IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REVEREND FATHER EMMANUEL LEMELSON, *Plaintiff*, v. SECURITIES AND EXCHANGE COMMISSION, *Defendant*.	:	No. 24-cv-2415 (JEB)

PLAINTIFF'S APPLICATION FOR A PRELIMINARY INJUNCTION

Plaintiff, the Reverend Father Emmanuel Lemelson, respectfully applies pursuant to Fed. R. Civ. P. 65(a) and Local Rule 65.1(c) for a preliminary injunction that would order Defendant Securities and Exchange Commission ("SEC") to suspend its unconstitutional and unlawful "follow-on" administrative enforcement prosecution against Lemelson until this Court rules on the merits of Lemelson's constitutional and other objections to that prosecution. Plaintiff supports this application with his contemporaneously filed First Amended Complaint, the attached memorandum of points and authorities, and the attached Declaration of Douglas S. Brooks.

Pursuant to Local Rule 7(m), undersigned counsel consulted by email with counsel for SEC between December 6, 2004 and December 12, 2024, in a good-faith effort to determine whether SEC opposes the relief sought by this application and, if so, to narrow the areas of disagreement. After such consultation, counsel for SEC advised that SEC would object to the relief sought, and the parties agreed that they were unable to narrow the areas of disagreement.

WHEREFORE, for the reasons stated in the First Amended Complaint and the attached memorandum and declaration, Plaintiff Lemelson respectfully requests that the Court grant his application for a preliminary injunction.

A proposed order is attached.

December 17, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that the foregoing motion, the attached memorandum of points and authorities, and the attached declaration (including exhibits) were filed on December 17, 2024 via this Court's electronic filing system. Undersigned counsel hereby certifies that the foregoing was served on all counsel of record via the notification of docket activity generated by this filing.

/s/ Russell G. Ryan
Russell G. Ryan

Counsel for Plaintiff

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REVEREND FATHER EMMANUEL LEMELSON, *Plaintiff*, v. SECURITIES AND EXCHANGE COMMISSION, *Defendant*.	:	No. 24-cv-2415 (JEB)

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF HIS APPLICATION FOR A PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

Plaintiff, the Reverend Father Emmanuel Lemelson, respectfully submits this Memorandum of Points and Authorities in support of his application, pursuant to Fed. R. Civ. P. 65(a) and LCvR 65.1(c), for a preliminary injunction that would order Defendant Securities and Exchange Commission ("SEC") to suspend its unconstitutional and unlawful "follow-on" administrative enforcement prosecution against Lemelson until this Court rules on the merits of Lemelson's constitutional and other objections to that prosecution.[1]

INTRODUCTION AND SUMMARY

As detailed in Lemelson's First Amended Complaint (cited herein as "FAC ¶ __), SEC's follow-on administrative prosecution against Lemelson is a caricature of structural adjudicative bias that deprives him of his right to due process of law under the Fifth Amendment to the U.S. Constitution. SEC's prosecution also violates Articles II and III of the Constitution and the separation of powers; Lemelson's rights under the Fifth and Seventh Amendments to have a jury decide his fate; and well-established principles of *res judicata*. Lemelson is substantially likely to succeed on at least several of these claims. Moreover, he will suffer irreparable harm in the absence of the requested preliminary injunction, and both the balance of equities and the public interest tip decidedly in favor of granting injunctive relief. Accordingly, the Court should grant the requested preliminary injunction.[2]

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[1] Pursuant to Local Rule 7(m), undersigned counsel consulted by email with counsel for SEC between December 6, 2024 and December 12, 2024, in a good-faith effort to determine whether SEC opposes the relief sought by this application and, if so, to narrow the areas of disagreement. After such consultation, counsel for SEC advised that SEC would object to the relief sought, and the parties agreed that they were unable to narrow the areas of disagreement.

[2] The Court has jurisdiction under Article III, § 2 of the United States Constitution and 28 U.S.C. §§ 1331, 1346, 1367, 1651, and 2201. *See also Free Enter. Fund v. PCAOB*, 561 U.S. 477, 489-91 (2010); *Axon Enter., Inc. v. FTC* and *SEC v. Cochran*, 598 U.S. 175, 180 (2023) ("*Axon/Cochran*").

RELEVANT FACTS

A. The Parties

Lemelson is an ordained Greek Orthodox priest who also manages an investment fund called The Spruce Peak Fund, LP, which *Hedge Fund Research* has ranked among the top-performing equity funds. *See* FAC ¶ 3. Lemelson's investment research and analysis have been cited in a wide range of business media publications, including *The Wall Street Journal*, Bloomberg, CNBC, Fox Business News, *Fortune*, *Forbes*, *Barron's*, *Business Insider*, the *International Business Times*, Reuters, MarketWatch, and TheStreet.com. *Id.*

Defendant SEC is an agency of the U.S. Government headquartered in Washington, DC. *Id.* ¶ 4.

B. SEC's "Follow-On" Administrative Prosecutions

Section 203(f) of the Investment Advisers Act of 1940 (the "Advisers Act") empowers SEC, among other things, to bar or suspend a person from working in the securities industry if it finds, "on the record after notice and opportunity for hearing," that such a bar or suspension is "in the public interest" and that the person has been convicted of a serious crime or been enjoined by a court from, among other things, "engaging in or continuing any conduct or practice … in connection with the purchase or sale of any security." 15 U.S.C. § 80b-3(f) (incorporating by reference § 80b-3(e)(4)). Using this power and similar power conferred by a parallel provision of the Securities Exchange Act of 1934 (codified at 15 U.S.C. § 78o(b)(6)), SEC initiates scores of such "follow-on" administrative prosecutions every year—sometimes more than two hundred. FAC ¶ 5; *see also* Addendum to SEC Press Rel. No. 2024-186, at 2 (Nov. 22, 2024), *available at* https://www.sec.gov/newsroom/press-releases/2024-186.

In these SEC administrative follow-on prosecutions, the deck is stacked decidedly against the accused and in SEC's own favor. FAC ¶ 6; *cf. SEC v. Jarkesy*, 144 S. Ct. 2117, 2141 (2024) (Gorsuch, J., concurring) ("Going in, then, the odds were stacked against Mr. Jarkesy."). The cases are ultimately adjudicated by SEC's commissioners, sometimes after an initial decision is rendered by one of SEC's hand-picked employees called an administrative law judge ("ALJ"). FAC ¶ 6; *see generally Jarkesy*, 144 S. Ct. at 2125–26 (citing 15 U.S.C. § 78d-1); 17 C.F.R. §§ 201.200 *et seq*. No jury or independent Article III judge is involved; SEC holds its staff prosecutors to only the featherweight "preponderance of evidence" burden of proof; and ordinary rules of evidence are inapplicable. FAC ¶ 6; *see generally* Joseph A. Grundfest, *Fair or Foul?: SEC Administrative Proceedings and Prospects for Reform Through Removal Legislation*, 85 FORDHAM L. REV. 1143, 1145 (2016); Gideon Mark, *SEC and CFTC Administrative Proceedings*, 19 U. PA. J. CONST. L. 45, 63–65 (2016); Ryan Jones, *The Fight Over Home Court: An Analysis of the SEC's Increased Use of Administrative Proceedings*, 68 SMU L. REV. 507, 509 (2015).[3]

Courts have repeatedly instructed SEC to consider a range of case-specific factors when determining whether imposition of a bar or suspension in any given case is "in the public interest." *See, e.g.*, *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).[4] As a practical matter, however, a bar or suspension is a foregone conclusion in virtually all SEC follow-on prosecutions. According to exhaustive empirical analysis by a leading securities

[3] Despite the complexities of the securities laws and the gravity of the potential sanctions, impecunious SEC respondents have no right to government-compensated counsel to assist in their defense. Unsurprisingly, a disproportionately large percentage present no defense and are barred by either consent or default.

[4] The D.C. Circuit has frequently cited *Steadman* when reviewing SEC sanctions, but has not explicitly adopted those factors. *See, e.g.*, *PAZ Secs., Inc. v. SEC*, 566 F.3d 1172, 1175 (D.C. Cir. 2009) ("Although the factors listed in *Steadman* will often be relevant … we do not require the Commission to explain itself by reference to 'some mechanical formula.'" (quoting *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1113 (D.C. Cir. 1988)).

law scholar, SEC invariably imposes a bar or suspension in *all* follow-on prosecutions except the small handful in which SEC is unable to locate and serve the respondent, or where the predicate court injunction or criminal conviction is vacated. Urska Velikonja, *Reporting Agency Performance: Behind the SEC's Enforcement Statistics*, 101 CORNELL L. REV. 901, 963, 967 (2016). Consistent with that analysis, one of SEC's own ALJs once observed that "[f]rom 1995 to [March 2016], there have been over forty-six litigated follow-on proceedings based on antifraud injunctions or convictions in which the Commission issued opinions, and all of the respondents were barred—forty-three unqualified bars and three bars with the right to reapply after five years." *In re Maher F. Kara*, SEC Initial Decision Rel. No. 979, 2016 WL 1019197, at *7 (Mar. 15, 2016). As one Supreme Court Justice recently noted, "[e]ven the 1972 Miami Dolphins would envy that type of record." *Axon/Cochran*, 598 U.S. at 197 n.1 (Thomas, J., concurring) (quoting Ninth Circuit opinion below in that case).

C. SEC's Follow-On Prosecution Against Lemelson

Well beyond SEC's documented predictability in ordering follow-on industry bars in general, Lemelson has uniquely personal reasons not to trust that SEC's adjudication of his case will be fair and impartial. That's because SEC has been in an openly aggressive and adversarial relationship with Lemelson for much of the past decade. FAC ¶ 8; *see also*, *SEC v. Lemelson*, No. 1:18-cv-11926, 2024 WL 3507495, at *1 (D. Mass. July 23, 2024) (characterizing the parties' ongoing litigation as "long-running, hard-fought, [and] bitter"). SEC launched an intrusive and persecutive investigation against Lemelson in or around 2015 after a pharmaceutical company called Ligand Pharmaceuticals, Inc. complained about his withering public criticism of the company the year before. FAC ¶ 8; *see also SEC v. Lemelson*, 532 F. Supp. 3d 30, 36-37 (D. Mass. 2021) (describing repeated communications between Ligand's counsel and SEC staff regarding

Lemelson). In September 2018, just months after Lemelson sent an open letter to Congress accusing SEC of incompetence and financial illiteracy, the agency sued Lemelson in the United States District Court for the District of Massachusetts, leveling incendiary allegations that Lemelson had engaged in market manipulation and other nefarious misconduct. FAC ¶ 8; Declaration of Douglas A. Brooks ("Brooks Decl.") Exh. 1. Among other baseless allegations, SEC accused Lemelson of defrauding *his own investors*—a recklessly false claim that a federal jury eventually rejected, but which by that time had caused Lemelson irremediable reputational and financial harm. FAC ¶ 8. SEC's lawsuit demanded millions of dollars in penalties and forfeitures against Lemelson. *Id.*; *see also SEC v. Lemelson*, 596 F. Supp. 3d 227, 230 (D. Mass. 2022), *aff'd*, 57 F.4th 17 (1st Cir. 2023).

