UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM,

Plaintiff,

v. **No. 4:20-cv-0201-P**

SIX FLAGS ENTERTAINMENT CORPORATION ET AL.,

Defendants.

OPINION AND ORDER

Before the Court are Plaintiff's Motion for Leave to File its Amended Complaint (ECF No. 101), Defendants' Motion for Judgment on the Pleadings (ECF No. 102), and Key West Police & Fire Pension Fund's Motion to Intervene (ECF No. 108). For the reasons below, the Court **DENIES** Plaintiff's Motion (ECF No. 101), **GRANTS** Defendants' Motion (ECF No. 102), and **DENIES** Movant's Motion (ECF No. 108).

BACKGROUND

This case arises from Defendants' failed attempt to expand their amusement parks into China. *See* ECF No. 50. Throughout 2018, Defendant Executives repeatedly maintained that their development and earnings schedule remained on-track. *Id.* But the projected park opening schedule was allegedly "in serious jeopardy" as early as May 2018. *Id.* at 8. Movant began purchasing shares of Defendants' stock in July 2018. ECF No. 109 at 126. Throughout the rest of the year, Riverside began defaulting on its licensing payments, and "construction in China came to a standstill" by 2019. ECF No. 50 at 8–9.

Beginning in February 2019, Defendants began announcing negative revenue adjustments due to the delays. ECF No. 50 at 10. On an October 23, 2019, earnings call, Defendants announced a "very high likelihood going forward that [Defendants would] see changes in the timing of park

openings," *Id.*; ECF No. 103 at 8–9, and that it was "unrealistic" to think the original timelines would hold. *Id.* Days after, Plaintiff began purchasing shares of Defendants' stock. ECF No. 28-2 at 12.

By February 2020, Defendants disclosed that they had terminated its development agreements with Riverside and that Six Flags would not recognize any revenue from the planned China expansion. ECF No. 103 at 8–9.

Plaintiff then sued, alleging violations of sections 10(b) and 20(a) of the Securities Exchange Act for false and misleading statements made to investors from 2018 to 2020 about the progress, timeline for opening, and accounting for various Six Flags parks in China. ECF No. 50. Pursuant to Plaintiff's request, the Court appointed Oklahoma Firefighters as a Co-Lead Plaintiff for a potential future putative class. ECF No. 26. Oklahoma filed its Amended Complaint, which Defendants moved to dismiss. ECF Nos. 50, 51, The Court then granted Defendants' Motion. ECF No. 69.

Oklahoma Firefighters appealed. ECF No. 77. In January 2023, the Fifth Circuit reversed and remanded this Court's decision, holding that Plaintiff pled sufficient facts to support a claim for securities fraud to survive a motion to dismiss. ECF Nos. 82, 83. But the Fifth Circuit also held that "statements before October, 2019 satisfy the pleading standard, but, because Defendants had adequately tempered their optimistic language by October, the later allegations do not." *Oklahoma Firefighters Pension and Ret. Sys. v. Six Flags Ent. Corp.*, 58 F.4th 195, 218 (5th Cir. 2023).

As a result, Plaintiff moved to amend its complaint, ECF No. 101, and seeks to add Movant Key West and substitute them as Lead Plaintiff. *Id.* In response, Defendant moved for judgment on the pleadings, arguing that Plaintiff lacks standing based on the Fifth Circuit's holding. ECF Nos. 102, 103.

Key West then moved to intervene. ECF No. 108. Movant argues that they should be added to the suit because its injuries are nearly "identical" to Plaintiff's—except that it bought stock over a year earlier. *Id.*

LEGAL STANDARD

Federal Rule of Civil Procedure 12(c) provides that a party may move for judgment on the pleadings "[a]fter the pleadings are closed[,] but early enough not to delay trial." FED. R. CIV. P. 12(c). In considering such a motion, "[t]he central issue is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief." *Brittan Commc'ns Int'l Corp. v. Sw. Bell. Tel. Co., 313 F.3d 899, 904 (5th Cir. 2002).* (quoting *Hughes v. The Tobacco Inst., Inc.*, 278 F.3d 417, 420 (5th Cir. 2001)). Therefore, the nonmovant "must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Doe. v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Pleadings should be construed liberally, and judgment on the pleadings is appropriate only if there are no genuine issues of material fact and only questions of law remain." *Brittan Commc'ns Int'l Corp. v. Sw. Bell. Tel. Co.*, 313 F.3d 899, 904 (5th Cir. 2002).

