UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LEK SECURITIES CORPORATION, SAMUEL LEK, VALI MANAGEMENT PARTNERS d/b/a AVALON FA LTD, NATHAN FAYYER, and SERGEY PUSTELNIK a/k/a/ SERGE PUSTELNIK, Defendants.	17-cv-01789 (DLC)

DEFENDANTS LEK SECURITIES CORPORATION AND SAMUEL LEK'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

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Defendants Lek Securities Corporation ("LSC") and Samuel Lek ("Lek" and together with LSC, the "Lek Defendants"), by their counsel, respectfully submit this Memorandum of Law in Opposition to Plaintiff Securities and Exchange Commission's ("SEC") Motion for a Preliminary Injunction (the "Motion").

PRELIMINARY STATEMENT

This case is about the legality of certain orders made by Avalon traders in the securities markets. The SEC alleges that these orders were part of a "layering" strategy that it argues constituted manipulative trading in violation of the securities laws. In the instant Motion, the SEC seeks to freeze assets of Avalon, including assets in LSC's possession and over which LSC asserts a lien.

The Lek Defendants consist of LSC, Avalon's former execution and clearing firm, and Samuel Lek, LSC's founder and Chief Executive Officer. The SEC does not allege that the Lek Defendants directed any of the purported manipulative trading at issue, and the SEC's claims against the Lek Defendants sound primarily in aiding and abetting for providing Avalon access to the securities markets. The Lek Defendants strenuously deny any wrongdoing. In fact, the Lek Defendants instituted a robust compliance program to prevent "layering" from being undertaken by its clients, including Avalon.

While the Lek Defendants have not been accused of orchestrating the purported manipulative scheme, they seek herein to inform the Court of the SEC's deficient showings of proof in support of its Motion, particularly since they are alleged to have aided and abetted it. The SEC is not entitled to a preliminary injunction because it fails to show a likelihood of success in its claims against Avalon. It has not proffered sufficient evidence that Avalon engaged in market manipulation or acted with the required scienter. The SEC provides little clarity on what it asserts constitutes "layering" and the expert report on which it relies invents out of whole cloth, without

explanation or support, standards to identify trading consistent with layering. In addition, the SEC and its expert wholly fail to inform the Court of the reality of trading in the modern securities markets. Understanding the context of everyday practices within the securities markets, and in particular its size, speed, and the enormous rate of order cancellations, is necessary to evaluate Avalon's alleged activity. In light of these failures, the Motion should be denied.

STATEMENT OF FACTS

United States Securities Markets

The SEC's Motion and supporting papers provide little insight into or evidence of the general workings of the securities markets in the United States. In fact, in his declaration and his subsequent report, the SEC's proposed expert, Terrence Hendershott ("Hendershott"), states only that "[m]odern financial markets typically operate as an open electronic limit-order book" and "[l]imit orders are instructions to trade at a price that is no worse that the limit price specified by the trader." (Declaration of Terrence Hendershott, dated March 7, 2017, Dkt. No. 14 ("Hendershott Decl.") ¶ 9; Expert Report of Terrence Hendershott, Ph.D., dated April 3, 2017 ("Hendershott Rpt.") ¶ 12).

Fortunately, the SEC's website, and in particular the "Market Structure" section of its website, provides helpful facts and statistics about trading in the securities markets. "The [SEC] created this website to promote better understanding of our equity markets and equity market structure through the use of data and analytics." (*See* Declaration of Steve M. Dollar, dated April 7, 2017, ("Dollar Decl.") Ex. A, the *Market Structure* section of the SEC's website, https://www.sec.gov/marketstructure/index.html (last visited April 5, 2017).) Postings in the "Data Highlights" section of the website, which are cited herein, "are periodically prepared by SEC staff based on [its Market Information Data Analytics System] data snapshots when new data series are created or noteworthy changes or developments occur." (*Id.* Ex. B, the *Research and*

Analysis subpart of the *Market Structure* section of the SEC's website, https://www.sec.gov/marketstructure/research.html (last visited April 7, 2017).)