Immediately upon filing its lawsuit against Lemelson, SEC also embarked on a parallel media campaign to further malign him. FAC ¶ 9. On September 12, 2018, the agency issued a press release emblazoned with the headline "SEC Charges Hedge Fund Adviser With Short-and-Distort Scheme." Brooks Decl. Exh. 2, *also available at* https://www.sec.gov/newsroom/press-releases/2018-190). The press release, which remains posted on SEC's public website today, includes links not only to SEC's original complaint in the case but also to an "investor alert" that ominously warns its readers about "fraudsters who may attempt to manipulate share prices by using social media to spread false or misleading information about stocks." *Id.; see also* SEC, *Updated Investor Alert: Social Media and Investing—Stock Rumors*, Nov. 15, 2015, *available at* https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/updated-1. The next day, SEC issued a separate "litigation release," which also remains posted on SEC's website to this day, which repeated many of the same derogatory statements included in its press release the day before. Brooks Decl. Exh. 3, *also available at*

https://www.sec.gov/enforcement-litigation/litigation-releases/lr-24267. These two public releases had the predictable effect of prompting media reports that dutifully repeated SEC's allegations, thereby inflicting further reputational and financial harm on Lemelson.[5]

Three years later, a jury ultimately rejected most of SEC's charges, including all of its most serious charges alleging that Lemelson engaged in a fraudulent or manipulative scheme and that he allegedly defrauded his own investors either intentionally or negligently. Brooks Decl. Exh. 4. The jury found that only three isolated sentences, or sentence fragments—two from Lemelson's 56 pages of written commentary (both of which related to a different, non-public company other than Ligand), and one from among four unscripted online interviews he gave about Ligand—contained any purportedly "untrue" statements or omissions. *Id.*

SEC's Massachusetts federal court prosecution against Lemelson has been hostile and contentious from the start—through discovery, numerous motions, trial, appeal, and an unsuccessful petition for certiorari. FAC ¶ 10; *see SEC v. Lemelson*, 57 F.4th 17 (1st Cir. 2023), *cert. denied*, 144 S. Ct. 486 (2023). The litigation is still ongoing because Lemelson subsequently sought to recover his attorneys' fees and costs under the Equal Access to Justice Act ("EAJA"). FAC ¶ 10. As explained in his EAJA motion, an award of fees and costs is warranted because the Massachusetts jury overwhelmingly rejected SEC's charges against Lemelson and because the Massachusetts district court ultimately awarded SEC only a small fraction of the relief the agency unreasonably demanded in its complaint and in its post-trial pleadings. *Id.* The Massachusetts

[5] *See, e.g.*, Christine Idzelis, *Priest, Hedge Fund Manager Charged With Fraudulent Short-Selling Scheme*, Institutional Investor, Sept. 13, 2018; Alison Noon, *SEC Claims Mass. Broker Lied To Short Drug Co. By $1.3M*, Law360, Sept. 12, 2018; William Sprouse, *Hedge Fund Adviser Charged In 'Short-and-Distort' Scheme*, CFO.com, Sept. 13, 2018; Craig S. Warkol, Marc E. Elovitz and Brian T. Daly, *Short-and-Distort Scheme: SEC charges hedge fund manager*, Hedge Fund Journal, Oct. 2018.

district court denied Lemelson's EAJA motion in July 2024, despite finding that Lemelson was a "prevailing party" in the case within the meaning of EAJA. *Id.*; *see Lemelson*, 2024 WL 3507495. Lemelson has appealed that decision to the First Circuit. FAC ¶ 10; *see also* Appellants' Opening Brief, *SEC v. Lemelson*, No. 24-1754 (1st Cir., filed Nov. 27, 2024).

Although SEC overwhelmingly lost its case before the Massachusetts federal jury and obtained only a small fraction of the relief it demanded, the Massachusetts district court entered a final judgment that vaguely and summarily enjoined Lemelson "from violating Section 10(b) of the [Securities] Exchange Act and [SEC] Rule 10b-5 for a period of five years" while ordering him to pay a $160,000 civil penalty and no disgorgement. Brooks Decl. Exh. 8. In doing so, the court rebuffed SEC's outlandish demand for a *permanent*, *lifelong* injunction and *more than $2.6 million* in penalties and disgorgement. *Id.*; *see SEC v. Lemelson*, 596 F. Supp. 3d at 234–48.

SEC could have requested that the Massachusetts district court judgment include an order barring, suspending, or enjoining Lemelson from participating in all or part of the securities industry. 15 U.S.C. § 78u(d)(5) (empowering SEC to seek, and court to grant, "any equitable relief that may be appropriate or necessary for the benefit of investors"); *see also id.* §§ 78u (d)(1), 80b-9 (d). But SEC did not seek such relief, thereby forever forfeiting its right to do so under well-established principles of *res judicata*. FAC ¶ 12; *see generally Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) ("A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.") Upon information and belief, SEC made that deliberate tactical decision based on its erroneous assumption that it could unilaterally impose such sanctions in its own follow-on administrative prosecution, thereby avoiding the need to prove to a neutral and independent Article III district court that this additional punishment was necessary or appropriate. FAC ¶ 12.

Throughout the contentious Massachusetts federal court prosecution, SEC has filed numerous pleadings, motions, and other documents that have repeatedly maligned Lemelson and effectively demonized him as not just a fraudster but a religious charlatan too. *Id.* ¶ 13. SEC has also continued its defamatory media campaign against Lemelson. *Id.* ¶ 14. Even after the Massachusetts district court jury exonerated Lemelson of most of SEC's charges—including all charges alleging manipulation or a scheme to defraud—SEC issued another false and disparaging press release headlined "SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme." *Id.*; *see* Brooks Decl. Exh. 5. While boasting about SEC's purported "win"—and inexplicably repeating the agency's allegations of manipulation and scheming despite the jury having unequivocal *rejected* those very charges—the press release made *no mention whatsoever* of the jury's rejection of most of SEC's case.[6] Ironically, SEC routinely sues companies and individuals, including Lemelson, for far less egregious (and even unintentional) alleged omissions. FAC ¶ 14.

On November 8, 2018, three days after the jury returned its verdict, SEC issued a separate litigation release that again claimed victory without acknowledging the jury's rejection of most of its claims. Brooks Decl. Exh. 7, *also available at* https://www.sec.gov/enforcement-litigation/litigation-releases/lr-24267. That litigation release, which links back to SEC's September 13, 2018 litigation release, remains posted on SEC's public website as of today.

In short, through its words and actions over many years, SEC has repeatedly betrayed an intense, unrelenting contempt for Lemelson and a willingness to make false and incendiary public

[6] SEC changed the headline only after Lemelson's counsel challenged its flagrant misrepresentation of the jury's verdict. SEC has never corrected the body of the press release to acknowledge the jury's rejection of most of its charges. *See* Brooks Decl. Exh. 6, *also available at* https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25353.

allegations about him. FAC ¶ 18. Yet despite this palpable disdain for its decade-long nemesis, despite its baseless public allegations against him, despite its misleading and incendiary press releases falsely maligning him, and despite its still-ongoing Massachusetts federal court litigation against him, SEC now sits in judgment as the supposedly impartial adjudicator of the follow-on prosecution it launched against him in April 2022, through which it threatens to bar or suspend Lemelson from the securities industry. *Id.* ¶ 19; *see* Brooks Decl. Exh. 10, *also available at* https://www.sec.gov/files/litigation/admin/2022/ia-6000.pdf. SEC launched that follow-on prosecution—which arises from the same facts and circumstances as SEC's Massachusetts federal court prosecution—just weeks after the Massachusetts district court entered its final judgment predominantly in Lemelson's favor.[7]

In its follow-on prosecution against Lemelson, SEC asserts as the relevant predicate for a bar or suspension the portion of the Massachusetts district court judgment that enjoined Lemelson, for five years, from violating Section 10(b) of the Securities Exchange Act and SEC Rule 10b-5. Brooks Decl. Exh. 10, at 1-2. SEC staff prosecutors in the follow-on administrative case are the very same SEC attorneys who advised and represented SEC as the agency's lead counsel in the Massachusetts federal court prosecution. FAC ¶ 20. Upon information and belief informed by established SEC practice, these SEC attorneys have likely engaged in multiple *ex parte* attorney-client communications with the SEC commissioners about Lemelson's case since at least September 2018. *Id.*; *see also* SEC ENFORCEMENT MANUAL § 2.5 (Nov. 28, 2017) (describing, among other things, the case-specific *ex parte* "action memorandum" submitted by SEC staff prosecutors to SEC commissioners, and related case-specific *ex parte* "closed meetings" held

[7] Pleadings filed in SEC's follow-on prosecution of Lemelson are available at www.sec.gov/enforcement-litigation/administrative-proceedings/3-20828.

between SEC staff prosecutors and SEC commissioners, before authorization and commencement of public enforcement actions and certain subsequent events), *available at* www.sec.gov/divisions/enforce/enforcementmanual.pdf. As a result, SEC has not only an intense and obvious prejudice against Lemelson but also the undeniable appearance of bias *in favor of* its own trusted lawyers, who are now appearing before SEC and its ALJ as lead prosecutors of the follow-on case after advising SEC, *ex parte*, in connection with the parallel Massachusetts federal court litigation against Lemelson since at least 2018. FAC ¶ 21.

SEC's administrative follow-on prosecution against Lemelson remains pending before the agency, as-yet undecided. FAC ¶ 22. The parties submitted briefs on the merits of SEC staff prosecutors' motion for summary disposition more than two years ago, shortly before SEC separately filed its merits brief in the First Circuit opposing Lemelson's appeal from the Massachusetts district court judgment. *Id.*

On September 20, 2024, after filing his original complaint in this Court—and in an effort to avoid burdening this Court with a motion for a preliminary injunction—Lemelson asked SEC to stay its follow-on prosecution pending the outcome of this case. *Id.* ¶ 23; *see* Brooks Decl. Exh. 11, *also available at* https://www.sec.gov/files/litigation/apdocuments/3-20828-2024-09-20-motion.pdf. SEC issued an order denying Lemelson's stay request on October 23, 2024, just days before expiration of SEC's deadline to answer Lemelson's complaint in this Court. Brooks Decl. Exh. 12 (SEC order denying stay motion), *also available at* https://www.sec.gov/files/litigation/opinions/2024/ia-6755.pdf. In its order, SEC expressly acknowledged Lemelson's stated intention to seek injunctive relief from this Court absent the requested stay. *Id.* at 2.

