UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#14

CIVIL MINUTES - GENERAL

Case No.	CV 19-6111 PSG (GJSx)	Date	December 3, 2019
Title	Merkamerica Inc. v. Eiland Glover, et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): The Court DENIES Defendants' motion to dismiss

Before the Court is Defendants Eiland Glover, John Reitano, Walker Willse, and Kowala SEZC's ("Kowala") (collectively, "Defendants") motion to dismiss Plaintiff Merkamerica Inc.'s ("Plaintiff") complaint. *See* Dkt. # 14 ("*Mot.*"). Plaintiff opposes the motion, *see* Dkt. # 18 ("*Opp.*"), and Defendants replied, *see* Dkt. # 22 ("*Reply*"). The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. Having considered the moving, opposing, and reply papers, the Court **DENIES** Defendants' motion.

I. Background

A. Factual Background

This is a securities fraud case involving cryptocurrency. The gravamen of Plaintiff's complaint is that it invested in Defendants' cryptocurrency scheme based on statements by Defendants, but Defendants knew it would not work. The following facts are alleged in the complaint.

Plaintiff invested in Kowala under two contracts, entitled Simple Agreements for Future Tokens ("SAFTs"), dated January 21 and 23, 2018. *See Complaint*, Dkt. # 1 ("*Compl.*"), ¶ 1. The SAFTs provided that, in consideration for Plaintiff's payment to Kowala of more than $300,000, Defendants would issue to Plaintiff a certain number of mining tokens giving Plaintiff the right to process blockchain transactions and earn profits once the kCoin was launched. *See id.* The "kUSD" is the dollar-denominated version of the kCoin, and the "mUSD" is the mining token associated with the kUSD. *See id.* ¶¶ 41, 61.

Defendant Kowala is a Cayman Islands company, and Defendants Eiland Glover and John Reitano are the two founders of Kowala; they held the titles Chief Executive and Chief Technology Officer, respectively, during the relevant time period. *See id.* ¶¶ 12, 24. Defendant Walker Willse was third in the corporate hierarchy and held the title of Vice President, Business Development, during the relevant time period. *See id.* ¶ 25. Defendants Glover, Reitano and Willse were previously involved in a cryptocurrency venture called "UR Technology" which "was a failure," and in July 2017 they offered UR owners the opportunity to exchange kCoins for up to 50 million UR coins, for free, if the kCoin launched. *See id.* ¶ 26. These individual Defendants allegedly misrepresented their work experience on their LinkedIn profiles. *See id.* ¶¶ 27–31.

Representatives of Merkamerica, Steven Merker and Quinn Alexander, met Defendant Glover in January 2018 at the North American Bitcoin conference in Miami, Florida. *See id.* ¶¶ 83–87. Defendant Glover told them about the Kowala project and made various oral representations to solicit Plaintiff's investment regarding the Kowala project at a January 19, 2018 meeting. *See id.* ¶¶ 88–96. For instance, Defendant Glover allegedly told Plaintiff that "he had a working blockchain that was ready to launch," that "[w]e are a live working blockchain that can hold the kUSD stable, and you can make mining rewards from the mUSD," and that "[w]e are preparing to launch in February," and that they had "solved the stability issue that Basecoin could not." *See id.* Defendant Willse made various representations on a phone call on January 20, 2018. *See id.* ¶¶ 99–103. In addition, Defendant Willse made additional representations in an e-mail sent on January 20, 2018. *See id.* ¶ 104. Defendants provided Plaintiff with the first version of the "White Paper," authored by Glover and Reitano, which Plaintiff reviewed. *See id.* ¶¶ 32–50, 112; Dkt. # 14-2, Ex. A.1 ("*White Paper I*"). Plaintiff also reviewed the Kowala website. *See Compl.* ¶¶ 53–69, 112; Dkt. # 21-2, Ex. C ("*Website*"). The White Paper and website described their kCoin cryptocurrency as a non-asset-backed stable coin. *See Compl.* ¶ 37. Finally, Plaintiff read the SAFTs, which contained various representations, prior to investing. *See Compl.* ¶¶ 113–114; Dkt. # 14-4, Ex. B.1 ("*SAFT I*"); Dkt. # 14-5, Ex. B.2 ("*SAFT II*"). After its initial investment, Plaintiff again spoke with Defendants, and Defendant Willse made various representations by phone and email on January 22, 2018, including confirming that the token metrics represented in the White Paper were true. *See Compl.* ¶¶ 124–128. Plaintiff relied on representations made in the Kowala White Paper I, the Kowala website, the SAFT agreements, and in statements made by Defendants in deciding to purchase Kowala mining tokens and invest in Kowala. *See id.* ¶ 197. After Plaintiff invested in Kowala in January 2018, Defendants issued a new version of the Kowala White Paper, authored by Glover and Reitano, changing aspects of their system, including the system by which token

purchaser would profit from participation in the Kowala blockchain. *See id.* ¶ 162; Dkt. # 14-3, Ex. A.2 ("*White Paper II*").

Defendants never launched the kCoin, never issued mining tokens, and never returned any money to Plaintiff. *See id.* ¶¶ 2, 161, 195. Other events transpired after Plaintiff's investment, for instance, on February 2018, Defendants opened a new pre-sale round for seed investors, it did not open a public sale, *see id.* ¶ 166, and changed the ownership of tokens, *see id.* ¶ 167. Defendants also sent Plaintiff a new SAFT with various disclosures, which Plaintiff refused to sign. *See id.* ¶¶ 174–79.

B. Alleged Misrepresentations

Plaintiff's complaint alleges a variety of misleading statements, organized as follows. *Id.* ¶¶ 144–157.

