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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

YEN HOANG, et al.,  
Plaintiffs,  
v.  
CONTEXTLOGIC, INC., et al.,  
Defendants.

Case No. 21-cv-03930-BLF

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS WITH LEAVE TO AMEND**  
[Re: ECF No. 106]

This is a putative class action for violation of the Securities Act of 1933 (“Securities Act”) against ContextLogic, Inc. (“Wish”), certain of its officers and directors, and underwriters of its IPO. Plaintiffs have filed a Second Consolidated Amended Class Action Complaint alleging violations of Sections 11 and 15 of the Securities Act. ECF No. 103 (“SAC”). Wish and its officers and directors (“Wish Defendants”) filed a Motion to Dismiss. ECF No. 106 (“Mot.”); ECF No. 111 (“Reply”). The underwriters of Wish’s IPO (“Underwriter Defendants”) joined Wish’s motion. ECF No. 107. Plaintiffs oppose the Motion. ECF No. 109 (“Opp.”). For the reasons explained below, Wish’s Motion to Dismiss is GRANTED IN PART AND DENIED IN PART WITH LEAVE TO AMEND.

**I. BACKGROUND**

**A. The Parties**

Defendant Wish is an e-commerce company that operates the Wish platform. SAC ¶¶ 1, 60. The Wish platform enables merchants to sell their products directly to global consumers. *Id.*

Defendant Piotr Szulczewski was Wish’s Chief Executive Officer (“CEO”) and Chairman of Wish’s Board of Directors at all relevant times. *Id.* ¶ 18. Defendant Rajat Bahri was Wish’s Chief Financial Officer (“CFO”) from 2016 through July 23, 2021. *Id.* ¶ 19. Defendant Brett Just

1 has served as Wish’s Chief Accounting Officer (“CAO”) since November 2020. *Id.* ¶ 20.  
2 Defendants Julie Bradley, Ari Emanuel, Joe Lonsdale, Tanzeen Syed, Stephanie Tilenius, and  
3 Hans Tung served as directors on Wish’s Board of Directors at the time of its initial public  
4 offering (“IPO”). *Id.* ¶¶ 21–26. Defendant Jaqueline Reses was identified as an incoming director  
5 of Wish at the time of the IPO and named a member of the Board of Directors on December 18,  
6 2020. *Id.* ¶ 27. Collectively these officers and directors are referred to throughout this order as  
7 the “Individual Defendants.” *Id.* ¶ 28.

8 The Underwriter Defendants are Goldman Sachs & Co. LLC; J.P. Morgan Securities LLC;  
9 BofA Securities, Inc.; Citigroup Global Markets Inc.; Deutsche Bank Securities Inc.; UBS  
10 Securities LLC; RBC Capital Markets, LLC; Credit Suisse Securities (USA) LLC; Cowen and  
11 Company, LLC; Oppenheimer & Co. Inc.; Stifel, Nicolaus & Company, Incorporated; William  
12 Blair & Company, L.L.C.; Academy Securities, Inc.; Loop Capital Markets LLC; and R. Seelaus  
13 & Company, LLC. *Id.* ¶¶ 34–48.

14 Lead Plaintiffs Xiaoquan Yang and Alexander De Block’s Second Consolidated Class  
15 Action Complaint asserts two counts for violations of securities laws. *See* SAC. Count I alleges  
16 violations of Sections 11 of the Securities Act. *Id.* ¶¶ 119–127. Count II alleges violations of  
17 Sections 15 of the Securities Act. *Id.* ¶¶ 128–133. The complaint names as defendants Wish, 10  
18 individuals, and 15 companies that underwrote Wish’s initial public offering (IPO).

19 **B. Registration Statement**

20 In its Registration Statement for its Initial Public Offering (“IPO”) on December 15, 2020,  
21 Wish repeatedly attributed its growth success to advertising. SAC ¶¶ 10, 59, 66. The Registration  
22 Statement represented that Wish materially increased its advertising spending for the first nine  
23 months of 2020 compared to the first nine months of 2019. *Id.* ¶¶ 69–73. Defendants also  
24 stressed the importance of “attracting and engaging users,” and represented that the Company was  
25 “focused on growing [its] user base around the world, particularly in “key growth markets,” or  
26 emerging markets. *Id.* ¶¶ 2, 63–69. Thus, Plaintiffs allege, the Registration Statement,  
27 affirmatively created an impression to the investing public that Wish was continuing the same  
28 advertising and marketing efforts that the Company made for the first nine months of 2020 to

1 grow users worldwide, particularly in emerging markets. *Id.* ¶ 3.

2         Despite Defendants’ representations in the Registration Statement that Wish had increased  
3 its advertising spend for the first nine months of 2020 and continued with acquiring customers  
4 particularly in emerging markets, beginning in 4Q 2020, the Company had reduced advertising  
5 and its efforts to acquire customers in emerging markets outside of Europe and North America,  
6 including India, Brazil, Columbia, and the Philippines. *Id.* ¶ 73. This reduction caused monthly  
7 active users (“MAUs”) to materially decline in 4Q 2020. *Id.* Later, the Company attributed a 10%  
8 year-over-year (“YoY”) MAU decline during the fourth quarter to its reduction of advertising and  
9 user acquisition efforts in those locations. *Id.* Although the Registration Statement disclosed  
10 several risk factors that might impact the Company’s efforts to acquire users, Plaintiffs allege that  
11 Wish failed to warn of the specific risk that due to Wish’s reduced advertising spend and user  
12 acquisition efforts in emerging markets in 4Q 2020, Wish’s performance, particularly MAUs,  
13 could be materially adversely impacted. *Id.* ¶¶ 74–75.

14         On March 8, 2021, Wish disclosed that in 4Q 2020, its “MAUs declined 10% YoY during  
15 Q4 to 104 million, primarily in some emerging markets outside of Europe and North America  
16 where Wish temporarily de-emphasized advertising and customer acquisition as the company  
17 worked through logistics challenges it faced earlier in the year.” *Id.* ¶ 107. On the same day, a  
18 Bloomberg article noted the mixed information in Wish’s results of an above-estimate revenue  
19 forecast for the ongoing 1Q 2021 and the material MAU decline in 4Q 2020. *Id.* ¶ 108. At the  
20 earnings call held the same day, CFO Bahri was asked to provide more details for “the pullback  
21 that you did on advertising and customer acquisition in some of those emerging markets and how  
22 we should think about the timing as you bring that back on.” *Id.* ¶ 109. In response, CFO Bahri  
23 stated, “the countries like – these emerging markets, the days to delivery was significantly large  
24 and we just felt it’s not right to invest in these businesses if the consumers churn, what’s the point  
25 of investing. So maybe much all of the decline was driven by countries like India, Philippines,  
26 Colombia, some Brazil all those countries wherever be it.” *Id.* Plaintiffs allege that this “de-  
27 emphasizing” strategy continued to materially impact the Company’s performance for the next  
28 two quarters. *Id.* ¶¶ 8, 110.

1 On May 12, 2021, Wish announced its 1Q 2021 financial results, disclosing, again, that  
2 Wish’s MAUs declined by an additional 7%, and attributed the additional decline, again, to its de-  
3 emphasizing strategy in some emerging markets. *Id.* ¶¶ 110. On this news, Wish’s stock price fell  
4 by more than 29%. *Id.*

5 **C. Previous Motion**

6 This is the Wish Defendants’ second Motion to Dismiss. The Court granted the Wish  
7 Defendants’ Motion to Dismiss Plaintiffs’ Consolidated Amended Class Action Complaint  
8 (“CAC”) on March 10, 2023. ECF No. 98.

9 **D. Alleged False Statements**

10 At issue are five statements alleged by Plaintiffs to be false or misleading. *See* SAC; ECF  
11 103-1.

12 **1. Statement One**

13 Plaintiffs allege that the following statement (Statement One) about Wish’s growth  
14 strategy was false or misleading:

15 **Our Growth Strategy**

16 We leverage our data and unique insights on merchants and users to  
17 extend our platform outside of our core business and drive additional  
18 growth opportunities. Our data science capabilities are a unique  
19 advantage and core to the operations of our business.