In the same order, SEC also denied its prosecutors' long-neglected motion for summary disposition and ordered that a hearing be convened, superintended, and initially adjudicated by one of its ALJs. *Id*. at 2-4. That hearing is currently scheduled to begin on July 7, 2025. Brooks Decl. Exh. 13, *also available at* https://www.sec.gov/files/alj/aljorders/2024/ap-6912.pdf.[8]

APPLICABLE LEGAL STANDARD

The Federal Rules of Civil Procedure allow a court to issue a preliminary injunction after notice has been provided to the adverse party. Fed. R. Civ. P. 65(a).[9] A preliminary injunction is appropriate if the movant demonstrates: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that a preliminary injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014); *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011). Where, as here, the federal government is the opposing party, the balance of equities and public interest factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009); *Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016). Moreover, courts in the D.C. Circuit evaluate the four preliminary injunction factors on a "sliding scale"—thus, if the movant "makes an unusually strong showing on one of the factors, then it does

[8] Lemelson's administrative case may be the only one currently pending before any of SEC's ALJs. According to a semi-annual report posted on SEC's website on October 31, 2024, the Commission didn't assign a single administrative enforcement matter to any of its ALJs between April 1, 2023 and September 30, 2024, and as of September 30, 2024 there were no enforcement cases pending before any of those ALJs. *See* SEC Exchange Act Rel. No. 101485, "Report on Administrative Proceedings for the Period April 1, 2024 through September 30, 2024," at 2 (October 31, 2024), *available at* https://www.sec.gov/files/34-101485.pdf.

[9] As previously noted, Lemelson provided SEC with advance notice of his intention to seek a preliminary injunction and an opportunity for SEC to moot the need for such relief by staying its administrative follow-on proceeding pending the outcome of this case. In declining to do so, SEC expressly acknowledged Lemelson's stated intention to seek injunctive relief from this Court in the absence of a stay. *See* Brooks Decl. Exh. 12, at 2.

not necessarily have to make as strong a showing on another factor." *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291–92 (D.C. Cir. 2009).

As demonstrated below, Lemelson is entitled to a preliminary injunction under this well-settled standard.

ARGUMENT

The Court should issue a preliminary injunction that orders SEC to suspend its follow-on administrative prosecution against Lemelson until this Court rules on the merits of Lemelson's constitutional and other objections to that prosecution. Lemelson has a substantial likelihood of succeeding on the merits of at least several of his constitutional claims, and he will suffer irreparable harm if SEC's administrative prosecution is allowed to continue. Moreover, the balance of equities and the public interest weigh decidedly in favor of granting the requested injunctive relief.

I. LEMELSON IS SUBSTANTIALLY LIKELY TO SUCCEED ON THE MERITS OF HIS CONSTITUTIONAL CLAIMS

Although Lemelson is confident that all of the claims in his First Amended Complaint are meritorious and likely to succeed, three of those claims—SEC's usurpation and relocation of "judicial" power in violation of Article III (Claim 2), SEC's denial of Lemelson's right to a jury trial in violation of the Fifth and Seventh Amendments (Claim 3), and the excessive tenure protection enjoyed by SEC's ALJ in violation of Article II (Claim 4)—stand out as especially likely to succeed and especially guaranteed to inflict "here-and-now" irreparable harm on Lemelson if SEC is not enjoined.[10]

[10] As Plaintiff acknowledges in his First Amended Complaint, his due process claim based on the palpable hostility and bias of his now-adjudicator (Claim 1) is in some tension with one of the holdings of the D.C. Circuit in *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1104–08 (D.C.

A. Article III and Jury Trial Claims (Claims 2 and 3)

Lemelson's Article III and jury-trial claims are both strongly supported by the Supreme Court's recent decision in *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024), which involved the very same SEC in-house, non-jury administrative adjudication system that Lemelson is now challenging. Article III of the Constitution vests the judicial power in courts, not agencies within the executive branch. U.S. Const., art. III § 1. That power extends to "*all* Cases, in Law and Equity" that arise under the Constitution and laws of the United States—not some of those cases, or even most of them—as well as "Controversies to which the United States shall be a Party." U.S. Const., art. III § 2 (emphasis added). But SEC is not a court, and neither the SEC commissioners nor its ALJ are Article III judges. Nor are they independent or neutral adjudicators. Nor do they enjoy life tenure. Indeed, like SEC's staff prosecutors, its ALJ is a paid employee-agent of SEC, and thus is wholly subservient to the same SEC commissioners who prosecuted Lemelson in the parallel federal court case in the District of Massachusetts and the First Circuit. *See generally Jarkesy*, 144 S. Ct. at 2140 (Gorsuch, J., concurring) (SEC ALJs "remain servants of the same master—the very agency tasked with prosecuting individuals like Mr. Jarkesy").

In *Jarkesy*, the Court confirmed that "[t]he Constitution prohibits Congress from 'withdraw[ing] from judicial cognizance any matter which, from its nature, is the subject of a suit a common law,'" because "[o]nce such a suit 'is brought within the bounds of federal jurisdiction,' an Article III court must decide it, with a jury if the Seventh Amendment applies." *Id.* at 2131 (second alteration in original) (internal citations omitted). Justice Gorsuch, in his concurring opinion (joined by Justice Thomas), elaborated that "because it was 'the peculiar province of the

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Cir. 1988). His res judicata claim (Claim 5) is not a constitutional claim and thus presents a less acute threat of irreparable harm.

judiciary' to safeguard life, liberty, and property, due process often meant *judicial* process." *Id.* at 2145 (emphasis in original) (quoting 1 St. George Tucker, Blackstone's Commentaries, Editor's App. 358 (1803)).

> That is, if the government sought to interfere with those rights, nothing less than "the process and proceedings of the common law" had to be observed before any such deprivation could take place. … In other words, "'due process of law' generally implie[d] and include[d] … *judex* [a judge], regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings." … This constitutional baseline was designed to serve as "a restraint on the legislative" branch, preventing Congress from "mak[ing] any process 'due process of law,' by its mere will."

Id. (alterations in original) (citations omitted).

As in *Jarkesy*, SEC's administrative prosecution against Lemelson invokes federal power to threaten his liberty and property rights—to wit, his chosen profession and means of livelihood—thus rendering it not just a suit at common law but a quasi-criminal case seeking a sanction the D.C. Circuit has aptly called "the securities industry equivalent of capital punishment." *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013) (quoting *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007)); *accord SEC v. Gentile*, 939 F.3d 549, 566 (3d Cir. 2019). The Framers understood the concept of a suit at common law "in contradistinction to equity, and admiralty, and maritime jurisprudence," thus embracing "all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume." *Parsons v. Bedford*, 3 Pet. 433, 446–47 (1830), *quoted in Jarkesy*, 144 S. Ct. at 2128. Because SEC's administrative prosecution is not of equity or admiralty jurisdiction, it can lawfully be prosecuted only in an Article III court of law.

Jarkesy also confirms Lemelson's right to a trial by jury rather than a hearing and decision by SEC's own employee-agent. Addressing the specific question of "whether the Seventh Amendment permits the SEC to compel respondents to defend themselves before the agency rather than before a jury in federal court," the Court held that SEC was *not* permitted to do so. *See*

Jarkesy, 144 S. Ct. at 2125-2127. "The right to trial by jury," the Court explained, "is 'of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right' has always been and 'should be scrutinized with the utmost care.'" *Id.* at 2128 (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)). Applying that scrutiny to SEC administrative prosecutions, the Court held that when SEC seeks to penalize an alleged securities-law violator, it must do so in an Article III court where the accused violator has a right to a jury trial. *Id.* at 2127–39.

The answer should be no different here. SEC's non-jury administrative prosecution of Mr. Jarkesy and his firm threatened them with industry bars, monetary penalties, and other sanctions based on allegations of securities fraud. *See id.* at 2127. Here too, SEC threatens equally punitive sanctions based on what SEC has claimed to constitute securities fraud. That a jury overwhelmingly rejected SEC's fraud charges makes no difference on the jury trial issue, because SEC's ongoing administrative prosecution threatens to punish him again by stripping him of his liberty and property interests in continuing his chosen profession and his chosen means of livelihood.

It is no answer, as we anticipate SEC will argue, that SEC's administrative prosecution threatens Lemelson with only non-monetary sanctions that purportedly resemble remedies in equity rather than in law. Article III vests in courts the power to decide "all" cases and controversies in both "Law and Equity," requiring *both* forms of action to be prosecuted in real courts rather than in executive branch tribunals. The notion of executive branch tribunals dispensing remedies in equity is an oxymoron, especially in cases where the agency itself is both the prosecutor and the ultimate adjudicator. In any event, the punitive, non-monetary sanctions threatened against Lemelson in SEC's administrative prosecution—what the D.C. Circuit has

described as the securities industry equivalent of capital punishment—go well beyond compensating any allegedly wronged party, or otherwise restoring the status quo, and thus are properly considered penalties rather than remedial or equitable relief. *See Proffitt v. FDIC*, 200 F.3d 855, 860–61 (D.C. Cir. 2000) (FDIC expulsion order is a penalty); *Johnson v. SEC*, 87 F.3d 484, 491 (D.C. Cir. 1996) (SEC suspension is a penalty). And because those threatened sanctions "are designed to punish and deter, not to compensate," they are, like monetary penalties, "a type of remedy at common law that could only be enforced in courts of law." *Jarkesy*, 144 S. Ct. at 2130 (quoting *Tull v. United States*, 481 U.S. 412, 422 (1987)).

Nor does SEC's follow-on administrative prosecution of Lemelson fit within whatever vestige remains of the "public rights" doctrine. The Supreme Court in *Jarkesy* emphasized the extremely narrow scope of that "arcane," "confusing," and oft-criticized exception to the requirement that cases and controversies be adjudicated in Article III courts, with jury trials if required by the Seventh Amendment. 144 S. Ct. at 2133 (citation omitted); *see also id.* at 2138 n.4 (noting scholars "have often simply ignored" the leading case applying the public rights doctrine or "offered nothing but a variety of criticisms" of that case). According to the Court, this narrow exception has historically been limited to, at most, cases involving revenue collection, immigration, foreign commerce, tariffs, and Indian tribes. *Id.* at 2132–33. The Court in *Jarkesy* further noted that the exception "has no textual basis in the Constitution," *id.* at 2134, and that even when cases fall within the exception, "the presumption is in favor of adjudication in Article III courts," *id.* at 2134 (citation omitted).

SEC's prosecution of Lemelson threatens his private liberty and property rights; it bears no resemblance to a "public rights" case. For these reasons, Lemelson is likely to succeed on his claims that SEC's administrative prosecution seeks to usurp judicial power and relocate it to the

Executive Branch in violation of Article III of the Constitution (Claim 2) and that it violates his Fifth and Seventh Amendment rights to a jury trial in an Article III court (Claim 3).

B. ALJ Tenure-Protection Claim (Claim 4)

Lemelson is also likely to succeed on his claim that the ALJ assigned to adjudicate his administrative prosecution is protected by multiple levels of tenure protection in violation of Article II of the Constitution. SEC cannot dispute that its ALJ is an "officer" of the United States for constitutional purposes, *Lucia v. SEC*, 585 U.S. 237, 249 (2018). As such, the ALJ can constitutionally enjoy no more than one layer of tenure protection against at-will removal by the President. *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 492, 496 (2010). Yet he enjoys at least two levels of protection, because for the President to remove him, he would first need to convince the SEC to remove him and, even then, federal law would prohibit his removal except for good cause established and determined by the Merit Systems Protection Board ("MSPB"). 5 U.S.C. § 7521(a). Exacerbating this constitutional defect is the common understanding that the heads of both SEC and MSPB enjoy their own tenure protection that protects them from presidential removal without cause. *See* Brief for the Federal Parties, *Axon/Cochran* (U.S. Nos. 21-86 and 21-1239, filed Aug. 8, 2022) at 2–3 (removal for "inefficiency, neglect of duty, or malfeasance in office" has "long been understood to apply to SEC Commissioners" (quoting 15 U.S.C. § 41 and citing *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 487 (2010))); 5 U.S.C. § 1202(d) (MSPB members removable only for "inefficiency, neglect of duty, or malfeasance in office"). Thus, just like the Board members of the Public Company Accounting Oversight Board at issue in *Free Enterprise Fund*, SEC ALJs are "safely encased within a Matryoshka doll of tenure protections" and are "immune from Presidential oversight, even as they exercise[ ] power in the people's name." 561 U.S. at 497.