First, Plaintiff alleges that various statements falsely represented that Defendants were able to create kCoins with stable values. The White Paper states in its abstract: "The Kowala Protocol is our proposed method for creating a new family of cryptocurrencies which maintain stable values while retaining other benefits of cryptocurrencies, such as decentralization, security, privacy, speed of transfer, and low transaction costs." *Id.* ¶ 35. The Paper states that the "kCoins constantly gather market information from endorsed sources and regulate their value through three core mechanisms: variable block rewards, variable fees, and an active and well-informed trading market. In time, these mechanisms always return each kCoin to parity with its underlying, tracked asset. The certainty of each kCoin's eventual return to parity, in turn, creates pure arbitrage opportunities for traders seeking to profit from slight fluctuations in kCoin market prices around the peg." *Id.* ¶ 41. The overview of the Protocol's mechanisms begins with the statement: "[a]t its core, the Kowala Protocol consists of three mechanisms that keep the market price of kUSD at or very near $1." *Id.* ¶ 42. "[G]iven sufficient time, the first two mechanisms above will cause the price of kUSD to revert to parity (i.e. 1 USD per kUSD)." *Id.* ¶ 45. Further, the website contained various statements, including that: "kUSD is the world's first autonomously stabilized cryptocurrency," that "kUSD is a stable cryptocurrency pegged to the US dollar. For the first time you can run real life and real businesses in cryptocurrency. All with a stable value you can rely on." *Id.* ¶¶ 55, 57. It went on: "Now anyone in the world can send, save and spend stable cryptocurrency instantly, securely and safely," and in the FAQ section, "kUSD has all the features of other cryptocurrencies like Bitcoin and Ethereum. Unlike these, however, kUSD has a stable value pegged to the US dollar." *Id.* ¶¶ 63, 66. It also stated "kUSD can function properly with only one exchange and as few as 3 active traders." *Id.* ¶ 66.

Finally, Plaintiff alleges various oral representations were made by Defendant Glover, including, in the January 19, 2018 meeting: "[w]e are a live working blockchain that can hold the kUSD stable, and you can make mining rewards from the mUSD. We are preparing to launch in February." *Id.* ¶ 88. In addition, he told Plaintiff that the value of kCoins would be stable, through the algorithm described in the White Paper. *Id.* ¶ 91. He also stated that the Kowala algorithm "will cause kCoins to maintain stable values corresponding with the associated currency," and "[w]e solved the problem that Basecoin couldn't solve. We made our stable coin stable. We are the only stable coin to figure out how to do this without being backed." *Id.* ¶ 95.

However, according to the statements of the software development company, Endian, and its owners, who were hired to write the software of the Kowala Protocol, "in January 2018 when [Plaintiff] made its investment in Kowala SEZC, neither [Defendants] nor anyone at Endian had the belief or expectation that the kCoin algorithm would work in practice, that the software code for the Kowala blockchain would work in practice, that the software code for the Kowala blockchain would work as promised, or that the price of the kCoin would ever by stabilized as promised." *Id.* ¶ 139. The algorithm was "purely theoretical, no code had ever been written to make the algorithm work." *Id.* In addition, "before January 2018, Endian and its owners expressly told [D]efendants, that it would take two or three years to develop the stability mechanisms, if ever." *Id.* ¶ 141.

Second, various statements made orally and via email by Defendants Glover and Willse falsely represented that Defendants had working software, that their software was able to maintain stable values for kCoins, that the kCoin blockchain was ready to launch, and that the Defendants were preparing to launch the kCoin by February or March 2018. *Id.* ¶¶ 88, 93, 122, 128, 132. These statements were allegedly false for the same reasons as described above.

Third, Plaintiff alleges that the following statements falsely represented that Plaintiff would profit from the purchase of mining tokens. The White Paper states that purchasers of mining tokens will be able to "reap[] mining rewards consistently," that the kCoin will be a "proof of control" blockchain which "assign[s] the transaction to only one token holder" who "reap[s] the mining reward," and that token purchasers "will receive rewards for confirming transactions." *Id.* ¶¶ 40, 47. In addition, the Website stated that "mUSD mining tokens do the work of the blockchain and earn mining rewards for their efforts," and "kUSD's consensus mechanism can provide more consistent block rewards to miners than mechanisms similar to ETH [Ethereum] and BTC [Bitcoin]." *Id.* ¶ 66. In addition, various oral representations were made. *Id.* ¶¶ 88, 91–92, 99, 128. Plaintiff alleges that these statements are false because the kCoin was purely theoretical, no code had ever been written, the code was not reasonably

guaranteed to work, and it would take two or three years to develop the stability mechanisms, if ever. *Id.* ¶¶ 139–141. In addition, the "proof-of-control" mechanism was a "staggering undertaking," according to the engineers, and in the second White Paper Defendants abandoned the "proof-of-control" concept and limited profit to the top ten stakeholders. *Id.* ¶¶ 142, 162–64.

Fourth, Defendants failed to warn Plaintiff of the risk that the software might not work, and fifth, that the investment in Kowala mining tokens was risky and that Plaintiff might lose all its investment. *Id.* ¶¶ 133, 148. "Throughout the process of soliciting Merkamerica's investment in Kowala SEZC, [D]efendants failed to warn Merkamerica of the risk that the software might not work," and that "the software was not reasonably guaranteed to work and would take two or three years to develop, if ever." *Id.* ¶ 133.

Sixth, Plaintiff alleges that the SAFT agreements falsely claimed that Kowala owned the intellectual property rights for the blockchain, but in fact they were owned by the software developers, and that Defendants knew this at all times. *Id.* ¶¶ 114, 149.

Seventh, Plaintiff alleges that the following statement falsely represented that Plaintiff's investment would be used "for the development of kUSD." *Id.* ¶¶ 48, 150. This was allegedly orally confirmed by Defendant Glover on January 19, 2018, and by Willse on January 20, 2018. *Id.* ¶¶ 96, 103. This statement was allegedly false because Defendants "knew they would, and intended to, profit personally from Merkamerica's purchase of Kowala mining tokens and use such funds for their own personal enrichment and not for the development of kUSD." *Id.* ¶¶ 150, 193.

Eighth, Plaintiff alleges that Defendants falsely touted Defendant Reitano's experience in oral statements, and concealed his prior failed cryptocurrency experience. *Id.* ¶¶ 93, 99, 26–27, 151.