ANALYSIS

I. Article III Standing

Standing contains three requirements. *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560 (1992). *First*, there must be a concrete injury in fact that is not conjectural or hypothetical. *Whitmore v. Arkansas*, 495 U.S. 149, 149 (1990). *Second*, there must be causation—a fairly traceable connection between a plaintiff's injury and the complained-of conduct of the defendant. *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41–42 (1976). *Third*, there must be redressability—a likelihood that the requested relief will redress the alleged injury. *See Lujan*, 504 U.S. at 562. These three requirements constitute the core of Article III's case-or-controversy requirement. *See FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990); *Lewis v. Knutson*, 699 F.2d 230, 236 (5th Cir. 1983) ("The constitutional limits on standing eliminate claims in which the plaintiff had failed to make out a case or controversy.").

"[A party's] lack of standing can be raised at any time." *Sommers Drug Stores Co. Emp. Profit Sharing Tr. v. Corrigan* 883 F.2d 345, 348 (5th Cir. 1989). And a party's purported standing may be revoked by the

intervening opinion of a higher court. *See Summit Off. Park, Inc. v. U.S. Steel Corp.*, 639 F.2d 1278 (5th Cir. 1981).

Defendant argues that Plaintiff lacks standing to pursue a claim for securities fraud because the Fifth Circuit determined that there was a full corrective disclosure by the time Plaintiff purchased stock. ECF No. 103 at 1. As a result, Plaintiff could not have suffered an injury in fact. *Id.*

Plaintiff responds that—to have standing—it only needed to buy stock when the price was still artificially inflated—i.e., before *all* artificial inflation was removed from the stock price. ECF No. 110 at 15. Plaintiff also contends that "the full truth" about Defendant's fraud was not known to investors until the disclosures made in early 2020 marked the end of the purported class period. *Id.* Plaintiff lastly asserts that the Fifth Circuit's holding regarding "statements" made after October 2019 applies only to one *category* of statements—those made about the timeline of the parks' opening. *Id.* at 10–15. And because Plaintiff purchased within the broader inflationary period in reliance on *other* statements before the 2020 disclosures, they have asserted an injury in fact. *Id.*

The Court therefore addresses whether Plaintiff has suffered an injury in fact.

a. Injury in Fact and Securities Fraud

To state a claim for securities fraud, a plaintiff must allege: "(1) a material misrepresentation or omission; (2) scienter (a 'wrongful state of mind'); (3) a connection with the purchase or sale of a security; (4) reliance; (5) economic loss; and (6) a 'causal connection between the material misrepresentation and the loss.'" *Oklahoma Firefighters Pension and Ret. Sys. v. Six Flags Ent. Corp.*, 58 F.4th 195, 206 (5th Cir. 2023) (quoting *Mun. Emps.' Ret. Sys. of Mich. v. Pier 1 Imports, Inc.*, 935 F.3d 424, 429 (5th Cir. 2019).

Here, the "injury in fact" issue turns on the fourth element—whether Plaintiff can sufficiently allege that it reasonably relied on certain "statements" exempt from the Fifth Circuit's holding when it purchased Defendants' stock after the October 2019 disclosure.

i. Reliance

The reliance element requires that a "requisite causal connection between a defendant's misrepresentation and a plaintiff's injury exists." *See Affco Inv. 2001, LLC v. Proskauer Rose, LLP*, 625 F.3d 185, 193 (5th Cir. 2010). An individual plaintiff must directly rely on a defendant's misrepresentation to connect the defendant's misrepresentation to the plaintiff's decision to buy. *See Basic v. Levinson*, 485 U.S. 224, 225 (1988). A plaintiff who buys stock after a corrective disclosure cannot suffer an injury in fact because any "reliance" on the earlier misrepresentation would not be reasonable given the disclosed information; and so a lack of reasonable reliance is a lack of standing under the PSLRA. *Basic, Inc.*, 485 U.S. 221, 246–47 (1988).

Plaintiff interprets the Fifth Circuit's holding in a way that parses Defendants' various "statements" by subject matter. ECF No. 111 at 16. Plaintiff claims it relied on Defendants' misrepresentation of its October 2019 *financial condition* (and other categories of continuing misrepresentations) in deciding to buy and that the Fifth Circuit's holding only applies to Defendants' representations on the timeline for park openings. *Id.*

Defendants contend that the Fifth Circuit's use of the term "statements" applies to *all* the alleged misrepresentations indiscriminately, and Plaintiff therefore bought stock too late to pursue a claim. ECF No. 112 at 13–18. Thus, the dispositive issue before the Court is defining and applying the term "statements."

B. The 5th Circuit's Opinion

The Parties' animosity now revolves around the following holding in the Fifth Circuit's Opinion:

> By late 2019, however, Defendants' language had changed. According to the Complaint, during the October 2019 earnings call, "Defendant Barber denied that there was 'any material change in the time line of China over the last 90 days.'" But in the full exchange on that call, Defendant Reid-Anderson admitted there was a 'very high likelihood going forward that we will see changes in the

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