Justice Breyer, dissenting in *Lucia*, expressly warned that the Court's decision in that case, coupled with its decision in *Free Enterprise Fund*, might mean that SEC ALJs are unconstitutionally protected from presidential removal. 585 U.S. at 258–61 (Breyer, J., concurring in the judgment in part and dissenting in part). The U.S. Solicitor General, on behalf of the government, went even further, expressly acknowledging this constitutional defect and urging the Court to resolve the issue. Brief for Respondent Supporting Petitioners, *Lucia* (U.S. No. 17-130, filed Feb. 21, 2018), at 39–55. The Court declined to address the issue in *Lucia*, but the Fifth Circuit subsequently did so in *Jarkesy*, squarely holding that SEC ALJs enjoy unconstitutional tenure protection. *Jarkesy v. SEC*, 34 F.4th 446, 464–65 (5th Cir. 2022). On certiorari, the Supreme Court again declined to address the issue, thus letting the Fifth Circuit's holding stand, and the Fifth Circuit recently reaffirmed that holding. *See* Statement on Remand from the United States Supreme Court, *Jarksey*, No. 20-61007, slip op. at 2 (5th Cir. Nov. 12, 2024) (per curiam) ("We see no basis to alter these determinations or our prior judgment, now that the case is on remand from the Supreme Court and our prior holdings have not been disturbed."); *cf. VHS Acquisition Subsidiary No. 7 v. NLRB*, No. 1:24-cv-2577, 2024 WL 5056358 (D.D.C. Dec. 10, 2024) (Mem. Op.) (holding unconstitutional the multi-layer tenure protection of NLRB ALJs).

For these reasons, Lemelson is likely to succeed on his claim that SEC's administrative follow-on prosecution subjects him to adjudication by an ALJ who enjoys excessive tenure protection in violation of Article II of the Constitution (Claim 4 of his First Amended Complaint).

II. LEMELSON WILL SUFFER IRREPARABLE HARM ABSENT A PRELIMINARY INJUNCTION

There is little doubt that Lemelson will suffer irreparable harm if involuntarily forced to defend himself in a constitutionally illegitimate proceeding overseen by constitutionally illegitimate and biased adjudicators. The deprivation of a constitutional right "for even minimal

periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod*). As with his likelihood of success on the merits, Lemelson's irreparable harm is confirmed by recent Supreme Court cases that are materially indistinguishable. For example, in *Axon/Cochran*, litigants threatened with agency enforcement adjudications by the FTC and SEC, respectively, sought injunctive relief to stop those proceedings from continuing due to various constitutional infirmities similar to those alleged by Lemelson here. In a consolidated opinion, the Supreme Court squarely held that the litigants were facing "here-and-now" constitutional injury that could not be remedied after the agency proceedings went forward.

> That harm may sound a bit abstract; but this Court has made clear that it is "a here-and-now injury." … And—here is the rub—it is impossible to remedy once the proceeding is over, which is when appellate review kicks in. Suppose a court of appeals agrees with Axon, on review of an adverse FTC decision, that ALJ-led proceedings violate the separation of powers. The court could of course vacate the FTC's order. But Axon's separation-of-powers claim is not about that order; indeed, Axon would have the same claim had it *won* before the agency. The claim, again, is about subjection to an illegitimate proceeding, led by an illegitimate decisionmaker. And as to that grievance, the court of appeals can do nothing: A proceeding that has already happened cannot be undone. Judicial review of Axon's (and Cochran's) structural constitutional claims would come too late to be meaningful.

598 U.S. at 191 (quoting *Seila Law LLC v. CFPB*, 591 U.S. 197, 212 (2020) (emphasis in original)); *id*. at 192 ("Again, Axon and Cochran protest the 'here-and-now' injury of subjection to an unconstitutionally structured decisionmaking process," a claim analogous to a claim of immunity from being sued); *accord Alpine Sec. v. FINRA*, No. 23-5129, 2024 WL 4863140, at *27 (D.C. Cir. Nov. 22, 2024) (Walker, J., concurring in the judgment in part and dissenting in part) (urging application of the *Axon/Cochran* injury analysis to the preliminary injunction context, and citing then-Judge Kavanaugh's similar dissenting opinion in *Doe v. CFPB*, 849 F.3d 1129 (D.C. Cir. 2017) as reading "like a preview" of *Axon/Cochran*).

The threatened harm to Lemelson from SEC's administrative follow-on prosecution is materially identical to the "here-and-now" harm threatened against Axon and Cochran. Lemelson meritoriously claims that SEC's proceeding is constitutionally illegitimate, and that both the superintending ALJ and the Commission itself are constitutionally illegitimate adjudicators. Moreover, as detailed in the first claim of his First Amended Complaint, and as evidenced by the exhibits appended to the declaration submitted in support of this application, Lemelson's adjudicators are plainly biased against him and in favor of SEC's own staff prosecutors, and thus they cannot provide a fair and impartial adjudication. *Cf. Alpine*, 2024 WL 4863140 at *14 (majority opinion citing pre-*Axon/Cochran* circuit precedent in holding that "*without more*," forced participation in a proceeding before an unconstitutionally appointed officer is not sufficient harm to warrant a preliminary injunction (emphasis added)). Finally, just as in *Axon/Cochran*, Lemelson's harm from being subjected to such an illegitimate and biased proceeding cannot be undone or otherwise remedied after the fact. *Axon/Cochran*, 598 U.S. at 191 ("A proceeding that has already happened cannot be undone.").

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST TIP DECIDEDLY IN LEMELSON'S FAVOR

When a preliminary injunction is sought against the government, the balance-of-equities and public-interest factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009); *Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016). Here, both factors weigh strongly in favor of granting Lemelson's requested injunctive relief.

In contrast to the irremediable here-and-now constitutional injury Lemelson would suffer absent injunctive relief, SEC would suffer no discernable harm if the Court preliminarily enjoins SEC's follow-on administrative prosecution against Lemelson. SEC's prosecution of Lemelson stems from three sentences (or sentence fragments) he wrote or uttered more than a decade ago—

during the summer of 2014. Ligand, the company Lemelson criticized, began agitating for SEC to investigate Lemelson shortly thereafter—beginning with a detailed, in person PowerPoint presentation in September 2014—again, *more than a decade ago*. Yet SEC has demonstrated no sense of urgency or diligence in seeking to bar or suspend Lemelson from the securities industry. It could have sought to bar or suspend him at any time over the past decade, but it waited until April 2022 even to initiate its administrative process for doing so. And even after belatedly initiating its follow-on prosecution, SEC let it languish without a hearing or decision for more than two additional years, after which it recently restarted the entire process by assigning the case to an ALJ after Lemelson filed his original complaint in this Court—just days before SEC's answer would have been due.

In any event, Lemelson is already subject to a federal court injunction. He could face summary contempt proceedings if he writes or speaks unfavorably again about Ligand (or any other publicly traded company) using sentences or sentence fragments that SEC deems untrue or misleading. That injunction, coupled with SEC's overall lack of urgency and diligence in seeking to bar or suspend Lemelson over the past decade, negates any plausible harm SEC might suffer from an order temporarily pausing its follow-on administrative prosecution until this Court decides the merits of his constitutional and other objections to that prosecution.

Finally, a preliminary injunction is in the public interest. There is no public interest and great harm in depriving an individual of constitutional rights. *See League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action."). On the contrary, "enforcement of an unconstitutional law is always *contrary* to the public interest." *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (emphasis added).

CONCLUSION

The Court should issue a preliminary injunction that orders Defendant SEC to suspend its follow-on administrative enforcement prosecution against Lemelson until this Court rules on the merits of Lemelson's constitutional and other objections to that prosecution.

December 17, 2024

Respectfully submitted,

/s/ *Russell G. Ryan*

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing document complies with the page limitation limit under LCvR 7(e) as well as other pertinent requirements set forth in LCvR 5.1, LCvR 7, and the Federal Rules of Civil Procedure.

/s/ Russell G. Ryan

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that the foregoing document was filed on December 17, 2024 via this Court's electronic filing system. Undersigned counsel hereby certifies that the foregoing was served on all counsel of record via the notification of docket activity generated by this filing.

/s/ Russell G. Ryan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REVEREND FATHER EMMANUEL LEMELSON, *Plaintiff*, v. SECURITIES AND EXCHANGE COMMISSION, *Defendant*.	:	No. 24-cv-2415 (JEB)

[PROPOSED] ORDER GRANTING PLAINTIFF'S
APPLICATION FOR A PRELIMINARY INJUNCTION

The Court having considered Plaintiff Lemelson's application for a preliminary injunction and Defendant Securities and Exchange Commission's opposition thereto, and the Court being of the opinion that Plaintiff has demonstrated (1) a likelihood of success on the merits of the Second, Third, and Fourth claims for relief asserted in his First Amended Complaint; (2) a likelihood of irreparable harm in the absence of preliminary injunctive relief; (3) that the balance of equities tips in movant's favor; and (4) that the requested preliminary injunction is in the public interest; it is, hereby

ORDERED, pursuant to Fed. R. Civ. P. 65(a), that Plaintiff's motion for a preliminary injunction is GRANTED; and it is

FURTHER ORDERED, that Defendant Securities and Exchange Commission, along with its officers, agents, servants, employees, and attorneys, and other persons who are in active concert

or participation with them, shall suspend further proceedings in its pending administrative enforcement prosecution against Lemelson (SEC Administrative Proceeding File No. 3-20828) until this Court issues its final judgment deciding the merits of Lemelson's constitutional and other objections to that prosecution, or until such earlier time as this Court may otherwise order.

_____
JAMES E. BOASBERG
Chief Judge

Date: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REVEREND FATHER EMMANUEL LEMELSON, *Plaintiff*, v. SECURITIES AND EXCHANGE COMMISSION, *Defendant*.	:	No. 24-cv-2415 (JEB)

DECLARATION OF DOUGLAS S. BROOKS IN SUPPORT
OF PLAINTIFF'S APPLICATION FOR A PRELIMINARY INJUNCTION

I, Douglas S. Brooks, declare under penalty of perjury that:

1. I am a member in good standing of the Bar of the Commonwealth of Massachusetts, I am managing partner of the law firm Libby Hoopes Brooks & Mulvey, and I am over the age of eighteen years. I submit this declaration in support of Plaintiff Rev. Fr. Emmanuel Lemelson's application for a preliminary injunction in the above-captioned case.