Ninth, Plaintiff alleges that the following statements falsely represented that the majority of mining tokens would be sold in a public token offering and the ownership of mining tokens would be decentralized: "The Kowala Protocol is our proposed method for creating a new family of cryptocurrencies which maintain stable values while retaining other benefits of cryptocurrencies, such as decentralization, security, privacy, speed of transfer, and low transaction costs"; "1. Up to 10% of the total generated mUSD [mining tokens] will be sold to early investors, development team members, and advisors as soon as is practical, in order to raise funds for the development of kUSD; 2. 15% of the total generated mUSD will be retained indefinitely by Kowala; and 3. the remaining 75% of all mUSD will be sold in one or more

public token offerings within 12 months of the first sales in part 1 above."; and statements that the mining of kCoins will ultimately be decentralized. *Id.* ¶¶ 35, 48–49, 154. This was false because Defendant Glover admitted that Defendants "always intended to keep control of a majority of the mining tokens." *Id.* ¶ 181.

Tenth, Plaintiff alleges that Defendants Glover and Willse represented to Plaintiff that by investing early in Kowala, Plaintiff would pay a lower price to purchase tokens than later token purchasers would pay. *Id.* ¶¶ 89, 100, 102, 125, 106, 109, 156. Plaintiff alleges this was false because Defendants knew at all relevant times that they would sell tokens at any price, or even give away tokens for free. *Id.* ¶ 156, 26, 172–180.

Eleventh, Plaintiff alleges that Defendants did not disclose to Plaintiff that they had offered to exchange kUSD for up to 50 million UR coins, for free, following the launch of the kCoin blockchain, as a way to satisfy prior UR coin holders who were holding a worthless product. *Id.* ¶¶ 26, 157.

C. Procedural Background

On July 16, 2019, Plaintiff filed suit against Defendants, bringing the following causes of action:

First Cause of Action: Violation of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. *Id.* ¶¶ 198–204.

Second Cause of Action: Violation of Section 20 of the Securities Exchange Act of 1934. *Id.* ¶¶ 205–209.

Third Cause of Action: Violation of California Corporations Code § 25401. *Id.* ¶¶ 210–215.

Fourth Cause of Action: Violation of California Corporations Code §§ 25504 and 25504.1. *Id.* ¶¶ 216–223.

Fifth Cause of Action: Common Law Fraud. *Id.* ¶¶ 224–230.

Sixth Cause of Action: Conspiracy to Commit Fraud. *Id.* ¶¶ 231–235.

Seventh Cause of Action: Negligent Misrepresentation. *Id.* ¶¶ 236–242.

Eighth Cause of Action: Rescission. *Id.* ¶¶ 243–251.

Ninth Cause of Action: Quantum Meruit. *Id.* ¶¶ 252–257.

Tenth Cause of Action: Unfair Business Practices in Violation of California Business & Professions Code § 17200. *Id.* ¶¶ 258–262.

Eleventh Cause of Action: Implied Contract. *Id.* ¶¶ 263–266.

Twelfth Cause of Action: Equitable Restitution. *Id.* ¶¶ 267–268.

Defendants move to dismiss Plaintiff's first claim for securities fraud under the Securities and Exchange Act of 1934 and SEC Rule 10b-5. *See generally Mot.*

II. Legal Standard

To survive a motion to dismiss under Rule 12(b)(6), a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In assessing the adequacy of the complaint, the court must accept all pleaded facts as true and construe them in the light most favorable to the plaintiff. *See Turner v. City & Cty. of San Francisco*, 788 F.3d 1206, 1210 (9th Cir. 2015); *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). The court then determines whether the complaint "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. Accordingly, "for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted).

Rule 9(b) requires a party alleging fraud to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b). To plead fraud with particularity, the pleader must state the time, place, and specific content of the false representations. *See Odom v. Microsoft Corp.*, 486 F.3d 541, 553 (9th Cir. 2007). The allegations "must set forth more than neutral facts necessary to identify the transaction. The plaintiff must set forth what is false or misleading

about the statement, and why it is false." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotation marks omitted). In essence, the defendant must be able to prepare an adequate answer to the allegations of fraud. Where multiple defendants allegedly engaged in fraudulent activity, "Rule 9(b) does not allow a complaint to merely lump multiple defendants together." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007). Rather, a plaintiff must identify each defendant's role in the alleged scheme. *See id.* at 765.

Complaints alleging violations of Section 10(b) of the Exchange Act must also comply with the Private Securities Litigation Reform Act of 1995. Through the PSLRA, Congress imposed heightened pleading standards on federal securities fraud actions. *See* 15 U.S.C. § 78u-4(b)(l)–(2). "The PSLRA significantly altered pleading requirements in private securities fraud litigation by requiring that a complaint plead with particularity both falsity and scienter." *In re Vantive Corp. Sec. Litig.*, 283 F.3d 1079, 1084 (9th Cir. 2002), *abrogated on other grounds as recognized in S. Ferry LP, No. 2 v. Killinger*, 542 F.3d 776, 784 (9th Cir. 2008). "The purpose of this heightened pleading requirement was generally to eliminate abusive securities litigation and particularly to put an end to the practice of pleading fraud by hindsight." *Vantive*, 283 F.3d at 1084–85 (quoting *In re Silicon Graphics Sec. Inc. Litig.*, 183 F.3d 970, 973 (9th Cir. 1999)). To meet the exacting standards of the PSLRA, a plaintiff must "specify each statement alleged to have been misleading," and "the reason or reasons why the statement is misleading." *Id.* at 1085 (internal citation omitted).

III. Incorporation by Reference

"Generally, the scope of review on a motion to dismiss for failure to state a claim is limited to the contents of the complaint." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *accord Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002) ("Ordinarily, a court may look only at the face of the complaint to decide a motion to dismiss."). Courts may also, however, consider "attached exhibits, documents incorporated by reference, and matters properly subject to judicial notice." *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1051 (9th Cir. 2014).

The incorporation by reference doctrine permits the court "to take into account documents 'whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the plaintiff's pleading.'" *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (alteration omitted) (quoting *Silicon Graphics*, 183 F.3d at 986). This doctrine includes "situations in which the plaintiff's claim depends on the contents of a document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the

authenticity of the document, even though the plaintiff does not explicitly allege the contents of that document in the complaint." *Id.* The Supreme Court has explicitly noted the importance of considering such materials in evaluating a securities complaint. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) ("[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.").