20 **Grow Our Base of Users**

- 21 • **Continue to Acquire New Users.** *We are focused on*  
22 *growing our user base around the world.* We currently serve  
23 users in over 100 countries. We estimate that there are over 1  
24 billion households with income of less than \$75,000 around  
25 the world, excluding China and India. We intend to grow our  
26 user base by cost effectively reaching new users through a  
27 combination of data-driven and targeted advertising  
28 campaigns, word of mouth and other marketing efforts, as  
as well as increasing our brand awareness.  
...
- **Expand Geographically.** *We will continue to expand our*  
*global footprint and enter new geographies and acquire new*  
*users in those markets.* In particular, countries in Africa,  
Latin America, and Eastern Europe are key growth markets  
with large and growing populations as well as a significant  
portion of the population with lower average household  
incomes. Within these markets, the proliferation of consumer  
mobile use and improvements in internet infrastructure will

1 help us establish and grow our business. In addition, our  
2 investments in our own logistics network will help us achieve  
3 better breadth and density of coverage in our newer regions  
and countries, enabling a better user experience and localized,  
high-quality delivery and customer service.

4 SAC ¶¶ 66, 96 (quoting Registration Statement) (emphasis in original).

5 **2. Statement Two**

6 Plaintiffs further allege that the following statement about Wish’s efforts to acquire and  
7 engage users was false or misleading:

8 ***Our efforts to acquire new users and engage existing users may not***  
9 ***be successful or may be more costly than we expect, which could***  
***prevent us from maintaining or increasing our revenue.***

10 Our success depends on our ability to attract new users and engage  
11 existing users in a cost-effective manner. In order to acquire and  
12 engage users, we must, among other things, promote and sustain our  
13 platform and provide high-quality products, user experiences, and  
14 service. Our marketing efforts currently include various initiatives  
15 and consist primarily of digital marketing on a variety of social media  
16 channels, such as Facebook, search engine optimization on websites,  
17 such as Google, Bing, and Yahoo!, various branding strategies, such  
18 as our relationship with the Los Angeles Lakers and social  
19 influencers, and mobile “push” notifications, text messaging, and  
20 email. For the year ended December 31, 2019 and the nine months  
21 ended September 30, 2020, we spent \$1.5 billion and \$1.1 billion on  
22 sales and marketing, representing 78% and 64% of our revenue,  
23 respectively. ***We anticipate that sales and marketing expenses will***  
***continue to comprise a substantial majority of our overall operating***  
***costs for the foreseeable future.*** We have historically acquired a  
significant number of our users through digital advertising on  
platforms and websites owned by Facebook and Google, which may  
terminate their agreements with us anytime. ***Our investments in sales***  
***and marketing may not effectively reach potential users, potential***  
***users may decide not to buy through us, or user spend on our***  
***platform may not yield the intended return on investment, any of***  
***which could negatively affect our financial results.***

24 Many factors, some of which are beyond our control, may reduce our  
25 ability to acquire, maintain and further engage with users, including  
26 those described in this “Risk Factors” section and the following:

- 27 • system updates to app stores and advertising platforms such  
28 as Facebook and Google, including adjustments to algorithms  
that may decrease user engagement or negatively affect our  
ability to target a broad audience;
- changes in advertising platforms’ pricing, which could result  
in higher advertising costs;
- changes in digital advertising platforms’ policies, such as  
those of Facebook and Google, that may delay or prevent us  
from advertising through these channels, which could result in

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- reduced traffic to and sales on our platform;
- changes in search algorithms by search engines;
- inability of our email marketing messages to reach the intended recipients' inbox;
- ineffectiveness of our marketing efforts and other spend to continue to acquire new users and maintain and increase engagement with existing users;
- decline in popularity of, or governmental restrictions on, social media platforms where we advertise;
- the development of new search engines or social media sites that reduce traffic on existing search engines and social media sites;
- consumer behavior changes as a result of COVID-19; and
- products listed by merchants on our platform that are the subject of adverse media reports, regulatory investigations, or other negative publicity.

*As a result of any of these factors or any additional factors that are outside of our control, if we are unable to continue acquiring new users or increasing engagement with existing users, it could have a material adverse effect on our business, financial condition, results of operations, and prospects.*

SAC ¶ 74, 98 (quoting Registration Statement) (emphasis in original).

### 3. Statement Three

Plaintiffs further allege that the following statement (Statement Three) about Wish's growth strategy was false or misleading:

#### **Our Growth Strategy**

##### **Grow Our Base of Users**

- Continue to Acquire New Users. *We are focused on growing our user base around the world.* We currently serve users in over 100 countries. We estimate that there are over 1 billion households with income of less than \$75,000 around the world, excluding China and India. (Emphasis added).
- Drive User Conversion. We have over 12 million monthly active buyers and over 100 million monthly active users on the platform. We will continue to drive greater user engagement and convert more active users on our platform to become active buyers by utilizing our data science and introducing more interactive and entertaining features.
- Drive Profitable Lifetime Value from Existing Users. We plan to continue to improve the engagement and monetization of our users on our platform to maximize their lifetime value. We plan to achieve this goal by:
  - Using our data science to drive personalization of our platform;
  - Continuing to offer attractive discounts and value, an entertaining user experience, and robust user-generated content; and
  - Improving our ease of use by investing in our user

1 support and logistics infrastructure to enable faster  
2 deliveries and localization of our platform.

3 Expand Geographically. *We intend to continue to expand our global  
4 footprint and enter new geographies and acquire new users in those  
5 markets.*

6 SAC ¶ 100 (quoting Registration Statement) (emphasis in original).

#### 7 **4. Statement Four**

8 Plaintiffs further allege that the following statement (Statement Four) about potential  
9 fluctuations in quarterly and annual operating results was false or misleading:

10 *Our quarterly and annual operating results may fluctuate, which  
11 could cause our stock price to decline.*

12 Our quarterly and annual operating results may fluctuate for a variety  
13 of reasons, many of which are beyond our control. These reasons  
14 include those described in this “Risk Factors” section as well as the  
15 following:

- 16 • our user acquisition strategies;
- 17 • selling prices on our platform and the percentage of revenue  
18 we retain from the sale of products;
- 19 • mix of products listed on our platform;
- 20 • fraud, including the sale of counterfeit goods, and refunds,  
21 including our response to these areas;
- 22 • fraud, including the sale of counterfeit goods, and refunds,  
23 including our response to these areas;
- 24 • the level of merchant advertising on our platform;
- 25 • disruptions in supply or shipment of products listed on our  
26 platform, especially from China where most of our merchants  
27 are currently located;
- 28 • the actions of app stores and advertising platforms such as  
Facebook and Google;
- seasonality;
- fluctuations in exchange rates;
- the amount and timing of our other operating expenses;
- the impact of competitive developments and our response to  
those developments;
- changes in carrier policies and pricing and resulting higher  
logistics costs;
- actual or perceived disruptions or defects in our platform, such  
as data security breaches or outages;
- changes in laws and regulations that impact our business;
- changes in tax laws in the jurisdictions in which we operate;  
and
- general political, economic, and market conditions,  
particularly those affecting our industry.

Fluctuations in our quarterly and annual operating results may cause  
those results to fall below the expectations of analysts or investors,  
which could cause the price of our Class A common stock to decline.  
Fluctuations in our results could also cause a number of other

1 problems. For example, analysts or investors might change their  
2 models for valuing our Class A common stock, we could experience  
short-term liquidity issues, our ability to retain or attract key  
personnel may diminish, and other unanticipated issues may arise.

3 In addition, we believe that our quarterly and annual operating results  
4 may vary in the future and that period-to-period comparisons of our  
operating results may not be meaningful. For example, our historical  
5 growth may have overshadowed the seasonal effects on our historical  
operating results. These seasonal effects may become more  
6 pronounced over time, which could also cause our operating results  
to fluctuate. You should not rely on the results of one quarter or one  
7 year as an indication of future performance.