2. I served as lead counsel defending Fr. Lemelson in a lawsuit brought against him by the Securities and Exchange Commission ("SEC") in the United States District Court for the District of Massachusetts, bearing docket number 18-CV-11926 (the "Massachusetts Litigation"). I am also lead counsel currently defending Fr. Lemelson in the SEC's "follow-on" administrative enforcement prosecution against him. As such, I am personally familiar both proceedings and with the matters addressed in this declaration. Based on my 27 years as a practicing lawyer, the Massachusetts Litigation was unusually contentious and adversarial.

3. Attached hereto as **Exhibit 1** is a copy of the SEC's original complaint filed against Fr. Lemelson in the Massachusetts Litigation on September 12, 2018.

4. Attached hereto as **Exhibit 2** is a copy of a press release the SEC issued and posted to its public website on or about September 12, 2018, shortly after filing its complaint against Fr. Lemelson in the Massachusetts Litigation. This press release, which links to the SEC's complaint in the Massachusetts Litigation (Exhibit 1 hereto) and to an SEC "investor alert" dated November 15, 2015," remains posted on the SEC's public website as of the date of this declaration.

5. Attached hereto as **Exhibit 3** is a copy of a "litigation release" the SEC issued and posted to its public website on or about September 13, 2018, the day after it filed its complaint against Fr. Lemelson in the Massachusetts Litigation. This litigation release, which links to the SEC's complaint in the Massachusetts Litigation (Exhibit 1 hereto), remains posted on the SEC's public website as of the date of this declaration.

6. Attached hereto as **Exhibit 4** is a copy of the verdict form returned by the jury at the conclusion of the trial in the Massachusetts Litigation on November 5, 2021.

7. Attached hereto as **Exhibit 5** is a copy of a screenshot of a press release the SEC issued and posted to its public website on or about November 5, 2021, shortly after the jury returned its verdict in the Massachusetts Litigation. This press release appears to be no longer available on the SEC's public website.

8. Attached hereto as **Exhibit 6** is copy of a revised press release the SEC issued and posted to its public website on or about November 5, 2021, after I, on behalf of Fr. Lemelson, contacted the SEC and disputed the accuracy of the press release attached as Exhibit 5. This revised press release, which links to the SEC's complaint in the Massachusetts Litigation (Exhibit 1 hereto), remains posted on the SEC's public website as of the date of this declaration.

9. Attached hereto as **Exhibit 7** is a copy of a litigation release the SEC issued and posted to its public website on or about November 8, 2021. This litigation release, which links to the SEC's September 13, 2018 litigation release (Exhibit 3 hereto), remains posted on the SEC's public website as of the date of this declaration.

10. Attached hereto as **Exhibit 8** is a copy of the final judgment entered in the Massachusetts Litigation on March 31, 2022.

11. Attached hereto as **Exhibit 9** is a copy of a litigation release the SEC issued and posted to its public website on or about March 31, 2022, shortly after entry of final judgment in the Massachusetts Litigation. This litigation release, which links to the SEC's complaint in the Massachusetts Litigation (Exhibit 1 hereto), to the SEC's revised November 5, 2021 press release (Exhibit 6 hereto), and to the final judgment in the Massachusetts Litigation (Exhibit 8 hereto), remains posted on the SEC's public website as of the date of this declaration.

12. Attached hereto as **Exhibit 10** is a copy of an "Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing," which SEC issued and posted to its public website on or about April 20, 2022. This order remains posted on the SEC's public website as of the date of this declaration.

13. Attached hereto as **Exhibit 11** is a copy of Fr. Lemelson's September 20, 2024 motion to stay the SEC's administrative prosecution against him.

14. Attached hereto as **Exhibit 12** is a copy of the SEC's October 23, 2024 order denying Fr. Lemelson's motion to stay the SEC's administrative prosecution against him, denying SEC staff prosecutors' motion for summary disposition, and ordering that a hearing be convened before an administrative law judge ("ALJ").

15. Attached hereto as **Exhibit 13** is a copy of a scheduling order the ALJ issued on November 14, 2024 in the SEC's administrative prosecution against Fr. Lemelson.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 16, 2024.

Douglas S. Brooks

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GREGORY LEMELSON and LEMELSON CAPITAL MANAGEMENT, LLC,

Defendants,

and

THE AMVONA FUND, LP,

Relief Defendant.

Civ. No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the "Commission"), alleges the following against Defendants Gregory Lemelson ("Lemelson") and Lemelson Capital Management, LLC, and Relief Defendant The Amvona Fund, LP, and hereby demands a trial by jury:

SUMMARY OF ALLEGATIONS

1. Between May and October of 2014, Lemelson devised and carried out a fraudulent scheme in which he purchased "short positions" in the stock of Ligand Pharmaceuticals, Inc. ("Ligand") and then sought to manipulate the stock price to make a profit. A short position is an investment technique whereby an investor seeks to profit when the price of a stock falls. Lemelson publicly disseminated a series of false statements about Ligand to drive

down the price of the stock, while engaging in a series of purchases and sales of Ligand stock that enabled him to profit from the lowered stock price.

2. An investor takes a "short position" in a stock by borrowing a company's stock from a broker. The investor then sells the stock at its current market price (which the investor hopes is overvalued and will soon drop). If the price of the stock goes down, the investor profits from the "short sale" by purchasing the stock at the lower price, referred to as "covering" the short sale, returning the borrowed stock to the broker, and keeping the difference between the initial sale and the later purchase at a lower price.

3. Beginning in May 2014 and continuing through October 2014, Lemelson took short positions in Ligand stock through his hedge fund, The Amvona Fund, LP ("Amvona"). He then orchestrated a public campaign attacking Ligand with the intent to convince the investing public that Ligand's stock was overvalued. As part of his campaign, Lemelson made a series of false statements of material fact about Ligand that were intended to shake investor confidence in the company, drive down the price of Ligand's stock, and, consequently, increase the value of Lemelson's short positions.

4. Starting in June 2014 and continuing through August 2014, Lemelson authored and published multiple "research reports" that contained false statements of material fact about Ligand and that were intended to create a negative view of the company and its value and, consequently, to drive down the price of the company's stock. Further, between June and October of 2014, Lemelson participated in live and written interviews in which he made additional false statements of material fact about Ligand which also were intended to create a negative view of the company and its value and, consequently, to drive down the price of the company's stock.

5. Each of Lemelson's false statements was intended to drive down the price of Ligand's stock. For example, in a June 2014 report, Lemelson stated that Ligand's flagship drug product, and main source of licensing revenue, was imminently "going away." To bolster and lend credence to his report, Lemelson, in a widely available radio interview, falsely stated that a Ligand representative agreed with his analysis. Lemelson also falsely claimed that Ligand engaged in a sham licensing transaction with another pharmaceutical company and had run up so much debt that the company had virtually no value. None of these statements was true, none had a reasonable basis in fact, and each concerned significant aspects of Ligand's financial condition, business dealings, and the viability of its products that reasonable investors would consider important in evaluating Ligand's prospects. Lemelson made each of these false statements intentionally or recklessly for the purpose of driving down Ligand's stock price.

6. Between June and October 2014, Lemelson publicly and widely disseminated false statements about Ligand in press releases, on Amvona's blog, through social media, in various other media outlets, and also in appearances on radio shows. In doing so, Lemelson intended to create a negative view of the company and its value and, consequently, to drive down the price of the company's stock.

7. In addition to deceiving the investing public by making false statements of material fact about Ligand, Lemelson and Lemelson Capital Management, LLC ("LCM") deceived investors and prospective investors in The Amvona Fund by making and disseminating false statements about Ligand as part of their efforts to obtain and retain Amvona Fund investors. Defendants further misled investors and potential investors by not disclosing that The Amvona Fund's positive returns from its short position in Ligand were based on Defendants' stock price manipulation.

8. As Lemelson intended, the price of Ligand stock fell during his scheme to mislead investors about its value. The day Lemelson began disseminating his false statements, June 16, 2014, Ligand's opening share price was $67.26. By October 13, 2014, Ligand's share price had dropped by nearly than $23—a decline of approximately 34 percent. Also by that time, Lemelson had "covered" the vast majority of Amvona's short position in Ligand generating approximately $1.3 million in illegal profits. Ligand's stock price subsequently recovered, and today, Ligand stock trades at over $250 per share.

9. By engaging in this conduct, Lemelson and LCM violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rules 10b-5(a), (b), and (c) thereunder [17 C.F.R. § 240.10b-5(a)-(c)], and both Lemelson and LCM violated Section 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

10. The Commission seeks injunctive relief, disgorgement of ill-gotten gains together with prejudgment interest, and civil penalties.

JURISDICTION AND VENUE

11. The Commission brings this action pursuant to the enforcement authority conferred upon it by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]. The Commission seeks the imposition of a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

12. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Sections 209(d), 209(e) and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), 80b-14], and 28 U.S.C. § 1331.

13. Venue is proper in this district pursuant to 28 U.S.C. § 1331(b)(2), Sections 21(d)-(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)-(e) and 78aa], and Sections 209(d) and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d) , 80b-14], because a substantial part of the acts constituting the alleged violations occurred in the District of Massachusetts, Lemelson lived and worked in Massachusetts during the relevant time period, and the principal place of business of Amvona and Lemelson Capital Management LLC ("LCM") is in Massachusetts.

14. In connection with the conduct alleged in this Complaint, Lemelson directly or indirectly made use of the means or instruments of transportation or communication in interstate commerce, the facilities of national securities exchanges, or the mails.

15. Lemelson's conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

16. Unless enjoined, Lemelson will continue to engage in the securities law violations alleged herein, or in similar conduct that would violate federal securities laws.

DEFENDANTS AND RELIEF DEFENDANTS

17. **Gregory Lemelson**, 42, resides in Mansfield, Massachusetts. He is the Chief Investment Officer and portfolio manager of Lemelson Capital Management LLC, a private investment firm he founded to manage The Amvona Fund, LP. At all relevant times, Lemelson was an "investment adviser" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)]. Lemelson is LCM's founder, Chief Investment Officer, and portfolio manager. In those capacities, Lemelson controls LCM and makes all decisions on behalf of LCM.

18. **Lemelson Capital Management, LLC** is a Massachusetts company formed on June 14, 2012, with its principal office in Marlborough, Massachusetts. LCM is an Exempt

Reporting Adviser registered with the Commission and the Commonwealth of Massachusetts. LCM is the investment manager and investment adviser to The Amvona Fund, LP. At all relevant times, LCM was an "investment adviser" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)].

19. **The Amvona Fund, LP** is a Delaware company formed on July 24, 2012, with its principal office in Marlborough, Massachusetts. Amvona is a pooled investment vehicle under Rule 206(4)-8(b) promulgated under the Advisers Act [17 C.F.R. § 275.206(4)-8] and Sections 3(a) and 3(c)(1) of the Investment Company Act of 1940 [15 U.S.C. § 80a-3(a) and (c)(1)]. Lemelson is the General Partner of Amvona. Lemelson launched Amvona as a hedge fund in September 2012, and began accepting limited partner investments shortly thereafter. On January 4, 2013, Lemelson formed The Amvona Fund Ltd. ("Amvona Limited") in the British Virgin Islands. Amvona Limited operates as a feeder fund into Amvona (Amvona Limited and Amvona are hereinafter referred to together as "Amvona"). Lemelson is the Director of Amvona Limited. Amvona advertises itself as a long-position fund, *i.e.*, a fund that seeks to profit from appreciation in the price of securities it holds. Amvona has approximately $15 million of assets under management, more than half of which belong to Lemelson and his family.