Here, Defendants have attached documents that were referenced in the complaint for the Court to consider. Because the Court finds it proper to consider such materials under the incorporation by reference doctrine, and because Plaintiff does not oppose Defendants' request for judicial notice, the Court **GRANTS** Defendants' request.[1]

IV. Discussion

To prevail under Section 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, a plaintiff must establish that there was "(1) a material misrepresentation or omission of fact, (2) scienter, (3) a connection with the purchase or sale of a security, (4) transaction and loss causation, and (5) economic loss." *In re Daou Sys., Inc.*, 411 F.3d 1006, 1014 (9th Cir. 2005) (citing *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341–42 (2005)). Further, to satisfy Rule 9(b), plaintiffs must "state with particularity the circumstances constituting fraud," Fed. R. Civ. P. 9(b), meaning a plaintiff must plead the "who, what, when, where, and how" of any alleged misconduct. *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (citation omitted). The PSLRA goes further, requiring plaintiffs to "plead with particularity both falsity and scienter." *In re Daou*, 411 F.3d at 1014 (citation omitted). The PSLRA's specificity requirements "prevent[] a plaintiff from skirting dismissal by filing a complaint laden with vague allegations of deception unaccompanied by a particularized explanation stating *why* the defendant's alleged statements or omissions are deceitful." *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008) (emphasis in original). Thus, plaintiffs *must* "specify each statement alleged to have been misleading, the

[1] Plaintiff did file an objection to judicial notice of Exhibit C, Dkts. # 14-6, 14-7, which is a purported copy of Kowala's website, on the basis that the submitted Exhibit contains the questions on the "FAQ" but not the answers. *See* Dkt. # 19. However, the parties thereafter stipulated that Defendants would file a substitute, more fulsome Exhibit C to address Plaintiff's objections, which the Court granted. *See* Dkts. # 21, 23. Accordingly, the Court will consider the substituted Exhibit C in place of Dkts. # 14-6 and 14-7.

reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omissions is made on information or belief, the complaint shall state with particularity all facts on which that belief is formed." *Id.* (quoting 15 U.S.C. § 78u-4(b)(1)). Notably, in evaluating scienter, the Court "must consider all reasonable inferences to be drawn from the allegations, including inferences unfavorable to the plaintiffs." *Gompper v. VISX*, 298 F.3d 893, 897 (9th Cir. 2002).

Here, Plaintiff bases the § 10b-5 claim on a number of statements made in the White Paper I, the website, the SAFTs, and oral and e-mail communications by Defendants. *See generally Compl.*

Defendants do not contest that the sales were sales of securities, or the elements: connection with the purchase or sale of a security, loss causation, or economic loss. *See Opp.* 9:21 n.4; *see generally Mot.* In addition, Defendants do not expressly argue in their motion that scienter is not properly pleaded. *See generally Mot.*; *Opp.* 22:8–10. The only statement to that effect is found in a footnote, where Defendants assert that Plaintiff failed to plead that Defendants "had no present intent to fulfill" promises in the White Paper, *see Mot.* 14 n.5, however, Plaintiff's complaint alleges in detail that Defendants knew the kCoin was purely theoretical, no code had ever been written, the code was not reasonably guaranteed to work, and it would take years to develop the stability mechanisms, if ever, and knew of these risks without disclosing them, giving rise to the inference that Defendants knowingly misled investors for personal gain. *See Opp.* 23:1–15; *Compl.* ¶¶ 139–141, 150, 193; *Shenwick v. Twitter, Inc.*, 282 F. Supp. 3d 1115, 1147 (N.D. Cal. 2017) ("By making detailed factual statement[s], contradicting important data to which [the Defendants] had access, a strong inference arises that [they] knowingly misled the public as to its clear meaning."). Instead, Defendants argue that the documents Plaintiff reviewed before its purchases, specifically the White Paper, website, and the two SAFTs, preclude Plaintiff's claims.[2] *See generally Mot.*

A. The White Paper and Website

[2] While Defendants make several more arguments in their reply, *see generally Reply*, to the extent these arguments were not raised in the initial motion, Plaintiff did not have an opportunity to respond to them. Accordingly, the Court does not consider them. *See Telesign Corp. v. Twilio, Inc.*, No. CV 15-3240 PSG (SSx), 2015 WL 12662344, at *1 (C.D. Cal. Oct. 9, 2015) ("[A] court does not need to consider facts or arguments raised for the first time in a reply brief.").

"[A] statement is misleading if it would give a reasonable investor the 'impression of a state of affairs that differs in a material way from the one that actually exists.'" *Retail Wholesale & Dep't Store Union Local 338 Ret. Fund v. Hewlett-Packard Co.*, 845 F.3d 1268, 1275 (9th Cir. 2017) (quoting *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 985 (9th Cir. 2008)). "To be misleading, a statement must be 'capable of objective verification.'" *Id.* (quoting *Or. Pub. Emps. Ret. Fund v. Apollo Grp. Inc.*, 774 F.3d 598, 606 (9th Cir. 2014)). For example, "puffing," which is "expressing an opinion rather than a knowingly false statement of fact," is not misleading. *Id.*

In their motion, Defendants argue that the alleged misrepresentations and omissions in the White Paper cannot be misleading or reasonably relied upon because: (1) they are forward-looking statements and the "bespeaks caution" doctrine applies, and (2) the statements were mere "puffery." *See Mot.* 7:5–11:13.[3]

i. Forward-Looking Statements and Bespeaks Caution Doctrine

"The bespeaks caution doctrine provides a mechanism by which a court can rule as a matter of law (typically in a motion to dismiss for failure to state a cause of action or a motion for summary judgment) that defendants' forward-looking representations contained enough cautionary language or risk disclosure to protect the defendant against claims of securities fraud." *In re Worlds of Wonder Sec. Litig.*, 35 F.3d 1407, 1413 (9th Cir. 1994). The PSLRA's safe harbor provision is the codified equivalent of the "bespeaks caution" doctrine. *In re New Century*, 588 F. Supp. 2d 1206, 1225 (C.D. Cal. 2008). "The 'bespeaks caution' doctrine is thus wholly consistent with our analysis that whether a statement in a public document is misleading may be determined as a matter of law only when reasonable minds could not disagree as to whether the mix of information in the document is misleading. Inclusion of some cautionary language is not enough to support a determination as a matter of law that defendants' statements were not misleading." *Fecht v. Price Co.*, 70 F.3d 1078, 1082 (9th Cir. 1995). A motion to dismiss "will succeed only when the documents containing defendants' challenged statements include 'enough cautionary language or risk disclosures . . . that 'reasonable minds' could not disagree that the challenged statements were not misleading." *Id.* (internal citation omitted).