8 SAC ¶ 102 (quoting Registration Statement) (emphasis in original).

9 **5. Statement Five**

10 Plaintiffs further allege that the following statement (Statement Five) about Wish’s digital  
11 marketing strategies was false or misleading:

12 **Invest in our sales and marketing engine.** We have made significant  
13 investments in our data science which underpins all aspects of our  
operations including marketing and user acquisition. By leveraging  
14 our unique and scaled data set and algorithms, *our goal is to execute  
cost-effective and successful digital marketing strategies to acquire  
15 new users and re-engage existing users on the Wish platform.* We  
consider our user acquisition expertise a strong competitive  
16 advantage and have invested in this capability over time to continue  
to drive user and revenue growth. *We will need to continue to invest  
17 in our marketing efforts to attract new users and increase user  
engagement.*

18 SAC ¶ 104 (quoting Registration Statement) (emphasis in original).

19 **II. LEGAL STANDARD**

20 “A Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a  
21 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation  
22 Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d  
23 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts  
24 as true all well-pled factual allegations and construes them in the light most favorable to the  
25 plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the  
26 Court need not “accept as true allegations that contradict matters properly subject to judicial  
27 notice” or “allegations that are merely conclusory, unwarranted deductions of fact, or  
28 unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)



1 (internal quotation marks and citations omitted). While a complaint need not contain detailed  
2 factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to  
3 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
4 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the  
5 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

6 Section 11 of the Securities Act creates a private remedy for any purchaser of a security if  
7 “any part of the registration statement, when such part became effective, contained an untrue  
8 statement of a material fact or omitted to state a material fact required to be stated therein or  
9 necessary to make the statements therein not misleading . . . .” 15 U.S.C. §77k(a). “The section  
10 was designed to assure compliance with the disclosure provisions of the Act by imposing a  
11 stringent standard of liability on the parties who play a direct role in a registered offering.” *Hildes*  
12 *v. Arthur Andersen LLP*, 734 F.3d 854, 859 (9th Cir. 2013). “As long as a plaintiff purchased a  
13 security issued pursuant to a registration statement, he need only show a material misstatement or  
14 omission to establish his *prima facie* case.” *Id.*; 15 U.S.C. §77k(b).

15 “Section 11 thus creates two ways to hold issuers liable for the contents of a registration  
16 statement—one focusing on what the statement says and the other on what it leaves out.”  
17 *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175, 179 (2015).  
18 “Either way, the buyer need not prove (as he must to establish certain other securities offenses)  
19 that the defendant acted with any intent to deceive or defraud.” *Id.* “Liability against the issuer of  
20 a security is virtually absolute, even for innocent misstatements.” *Hildes*, 734 F.3d at 859.  
21 Additionally, “Section 11 lacks a scienter requirement.” *Id.* at 860. Thus, “[t]he standard for  
22 Section 11 falsity is more lenient than pleading a Rule 10(b)(5) violation” pursuant to the  
23 Securities Exchange Act of 1934 (“Exchange Act”). *In re Restoration Robotics, Inc. Sec. Litig.*,  
24 417 F. Supp. 3d 1242, 1257 (N.D. Cal. 2019). “When a Section 11 complaint does not sound in  
25 fraud, it must only meet Rule 8(a)’s ordinary notice pleading requirements.” *Id.* Accordingly,  
26 “Section 11 places a relatively minimal burden on a plaintiff.” *Hildes*, 734 F.3d at 859.

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1 **III. DISCUSSION**

2 **A. Judicial Notice**

3 A court generally cannot consider materials outside the pleadings on a Motion to Dismiss  
4 for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). A court may, however, consider items of  
5 which it can take judicial notice without converting the motion to dismiss into one for summary  
6 judgment. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994). A court may take judicial notice  
7 of facts “not subject to reasonable dispute” because they are either “(1) generally known within  
8 the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by  
9 resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201. A court  
10 may additionally take judicial notice of “‘matters of public record’ without converting a Motion to  
11 Dismiss into a motion for summary judgment.” *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th  
12 Cir. 2001) (quoting *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986)). Under  
13 the incorporation by reference doctrine, courts may consider documents “whose contents are  
14 alleged in a complaint and whose authenticity no party questions, but which are not physically  
15 attached to the [plaintiff’s] pleading.” *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986  
16 (9th Cir. 1999) (quoting *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994)) (alteration in  
17 original).

18 Defendants seek notice of four exhibits:

- 19 1. Exhibit 1, excerpts of ContextLogic’s Amended Registration Statement on Form S-1,  
20 filed with the U.S. Securities and Exchange Commission (“SEC”) on December 7,  
21 2020. ECF No. 106-1 (“Ex. 1”).
- 22 2. Exhibit 2, ContextLogic’s Current Report on Form 8-K, filed with the SEC on March  
23 8, 2021. ECF No. 106-1 (“Ex. 2”).
- 24 3. Exhibit 3, a transcript of ContextLogic’s earnings call for the fourth quarter of 2020,  
25 dated March 8, 2021. ECF No. 106-1 (“Ex. 3”).
- 26 4. Exhibit 4, a Bloomberg terminal printout of ContextLogic’s stock price between March  
27 1 and March 30, 2021. ECF No. 106-1 (“Ex. 4”).

28 ECF No. 106-2. Defendants also note that the Court previously took judicial notice of Exhibits 1

1 through 3. *Id.*; ECF No. 98 at 9–10. Plaintiffs do not oppose Defendants’ requests for judicial  
2 notice.

3 Separately, Plaintiffs seek judicial notice of Wish’s Q1 2021 Shareholder Letter, posted on  
4 May 12, 2021. Opp. at 2; ECF No. 110-1 (“Shareholder Letter”). Defendants challenge  
5 Plaintiffs’ use of the Shareholder Letter, noting that certain facts were “not [] alleged in the SAC.”  
6 Mot. at 9.

7 The Court grants judicial notice of Defendants’ four exhibits. *See Metzler Inv. GMBH v.*  
8 *Corinthian Colleges, Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir. 2008) (granting judicial notice of  
9 publicly available financial documents such as SEC filings); *Heliotrope Gen., Inc. v. Ford Motor*  
10 *Co.*, 189 F.3d 971, 981 n.18 (9th Cir. 1999) (granting judicial notice of publicly available articles  
11 or other news releases of which the market was aware). The Court does not take notice of the  
12 truth of any of the facts asserted in these documents. *See City of Sunrise Firefighters' Pension*  
13 *Fund v. Oracle Corp.*, 2019 WL 6877195, at \*23 (N.D. Cal. Dec. 17, 2019).

14 The Court grants judicial notice of Plaintiffs’ exhibit, but notes that the SAC makes no  
15 mention of this Shareholder Letter or its contents, and is thus beyond the complaint. *See*  
16 *Schneider v. Cal. Dep’t of Corrections*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (“In determining  
17 the propriety of a Rule 12(b)(6) dismissal, a court *may not* look beyond the complaint to a  
18 plaintiff’s moving papers, such as a memorandum in opposition to a defendant’s motion to  
19 dismiss.” (emphasis in original)). The Court relies only on the SAC for Plaintiffs’ allegations.

20 **B. Alleged False Statements**

21 “To prevail on a Section 11 claim, a plaintiff must demonstrate (1) that the registration  
22 statement contained a misrepresentation or omission; and (2) that the misrepresentation or  
23 omission was material.” *Rieckborn v. Jefferies LLC*, 81 F. Supp. 3d 902, 914 (N.D. Cal. 2015)  
24 (citing *In re Daou Sys., Inc.*, 411 F.3d 1006, 1027 (9th Cir.2005); *see also In re Dropbox Sec.*  
25 *Litig.*, No. 19-CV-06348-BLF, 2020 WL 6161502, at \*5 (N.D. Cal. Oct. 21, 2020). A  
26 misrepresentation or omission is material where it “would have misled a reasonable investor about  
27 the nature of his or her investment.” *Daou*, 411 F.3d at 1027.

28 Plaintiffs allege that five statements were false or misleading and that Wish failed to

1 disclose (pursuant to Item 105) that investment in it was speculative or risky. The Court addresses  
2 each statement individually except Statements One and Three, which it addresses together because  
3 they share the material language at issue, then finally the Item 105 disclosure.

