

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

NECA-IBEW PENSION TRUST FUND
(THE DECATUR PLAN), and ANGELA
LOHMANN, as Trustee for the
Angela Lohmann Revocable Trust,
individually and on behalf of
all others similarly situated,

3:16-CV-01756-YY

ORDER

Plaintiffs,

v.

PRECISION CASTPARTS CORP.,
MARK DONEGAN, DON R. GRABER,
LESTER L. LYLES, DANIEL J.
MURPHY, VERNON E. OECHSLE,
ULRICH SCHMIDT, RICHARD L.
WAMBOLD, and TIMOTHY A. WICKS,

Defendants.

BROWN, Judge.

Magistrate Judge Youlee Yim You issued Findings and Recommendation (#72) on October 3, 2017, in which she recommends the Court deny the Motion (#57) to Dismiss filed by Defendants Precision Castparts Corp., Mark Donegan, Don R. Graber, Lester L.

Lyles, Daniel J. Murphy, Vernon E. Oechsle, Ulrich Schmidt, Richard L. Wambold, and Timothy A. Wicks. Defendants filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*).

BACKGROUND

Plaintiffs are former shareholders of Precision Castparts Corp. (PCC). On September 2, 2016, Plaintiffs filed a Class Action Allegation Complaint (#1) against PCC and current and former officers and directors for making allegedly false and misleading statements in proxy materials issued in October 2015 in violation of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (Act), 15 U.S.C. §§ 78n(a) and 78t(a), and Rule 14a-9 of the Securities and Exchange Commission, 17 C.F.R. § 240.14a-9, related to the acquisition of PCC by Berkshire Hathaway, Inc. On January 5, 2017, Plaintiffs filed an Amended Class Action Allegation Complaint (#56).

On March 6, 2017, Defendants filed a Motion (#57) to Dismiss the Amended Class Action Allegation Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds that Plaintiffs have not sufficiently alleged a material misstatement or omission; the "bespeaks caution" doctrine and the safe-harbor provision of the Private Securities Litigation Reform Act of 1995 (PLSRA), 15 U.S.C. § 78u-5(c)(1)(A)(I), bar Plaintiffs' claims; and Plaintiffs have failed to plead scienter with particularity.

The Magistrate Judge found Plaintiffs adequately alleged the acts or omissions of the Defendant that violated the Act, the statements made were not forward-looking statements, and Plaintiffs adequately alleged scienter. The Magistrate Judge, therefore, recommends this Court deny Defendants' Motion to Dismiss in its entirety.

In their Objections Defendants assert the same or similar arguments similar they raised in their Motion to Dismiss.

This Court has carefully considered Defendants' Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge You's Findings and

Recommendation (#72) and, therefore, **DENIES** Defendants' Motion (#57) to Dismiss Plaintiffs' Amended Complaint.

The Court returns this matter to the Magistrate Judge for further handling.

IT IS SO ORDERED.

DATED this 24th day of January, 2018.

/s/ Anna J. Brown

ANNA J. BROWN
United States Senior District Judge