[3] Defendants do not allege that their statements fall within the PSLRA safe-harbor provision, 15 U.S.C. § 78u-5(c); they do not argue that it is applicable here. *See generally Mot.*; *Opp.* at 11 n.6. Additionally, Defendants state in their reply that they are not disputing that the statements in the White Paper and SAFTs were material. *See Reply* 3:14–16.

Defendants argue that the statements in the White Paper cannot be considered misleading, because the Paper is the description of a concept with "aspirational, forward-looking" statements about future development, rather than "a representation of a fully-functioning stablecoin as a present fact." *See Mot.* 7:5–12. Defendants point to the title of the Paper which includes the word "Protocol," conveying a "draft, theorem, or plan." *See id.* 7:14–19. They point to the statement that "[t]he Kowala Protocol is our proposed method for creating a new family of cryptocurrencies." *See id.* 7:20–23. And the conclusion of the White Paper states that "[a]lthough we have established through extensive modelling that the protocol works in many anticipated scenarios, more work is needed to demonstrate with higher certainty that the specific mechanism described here will work in a real-world market." *See id.* 7:20–8:4. Finally, they point to various future-tense phrases in the Paper that suggest a description of a plan not yet implemented, such as "Kowala *will* function . . .", a description of a "model," that Kowala "plans to participate" in secondary trading, among others. *See id.* 8:9–9:16.

However, the White Paper, when taken as a whole, does not include sufficient cautionary or risk disclosure for the bespeaks caution doctrine to bar Plaintiff's claims as a matter of law. The Paper does contain a cautionary statement that "more work is needed to demonstrate with higher certainty that the specific mechanisms described here will work in a real-world market," but this is immediately preceded by the statement that "we have established through extensive modelling that the protocol works in many anticipated scenarios." *See White Paper I* at 12. Plaintiff argues that a reasonable investor could read this statement to mean "that the kCoin works, but real-world proof will come after real-world launch, which was imminent." *See Opp.* 14:3–13; *Compl.* ¶ 88. The Court agrees with Plaintiff that, when read in its entirety, the Paper does not contain sufficient cautionary language or risk disclosure to preclude Plaintiff from relying on Defendants' various statements, sufficient to dismiss at the pleading stage. Beyond the single cautionary statement described above, the White Paper does not disclose risks to investment. *See generally White Paper I*; *cf. Sitrick v. Citigroup Global Markets, Inc.*, No. 05-cv-3731, 2009 WL 1298148 at *9–10 (C.D. Cal. Apr. 30, 2009) (eight pages of risk factors). Many of the statements describing the kCoin in the White Paper are in present tense. *See Opp.* 12:19–13:18; *Compl.* ¶¶ 41, 42, 45, 47, 48 ("In time, these mechanisms always return each kCoin to parity with its underlying, tracked asset.") ("At its core, the Kowala Protocol consists of three mechanisms that keep the market price of kUSD at or very near $1.") ("kCoins constantly gather market information from endorsed sources and regulate their value through three core mechanisms: variable block rewards, variable fees, and an active and well-informed trading market."). The statement that the Kowala Protocol "is our proposed method for creating a new family of cryptocurrencies which maintain stable values," could reasonably be read as describing a method that the authors believe will and "propose" to solve the difficulties of non-

stable cryptocurrency. *See Opp.* 12:25–28; *Compl.* ¶ 35. The complaint alleges that the statements are misleading in that, at the time they were made, they represented that Defendants were able to develop the software described and believed that the software described worked and was viable, which Plaintiff expressly alleges was untrue. *See Compl.* ¶¶ 139, 141, 144; *see also S.E.C. v. Platforms Wireless Intern. Corp.*, 617 F.3d 1072, 1094–96 (9th Cir. 2010) (press release was materially misleading because it "only permits the conclusion that Platforms was announcing it had actually developed a viable ARC system," but at the time of the press release Platforms "had only a design of the system, had no operational prototype, and did not have the money to build a prototype"). As to material omissions, it is plausible that the statements in the White Paper taken together, and absent disclosure that the stablecoin described was purely theoretical, misrepresented that it existed or could be created by the Defendants and that Defendants believed it worked in practice and as described. Because reasonable minds could disagree as to whether the mix of information in the White Paper is misleading, dismissal on the basis of the "bespeaks caution" doctrine is improper here at the pleading stage. *See Fecht*, 70 F.3d at 1082; *see also Basic Inc. v. Levinson*, 485 U.S. 224, 239–41 (1988) (the issue of materiality is fact-specific and appropriately left to the fact finder).

ii. Puffery

Statements of mere corporate puffery, "vague statements of optimism like 'good,' 'well-regarded,' or other feel good monikers," are not actionable because "professional investors, and most amateur investors as well, know how to devalue the optimism of corporate executives." *Police Ret. Sys. of St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d 1051, 1060 (9th Cir. 2014). But even "general statements of optimism, when taken in context, may form a basis for a securities fraud claim" when those statements address specific aspects of a company's operation that the speaker knows to be performing poorly. *In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130, 1143 (9th Cir. 2017), cert. dismissed sub nom. *Quality Sys., Inc. v. City of Miami Fire Fighters' & Police Officers' Ret. Tr.*, 139 S. Ct. 589 (2018). For instance, the statements that a company "'will come out stronger,' and 'is in a pretty good position' despite the economic crisis," was mere puffery, while "reassuring investors that 'everything [was] going fine' with FDA approval when the company knew FDA approval would never come," was not mere puffery. *Id.* at 1143–44. The "defining question is . . . whether the statement is so 'exaggerated' or 'vague' that no reasonable investor would rely on it when considering the total mix of available information." *Gammel v. Hewlett-Packard Co.*, 905 F. Supp. 2d 1052, 1068 (C.D. Cal. 2012) (quoting *In re Impac Mortg. Holdings, Inc., Sec. Litig.*, 554 F. Supp. 2d 1083, 1096 (C.D. Cal. 2008)).