4 **1. Statements One and Three: Growth Strategy**

5 Plaintiffs allege that Wish’s disclosures about its growth strategy (Statements One and  
6 Three) are false or misleading. Specifically, Plaintiffs emphasize (and Defendants challenge) two  
7 shorter statements shared by Statements One and Three. The first shared statement is “[w]e are  
8 focused on growing our user base around the world.” SAC ¶¶ 66, 96 (Statement One); SAC ¶ 100  
9 (Statement Three). The second shared statement is “We will continue to expand our global  
10 footprint and enter new geographies and acquire new users in those markets.” SAC ¶¶ 66, 96  
11 (Statement One); SAC ¶ 100 (Statement Three, replacing “will continue” with “intend to  
12 continue”). The Court addresses these two statements in turn.

13 a. Statements One and Three: “We are focused on growing our user base around  
14 the world”

15 First, Plaintiffs allege that Wish’s statement, “[w]e are focused on growing our user base  
16 around the world,” was false based on Wish’s March 8, 2021 disclosures that “[d]uring the holiday  
17 season,” Wish “temporarily de-emphasized advertising and customer acquisition” in India, the  
18 Philippines, Colombia, and Brazil, and “expect[ed] to again engage with these markets” in the  
19 coming months. SAC ¶¶ 96, 100, 107–109; *see also* SAC ¶¶ 97, 101; Ex. 2 at 6; Ex. 3 at 7, 9;  
20 SAC, Ex. 1 at 1, 5.

21 Defendants challenge this allegation, arguing that there are no facts in either the SAC or  
22 the Registration Statement to suggest that Wish’s business was so heavily dependent on the four  
23 countries (India, the Philippines, Colombia, and Brazil) that a “temporary” reduction in  
24 advertising spend meant it abandoned its “growth strategy” and was no longer “focused on  
25 growing [its] user base.” Mot. at 8 (quoting SAC ¶¶ 96, 100). Defendants also argue that  
26 Plaintiffs’ allegation that Wish abandoned its marketing strategy is undercut by the fact that  
27 Wish’s advertising spend in Q4 2020 was the highest reported quarter ever for the Company and  
28 Plaintiffs’ own allegations that “Wish was pouring a couple of million dollars a day into ads.”

1 *Compare* Ex. 2 at 12 (Q4 2020 spend was \$583 million), *with* Ex. 1 at 110 (previous quarterly  
2 spend ranged from \$257 to \$468 million); Mot. at 9 (quoting SAC ¶¶ 93–94).

3 Plaintiffs respond that Defendants’ argument that Wish increased total advertising spend  
4 globally is “bizarre” and “irrelevant.” Opp. at 12. Plaintiffs argue that the statement is misleading  
5 because Wish’s reduced advertising and customer acquisition efforts “in some emerging markets  
6 outside of Europe and North America” “primarily” caused Wish’s MAUs to have materially  
7 “declined 10% [year-over-year] during Q4.” *Id.* (quoting SAC ¶¶ 107, 109).

8 The Court agrees with Defendants. Reduced advertising spend in certain countries is not  
9 inconsistent with Wish’s plan to grow its user base around the world. *See In re Read-Rite Corp.*,  
10 335 F.3d 843, 846, 848 (9th Cir. 2003) (affirming dismissal in PSLRA action where defendant  
11 “did not make . . . statements that were contradictory or necessarily inconsistent with allegedly  
12 false public statements”), *abrogated on other grounds by S. Ferry LP, No. 2 v. Killinger*, 542 F.3d  
13 776 (9th Cir. 2008); *Golubowski v. Robinhood Markets, Inc.*, 2023 WL 1927616, at \*10 (N.D.  
14 Cal. Feb. 10, 2023) (statement about growth strategy not misleading because “it can be  
15 simultaneously true that [defendant] faced *some* customer service controversies while overall  
16 building a trusted brand. . .” (emphasis in original)). In light of record global advertising spend,  
17 an advertising spend decrease in certain countries is not on its own inconsistent with Wish’s  
18 disclosed “focus” on “growing [its] user base around the world,” to the point that it “would have  
19 misled a reasonable investor about the nature of his or her investment.” *Daou*, 411 F.3d at 1027.  
20 Thus, the Court finds that Wish’s disclosure that it was “focused on growing [its] user base around  
21 the world” is not false or misleading.

22 b. Statements One and Three: “We will continue” and “We intend to continue”  
23 “to expand our global footprint and enter new geographies and acquire new  
24 users in those markets”

25 Defendants challenge a second statement shared by Statements One and Three. Plaintiffs  
26 allege that Wish’s disclosures about its plans to “continue to expand our global footprint and enter  
27 new geographies”—including “in Africa, Latin America, and Eastern Europe”—were false for the  
28 same reason that Wish “temporarily de-emphasized advertising and customer acquisition” in India,  
the Philippines, Colombia, and Brazil, and “expect[ed] to again engage with these markets” in the

1 coming months. SAC ¶¶ 66, 96; SAC, Ex. 1 at 1, 5.

2 Defendants make two challenges to the statement. First, Defendants argue that the  
3 “statement is discussing *new* markets that Wish plans to enter, so it cannot be rendered false by  
4 omitting the alleged de-emphasis of certain *current* markets serviced by Wish.” Mot. at 9 (citing  
5 SAC ¶¶ 96–97, 100–101) (emphasis in original). Second, Defendants claim that this disclosure is  
6 a forward-looking statement protected under the “bespeaks caution” doctrine. *Id.* at 9–10.

7 Plaintiffs respond that Defendants’ interpretation of the statement is self-serving, and that  
8 they are misleading when read in the light most favorable to Plaintiffs. Opp. at 12. Plaintiffs also  
9 reject Defendants’ invocation of the bespeaks caution doctrine because the disclosures are not  
10 forward-looking and did not specifically warn of the magnitude of the risk. *Id.* at 13.

11 The Court agrees with Defendants. Statements One and Three disclosed that Wish “will  
12 continue to expand [its] global footprint and enter new geographies and acquire new users in those  
13 markets.” SAC ¶¶ 96, 100 (similarly stating “[w]e intend to continue”). Statement One continues,  
14 “[i]n particular, countries in Africa, Latin America, and Eastern Europe are key growth markets.”  
15 *Id.* ¶ 96. Thus, of the four countries listed by CFO Bahri on the investment call, *id.* ¶ 110, only  
16 Brazil and Colombia are in “key growth markets.” Allegations of reduced advertising spend in  
17 two countries out of “over 100 countries,” *id.* ¶ 96, particularly in light of Wish’s record high  
18 global ad spend, is not inconsistent with vague and general goals to expand global footprint, enter  
19 new geographies, and acquire new users. *See Read-Rite*, 335 F.3d at 846, 848; *Robinhood*, 2023  
20 WL 1927616, at \*10. Furthermore, Plaintiffs have not alleged that Brazil and Colombia are “new”  
21 markets. Therefore, advertising decreases in those countries are not sufficiently connected to  
22 Wish’s disclosure that it will “expand [its] global footprint and enter new geographies” in such a  
23 way that it would have misled a reasonable investor. *Daou*, 411 F.3d at 1027; *see also Hong v.*  
24 *Extreme Networks, Inc.*, 2017 WL 1508991, at \*15 (N.D. Cal. Apr. 27, 2017) (falsity inadequately  
25 alleged in 10(b) and 10b-5 claims where “the reasons Plaintiffs offer as to why the statements are  
26 false or misleading bear no connection to the substance of the statements themselves”). Thus, the  
27 Court concludes that Plaintiffs have failed to allege that this statement is false or misleading.

28 Having found that Statements One and Three are not false or misleading, the Court need

1 not address Defendants’ “bespeaks caution” doctrine arguments.

2 The Court finds that Plaintiffs have failed to allege that Statements One and Three—“We  
3 are focused on growing our user base around the world” and that Wish “will continue” and  
4 “intends to continue” “to expand our global footprint and enter new geographies and acquire new  
5 users in those markets” —were false or misleading. Furthermore, because the statements point to  
6 vague and general goals of global growth and acquiring users, no additional facts would cure  
7 Plaintiffs’ allegation, nor have Plaintiffs suggested they could amend. Thus, Defendants’ Motion  
8 to Dismiss Plaintiffs’ claims pertaining to Statements One and Three is granted without leave to  
9 amend.