The scale of the modern securities markets is staggering. "Each day hundreds of millions of quotes and orders to buy or sell equity securities are posted to public exchanges." (*Id.* Ex. C, *The Speed of the Equity Markets*, Data Highlight 2013-05, dated October 9, 2013, https://www.sec.gov/marketstructure/research/highlight-2013-05.html (last visited April 5, 2017).) Because the markets operate as an open electronic limit-order book, an order stays open until it is (i) executed because another party issues a corresponding order on the other side of the market or (ii) the party placing the order cancels it. (*See generally, id.*)

Rather than being an outlier as suggested by the SEC, orders that end in cancellation are customary and far more frequent than executed orders. "[A]t most, *only a few percent* of all orders and quotes for shares posted by market participants result in trade executions. The majority of displayed quotes are canceled." (*Id.* (emphasis added).) In fact, in the last quarter of 2012 and the first two quarters of 2013, only 3.5%, 3.7% and 3.2% of equity orders were filled. (*Id.* Ex. D, *Trade to Order Volume Ratios*, Data Highlight 2013-01, dated October 9, 2013, https://www.sec.gov/marketstructure/ research/highlight-2013-01.html (last visited April 5, 2017).) In other words, during these quarters, 96.5%, 96.3% and 96.8% of orders were cancelled. (*See id.*) The ratio of cancelled orders to executed orders during these quarters was 28-to-1, 26-to-1, and 30-to-1. (*See id.*)

The length of time orders remain outstanding also conveys a great deal about the nature of the markets. The majority of executed trades and cancellations occur in only a few seconds, and many considerably faster. In order to "convey an overall sense of the absolute and relative speeds of the market," the SEC prepared an analysis of "quote lifetimes over the period of [the second

quarter of] 2013 for corporate stocks traded across all exchanges." (*Id.* Ex. C.) This analysis showed that 45.9% of cancelled orders were cancelled within one second of being made, 38.7% of cancelled orders were cancelled within half a second of being made, and 23.2% of cancelled orders were cancelled within 50 milliseconds or one twentieth of a second of being made. (*Id.*) The analysis also showed that every day, millions of orders are cancelled within 50 microseconds or one twenty thousandth of a second of being made. (*See id.*)

Instances of Avalon's Purported Manipulation

The SEC proffers its expert's analysis of Avalon's trading data to identify Avalon's purported manipulative activity. The SEC tasked Hendershott with providing an opinion on whether Avalon's trading was "consistent with . . . behavior often called 'spoofing' or 'layering.'" (Hendershott Rpt. ¶ 8.) Hendershott provided no definition of layering. Instead he provided a general description that:

> Strategies often referred to as "spoofing" or "layering" typically involve certain traders placing visible limit orders (on shares of a company's common stock, for example) that they do not intend to execute, but rather to create an artificial appearance of supply or demand to improve the execution of their other orders. Layering involves placing orders on both the buy and sell sides of the market. Limit orders on one side of the market are entered without the intent of executing in order to benefit the orders on the other side that are intended to execute. Once the desired execution occurs, the remaining orders are cancelled . . . A successful layering strategy . . . is typically done by placing orders on the two sides of the market in an imbalanced manner.

(*Id.* ¶ 13-14.) He referred to the side on which fewer orders are made as the "Quiet" side and the side on which more orders are made as the "Loud" side. (*Id.* ¶ 14.) He also stated that "the Loud-side orders are characterized as non-bona fide because the layering trader *does not intend* those orders to execute." (*Id.* ¶ 14, n.9 (emphasis added).)

Hendershott then described his purported "methodologies for evaluating whether Avalon's Trade Data shows conduct *consistent with* layering." (*Id.* ¶ 15 (emphasis added).) Notably, he provided no opinion on whether any of Avalon's trading *actually was* layering. Instead, he explained that he "rel[ied] on three criteria to identify orders and trades *consistent with* layering." (*Id.* ¶ 17 (emphasis added).) He asserted that pursuant to his "methodology" there were 675,506 instances in which Avalon's order and execution activity was "*consistent with* layering over the period from December 2010 to September 2016." (*Id.* ¶ 11(b) (emphasis added).) He then described four additional analyses from which he asserted that the identified instances were consistent with layering and unlikely to have arisen unintentionally. (*Id.* ¶ 22.) Hendershot offers no opinion in his report, based on any of his methodologies, as to whether any of Avalon's trading activity *was* layering.