Here, the statements in the White Paper were specific. *See Compl.* ¶¶ 139, 131. Defendants rely on *Gammel v. Hewlett-Packard Co.*, where the court held that statements "concerning timing for putting webOS on PCs and printers" were not mere puffery, because "a reasonable investor could have relied on Defendants' predictions regarding HP's timeline for developing webOS PCs and printers," and were "too specific to be dismissed as puffery." 905 F. Supp. 2d at 1069. On the other hand, statements such as "we will not release a [TouchPad] product that isn't perfect," and "webOS is ready for prime time" were sufficiently vague and general to constitute puffery. *Id.* at 1070. Here, the statements describing in specific terms the functioning of the stable kCoin and that it has repeatedly worked when modelled, could be material to a reasonable investor, as opposed to general statements of puffery made by an executive. *See In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d at 1143.

Defendants also rely on *Xu v. Chinacache Int'l Holdings Ltd.*, for the proposition that "launch" projections and statements about ongoing software development are not actionable. No. CV15-07952-CAS (RAOx), 2017 WL 114401, at *8 (C.D. Cal. Jan. 9, 2017). There, the plaintiff's claim was that the defendant company made false statements regarding its transition to a new high performance cache cloud distribution system: that it failed to disclose the transition was "fraught with technical issues, incomplete during the class-period, and resulted in worse service to [defendant's] customers." *Id.* at *1. The alleged false statements concerned the migration, and the plaintiff there asserted the software did not meet a represented level of functionality. *Id.* at *8–10. For instance, the plaintiff claimed that various statements that defendants could now offer "enhance services and a more efficient network," and that the HPCC could "provide the network service with higher scalability, flexibility and stability," falsely represented the functionality of the software. *Id.* at *8–9. The court rejected that argument, because these statements were vague optimistic "puffery," and explained that the "existence of 'kinks' does not make positive statements about software false." *Id.* at *8. In contrast, this case concerns allegations that Defendants' statements described in present tense a certain software, but that Defendants knew the software did not work and could not work. As such, *Xu* is inapposite.

As to the website, because the statements are also specific rather than vague, generalized statements of "puffery," the Court is not prepared to rule as a matter of law that the website statements are inactionable. *See, e.g.*, *Compl.* ¶¶ 53, 55, 57, 63, 66 ("kUSD is the world's first autonomously stabilized cryptocurrency.") ("kUSD is a stable cryptocurrency pegged to the US dollar. For the first time, you can run real life and real businesses in cryptocurrency. All with stable value you can rely on.").

C. The SAFTs

Defendants first argue that the SAFT language indicated that the endeavor was speculative, precluding Plaintiff's claims. *See Mot.* 11:22–14:8. Second, Defendants argue that the two clauses of the SAFTs contradict Plaintiff's alleged reliance on oral statements. *See id.* 14:9–15:5. Third, Defendants argue that the SAFTs preclude justifiable reliance. *See id.* 15:6–16:10. The Court takes these arguments in turn.

i. Speculative Language

Defendants argue that the terms of the SAFTs indicate that the endeavor was speculative and might never come to fruition. The SAFT states that Plaintiff is exchanging money, in return for Kowala to issue to Plaintiff "the right to purchase certain units of mUSD (the "Tokens" or "mUSD") at a particular token price." *See SAFT I* at 2. For instance, the SAFT states: "[i]f there is a Network Launch before the expiration or termination of this instrument, the Company will deliver to the Purchaser, according to the procedures specified separately by the Company, a number of Tokens equal to the entire Purchase Amount divided by the Token Price." *See id*. Defendants argue that the "if" phrasing indicates that the occurrence of that event was entirely speculative. In addition, the SAFT indicates that the "expiration or termination" of the SAFT is either the issuance of tokens or a "dissolution event" terminating the agreement by Kowala's voluntary cessation of operations. *See id.* at 9–10. The SAFT described the Kowala protocol as follows: "'Kowala Protocol' means the Company's protocol that is designed to enable holders of the mUSD to mine kUSD, a cryptocurrency designed to maintain a close to one-to-one value with the U.S. dollar, among other potential future uses." *See id.* at 10. The SAFT also states that "a significant portion of the amount raised under the SAFTs [were] to be used to fund the Company's development of the Kowala Protocol," rather than all funds. *See id.* at 10. Finally, the SAFT states that "[a]ny provision of this instrument may be amended, waived or modified only upon the written consent of the Company and the holders of a majority in aggregate purchase amount paid to the Company. . ." *See id.* at 14. Defendants argue that each of these statements reveal that investment in Kowala was a speculative venture. *See Mot.* 12:22–23. Plaintiff responds that the SAFTs were contracts, and that Defendants were contractually obligated to deliver tokens to Plaintiff upon launch. *See Opp.* 20:16–18. Moreover, Plaintiff argues that Defendants' statements misled it into believing that the launch could occur, despite Defendants' actual knowledge that the kCoin was purely theoretical, no code had ever been written, the code was not reasonably guaranteed to work, and it would take two or three years, if ever, to develop the stability mechanisms. *Compl.* ¶¶ 139–141.

Section 1(a) of the SAFT states "[i]f there is a Network Launch before the expiration or termination of this instrument. . ." *SAFT I* at 2. Thus, this statement is not misleading because it specifically phrases a launch as a conditional possibility. However, the Court agrees with Plaintiff that the language of the SAFT contracts does not preclude Plaintiff's reliance on the numerous other statements made by Defendants, such that its claims are barred, as a matter of law. A reasonable investor could read the SAFT and remain under the impression, based on Defendants' other statements described in the complaint, that Defendants were capable of creating the kCoin software, were developing it, that it was not purely theoretical.

ii. "No-Warranties" and Merger Clauses

Without citing to any authority, Defendants argue that two provisions in the SAFT preclude Plaintiff from alleging reliance on the oral statements made by Defendants. *See Mot.* 14:10–15:5. The first is a "no-warranties" clause, which states:

> PURCHASER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON AN REPRESENTATION OR WARRANTY MADE BY THE COMPANY, OR ANY OTHER PERSON ON THE COMPANY'S BEHALF.