10 **2. Statement Two: Acquiring Users**

11 “[A] company may make a materially misleading statement when it ‘speaks entirely of as-  
12 yet-unrealized risks’ when the risks have ‘already come to fruition.’” *In re Facebook, Inc. Sec.*  
13 *Litig.*, No. 22-15077, 2023 WL 8365362, at \*9 (9th Cir. Dec. 4, 2023) (quoting *Berson v. Applied*  
14 *Signal Tech.*, 527 F.3d 982, 987 (9th Cir. 2008)); *see also In re Alphabet, Inc. Sec. Litig.*, 1 F.4th  
15 687, 702–05 (9th Cir. 2021).

16 Plaintiffs allege that Statement Two was “incomplete, inaccurate and materially false” for  
17 failing to disclose Wish’s de-emphasis strategy. SAC ¶ 98. Statement Two discloses that Wish’s  
18 “efforts to acquire new users and engage existing users **may not be successful or may be more**  
19 **costly** than we expect, which could prevent us from maintaining or increasing our revenue.” *Id.* ¶  
20 98 (emphasis added). The statement continues that “sales and marketing may not effectively reach  
21 potential users, potential users may decide not to buy through us, or user spend on our platform  
22 **may not yield the intended return on investment**, any of which could negatively affect our  
23 financial results.” *Id.* (emphasis added). The Statement lists several risk factors, then states:

24 As a result of any of these factors or any additional factors that are  
25 outside of our control, **if we are unable to continue acquiring new**  
26 **users or increasing engagement with existing users**, it could have a  
material adverse effect on our business, financial condition, results of  
operations, and prospects.

27 *Id.* (emphasis added). Plaintiffs allege that the risks had already come to fruition, noting that Wish  
28 eventually disclosed on a Form 8-K on March 8, 2021 that MAUs declined year-over-year in Q4

1 2021, “primarily in some emerging markets outside of Europe and North America where Wish  
2 temporarily de-emphasized advertising and customer acquisition.” SAC ¶ 107. Plaintiffs add that  
3 CFO Bahri said in the investor call, also on March 8, 2021, that the pullback on advertising and  
4 customer acquisition in “emerging markets . . . India, Philippines, Colombia, [and] Brazil” was  
5 because “it’s not right to invest in these businesses if the consumers churn.” SAC ¶ 109.  
6 Plaintiffs allege that Statement Two was “materially false and misleading because it failed to  
7 disclose that starting from the beginning of the fourth quarter of 2020, Wish reduced advertising  
8 spend and user acquisition efforts in emerging markets.” SAC ¶¶ 98–99. Plaintiffs allege that the  
9 omission, coupled with Wish’s disclosures that “Wish had increased its advertising spend . . . in  
10 the first nine months of [ ] 2020” and “was continuing to advance its goal to expand users,”  
11 allegedly “created a false impression . . . that Wish was continuing its advertising spending and  
12 marketing efforts in emerging markets.” SAC ¶ 99.

13 Defendants argue that the risk factor did not create an impression that materially differed  
14 from reality. Defendants specifically note that Wish’s advertising spend in Q4 2020 was the  
15 highest it had ever been, Wish’s MAUs in Q4 2020 increased quarter-over-quarter, and Wish had  
16 reported its quarterly advertising spend in the two years leading up to the IPO, which showed that  
17 Wish’s advertising spend fluctuated by quarter. Mot. at 10–11; *see* Ex. 1 at 17, 110. Defendants  
18 also argue that the disclosures did not bar Wish from deciding whether to increase or decrease its  
19 advertising spending. *Id.* at 11 (citing SAC ¶¶ 98–99).

20 Plaintiffs respond that the disclosures “omitted then-existing material facts,” which  
21 “created a false impression that Wish was continuing its advertising spending and marketing  
22 efforts in emerging markets in 4Q 2020, when in fact, the Company had reduced its efforts to  
23 acquire users in emerging markets.” Opp. at 14. Plaintiffs contend that the risk disclosures were  
24 false and misleading for failing to inform the investing public of: “(i) reduced ad spend in the  
25 emerging markets; (ii) materially declining MAUs intra-quarter; and (iii) as a result, a specific  
26 material risk that the ‘de-emphasizing’ strategy leaving the ‘large and growing populations’ in  
27 emerging markets would likely cause Wish’s operating results, including MAUs, to materially  
28 decline in 4Q 2020 and in the near future.” *Id.* Plaintiffs argue that Wish’s “generic risk



1 disclosures were misleading because ‘they disclosed a risk in the abstract but omitted the fact that  
2 it had already come to fruition.’” *Id.* (quoting *Cutler v. Kirchner*, 696 F. App’x 809, 813 (9th Cir.  
3 2017)).

4 The Court first addresses the parties dispute over whether MAUs increased or decreased in  
5 the fourth quarter of 2020. Defendants state that “Wish’s MAUs in Q4 2020 increased quarter-  
6 over-quarter.” Reply at 5; *see also* Order at 18. Defendants also argue that to the extent Plaintiffs  
7 claim that Wish should have disclosed that “MAUs [] materially decline[d] in the fourth quarter,”  
8 the Court already rejected this theory. Mot. at 12 (quoting SAC ¶ 103). The Court notes that it  
9 had previously rejected a “blanket assertion that MAUs declined in the third and fourth quarters of  
10 2020.” Order at 18. However, the SAC now alleges a different decline, namely that Wish’s  
11 MAUs “declined 10% [year-over-year] during Q4.” SAC ¶¶ 107 (quoting Wish’s March 8, 2021  
12 Form 8-K). The Court finds that the SAC adequately alleges the year-over-year decline.

13 Next, the Court addresses Plaintiffs claim that the disclosed risks had already come to  
14 fruition. *Alphabet* and *Facebook* are instructive because in both cases, the alleged false statements  
15 warned of risks that had already come to pass. *Facebook*, 2023 WL 8365362, at \*9 (disclosure  
16 describing “third parties improperly accessing and using Facebook users’ data as purely  
17 hypothetical” was false in light of internal knowledge it had happened); *Alphabet*, 1 F.4th at 695  
18 (security or privacy risks that “could” or “may” happen were false in light of internal knowledge  
19 of the bug).

20 *Facebook* involved Cambridge Analytica, a British political consulting firm that “created a  
21 database of information about American voters by harvesting their Facebook data.” 2023 WL  
22 8365362, at \*4. The shareholder plaintiffs alleged that “Facebook was aware of Cambridge  
23 Analytica’s misconduct before February 2017, so Facebook’s statements about risk management  
24 ‘directly contradict[ed]’ what the company knew when it filed its 2016 10-K with the SEC.” *Id.* at  
25 \*9. The Ninth Circuit agreed, holding that shareholders “adequately pleaded falsity as to the  
26 statements in Facebook’s 2016 10-K that represented the risk of third parties improperly accessing  
27 and using Facebook users’ data as purely hypothetical.” *Id.*

28 In *Alphabet*, “internal Google investigators had discovered a software glitch in the

1 Google+ social network that had existed” for three years whereby “developers could collect  
 2 certain users’ profile data” such as “email addresses, birth dates, gender, profile photos, places  
 3 lived, occupations, and relationship status” “even if those users had relied on Google's privacy  
 4 settings to designate such data as nonpublic.” 1 F.4th at 695. Despite internal knowledge of the  
 5 bug, Alphabet filed a Form 10-Q that “incorporated the risk disclosures from Alphabet’s 2017 10-  
 6 K and made no disclosure about the Privacy Bug.” *Id.* at 696. The Ninth Circuit held that the  
 7 “complaint plausibly allege[d] that Alphabet's omission was material” because “Alphabet’s risk  
 8 disclosures in the 2017 10-K warned of the harms that could follow from the detection and  
 9 disclosure of security vulnerabilities, including public concerns about privacy and regulatory  
 10 scrutiny.” *Id.* at 703. The court also found that “Alphabet’s warning in each Form 10-Q of risks  
 11 that ‘could’ or ‘may’ occur is misleading to a reasonable investor when Alphabet knew that those  
 12 risks had materialized.” *Id.* at 704.