RELATED ENTITIES

20. **Ligand Pharmaceuticals, Inc.** ("Ligand") is a Delaware corporation with its principal place of business in San Diego, California. Ligand is a biopharmaceutical company involved in the development and licensing of medicines and technologies. Ligand's common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on NASDAQ under the symbol "LGND."

21. **Viking Therapeutics, Inc.** ("Viking") is a Delaware corporation with its principal place of business in San Diego, California. Viking is a clinical-stage biotherapeutics

company focused on developing treatments for metabolic and endocrine disorders. Viking's common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on NASDAQ under the symbol "VKTX." Through a Master License Agreement between Ligand and Viking dated May 2014, Ligand became a 49.8% owner of Viking common stock.

FACTS

A. Lemelson Published and Disseminated Negative Reports about Ligand While Increasing Amvona's Short Position in Ligand

22. On May 22, 2014, Lemelson and LCM took an initial short position in Ligand of 579 shares on behalf of Amvona. Shortly thereafter, Lemelson began publicly disseminating negative information about Ligand—including a series of false and misleading statements—as part of a fraudulent scheme to drive down Ligand's share price and profit from his short position.

23. Between June 16 and August 22, 2014, Lemelson published a total of five reports that discussed Ligand. Lemelson was the sole author and solely responsible for the content of each report. All of Lemelson's reports about Ligand were negative and took a dim view of the company's value and prospects. Certain of the reports also contained false and misleading statements of material fact, as detailed in Part B below. Lemelson used these false and misleading statements to bolster and lend credence to the overall attack levied against Ligand and its valuation.

24. Lemelson published the first of his negative reports about Ligand on June 16, 2014, titled "Ligand Pharmaceuticals (NASDAQ: LGND)" (the "June 16th Report"). As detailed below, Lemelson stated, without a reasonable basis in fact, that Ligand's primary source of licensing revenue, the drug Promacta, was on the brink of obsolescence. Lemelson then doubled down on this misstatement by falsely claiming in a June 19 interview that a Ligand representative stated the company knew Promacta was "going away." Lemelson thus concluded

that "Ligand's fair value is roughly $0 per share, or 100 percent below the current stock price." By this time, Lemelson had increased his short position in Ligand by borrowing and selling short 68,528 shares for approximately $4.6 million. In the days following the June 16 report Ligand's stock price dropped approximately 16%.

25. Lemelson continued his efforts to drive Ligand's stock price even lower. In his next report, dated July 3, 2014 and titled "Ligand Pharmaceuticals (NASDAQ: LGND); Appendix" (the "July 3rd Report"), Lemelson characterized a transaction between Ligand and Viking as a sham by making false statements about Viking's finances and operations. Lemelson went on to state that "the intrinsic value of Ligand shares must be reaffirmed as $0 with downside risk justifiably calculated at 100%."

26. Lemelson's next report, dated August 4, 2014 and titled "Update: Lemelson Capital Further Increases Short Stake in Ligand Pharmaceuticals (NASDAQ: LGND) as LGND EPS Plunges 76 percent in Q2 2014" (the "August 4th Report"), repeated his false statement about Promacta becoming obsolete and concluded that "the intrinsic value of Ligand shares must be reaffirmed as $0 with downside risk justifiably calculated at 100 percent."

27. In another report dated August 14, 2014, titled "Lemelson Capital Says Ligand Pharmaceuticals' (NASDAQ: LGND) $225M Debt Issuance Solidifies Company's Insolvency, Substantially Raises Specter of Bankruptcy" (the "August 14th Report"), Lemelson claimed that Ligand was teetering on the brink of bankruptcy.

28. Finally, on August 22, 2014, Lemelson issued a report titled "Ligand Pharmaceuticals' (NASDAQ: LGND) – Institutional Holders waste no time dumping stock in response to Insolvency and bankruptcy risk" (the "August 22nd Report"), in which he

mischaracterized Ligand's financial condition, as detailed below, and claimed that "common shareholders could be wiped out almost entirely without notice."

29. Lemelson published his Ligand reports under the heading of LCM; posted them on Amvona's website; distributed them to various press sources – among them, PR Newswire, Globe Newswire, Seeking Alpha, Benzinga, Street Insider, Value Walk, and USA Today – the day they were published; and posted links to the reports on various social media accounts under his control. The published press releases contained abbreviated summaries of the report and included links to the reports on Amvona's website.

30. Between June and October 2014, Lemelson also conducted various audio and written interviews in which he stated that Ligand's stock had no intrinsic value and provided additional commentary on Ligand. He conducted many such interviews with Benzinga, an online financial media outlet, including appearing on Benzinga's "Premarket Prep" show, which provides investors with information prior to market open. Lemelson discussed Ligand in at least four of these live and written interviews:

a. On June 19, 2014, Lemelson appeared on Benzinga's Premarket Prep show, for an audio interview (the "June 19th Interview") in which he falsely stated that a Ligand representative agreed with Lemelson's statements about Promacta in the June 16 Report and subsequently reiterated in the August 4 report.

b. On August 13, 2014, Lemelson appeared for a second time on the Benzinga Premarket Prep Show for an audio interview (the "August 13th Interview").

c. On September 16, 2014, Lemelson appeared for a third time on the Benzinga Premarket Prep Show for an audio interview (the "September 16th Interview").

d. On October 16, 2014, Lemelson appeared for a fourth time on the Benzinga Premarket Prep Show for an audio interview (the "October 16th Interview").

31. The purpose of Lemelson's reports and interviews was to shake investor confidence in Ligand and drive down Ligand's share price. For example, in a solicitation to a prospective Amvona investor, Lemelson touted the June 19th Interview and asserted that "[s]hares of Ligand dropped ~2% during the interview." Similarly, a major financial news organization noted that Ligand's stock price "fell more than 7 percent" after Lemelson published his report claiming that demand for Promacta was rapidly declining.

32. Lemelson took affirmative steps to suppress commentary that highlighted his bias, his lack of familiarity with the pharmaceutical industry, and his motivation to drive down the price of Ligand stock. For example, Lemelson successfully petitioned Seeking Alpha to remove commentary on his Ligand-related reports on or around at least the following dates:

a. June 22, 2014 (five separate comments by five separate accounts removed),
b. June 23, 2014,
c. June 24, 2014,
d. August 4, 2014 (two separate comments by two separate accounts removed),
e. August 23, 2014 (two separate comments by two separate accounts removed),
f. August 26, 2014, and
g. May 1, 2015.

Lemelson also unsuccessfully attempted to remove comments critical of his Ligand-related reports on July 7, 2014.

33. Lemelson expanded Amvona's short position in Ligand stock between May 22 and August 4, 2014, to 65,736 shares. He covered a significant portion of this position in August 2014, after Ligand's share price dropped from $68.72 on June 16, 2014, to $51.75 on August 22, 2014, in the wake of Lemelson's negative reports and interviews. Lemelson covered the bulk of Amvona's remaining short position in October 2014. In total, Lemelson sold short (and bought to cover) 77,836 shares of Ligand in 2014.

34. Amvona profited by approximately $1.3 million from this trading, and, as a part owner of Amvona, Lemelson personally profited from his fraudulent trading activity.

B. Lemelson's False and Misleading Statements Concerning Ligand.

35. Lemelson presented his negative reports on Ligand as a purported exposé on the company's inner workings, and claimed that his statements about Ligand were based on extensive research and discussions with the company's representatives and with medical experts. In his reports and other public statements, Lemelson intentionally or recklessly made the following material misstatements of fact.

1) Lemelson Falsely States that Ligand's Flagship Product was "Going Away."

36. The central thesis of Lemelson's June 16th Report was that Promacta, Ligand's flagship drug and primary source of revenue, was facing competitive pressure from a new competing drug, Sovaldi, which would soon render Promacta obsolete. Lemelson subsequently sought to lend credence to his thesis by falsely stating that a Ligand representative agreed with him and acknowledged that Promacta was going to become obsolete.

37. Specifically, following publication of the June 16 Report, Lemelson appeared on Benzinga's Pre-Market Prep show on June 19, 2014. During the June 19th Interview, Lemelson made the following false statement of material fact: "I had discussions with [Ligand] management just yesterday – excuse me, their [Ligand's] IR [investor relations] firm. And they basically agreed. They said, "'Look, we understand Promacta's going away.'"

38. Lemelson's statement referenced a conversation he had on June 18, 2014, with a representative of Ligand's investor relations firm (the "IR Representative"). The IR Representative, however, never made any such statement. The IR representative notified Lemelson of that fact via email after hearing Lemelson's Benzinga interview. Lemelson never

responded to the email. Nor did Lemelson correct or withdraw his false statement, or disclose that the IR Representative denied having made the statement Lemelson attributed to him.

39. Lemelson made this false statement of material fact to support his argument that one of Ligand's main revenue sources—royalties from licensing Promacta—was imperiled and that Ligand's stock was therefore overvalued.

40. Lemelson also attempted to bolster his false representation that Promacta was on the brink of obsolescence by misleading the readers of his reports about other "evidence" he had about Promacta. The June 16 Report cites information provided by "an Associate Clinical Professor of Medicine and Surgery at one of the largest transplant Hepatology departments at a major U.S. university hospital and also with the Chief of abdominal surgery and transplantation at a major European university hospital." This statement was itself misleading because: a) Lemelson did not disclose that the European hospital doctor was actually Amvona's largest investor (and thus had a significant financial interest in making Ligand's stock price fall), and b) Lemelson never spoke with the U.S. hospital doctor, relying only on a report from his largest investor on what the U.S. hospital doctor had said.

41. Further, none of the information Lemelson identified as the source of his statement about Promacta suggested that Sovaldi would render Promacta obsolete. Specifically, Lemelson cited two articles in the June 16th Report as "references to the obsolete nature of [Hepatitis C] supportive care treatments such as Promacta," despite the fact that neither article discussed Promacta, and neither article could be fairly construed as implying or suggesting that Sovaldi would render Promacta obsolete.

42. In sum, Lemelson's false statements about Promacta were falsely attributed to Ligand and had no other reasonable basis in fact. He either intentionally lied about Promacta's viability, or was reckless as to the truth or falsity of his statements.

43. Lemelson's false statements about Promacta were material. Each concerned the viability of one of Ligand's main sources of revenue. These material falsehoods supported Lemelson's misrepresentations that Ligand's revenue streams were in peril, and were thus central to his scheme to drive down Ligand's stock price.

2) Misstatements About Viking Therapeutics, Inc.

44. Lemelson published another report about Ligand on July 3, 2014. In that report, in addition to repeating his claims about Promacta, Lemelson also took aim at Ligand's business relationship with Viking. Lemelson stated that "Ligand appears to be indirectly creating a shell company through Viking to generate paper profits to stuff its own balance sheet." He further stated that Ligand had "engaged in a 'creative transaction' with an affiliate shell company called Viking Therapeutics" to the detriment of Ligand shareholders. To bolster and lend credence to these accusations, Lemelson made material misstatements of fact regarding Ligand's licensing agreement with Viking and Viking's Form S-1 registration statement (the form the SEC requires initially to register securities for public sale).