Avalon's Purported Intent

The SEC admits that Avalon hired "overseas traders" who traded "in the Avalon Account." (Plaintiff's Memorandum of Law in Support of the Motion, Dkt. No. 12 ("Pl. Br.") at 4.) The SEC submitted no evidence as to the identity of any of these individual traders who directed Avalon's trades, much less any evidence of their specific intent to either (1) place "non bona-fide" orders, *i.e.* to place orders that they did not intend to execute, or (2) manipulate the market, with regard to any purported "Layering Loop" identified by Hendershott.

Instead, the SEC relies on four emails for proof of the intent in executing the 675,506 purported instances of layering. (Pl. Br. at 6-8, 15.) Three of the emails are from Avalon's principal, Nathan Fayyer, to third parties (not either of the Lek Defendants) in which he references "layering." (*See* Declaration of Patrick A. McCluskey, dated March 7, 2017, Dkt. No. 16 ("McCluskey Decl.") Exs. 17-19.) The emails do not explain what Fayyer meant by "layering" or

provide context to determine his meaning. (*See id.*) None of the emails reference a specific "Layering Loop" series of trading orders identified by Hendershott. (*See id.*)

The fourth email includes a description of what the sender meant by "[l]ayering"; however, it is a solicitation email sent by an unknown party to Lek. (*Id.* Ex. 15.) Notably, the SEC ignores Lek's response to the email in which he states that "regulators have argued that your trading strategy 'layering' is manipulative and illegal. This is of concern to us, even though I do no not agree with their position." (*Id.* Ex. 15 at Z-001230516.) The SEC also ignores that the email chain does not end with the individual opening an account at LSC. (*See id.*)[1] The email does not reference a specific "Layering Loop" identified by Hendershott. (*See id.*)

ARGUMENT

To obtain a preliminary injunction to freeze assets, "the SEC 'must show either a likelihood of success on the merits, or that an inference can be drawn that the party has violated the federal securities laws.'" *Smith v. SEC*, 653 F.3d 121, 128 (2d Cir. 2011) (citation omitted). The SEC cannot merely rely on allegations to meet its burden. This showing must be "established by a preponderance of the evidence." *Anwar v. Fairfiled Greenwich Limited, et al.*, 728 F. Supp. 2d 462, 472 (S.D.N.Y. 2010) (citation omitted).

The SEC fails to show by a preponderance of the evidence that it is likely to succeed on any of its claims. To establish a claim under Section 10(b), the SEC must show that Avalon engaged in (1) "manipulative acts," (2) with "scienter," (3) "in connection with the purchase or sale of securities [and] furthered by the defendant's use of mails or any facility of a national securities exchange." *ATSI Communs., Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 101 (2d Cir. 2007). "Essentially the same elements are required under Section 17(a)(1)-(3)" as are required under 10(b)

[1] While the SEC alleges that this individual created an account at Avalon after this email, it identifies no evidence of this individual's specific intent with regard to any purported "Layering Loop."

with the exception that "no showing of scienter is required for the SEC to obtain an injunction under subsection[] [17](a)(3)." *Sec. Exch. Comm'n v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir. 1999) (citation omitted). "To assert a claim under Section 9(a)(2), a plaintiff must show (1) a series of transactions in a security creating actual or apparent trading in that security or raising or depressing the price of that security, (2) carried out with scienter and (3) for the purpose of inducing the security's sale or purchase by others." *Sharette v. Credit Suisse Int'l*, 127 F. Supp. 3d 60, 78 (S.D.N.Y. 2015) (internal quotation marks and citation omitted). Finally, liability under Section 20(a) requires a showing of: "(1) a primary violation by a controlled person; (2) control of the primary violator by the defendant; and (3) that the controlling person was in some meaningful sense a culpable participant in the primary violation." *Boguslavsky v. Kaplan*, 159 F.3d 715, 720 (2d Cir. 1998) (internal quotation marks and citation omitted).

The SEC fails to show by a preponderance of the evidence it is likely to succeed in proving that Avalon manipulated the securities markets and acted with scienter. The Motion should be denied.