13 Statement Two similarly warns of risks that “may” occur that Plaintiffs allege had already  
 14 come to pass. Statement Two discloses that Wish’s “efforts to acquire new users and engage  
 15 existing users *may not* be successful or may be more costly than we expect,” and “efforts *may not*  
 16 yield the intended return on investment.” SAC ¶ 98 (emphasis added). The Statement discloses  
 17 that, due to the risk factors, “*if* we are unable to continue acquiring new users or increasing  
 18 engagement with existing users, it could have a material adverse effect on our business, financial  
 19 condition, results of operations, and prospects.” *Id.* (emphasis added). Plaintiffs allege that these  
 20 risks had come to pass; MAUs declined year-over-year in Q4 2020 and CFO Bahri attributed some  
 21 of the decrease to reduced advertising spend in emerging markets. *Id.* ¶¶ 107–110.

22 Plaintiffs also allege that Defendants were aware of these risks before the release of the  
 23 Registration Statement. The SAC states that employees at Wish including Defendant  
 24 Szulczekewski and Defendant Bahri had access to MAU and advertising spend data in real time  
 25 and Defendant Szulczekewski discussed MAUs on a daily basis. SAC ¶¶ 79–92; ECF No. 103-2  
 26 (redline comparing CAC and SAC) ¶¶ 79–80 (according to FE1, Wish utilized Looker, Tableau  
 27 and Google Sheets dashboards to monitor MAUs and advertising spend in real time), ¶ 85  
 28 (“decreasing advertising specifically in some emerging markets outside of Europe and North

1 America correlated directly to a material decrease in user acquisitions”), ¶ 86 (“[Defendant]  
2 Szulczekewski discussed advertising spend daily over Slack” and “Defendant Bahri worked  
3 closely with Defendant Szulczekewski on all aspects of the Company’s advertising spend”), ¶ 92  
4 (“[e]veryone in the Company had the Dashboard on their computer screen that provided daily  
5 updates on MAU, [Gross Merchandise Value] and other data, which were easily accessed”).

6 Thus, despite the Registration Statement’s hypothetical language that efforts “may not be  
7 successful,” “may be more costly,” and “may not yield the intended return on investment,” the  
8 March 2021 statements and disclosures, together with allegations of Defendants real-time  
9 knowledge during Q4 2021 support an allegation that Defendants knew that efforts to acquire and  
10 engage users were *already* proving unsuccessful, proving costly, and not yielding the return on  
11 investment. *Facebook*, 2023 WL 8365362, at \*9; *Alphabet*, 1 F.4th at 695.

12 Defendants’ argument that the Registration Statement discloses that Wish could change  
13 how it spends money on advertisements fails. As Defendants note, Wish disclosed that in 2019  
14 there was a “decrease in sales and marketing expenses [that] consisted primarily of reductions to  
15 advertising spend, due to our intentional moderation of user acquisition spend resulting from our  
16 focus on the launch of the logistics platform.” Ex. 1 at 106; *see also id.* at 102 (“The increase in  
17 sales and marketing expenses consisted primarily of an increase in advertising spend, as we re-  
18 focused on growth after we intentionally moderated user acquisition spend temporarily to focus on  
19 the launch of the logistics platform in the first half of 2019.”). But these statements did not  
20 disclose that Wish’s advertising spend was subject to reduction and moderation in Q4 2020, they  
21 merely summarize past reductions and moderations to advertising spend. The statements make no  
22 affirmative disclosure that advertising spend is being reduced or moderated in Q4 2020, and thus  
23 do not support Defendants’ argument that Wish disclosed that it could moderate or reduce  
24 advertising spend. *See Cutler v. Kirchner*, 696 F. App’x at 813; *Alphabet*, 1 F.4th at 704.

25 The Court finds that Plaintiffs have adequately alleged that Statement Two— “efforts to  
26 acquire new users and engage existing users may not be successful”—was false or misleading.  
27 Thus, Defendants’ Motion to Dismiss Plaintiffs’ claims pertaining to Statement Two is denied.

28 \\\

1                                   **3. Statement Four: Fluctuation of Quarterly and Annual Operating Results**

2                   Plaintiffs allege that Wish’s risk disclosure that its “quarterly and annual operating results  
3 may fluctuate, which could cause our stock price to decline” (Statement Four) was materially false  
4 and misleading because it “failed to completely inform the investing public that starting from the  
5 beginning of the fourth quarter of 2020, the Company had reduced advertising in India, Brazil, the  
6 Philippines and other emerging market countries outside of Europe and North America, causing  
7 MAUs to materially decline in the fourth quarter.” SAC ¶ 102–103.

8                   Defendants argue that this risk factor is not actionable because it addressed the very risks  
9 that Plaintiffs say should have been disclosed. Mot. at 12.

10                  Plaintiffs respond that the purported risk factor is too general and boilerplate. Opp. at 16.  
11 Plaintiffs also argue that the warned of risks already came to fruition and that “cautionary words  
12 about future risk cannot insulate from liability the failure to disclose that the risk has transpired.”  
13 Opp. at 16–17 (quoting *In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132, 1178 n.62  
14 (C.D. Cal. 2008)). Plaintiffs again invoke *Alphabet* and *Facebook* for the proposition that, “if you  
15 discuss a risk and a result . . . if the cause occurs, you must disclose it.” Hearing Tr. 25:12–14.  
16 With respect to MAUs, Plaintiffs argue that Defendants “were duty bound to disclose the material  
17 risk of performance decline attendant to Wish’s reduced advertising spend and customer  
18 acquisition efforts in emerging markets, a theory the Court found could be actionable.” Opp. at 17  
19 (citing Order at 23, ECF No. 110-2 (“Sams Decl., Ex. 2”) at 15).

20                  The Court agrees with Defendants. Statement Four discloses that operating results may  
21 fluctuate and lists a variety of reasons, among them “the amount and timing of our other operating  
22 expenses” and “our user acquisition strategies.” SAC ¶ 102; *see also* Ex. 1 at 24. As an initial  
23 matter, the term “fluctuates” is vague enough that a company’s price is arguably always  
24 fluctuating. Thus, a disclosure that a stock price may fluctuate hardly “create[s] an impression of  
25 a state of affairs that differs in a material way from the one that actually exists.” *Costanzo v. DXC*  
26 *Technology Company*, 2021 WL 5908385, at \*12 (N.D. Cal. Dec. 14, 2021). Furthermore, as  
27 Defendants note, Wish had reported its quarterly advertising spend in the two years leading up to  
28 the IPO, which showed that Wish’s advertising spend fluctuated by quarter. Mot. at 10–11. Thus,

1 the Registration Statement disclosed that fluctuation was a present risk. *See Steckman v. Hart*  
2 *Brewing, Inc.*, 143 F.3d 1293, 1296 (9th Cir. 1998) (affirming dismissal where “the risks were  
3 completely disclosed”); *Olkey v. Hyperion 1999 Term Tr., Inc.*, 98 F.3d 2, 5 (2d Cir. 1996)  
4 (affirming dismissal where “[t]he prospectuses warn investors of exactly the risk the plaintiffs  
5 claim was not disclosed”). Because fluctuations are ever-present and the Registration Statement  
6 discloses past fluctuations, the Court finds that Statement Four discloses the risk of fluctuation as  
7 a present risk, not a hypothetical. Thus, Statement Four is distinguishable from Statement Two,  
8 where Wish warned that “efforts to acquire new users and engage existing users *may not be*  
9 *successful*,” SAC ¶ 102, as if the risks were “as-yet-unrealized,” which Plaintiffs allege “directly  
10 contradict” what Wish employees and executives knew had already come to pass. *Facebook*, 2023  
11 WL 8365362, at \*9. Plaintiffs allege no such contradictions in Statement Four.

12 The Court finds that Plaintiffs have failed to allege that Statement Four—“quarterly and  
13 annual operating results may fluctuate” —was false or misleading. Furthermore, because the  
14 statement warns only of vague and ever-present fluctuations in operating results, no additional  
15 facts would cure Plaintiffs’ allegation, nor have Plaintiffs suggested otherwise. Thus, Defendants’  
16 Motion to Dismiss Plaintiffs’ claims pertaining to Statement Four is granted without leave to  
17 amend.

#### 18 **4. Statement Five: Investing in Marketing**

19 The final disclosure challenged by Plaintiffs (Statement Five) relates to Wish’s “goal [] to  
20 execute cost-effective and successful digital marketing strategies” and its “need to continue to  
21 invest in our marketing efforts to attract new users and increase user engagement.” SAC ¶ 104.  
22 Plaintiffs allege that these statements “created a false impression . . . that Wish was continuing its  
23 advertising spending and marketing efforts so it could expand its user acquisitions in emerging  
24 markets, . . . when in fact, the Company had reduced its efforts to acquire users in emerging  
25 markets/key growth markets.” *Id.* ¶ 105.