45. Viking was not a "shell." It was in the business of developing treatments for certain kinds of illnesses. Ligand had five drugs that it licensed to Viking to develop. Ligand had also invested in Viking and bought just under half of the company before Lemelson started trying to drive Ligand's stock price down. In short, Viking was working on developing certain of Ligand's drugs with financial support from Ligand.

46. In the July 3rd Report, Lemelson falsely stated that, as of the filing of Viking's July 1, 2014 Form S-1 registration statement, Viking had "yet to consult with [its auditors] on

any material issues" and that the "financial statements provided in the S1 accordingly are unaudited." Lemelson also falsely stated in the same report that "Viking does not intend to conduct any preclinical studies or trials." None of these statements were true, and each was made to support Lemelson's false claim that Viking was "an affiliate shell company" that Ligand used to "create almost a veritable pyramid scheme of shell companies" that was "guaranteed to lose money."

47. Lemelson's statements about auditors and financial statements were false and contradicted by Viking's July 1, 2014 Form S-1, which Lemelson relied upon when writing his July 3 report. The Form S-1 contains a letter from Viking's new auditors stating that they have "audited the balance sheets of Viking . . . as of December 31, 2012, and 2013."

48. Further, the May 21, 2014 Master License Agreement between Ligand and Viking, which was attached to the Viking Form S-1, stated that "Viking is engaged in the research, development, manufacturing and commercialization of pharmaceuticals products." Through the Master License Agreement, Viking obtained licenses to develop drugs, and leased space from Ligand to conduct the necessary research and development activities, which include preclinical studies and trials. Lemelson's statement that "Viking does not intend to conduct any preclinical studies or trials" is thus contradicted by the very document Lemelson supposedly relied upon.

49. In short, each of Lemelson's false statements about Viking is contradicted by the source Lemelson supposedly relied upon. Lemelson therefore either intentionally lied about, or was reckless as to the truth or falsity of, his statements.

50. Lemelson's falsehoods about Viking were material. Each concerned a significant financial transaction and sought to both cast doubt on the stated benefits of the transaction to

Ligand and to allege misconduct by Ligand management. These material falsehoods supported Lemelson's false claim that the Ligand-Viking business relationship was a sham or fraud designed to artificially inflate Ligand's profits, and were thus central to his scheme to drive down Ligand's stock price.

3) Lemelson Makes False and Misleading Statements about Ligand's Finances.

51. In his August 14 and August 22 Reports, Lemelson stated that Ligand was saddled with crippling debt and therefore insolvent. To support this claim, Lemelson falsely stated that Ligand "issued 245 million in new debt, against tangible equity of just $21,000, giving rise to a debt to tangible equity ratio of 11,667 to 1 (that is $11,667 dollars (sic) in debt for every $1 in tangible common shareholder equity)" and that "shareholders have only the protection of $21,000 in tangible equity to shield them from $245 million in debt."

52. In calculating Ligand's "debt to equity ratio of 11,667 to 1," Lemelson included the new debt but not the proceeds of the loan, which would have yielded a debt-to-equity ratio closer to 1:1. Lemelson intentionally misstated Ligand's debt-to-equity ratio, or was reckless as to the truth or falsity of his statement.

53. This false statement was material. Lemelson made his false statement about Ligand's debt-to-equity ratio to support his argument that Ligand had rendered itself insolvent by issuing excessive debt. Lemelson's false statement went to the heart of Ligand's overall financial viability and supported his argument that Ligand's stock was worthless.

C. Lemelson and LCM Misled Prospective Investors.

54. Both LCM and Lemelson, intentionally or recklessly, and by failing to exercise reasonable care, disseminated the material false statements of fact detailed above to LCM's investors and prospective investors. By doing so, and by omitting to disclose material

information, they caused disclosures by Lemelson and LCM about Amvona's investment strategy and about Lemelson's abilities as a financial adviser to be materially misleading.

55. Lemelson and LCM sent Lemelson's reports and links to his interviews, which contained multiple misstatements of material fact as detailed above, to current and prospective Amvona investors, including in emails dated June 16, June 19 (boasting that Ligand shares dropped two percent during his interview), July 2, July 3, and July 18, 2014. He also touted his results in driving down Ligand's stock price in communications to investors and prospective investors, including in an email dated July 18, 2014; letters to Amvona Fund partners dated July 17, 2014 (claiming that Lemelson's research report and appendix on Ligand "have begun to be proven correct") and October 9, 2014 (citing the decline in Ligand's stock price); an investor presentation dated September 4, 2014 (falsely noting that Lemelson Capital had been credited with the drop in Ligand's market capitalization by certain media outlets); and in multiple posts to his Amvona website. In addition, in using Lemelson's reports to solicit potential investors to entrust their funds to him, Lemelson and LCM did not disclose that the profitability of their short-selling strategy depended upon Lemelson's fraudulent manipulation of Ligand stock through false statements, rather than his ability to identify a company whose stock would decrease on its own based on its inherent lack of value. This omission also made other disclosures about Amvona's value-focused investing strategy materially false and misleading.

FIRST CLAIM FOR RELIEF

Fraud in the Purchase or Sale of Securities in Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

(Lemelson and LCM)

56. The Commission realleges and incorporates by reference paragraphs 1 through 55 above, as if set forth fully herein.

57. As detailed above, Defendants Lemelson and LCM engaged in a fraudulent scheme through a series of fraudulent acts, statements, and material omissions designed to drive Ligand's stock price down and profit from a short position in Ligand stock.

58. By engaging in the conduct above, these Defendants, directly or indirectly, acting intentionally, knowingly, or recklessly, by the use of means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) have employed or are employing devices, schemes, or artifices to defraud; (b) have made or are making untrue statements of material fact or have omitted or are omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) have engaged or are engaging in acts, practices, or courses of business which operate as a fraud or deceit upon certain persons, or, in the alternative, aided and abetted these violations.

59. The conduct of these Defendants involved fraud, deceit, manipulation, and/or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in losses to other persons.

60. By engaging in the foregoing conduct, Lemelson violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

Fraudulent, Deceptive, or Manipulative Act or Practice to Investors or Potential Investors in Pooled Investment Vehicle in Violation of Section 206(4) of the Investment Advisers Act and Rule 206(4)-8 Thereunder

(Lemelson and LCM)

61. The Commission realleges and incorporates by reference paragraphs 1 through 60 above.

62. Section 206(4) of the Advisers Act prohibits an investment adviser from, directly or indirectly, engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative. Rule 206(4)-8(a)(1) prohibits an adviser to a pooled investment vehicle from making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled vehicle.

63. By the actions described above, Lemelson and LCM, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly, recklessly, or negligently made untrue statements of material fact and omissions that rendered Lemelson's statements misleading to investors and prospective investors in Amvona.

64. At all relevant times, Lemelson and LCM were "investment advisers" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)]. Lemelson was an "investment adviser" by virtue of his ownership, management and control of LCM, and his provision of investment advice to Amvona. Both Lemelson and LCM were in the business of providing investment advice concerning securities, for compensation.

65. At all relevant times, Amvona was a "pooled investment vehicle" within the meaning of Rule 206(4)-8(b) promulgated under the Advisers Act [17 C.F.R. § 275.206(4)-8]

and Sections 3(a) and 3(c)(1) of the Investment Company Act of 1940 [15 U.S.C. § 80a-3(a) and (c)(1)].

66. By engaging in the conduct described above, Lemelson and LCM violated, and unless enjoined will continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

THIRD CLAIM FOR RELIEF

Other Equitable Relief, Including Unjust Enrichment and Constructive Trust

(As to Relief Defendant The Amvona Fund, LP)

67. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 66 above as if set forth fully herein.

68. Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)] states: "In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors."

69. Relief Defendant Amvona has received investor funds derived from the unlawful acts or practices of the Defendants under circumstances dictating that, in equity and good conscience, they should not be allowed to retain such funds.

70. Further, specific property acquired by Relief Defendant Amvona is traceable to Defendants' wrongful acts and there is no reason in equity why Relief Defendant should be entitled to retain that property.

71. As a result, Relief Defendant Amvona is liable for unjust enrichment and should be required to return its ill-gotten gains, in an amount to be determined by the Court. The Court

should also impose a constructive trust on property in the possession of the Relief Defendant that is traceable to Defendants' wrongful acts.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully request that the Court enter Final Judgment:

I.

Permanently restraining and enjoining Defendants, and their agents, servants, employees, attorneys and those persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8];

II.

Ordering Defendants and Relief Defendant to disgorge the proceeds their ill-gotten gains, plus prejudgment interest;

III.

Ordering Lemelson and LCM to pay appropriate civil monetary penalties under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)];

IV.

Retaining jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application of motion for additional relief within the jurisdiction of this Court; and

V.

Granting such other and further relief as this Court may determine to be just and necessary.

Dated: September 12, 2018

Respectfully submitted,

/s/ Alfred A. Day

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Exhibit 2

U.S. Securities and Exchange Commission

PRESS RELEASE

SEC Charges Hedge Fund Adviser With Short-and-Distort Scheme

FOR IMMEDIATE RELEASE | 2018-190

Washington D.C., Sept. 12, 2018 —The Securities and Exchange Commission today charged a hedge fund adviser and his investment advisory firm with illegally profiting from a scheme to drive down the price of San Diego-based Ligand Pharmaceuticals Inc., reaping more than $1.3 million of gains for the adviser and the hedge fund.

The SEC's complaint charges that Gregory Lemelson and Massachusetts-based Lemelson Capital Management LLC issued false information about Ligand after Lemelson took a short position in Ligand in May 2014 on behalf of The Amvona Fund, a hedge fund he advised and partly owned. Short-sellers profit when the price of stock declines. According to the SEC's complaint, Ligand's stock lost more than one-third of its value during the course of Lemelson's alleged scheme. After establishing his short position, the complaint charges that Lemelson made a series of false statements to shake investor confidence in Ligand, lower its stock price, and increase the value of his position.

The SEC's complaint, filed in federal court in Massachusetts, alleges that Lemelson used written reports, interviews, and social media to spread untrue claims, including that Ligand was "teetering on the brink of bankruptcy" and that Ligand's investor relations firm agreed with his view that its flagship Hepatitis C drug, Promacta, was going to become obsolete. Lemelson also allegedly misled investors by citing a European doctor's negative views on

the same Ligand drug without revealing the doctor was Amvona's largest investor and had a significant financial interest in seeing Ligand's stock price decline.

"While short-sellers are free to express their opinions about particular companies, they may not bolster those opinions with false statements, which is what we allege Lemelson did here," said David Becker, an Assistant Director in the SEC's Division of Enforcement.

The SEC's complaint charges Lemelson and Lemelson Capital Management with fraud and seeks to have them return allegedly ill-gotten gains with interest and pay monetary penalties. The complaint names the Amvona Fund as a relief defendant and seeks to have it return gains it obtained as a result of Lemelson and his firm's alleged misconduct.