SAFT I at 11–12. The second is a merger clause, which states:

> This instrument sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous disclosures, discussions, understandings and agreements, whether oral or written, between them relating to the subject matter hereof."

Id. at 14.

However, Section 29(a) of the Exchange Act, 15 U.S.C. § 78cc, provides that: "Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or of any rule or regulation thereunder, or of any rule of self-regulatory organization, shall be void." In addition, "[i]n dealing with federal securities, the general rule is that unknown or subsequently maturing causes of action may not be waived." *Petro-Ventures, Inc. v. Takessian*, 967 F.2d 1337, 1340–41 (9th Cir. 1992). This provision "generally invalidates blanket releases of liability that accompany the purchase of a sale of securities." *Melcher v. Fried*, No. 16-cv-2440, 2018 WL 6326334 at *6 (S.D. Cal. Dec. 4, 2018). However, Section 29(a) does not bar waivers of securities fraud claims to settle existing litigation, *Petro-Ventures*,

967 F.3d at 1342–43, or if the waiving party has actual knowledge of claims for securities fraud at the time of signing the release, *Burgess v. Premier Corp.*, 727 F.2d 826, 831–32 (9th Cir. 1984). Neither occurred here: Plaintiff signed the SAFTs before learning of the present claims or filing this action. *See Compl.* ¶¶ 115, 130, 143, 193.

The parties have not pointed the Court to any Ninth Circuit case law as to how Section 29(a) applies to "non-reliance" clauses and merger clauses. However, courts in other jurisdictions interpreting Section 29(a) have held that "non-reliance" clauses, where a party represents that it did not rely on statements outside the contract itself, cannot establish non-reliance as a matter of law. *See AES Corp. v. Dow Chemical Co.*, 325 F.3d 174, 180 (3d Cir. 2003) (holding that Section 29(a) "forecloses anticipatory waivers of compliance with duties imposed by Rule 10b-5," including non-reliance clauses, because "if a party commits itself never to claim that it relied on representations of the other party to its contract, it purports anticipatorily to waive any future claim based on fraudulent misrepresentations of that party"); *Rogen v. Illikon*, 361 F.2d 260, 268 (1st Cir. 1966) ("[W]e see no fundamental difference between saying, for example, 'I waive any rights I might have because of your representations or obligations to make full disclosure,' and 'I am not relying on your representations or obligations to make full disclosure.' Were we to hold that the existence of this provision constituted the basis . . . for finding non-reliance as a matter of law, we would have gone far toward eviscerating Section 29(a)"); *Jadoff v. Gleason*, 140 F.R.D. 330, 334 (M.D.N.C. 1991) ("Were such a statement to be upheld as a waiver it would constitute a license for fraud. Parties would be estopped from complaining of actionable misrepresentations and omission simply because they signed a paper stating there were none."). The Court finds the reasoning of those cases persuasive, and applies them here.

In addition, the Court is not convinced that the merger clause bars Plaintiff's reliance on oral statements. In *FS Photo Inc. v. Picturevision Inc.*, plaintiffs and defendant negotiated a settlement of disputes between the parties relating to another dispute, and in the course of negotiations defendant asked plaintiffs to convert their Series B Preferred Stock into Common Stock, and made a series of representations to plaintiffs, and subsequently, relying on those interpretations, the parties entered into a settlement agreement to convert their shares of stock. 61 F. Supp. 2d 473, 477 (E.D. Va. 1999). The agreement contained a merger clause. *Id.* The plaintiffs subsequently brought a federal and state securities fraud case, claiming that defendants' fraudulent acts caused plaintiffs to exchange shares of Preferred Stock for Common Stock at an artificially low ratio. *Id.* at 475. The Court explained that "a general merger clause . . . cannot bar a federal securities fraud claim because the [Securities and Exchange] Act itself precludes agreements waiving compliance with the statute's anti-fraud provisions," citing to

Section 29(a). *Id.* at 480. In contrast, in *Harsco Corp. v. Segui*, the parties negotiated at "arm's length," a 60+ page purchase agreement including a section which consisted of fourteen pages of specific representations about the investment. 91 F.3d 337, 344, 340 (2d Cir. 1996). The agreement contained a section disclaiming representations not in the agreement and a merger clause. *Id.* at 342. Because there was a "detailed writing developed via negotiations among sophisticated business entities and their advisors," the writing could be considered to define the boundaries of the transaction such that the plaintiff could be limited to bringing claims of fraud based on the representations within it, but not outside it. *Id.* at 343–44. The court stated that in different circumstances "a 'no other representations' clause might be toothless and run afoul of § 29(a)." *Id.* at 344; *see also Pasternack v. Shrader*, 863 F.3d 162, 172 (2d Cir. 2017) ("The sale of securities conditioned on the buyer's complete release of the seller would in effect license non-compliance with the securities laws, in violation of § 29(a)."). Here, in contrast to *Harsco*, the SAFTs were presented to Plaintiff for signature without counsel; there is nothing in the complaint to suggest negotiations between the parties. *See Compl.* ¶¶ 113–115, 121, 130; *Harsco*, 91 F.3d at 343. In its reply, Defendants state that they do not argue that these clauses constitute "'waivers' of liability," *see Reply* 3:20–22, and the Court concludes that they do not preclude Plaintiff's reliance on oral and other statements alleged in the complaint.

iii. Justifiable Reliance

Finally, Defendants suggest that Plaintiff may not rely on the alleged misrepresentations because Plaintiff already possessed enough information to call the representations into question. "The causation requirement in Rule 10b–5 securities fraud cases includes 'both transaction causation, that the violations in question caused the plaintiff to engage in the transaction, and loss causation, that the misrepresentations or omissions caused the harm.'" *Binder v. Gillespie*, 184 F.3d 1059, 1065 (9th Cir. 1999) (quoting *McGonigle v. Combs*, 968 F.2d 810, 820 (9th Cir. 1992)). "The requirement of transaction causation is equivalent to the element of reliance, or, in tort liability terms, but-for causation." *Id.* "If the investor already possesses information sufficient to call the representations into question, he cannot claim later that he relied on or was deceived by the lie. This is . . . because the securities laws create liability only when there is 'substantial likelihood' that the misrepresentation 'significantly altered the total mix of information' that the investor possesses." *Atari Corp. v. Ernst & Whinney*, 981 F.2d 1025, 1030 (9th Cir. 1992).