26 Defendants argue that Plaintiffs “ignore the critical fact that Wish spent more on  
27 advertising in Q4 2020 than in any other reported quarter.” Mot. at 12. Defendants add that  
28 “Plaintiffs plead no facts that Wish did *not* have a goal of ‘execut[ing] cost-effective and

1 successful digital marketing strategies,” and they plead no facts demonstrating how temporarily  
 2 pausing advertising in four markets meant that Wish had abandoned this goal.” *Id.* at 13 (quoting  
 3 SAC ¶ 105). Defendants also contend that Statement Five is “nonactionable puffing.” *Id.*

4 Plaintiffs respond that the Court found that the allegations regarding “these omissions  
 5 ‘may be able to go forward with some beefing up,’ which Plaintiffs have done through the SAC.”  
 6 *Opp.* at 17 (quoting Sams Decl., Ex. 2 at 15). Plaintiffs again rely on the argument that increased  
 7 global advertising spend is irrelevant to Wish’s reduced advertising spend in emerging markets.  
 8 Plaintiffs also note that Defendants’ expressed “goal” was stated in the context of their present-  
 9 tense representation that “[w]e will need to continue to invest in our marketing efforts to attract  
 10 new users and increase user engagement.” SAC ¶ 104.

11 The Court agrees with Defendants. Plaintiffs plead no facts demonstrating how Wish’s de-  
 12 emphasizing strategy in four countries meant that Wish had abandoned its goals to “execute cost-  
 13 effective and successful digital marketing strategies” and “attract new users and increase user  
 14 engagement.” The statement speaks to a vague and general goal of being “successful” and “cost-  
 15 effective.” The alleged de-emphasizing strategy in countries where return on investment is down  
 16 and churn is up is not inconsistent with Wish’s goal of being cost-effective. *See Read-Rite*, 335  
 17 F.3d at 848. Furthermore, Wish’s disclosure that it “will need to continue to invest in marketing  
 18 efforts” does not specify specific markets, geographies, or types of users, and is thus bolstered by  
 19 Wish’s all-time high global advertising spend in Q4 2020.

20 The Court also agrees with Defendants that Statement Five is “nonactionable puffing.”  
 21 *See Restoration Robotics*, 417 F. Supp. 3d at 1255. In *Restoration Robotics*, the court held that a  
 22 statement that “[o]ur **goal** is to expand the commercialization of the ARTAS System” is not  
 23 actionable because it is too vague for investors to rely on. *Id.* at 1255 (emphasis in original).  
 24 Plaintiffs point to *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*,  
 25 where the court found that disclosures about “clean diesel” were central to Volkswagen’s specific  
 26 goal “of becoming the world’s largest automobile manufacturer by 2018” and thus were not  
 27 puffery. No. 2672 CRB (JSC), 2017 WL 66281, at \*17 (N.D. Cal. Jan. 4, 2017). The court  
 28 reasoned that the “allegations demonstrate[d] that Volkswagen focused on environmental

1 friendliness as a core aspect” of the goal, so “it [was] plausible that a reasonable investor would  
2 view Volkswagen’s failure to in fact be environmentally friendly as significantly altering the ‘total  
3 mix’ of information available.” *Id.* But where the claims in *Volkswagen* centered around the  
4 specific goal of being a top automobile manufacturer, here, goals of executing “cost-effective and  
5 successful” strategies are “vague, generalized assertions of corporate optimism” and thus not  
6 actionable. *Restoration Robotics*, 417 F. Supp. 3d at 1255.

7 The Court finds that Plaintiffs have failed to allege that Statement Five—Wish’s “goal [] to  
8 execute cost-effective and successful digital marketing strategies” and its “need to continue to  
9 invest in our marketing efforts to attract new users and increase user engagement”—was false or  
10 misleading. Thus, Defendants’ Motion to Dismiss Plaintiffs’ claims pertaining to Statement Five  
11 is granted. Furthermore, because statements of vague corporate optimism are not actionable, no  
12 additional facts would cure Plaintiffs’ allegation. Defendants’ Motion to Dismiss Plaintiffs’  
13 claims pertaining to Statement Five is granted without leave to amend.

#### 14 **5. Item 105 Disclosure**

15 Item 105 requires a company disclose a “a discussion of the material factors that make an  
16 investment in the registrant or offering speculative or risky.” 17 C.F.R. §229.105; *see In re Lyft*  
17 *Inc. Sec. Litig.*, 484 F. Supp. 3d 758, 769 n.4 (N.D. Cal. 2020); *Crews v. Rivian Auto., Inc.*, No.  
18 2:22-CV-01524-JLS-E, 2023 WL 4361098, at \*15 (C.D. Cal. July 3, 2023). “Allegations  
19 sufficient to state a claim under Items 105 and 303 are also sufficient to state a claim under  
20 Sections 11 . . . of the 1933 Act.” *Crews*, 2023 WL 4361098, at \*15.

21 Plaintiffs allege that the Registration Statement failed to disclose, pursuant to Item 105,  
22 “that Wish’s reduced advertising and efforts to acquire users in emerging markets in the fourth  
23 quarter of 2020 could reasonably [] cause a material adverse impact on MAUs and Wish  
24 performance for the fourth quarter of 2020 and subsequent quarters, rendering an investment in  
25 Wish ‘speculative or risky.’” SAC ¶ 106.

26 Defendants argue that Plaintiffs once again allege “no facts to suggest that Defendants  
27 knew at the time of IPO that the reduction in advertising made investment in Wish risky or would  
28 have a material effect on Wish’s financial position.” Mot. at 13 (quoting Order at 23). Defendants

1 again argue that global advertising spend and MAUs were up in Q4 and that decreased advertising  
 2 spend in four emerging markets does not imply an advertising decrease across all emerging  
 3 markets. *Id.* at 14. Finally, Defendants state that Wish did address risk because the Registration  
 4 Statement warned that Wish’s “efforts to acquire new users and engage existing users may not be  
 5 successful.” Ex. 1 at 21.

6 Plaintiffs respond that “[t]he Court did not previously reject Plaintiffs’ theory, but instead  
 7 merely stated that the previous complaint did not state sufficient facts to support the theory and  
 8 needed ‘some beefing up.’” Opp. at 19 (quoting Sams Decl., Ex. 2 at 15). Plaintiffs add that they  
 9 now allege sufficient facts that employees regularly monitored MAUs and advertising spend and  
 10 CEO Szulczekewski and CFO Bahri were aware of the advertising numbers and MAU data. *Id.*

11 The Court agrees with Plaintiffs. Defendants are correct that the Court dismissed  
 12 Plaintiffs’ Item 105 allegations brought under the theory that Wish “‘failed to disclose, . . . that in  
 13 the fourth quarter of 2020 . . . [Wish] had pulled back advertising in India, Brazil, the Philippines  
 14 and other emerging market countries outside of Europe and North America.’” Order at 22  
 15 (quoting CAC ¶ 120). The Court reasoned in part that Plaintiffs alleged “no facts to suggest that  
 16 Defendants knew at the time of IPO that the reduction in advertising made investment in Wish  
 17 risky or would have a material effect on Wish’s financial position.” *Id.* at 23. But as discussed  
 18 above, Plaintiffs have added substantial allegations that employees regularly monitored MAUs  
 19 and advertising spend. *See* ECF No. 103-2 (redline comparing CAC and SAC) ¶¶ 79–92. These  
 20 additional facts shore up what was previously a deficient allegation. Where the CAC did not  
 21 allege that Defendants had knowledge of Q4 MAUs, the SAC adequately alleges that knowledge.

22 Furthermore, a higher global advertising spend does not paper over risks created by the  
 23 alleged de-emphasizing strategy in emerging markets due to real-time knowledge of churn by  
 24 Wish employees and executives. And that MAUs are up quarter-over-quarter is irrelevant because  
 25 Plaintiffs allege a year-over-year MAU decrease.