I. THE SEC FAILS TO SHOW A LIKELIHOOD IT WILL BE SUCCESSFUL IN PROVING AVALON MANIPULATED THE SECURITIES MARKETS

The SEC proffers no evidence that Avalon manipulated the securities markets. Market manipulation under Section 10(b) of the Exchange Act "refers generally to practices, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors *by artificially affecting market activity*." *Sante Fe Indus. v. Green*, 430 U.S. 462 (1977) (emphasis added); *see Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976) (Manipulation "connotes intentional or willful conduct designed to deceive or defraud investors *by controlling or artificially affecting the price of securities*.") (emphasis added). A "Section 10(b) plaintiff [must] establish that the alleged manipulator injected 'inaccurate information' into the market or created a false impression of

market activity." *GFL Advantage Fund, Ltd. v. Colkitt*, 272 F.3d 189, 205 (3d Cir. 2001) "[C]ourts generally ask whether a transaction sends a false pricing signal to the market." *Wilson v. Merrill Lynch & Co.*, 671 F.3d 120, 130 (2d Cir. 2011) (citations and internal quotation marks omitted).

A. Avalon's Orders Were Legitimate and Conveyed no False Information to the Market

Avalon's purported actions, the legitimate placing, and in some cases, cancellation, of orders by its traders did nothing to artificially effect the market or in inject false information into the market. Because manipulation requires *artificially effecting* market activity or injection of *inaccurate information*, regular market conduct is not a violation absent "something more." *See ATSI,* 493 F.3d at 101 ("To be actionable as a manipulative act, short selling *must be willfully combined with something more* to create a false impression of how market participants value a security.") (emphasis added). "Mere sales do not inject false information into the market place, nor can a party inject false information into the marketplace . . . simply by selling stock on the open market." *Nanopierce Techs., Inc. v. Southridge Capital Mgmt.*, No. 02-cv-0767, 2008 U.S. Dist. LEXIS 34560, at *6 (S.D.N.Y. Apr. 21, 2008) (citing *ATSI,* 493 F.3d at 101). Avalon's traders placed orders and were willing to purchase or sell securities at the prices specified in those orders. The placing of these orders therefore injected no false information into the marketplace and did not constitute manipulative acts.

The SEC asserts, without support, that Avalon's traders "did not intend to have executed" the orders that were ultimately canceled. (Pl. Br. at 6). It derides these orders as "non-bona fide" (*id.*) and asserts that "[b]y placing non-bona fide orders that it did not intend to execute, Avalon injected a 'false pricing signal' into the marketplace about supply and demand" (*id.* at 14). The SEC's expert likens this behavior to "how a shill bidder enters fake bids to induce other bidders in an auction to bid higher." (Hendershott Rpt. ¶ 13.)

These conclusory statements are simply not true. Avalon injected nothing false into the market and there was nothing fake about its orders. The nature of the limit order process necessarily means that Avalon was willing to engage in trades at the order amounts submitted and necessarily would have been held to them if they had been accepted, which often happened. Each order characterized by the SEC as "non-bona fide" is an actual order that could be, and as the SEC's expert acknowledged, in many cases were, executed. (*See id.* ¶ 14.) Because Avalon's trades carried real consequences, there was no artificial or false signal to the market. *See Cohen v. Stevanovich*, 722 F. Supp. 2d 416, 424 (S.D.N.Y. 2010) (distinguishing naked short sales, which are not manipulative, from wash sales or similar transactions, which are manipulative, because in the latter, the party "give[s] the false appearance of actual trades *without assuming any actual risk*.") (emphasis added).

The SEC's attempts to ascribe an intent to cancel the so-called non-bona fide orders based on the ultimate cancellation of such orders falls flat when viewed in the context of the greater market. According to the SEC's own information, millions of orders are cancelled every day within one twenty thousandth of a second of being made (*see* Dollar Decl. Ex. C), yet the SEC would have the Court believe that the traders placing those orders intended such orders to be executed, while Avalon's traders, who cancelled orders after considerably longer time, never intended they be executed.

