.

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[1] Unless otherwise noted, the facts are drawn from the amended complaint, Dkt. No. 44, and are accepted as true for the purposes of this motion to dismiss. *See, e.g.*, *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002). But "[t]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

2. Core Loan Book

Lead Plaintiffs refer to Qudian's consumer lending business as its "core loan book." Qudian's core loan book consists of "on-balance sheet" and "off-balance sheet" transactions. *Id.* ¶ 58. On-balance sheet transactions are loans funded either directly by Qudian or by Qudian's institutional funding partners. *Id.* Off-balance sheet transactions are loans that Qudian facilitates between borrowers and third parties. *Id.* ¶ 59. Under this service, Qudian refers qualified credit applications to banks along with Qudian's assessment of the potential borrower's credit profile and suggested credit limits. *Id.* The banks then independently review the credit application and approve or deny the loan. *Id.* If the loan is approved, the banks directly fund the loan to the borrower. *Id.* Qudian receives a facilitation fee for each loan and guarantees the full loan amount in the event of a default. *Id.* In 2018, Qudian's core loan book funded approximately $8.4 billion worth of loans. *Id.* ¶ 58. 64% of the transactions were on-balance sheet and the remainder were off-balance sheet. *Id.*

3. Regulatory Issues with the Core Loan Book

China imposes strict regulations on the online consumer lending industry. *Id.* ¶ 61. On December 1, 2017, China's Office of the Leading Group for Specific Rectification against Online Finance Risks and the Office of the Leading Group for Specific Rectification against P2P Online Lending Risks jointly issued the Circular on Regulating and Rectifying Cash Loan Business, which is known as Circular 141. *Id.* In its 2018 Annual Report, Qudian explained that Circular 141 "provides restrictions on banks' collaboration with third parties in cash loan business," including that "[a] bank may not outsource its core business functions, such as credit assessment and risk management, to third parties" and that "[a] bank participating in loan facilitation transactions may not accept credit enhancement services from a third party which has not obtained any license or approval to provide guarantees, including credit enhancement service in the form of a commitment to assume default risks." *Id.* ¶ 62.

Lead Plaintiffs allege that Qudian's off-balance sheet transactions, as well as on-balance sheet loans that were funded by other financial institutions, violate Chinese regulations, including Circular 141. *Id.* ¶ 66. Lead Plaintiffs allege that "it was common for Qudian to violate Circular 141's prohibition on having financial institutions outsource their credit assessments to Qudian," because "many of the banks that Qudian did business with were actually outsourcing the credit assessment function to Qudian" rather than conducting their own independent credit assessments. *Id.* ¶ 69. Despite allegedly violating Circular 141, Qudian "repeatedly assured investors . . . that Qudian was compliant with online lending regulations." *Id.* ¶ 78.

In addition to Circular 141, Qudian was subject to strict licensing regulations. At the end of 2018, Qudian had two online microlending licenses. *Id.* ¶ 72. The licenses were associated with two of Qudian's subsidiaries: Fuzhou Gaoxin District Qufenqi Microlending Co. Ltd. and Ganzhou Happy Life Online Microlending Co. Ltd. *Id.* Lead Plaintiffs allege that, in May 2019, China's government "downgraded the scope of business that Qufenqi Microlending could engage in so that its lending license was narrowed from not having any geographic restriction to being just a regional microlending license. This severely restricted Qudian to making microloans within the limits of Ganzhou district and surrounding counties." *Id.* Consequently, Lead Plaintiffs allege, the number of loans that Qudian was able to fund with its own capital was narrowed. *Id.* ¶ 73. Lead Plaintiffs allege that the restriction impacted Qudian's core loan book—both the number of on-balance sheet transactions and Qudian's financing income from those transactions declined in 2019. *Id.* ¶ 74.

Lead Plaintiffs contend that, as a result of these regulatory issues, Qudian's financial partners became reluctant to provide Qudian funding and some partners ended their partnership completely. *Id.* ¶ 76–77. Qudian became concerned about the viability of the core loan book. *Id.* ¶ 75. These concerns, among other reasons, pushed Qudian to try to generate income through other methods. *Id.* ¶ 75–77. However, Qudian failed numerous times to grow its business outside of its core loan book, including through a relationship with Ant Financial, an auto-financing business, and several ecommerce projects, among others. *See id.* ¶ 36–52. By November 2018, Qudian's share price had fallen by 82% from its IPO as a result of these failed projects. *Id.* ¶ 52.

4. Open Platform

In the third quarter of 2018, Qudian developed a new loan-referral business called Open Platform. *Id.* ¶¶ 2, 82. Through Open Platform, Qudian refers borrowers to other financial institutions which then make loans directly to the borrowers. *Id.* ¶ 2. The primary difference between Open Platform and the off-balance sheet loans that Qudian facilitated through its core loan book is that Qudian does not guarantee the loans made through Open Platform. *Id.* ¶ 103. In its 2018 Annual Report, Qudian explained that Open Platform:

> [O]ffers our large user base with more choices to satisfy their financial needs, while incurring no material cost of operations and no credit risk for us. For users that do not meet our credit requirements, we provide recommendations of financial products that are offered by financial service providers that participate on our platform. The relevant financial service providers perform independent credit assessment of users and make the ultimate credit decisions. We typically charge such financial service providers for lead generation on a cost-per-click basis. On the other hand, for users with better credit profiles that are applying for large loan amounts that exceed the limit permitted under our policy, we refer their applications to our institutional funding partners. We do not bear credit risk and receive commissions from our institutional funding partners for such referrals.

Id. ¶ 82. Qudian portrayed Open Platform as the next source of growth for Qudian after its other failed attempts to expand beyond the core loan book. *Id.* ¶ 84. Qudian told investors that Open Platform would allow Qudian to profit off its tens of millions of registered users that were not taking out loans. *Id.*

The reality, Lead Plaintiffs allege, was vastly different. Although Defendants stated that Open Platform was created as a new business opportunity, Lead Plaintiffs assert that Qudian "developed Open Platform to address its serious regulatory concerns with its core loan business." *Id.* ¶ 85. "Qudian's reason for shifting to Open Platform was actually that it was more compliant with China's strict online lending regulations, not that it presented a promising new avenue of growth separate from the core loan book. But rather than explaining the Company's true reason for

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