26 Finally, Defendants’ argument that “Wish did address the risk of losing users” also fails.  
 27 As the Court explained for Statement Two, Plaintiffs have alleged that the state of affairs differed  
 28 from what Defendants disclosed in the Registration Statement, namely that Defendants’



1 disclosures warned that market strategies “could” or “may” fail when in fact Defendants knew in  
 2 real time that they were failing. Such misrepresentations are actionable under Item 105 if they  
 3 “create an impression of a state of affairs that differ in a material way from the one that actually  
 4 exist.” *Bos. Ret. Sys. v. Uber Techs., Inc.*, No. 19-CV-06361-RS, 2020 WL 4569846, at \*7 (N.D.  
 5 Cal. Aug. 7, 2020); *Lyft*, 484 F. Supp. 3d at 769 n.4.

6 Thus, the Court concludes that Plaintiffs adequately allege that the Registration Statement  
 7 failed to disclose, pursuant to Item 105 that an investment in Wish is “speculative or risky.”  
 8 Defendants’ Motion to Dismiss Plaintiffs claims pertaining to Item 105 is denied.

9 **C. Negative Causation Defense**

10 Section 11 provides an affirmative defense that allows defendants “to prove that the  
 11 plaintiff’s loss, or some portion thereof, was not caused by the alleged misstatements or omissions  
 12 in the registration statement.” *In re Velti PLC Sec. Litig.*, 2015 WL 5736589, at \*27 (N.D. Cal.  
 13 Oct. 1, 2015); *see* 15 U.S.C. § 77k(e). The “negative causation” defense may serve as the basis for  
 14 a motion to dismiss where “the facts as alleged by plaintiffs . . . establish the affirmative defense  
 15 as a matter of law.” *In re Shoretel Inc., Sec. Litig.*, 2009 WL 248326, at \*5 (N.D. Cal. Feb. 2,  
 16 2009). “The defendant has the burden of proof on this defense,” and bears a “heavy burden.”  
 17 *Hildes*, 734 F.3d at 860. “The determination of whether there is a causal link includes a temporal  
 18 component—a disclosure followed by an immediate drop in stock price is more likely to have  
 19 caused the decline—but timing is not dispositive.” *In re Boff Holding, Inc. Sec. Litig.*, 977 F.3d  
 20 781, 790 (9th Cir. 2020).

21 Specifically, the “defendant must show that the depreciation in value of a plaintiff’s stock  
 22 resulted from factors other than the alleged material misstatement.” *Hildes*, 734 F.3d at 860  
 23 (internal quotations omitted). For example, in *Shoretel*, the court held that an alleged corrective  
 24 disclosure “reveal[ed] nothing about what was allegedly misrepresented in or omitted from the  
 25 Registration Statement” because it “merely disclosed that Shoretel’s results for the quarter ending  
 26 December 31, 2007 fell short of expectations and that a preliminary review revealed that sales to  
 27 new customers had declined.” 2009 WL 248326, at \*5. However, “there is no prohibition against  
 28 . . . alleging loss causation through a series of disclosures by the Defendants.” *Metzler*, 540 F.3d

1 at 1063.

2 Defendants argue that Plaintiffs’ Section 11 claim also fails because Plaintiffs suffered no  
3 recoverable losses because Wish’s stock traded higher the day after the alleged corrective  
4 disclosure was made, and continued to trade higher for weeks after. Mot. at 15.

5 Plaintiffs respond that the SAC clearly alleges that the Company’s “de-emphasizing  
6 strategy continued materially impacting the Company’s performance, financial condition and  
7 results of operation for the next two quarters,” which “related to the Company’s announcements  
8 on both March 8, 2021, and May 12, 2021.” Opp. at 21; SAC ¶¶ 7–8, 107–110. Plaintiffs also  
9 point to the Shareholder Letter as evidence that a continuation of the de-emphasis strategy caused  
10 the drop in stock price.

11 The Court agrees with Defendants. Plaintiffs have failed to plead that either the stock price  
12 drop or disclosures (both on May 12, 2021) relate to the challenged portion of the Registration  
13 Statement. The only alleged disclosures on May 12, 2021 are that “Wish announced that its  
14 MAUs declined” and “forward sales guidance also fell short,” SAC ¶ 8, 110, which does not relate  
15 to the challenged portions of the Registration Statement. The SAC does allege that “[t]he ‘de-  
16 emphasizing’ strategy that Wish took in the fourth quarter of 2020 continued to adversely impact  
17 the Company’s performance,” *id.* ¶ 110, but that statement is not supported by any facts  
18 connecting the May disclosures to the challenged portions of the Registration Statement. Rather,  
19 the alleged May disclosures “reveal nothing about what was allegedly misrepresented” in the  
20 Registration Statement. *Shoretel*, 2009 WL 248326, at \*5. Plaintiffs have failed to link the May  
21 2021 stock drop to any revelation about a reduction in advertising spend that had not already been  
22 disclosed in the March 8, 2021 corrective disclosure. Instead, Defendants offer a persuasive  
23 alternative explanation for the stock decline in May 2021 that sufficiently meets their heavy  
24 burden to prove this defense. First, they have shown that after the one corrective disclosure made  
25 on March 8, 2021, the stock price actually increased and stayed at a higher level for more than two  
26 weeks. They additionally have shown that there were no later disclosures regarding the Q4 2020  
27 decrease in advertising spend in emerging markets. Finally, Defendants have shown that in May  
28 2021, Wish disclosed disappointing Q1 2021 results including a decline in MAUs and a decrease

1 in future sales guidance. *Hildes*, 734 F. 3d at 860.

2 The Court recognizes that Plaintiffs have offered a May 2021 shareholder letter that they  
3 argue would support their loss causation theory. But that disclosure is not pled in the SAC, and  
4 thus the Court declines to consider it here. That said, the May 2021, Shareholder Letter may  
5 support Plaintiffs' theory of loss causation or Plaintiffs may be able to allege additional facts to  
6 overcome Defendants' alternative explanation. On that basis, the Court will allow one final  
7 opportunity to amend the complaint.

8 The Court therefore grants Defendants' Motion to Dismiss on the negative causation  
9 defense with leave to amend.

10 **D. Section 15 Allegation**

11 Because Plaintiffs fail to plead an underlying violation of Section 11, their claims under  
12 Section 15 are dismissed as well with leave to amend. *See Welgus v. TriNet Grp., Inc.*, 2017 WL  
13 6466264, at \*27 (N.D. Cal. Dec. 18, 2017), *aff'd*, 765 F. App'x 239 (9th Cir. 2019).

14 **IV. ORDER**

15 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 16 1. Defendants' Motion to Dismiss Plaintiffs' Section 11 (Count I) and Section 15 (Count  
17 II) claims related to Statement One is GRANTED WITHOUT LEAVE TO AMEND.
- 18 2. Defendants' Motion to Dismiss Plaintiffs' Section 11 (Count I) and Section 15 (Count  
19 II) claims related to Statement Two is DENIED.
- 20 3. Defendants' Motion to Dismiss Plaintiffs' Section 11 (Count I) and Section 15 (Count  
21 II) claims related to Statement Three is GRANTED WITHOUT LEAVE TO AMEND.
- 22 4. Defendants' Motion to Dismiss Plaintiffs' Section 11 (Count I) and Section 15 (Count  
23 II) claims related to Statement Four is GRANTED WITHOUT LEAVE TO AMEND.
- 24 5. Defendants' Motion to Dismiss Plaintiffs' Section 11 (Count I) and Section 15 (Count  
25 II) claims related to Statement Five is GRANTED WITHOUT LEAVE TO AMEND.
- 26 6. Defendants' Motion to Dismiss Plaintiffs' Section 11 (Count I) and Section 15 (Count  
27 II) claims pursuant to Item 105 is DENIED.
- 28 7. Defendants' Motion to Dismiss Count I and Count II under the negative causation

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defense is GRANTED WITH LEAVE TO AMEND.

Any amended complaint shall be filed by February 15, 2024. Plaintiffs may only amend consistent with this order and are limited to amending the complaint regarding loss causation without further order of the Court. Plaintiffs shall also file a redlined version of the TAC.

Dated: December 22, 2023

  
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BETH LABSON FREEMAN  
United States District Judge