In addition, the SEC provides no evidence or explanation, and it is difficult to comprehend, how *any* cancelled orders could constitute a false signal in a market in which ninety-seven out of every hundred orders are cancelled. (*See id.* Ex. D) "[T]he market is not misled when a transaction's terms are fully disclosed." *Wilson*, 671 F.3d at 130. The participants in the securities markets cannot be misled by the cancellation of orders when they are well aware that orders could

be cancelled at any time and indeed were cancelled almost all of the time. Avalon's submission and subsequent cancellation of a live order, capable of being executed at any time, thus cannot serve to mislead the market.

The SEC does not dispute that the ultimately cancelled orders made by Avalon were live and subject to full execution at any time. Instead, it argues that these live orders constituted market manipulation. (*See* Pl. Br. at 14-15) In doing so, the SEC relies on *SEC v. Masri,* but that decision merely states that in certain circumstances, some open market activity undertaken with sufficient scienter can qualify as manipulation. 523 F. Supp. 2d 361, 369 (S.D.N.Y. 2007). This does not mean that *all* open market activity constitutes manipulation. *Masri* "involve[d] a specific type of conduct that sets it apart from a bare purchase or sale of stock on the open market." *Id.* at 369 (discussing marking the close). Here, the SEC's case hinges on cancelled orders, something that encompasses 97% of all orders made in these equities markets. (*See* Dollar Decl. Ex. D.) Such common activity is not set apart from the purchase or sale of stock on the market.[2]

[2] The SEC also seeks to rely on authorities concerning the commodities market. (*See* Pl. Br. at 15.) Such reliance is misplaced as the commodities market has a dramatically different statutory landscape with regard to layering. As part of the Dodd Frank Act in 2010, Congress amended the Commodity Exchange Act to add specific statutory language identifying and barring spoofing in the commodities market. *See* 7 U.S.C. § 6c(a)(5)(C) ("It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution)."). This statutory change, and not any inherent characteristic of spoofing, overnight turned the practice into a market manipulation in the commodities markets. Pre-Dodd Frank, spoofing-like activity such as stacking bids was found to not be misleading "[s]ince defendants were willing and able to follow through on all of the bids." *United States v. Radley*, 659 F. Supp. 2d 803, 815 (S.D. Tex. 2009). In spoofing cases brought after the statutory change, pre-Dodd Frank authorities were found "distinguishable because . . . Congress had not defined the challenged term in the statute. In contrast, § 6c(a)(5)(C) provides a definition of 'spoofing.'" *United States v. Coscia*, 100 F. Supp. 3d 653, 659 (N.D. Ill. 2015). Such authorities are inapplicable to securities actions because no definition of spoofing or layering was added to the securities laws and no specific prohibition on layering in securities trading exists.

B. Hendershott's Report Does Not Establish that Avalon Manipulated Markets

1. *Hendershott provides no opinion on whether the identified trading constitutes "layering"*

The SEC relies on Hendershott's identification of purported "Layering Loops" and the purported "non-bona fide" orders contained within them to support its assertion that Avalon manipulated the market. (Pl. Br. at 8, 14-15.) But Hendershott does not opine on whether any of the "Layering Loops" actually are circumstances of layering. (*See* Hendershot Rpt. ¶ 11(b) (merely opining that the identified loops were "consistent with layering").) Nor does he opine on whether any of the identified Quiet-side orders were "non-bona fide." (*See id.* ¶ 11.) As such his opinion cannot form the sole basis for a finding of likelihood of success in proving manipulation.

2. *Hendershott's purported "methodology" is without any basis and his conclusions should be given no weight*

Expert opinion must, among other things, be "based upon [a] reliable methodology." *SEC v. Tourre*, 950 F. Supp. 2d 666, 674 (S.D.N.Y. 2013). The proponent of expert testimony "has the burden to demonstrate that its expert witness satisfies th[is] criteria," *R.F.M.A.S., Inc. v. So*, 748 F. Supp. 2d 244, 249 (S.D.N.Y. 2010) (citation omitted). "[A]n expert's analysis must be 'reliable at every step,' and although '[a] minor flaw in an expert's reasoning . . . will not render an expert's opinion per se inadmissible,' exclusion is nevertheless warranted whenever 'the flaw is large enough that the expert lacks 'good grounds' for his or her conclusions.'" *Compania Embotelladora Del Pacifico, S.A. v. Pepsi Cola Co.*, 650 F. Supp. 2d 314, 319 (S.D.N.Y. 2009) (quoting *Amorgianos v. Amtrak*, 303 F.3d 256, 267 (2d Cir. 2002)). Because Hendershott's selection of standards in his methodology is entirely arbitrary, he "'lacks 'good grounds' for his . . . conclusions,'" which should not be considered. *Id.*; *see Tourre*, 950 F. Supp. 2d at 679 (rejecting an expert's testimony because "there is no methodologically sound basis" upon which the expert could offer his opinions).