In *Atari*, the plaintiff investor, "[d]espite mounting evidence that Federated's financial statements were grossly inaccurate, reflecting a ridiculous overvaluation of the company's assets, [] continued to pursue the acquisition." *Id.* Prior to doing the deal, the plaintiff "had

access to enough information to know that Federated had been overvalued by about $15 million" and the plaintiff had access to Federated's general ledger and inventory, and "had done additional due diligence confirming its suspicions that further adjustments were necessary, to the tune of between $27 and 32 million, and that those adjustments would send Federated into default." *Id.* Under those circumstances, the Court held that plaintiff's continued reliance on the defendant's assurances was not justified. *Id.* The plaintiff's conduct was thus the "paradigm of the case of the investor who closes his eyes to a known risk." *Id.*

Defendants argue that Plaintiff, as a sophisticated investor,[4] was capable of evaluating the risks and could have, through minimal diligence, discovered the truth, such that it was not justified in relying on Defendants' statements. *See Mot.* 15:7–16:10. However, Plaintiff did not have access to other information outside Defendants' representations like the plaintiff in *Atari*; there is nothing in the complaint to indicate that Plaintiff had access to documents other than the White Paper, websites, SAFTs and Defendants' oral statements and e-mails. *See generally Compl.*; *Atari*, 981 F.2d at 1030. Plaintiff's complaint states that Plaintiff relied on Defendants' statements and would not have invested had it known the true facts. *See Compl.* ¶¶ 144–157.

D. Internal Inconsistencies

Defendants argue that Plaintiff's complaint contains two "self-defeating internal inconsistencies." *See Mot.* 16:17–17:12. These are: (1) that Plaintiff complains that Defendants misrepresented that it had a working blockchain, *see Compl.* ¶¶ 88, 133, 152, 246–47; but Plaintiff was told and understood that funds would be used to develop the blockchain and that it was not yet launched, *see id.* ¶¶ 96, 103, 49, 73; and (2) that Plaintiff stated that it "felt pressured" to invest, *see id.* ¶¶ 97, but Plaintiff's actions indicated it pressured Defendants to let it invest more, *see id.* ¶¶ 89, 108, 117, 119. *See Mot.* 16:17–17:12. Plaintiff responds that (1) a "working blockchain" indicates that Defendants could create kCoins with stable values as

[4] Defendants argue that, because Plaintiff signed the SAFT which contained boilerplate representations that Plaintiff "has such knowledge and experience in financial and business matters that [it] is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment . . . and is able to bear the economic risk of such investment for an indefinite period of time," Plaintiff is a sophisticated party. *Mot.* 11:22–12:20; *SAFT I* at 12; *SAFT II* at 12. However, whether Plaintiff was a sophisticated party is a fact question not amenable to resolution at the pleading stage, and moreover, the Court is not convinced that this boilerplate contract language requires the conclusion that Plaintiff was a sophisticated party as a matter of law.

represented in the White Paper, even if launch had not yet occurred and it was still being developed; and (2) that the emotions felt in the process of making the investment decision are plausible. *See Opp.* 24:24–25:11.

The Court agrees with Plaintiff that the complaint plausibly alleges fraud in Defendants' representation of its ability to create the kCoins described and belief in the workability of the kCoin, even if launch would occur in the future and it was still in development. *See Compl.* ¶ 144. In addition, the Court is not convinced that Plaintiff's pleadings as to the events surrounding Plaintiff's investment in Kowala and its representatives emotions are contradictory: for instance, that Plaintiff felt Defendants were acting as though they did not need Plaintiff's money is not inconsistent with Plaintiff's feeling that it was being pressured to invest early based on Defendant's various statements.

E. Group Pleading

Finally, Defendants briefly argue that Plaintiff's complaint contains "impermissible group pleading." *See Mot.* 17:14–17:28. Defendants argue that Plaintiff may not make generalized "all defendants" allegations, and that these are not sufficient to state a claim. *See id.* 17:14–28 (citing *Abdo v. Fitzsimmons*, No. 17-cv-00851-EDL, 2017 WL 6994539 at *7–10 (N.D. Cal. Nov. 3, 2017)).

However, the complaint particularly alleges the involvement of each Defendant here. *See Opp.* 23:21–24:22. For instance, the complaint specifically alleges that the White Paper was authored by Defendants Glover and Reitano. *See Compl.* ¶¶ 32, 33. "Signers of a document should be held responsible for the statements in the document." *See Howard v. Everex Sys.*, 228 F.3d 1057, 1061 (9th Cir. 2000). The complaint thus alleges that those two Defendants are liable for the alleged misrepresentations in that Paper. The complaint alleges oral statements by Defendants Glover and Willse, *see, e.g.*, *Compl.* ¶¶ 86–93, 98–103, and false e-mail statements sent by Willse, *see, e.g.*, *id.* ¶ 104. The speaker of a false oral statement is liable for that statement, *Janus Capital Grp., Inc. v. First Derivative Traders*, 564 U.S. 135, 143 (2011), and the sender of an e-mail is liable for false statements in the e-mail, *Lorenzo v. Sec. & Exch. Com'n*, 139 S. Ct. 1094, 1100–01 (2019). The Court thus finds these pleadings are sufficient at the pleading stage.

F. Summary

Plaintiff essentially alleges that Defendants deliberately misled prospective investors into believing that their kCoin was viable and could be launched, while knowing in fact that it was not. The Court is not convinced that the language of the White Paper, website, or SAFTs preclude Plaintiff's claims at the pleading stage based on Defendants' arguments.

V. Conclusion

For the foregoing reasons, Defendants' motion to dismiss is **DENIED**.

IT IS SO ORDERED.