II. THE SEC FAILS TO SHOW A LIKELIHOOD IT WILL BE SUCCESSFUL IN PROVING AVALON'S TRADERS ACTED WITH THE NECESSARY SCIENTER

If Avalon's trades could constitute manipulation, the SEC fails to show a likelihood of success in proving the scienter required to prevail on its claims. Pursuant to the authority the SEC relies on in its Motion, "in order to impose liability for an open market transaction, the SEC must prove that *but for* the manipulative intent, the defendant would not have conducted the transaction." *Masri*, 523 F. Supp. 2d at 372 (emphasis in original). The SEC's evidence of scienter does not approach this high standard.

A. The SEC Provides No Evidence of Any Avalon Trader's Intent

As the SEC acknowledges, Avalon's trades were planned and performed by "overseas traders" (Pl. Br. at 4), but it proffers no evidence of any individual trader's specific intent to manipulate the securities markets through any of the purported "Layering Loops" identified by Hendershott. Indeed, the SEC does not even attempt to identify these individuals. Absent any evidence of these individuals' intent, the SEC cannot show a likelihood of success in establishing the scienter necessary to succeed on its claims.

B. The Trading Activity Identified by the SEC Cannot Alone Show Scienter

Absent any evidence to support scienter on the identified trades, the SEC relies on the underlying trades themselves to establish the required scienter. This is simply insufficient to meets its burden of showing a likelihood of success. "[I]t is unreasonable 'to infer unlawful intent from lawful activity alone.'" *GFL Advantage*, 272 F. 3d at 207 (citation omitted). "A strong inference of scienter is not raised by alleging that a legitimate investment vehicle . . . creates an opportunity for profit through manipulation." *ATSI*, 493 F.3d 87 at 104.

The SEC relies on authority that suspicious features of open-market transactions can support a finding of manipulative intent to argue that scienter is "apparent from the nature of

layering itself [because it] involves placing orders (the non-bona fide orders) whose purpose is to mislead other market participants." (Pl. Br. at 15) This circular argument cannot support a finding of scienter. The SEC assumes, without any evidence, that Avalon's traders did not want certain orders to execute and brands these orders as "non-bona fide." Based on this assumed intent, the SEC argues that intent as to manipulation can be assumed. Two assumptions do not make the evidentiary proof required to establish a likelihood of success necessary to sustain its Motion. Avalon's cancelled orders constitute lawful and entirely regular activity that cannot alone create an inference of scienter.

C. The Emails Proffered by the SEC Do Not Establish Scienter

The SEC proffers no direct evidence of scienter as to any one trade or the entirety of the trades at issue. Instead, the SEC relies on a handful of out of context and mischaracterized email exchanges for proof of Avalon's intent in executing the 675,506 purported instances of layering. (Pl. Br. at 6-8, 15.)

The three emails to which employees of Avalon were a party contain no context to infer what the authors meant or what the recipients interpreted from the references to "layering." (McCluskey Decl. Exs. 17-19.) Nor do they refer to any particular trade or series of trades. (*Id.*) The sole email that includes a description of what the sender meant by "layering" was a solicitation email from an unknown party to Lek, to which Lek responded that "regulators have argued that your trading strategy 'layering' is manipulative and illegal. This is of concern to us, even though I do no not agree with their position." (*Id.* Ex. 15 at Z-001230516.) These emails do not suffice to show a likelihood of success on scienter, and the Motion should be denied.

CONCLUSION

For the foregoing reasons, the Lek Defendants respectfully request that the Court deny the Motion in its entirety.

Dated: New York, New York
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