The SEC's investigation was conducted by Virginia Rosado Desilets, Sonia Torrico, and Jennifer Clark, and supervised by David A. Becker. The SEC's litigation will be led by Marc Jones and Al Day.

###

Last Reviewed or Updated: Sept. 12, 2018

RESOURCES

- **SEC Complaint**
- **Investor Alert: Stock Rumors** (https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/updated-investor-alert-social-media-investing-0)

Exhibit 3

U.S. Securities and Exchange Commission

Gregory Lemelson, Lemelson Capital Management, LLC, and The Amvona Fund

SEC Charges Hedge Fund Adviser with Short-And-Distort Scheme

Litigation Release No. 24267 / September 13, 2018

Securities and Exchange Commission v. Gregory Lemelson, Lemelson Capital Management, LLC, and The Amvona Fund, No. 18-civ-11926 (D.Mass., filed September 12, 2018)

The Securities and Exchange Commission charged a hedge fund adviser and his investment advisory firm with illegally profiting from a scheme to drive down the price of San Diego-based Ligand Pharmaceuticals Inc., reaping more than $1.3 million of gains for the adviser and the hedge fund.

The SEC's complaint charges that Gregory Lemelson and Massachusetts-based Lemelson Capital Management LLC issued false information about Ligand after Lemelson took a short position in Ligand in May 2014 on behalf of The Amvona Fund, a hedge fund he advised and partly owned. Short-sellers profit when the price of stock declines. According to the SEC's complaint, Ligand's stock lost more than one-third of its value during the

course of Lemelson's alleged scheme. After establishing his short position, the complaint charges that Lemelson made a series of false statements to shake investor confidence in Ligand, lower its stock price, and increase the value of his position.

The SEC's complaint, filed in federal court in Massachusetts, alleges that Lemelson used written reports, interviews, and social media to spread untrue claims, including that Ligand was "teetering on the brink of bankruptcy" and that Ligand's investor relations firm agreed with his view that its flagship Hepatitis C drug, Promacta, was going to become obsolete. Lemelson also allegedly misled investors by citing a European doctor's negative views on the same Ligand drug without revealing the doctor was Amvona's largest investor and had a significant financial interest in seeing Ligand's stock price decline.

The SEC's complaint charges Lemelson and Lemelson Capital Management with violating the anti-fraud provisions of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder, as well as violating Section 206(4) of the Investment Advisers Act of 1941 and Rule 206(4)-8 thereunder, and seeks to have them return allegedly ill-gotten gains with interest and pay monetary penalties. The complaint names the Amvona Fund as a relief defendant and seeks to have it return gains it obtained as a result of Lemelson and his firm's alleged misconduct.

The SEC's investigation was conducted by Virginia Rosado Desilets, Sonia Torrico, and Jennifer Clark, and supervised by David A. Becker. The SEC's litigation will be led by Marc Jones and Al Day.

- SEC Complaint (/litigation/complaints/2018/comp24267.pdf)

RESOURCES

- **SEC Complaint**

Exhibit 4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. GREGORY LEMELSON Defendant,	)	Civil Action No. 18-11926-PBS

VERDICT FORM

Saris, D.J.

1. Did the Securities and Exchange Commission prove that Father Gregory Lemelson violated Rule 10b-5 (a) and (c) by intentionally or recklessly engaging in a scheme to defraud, or any act, practice, or course of business which operates or would operate as a fraud or deceit?

   Yes _____ No X

2. Did the Securities and Exchange Commission prove that defendant intentionally or recklessly made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading with respect to the following statements:

   (a) The Benzinga Interview (Exhibit 3, page 16)

   Yes X No _____

   (b) The Viking audit statement (Exhibit 4, page 10)

   Yes X No _____

(c) The Viking preclinical trial statement (Exhibit 4, page 7).

Yes X No _____

(d) The insolvency statements (Exhibit 6, pages 1-2; Exhibit 7, pages 3-6).

Yes _____ No X

3. Did the Securities and Exchange Commission prove that defendant intentionally or recklessly violated the Advisors Act?

Yes _____ No X

4. Did the Securities and Exchange Commission prove that defendant negligently violated the Advisors Act?

Yes _____ No X

I certify that the answers to each of the questions is unanimous.

Dated: 11/5/2021 Christopher M/Chiarmello
Foreperson

Exhibit 5

Press Release

SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme

FOR IMMEDIATE RELEASE
2021-224

Washington D.C., Nov. 5, 2021 — Jurors in Boston federal court today returned a verdict in the Securities Exchange Commission's favor against a hedge fund adviser and his investment advisory firm.

Gregory Lemelson and Massachusetts-based Lemelson Capital Management LLC were charged with fraud in September 2018 for reaping more than $1.3 million in illegal profits through a scheme to drive down the price of San Diego-based Ligand Pharmaceuticals Inc. The SEC's evidence at trial showed that after establishing a short position in Ligand through his hedge fund, Lemelson made a series of false statements to shake investor confidence in Ligand and lower its stock price, increasing the value of his fund's position. The false statements included assertions that Ligand's investor relations firm had agreed that Ligand's most profitable drug was on the brink of obsolescence and that Ligand had entered into a sham transaction with an unaudited shell company in order to pad its balance sheet. The evidence also showed that Lemelson had boasted about bringing down Ligand's stock price through his "multi-month battle" against the company.

The jury found Lemelson and Lemelson Capital Management liable for fraudulent misrepresentations. The court will determine remedies at a later date.

"Investment professionals play a crucial role in our markets and when they break the law they undermine investors' trust," said Gurbir S. Grewal, Director of the SEC's Division of Enforcement. "We'll continue to use all of the tools in our toolkit to hold wrongdoers accountable, including litigating whenever necessary. This verdict underscores that commitment as well as our staff's ability, tenacity, and experience to win those trials."

The SEC's litigation was conducted by Marc J. Jones and Alfred A. Day of the Boston Regional Office. The SEC's investigation was conducted by Virginia Rosado Desilets, Sonia Torrico, and Jennifer Clark, and supervised by David A. Becker and Carolyn Welshhans.

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Related Materials

- SEC Complaint

Exhibit 6

U.S. Securities and Exchange Commission

PRESS RELEASE

SEC Wins Jury Trial: Hedge Fund Adviser Found Liable for Securities Fraud

FOR IMMEDIATE RELEASE | 2021-224

Washington D.C., Nov. 5, 2021 — Jurors in Boston federal court today returned a verdict in the Securities Exchange Commission's favor against a hedge fund adviser and his investment advisory firm.

Gregory Lemelson and Massachusetts-based Lemelson Capital Management LLC were charged with fraud in September 2018 (https://www.sec.gov/news/press-release/2018-190) for reaping more than $1.3 million in illegal profits by making false statements to drive down the price of San Diego-based Ligand Pharmaceuticals Inc. The SEC's evidence at trial showed that after establishing a short position in Ligand through his hedge fund, Lemelson made a series of false statements to shake investor confidence in Ligand and lower its stock price, increasing the value of his fund's position. The false statements included assertions that Ligand's investor relations firm had agreed that Ligand's most profitable drug was on the brink of obsolescence and that Ligand had entered into a sham transaction with an unaudited shell company in order to pad its balance sheet. The evidence also showed that Lemelson had boasted about bringing down Ligand's stock price through his "multi-month battle" against the company.

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Last Reviewed or Updated: Nov. 5, 2021

RESOURCES

- **SEC Complaint**

Exhibit 7

U.S. Securities and Exchange Commission

Gregory Lemelson, Lemelson Capital Management, LLC, and The Amvona Fund

SEC Wins Jury Trial: Hedge Fund Adviser Liable for Securities Fraud

Litigation Release No. 25258 / November 8, 2021

Securities and Exchange Commission v. Gregory Lemelson, Lemelson Capital Management, LLC, and The Amvona Fund, No. 18-civ-11926 (D. Mass. filed September 12, 2018)

On November 5, 2021, jurors in Boston federal court returned a verdict in the Securities Exchange Commission's favor against a hedge fund adviser and his investment advisory firm.

Gregory Lemelson and Massachusetts-based Lemelson Capital Management LLC were charged with fraud in September 2018 (https://www.sec.gov/litigation/litreleases/2018/lr24267.htm) for reaping more than $1.3 million in illegal profits by making false statements to drive down the price of San Diego-based Ligand

Pharmaceuticals Inc. The SEC's evidence at trial showed that after establishing a short position in Ligand through his hedge fund, Lemelson made a series of false statements to shake investor confidence in Ligand and lower its stock price, increasing the value of his fund's position. The false statements include assertions that Ligand's investor relations firm had agreed that Ligand's most profitable drug was on the brink of obsolescence and that Ligand had entered into a sham transaction with an unaudited shell company in order to pad its balance sheet. The evidence also showed that Lemelson had boasted about bringing down Ligand's stock price through his "multi-month battle" against the company.

The jury found Lemelson and Lemelson Capital Management liable for fraudulent misrepresentations, finding that they violated the anti-fraud provisions of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder. The court will determine remedies at a later date.

The SEC's litigation was conducted by Marc J. Jones and Alfred A. Day, of the Boston Regional Office. The SEC's investigation was conducted by Virginia Rosado Desilets, Sonia Torrico, and Jennifer Clark, and supervised by David A. Becker and Carolyn Welshhans.

Exhibit 8

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Securities and Exchange Commission

Plaintiff

v.

CIVIL ACTION NO. 1:18-cv-11926-PBS

Gregory Lemelson, et al

Defendant(s)

JUDGMENT IN A CIVIL CASE

I. XX **Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED:

Count 1: Fraud in the Purchase or Sale of Securities in Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

Judgment is hereby entered for the Plaintiff

Count 2: Fraudulent, Deceptive, or Manipulative Act or Practice to Investors or Potential Investors in Pooled Investment Vehicle in Violation of Section 206(4) of the Investment Advisers Act and Rule 206(4)-8 Thereunder

Judgment is hereby entered for the Defendant

II. XX **Decision by the Court after the jury verdict**

IT IS ORDERED AND ADJUDGED:

Defendants are enjoined from violating Section 10(b) of the Exchange Act and Rule 10b-5 for a period of five years, and Lemelson is ordered to pay a Tier III civil penalty in the amount of $160,000 forthwith.

Robert M. Farrell Clerk
of Court

/s/ M. Molloy
Deputy Clerk

Dated:3/30/2022

Exhibit 9

U.S. Securities and Exchange Commission

Gregory Lemelson, Lemelson Capital Management, LLC, and The Amvona Fund

SEC Obtains Final Judgment Against Hedge Fund Adviser Who Jury Found Liable for Securities Fraud

Litigation Release No. 25353 / March 31 2022

Securities and Exchange Commission v. Gregory Lemelson, Lemelson Capital Management, LLC, and The Amvona Fund, No. 18-civ-11926 (D. Mass., filed September 12, 2018)

The Securities and Exchange Commission obtained a final judgment on March 30, 2022, against a hedge fund adviser and his investment advisory firm.

According to the SEC's complaint (https://www.sec.gov/litigation/litreleases/2018/lr24267.htm), filed in September 2018, Gregory Lemelson and Massachusetts-based Lemelson Capital Management, LLC ("LCM") were charged with making false statements to drive down the price of San Diego-based Ligand Pharmaceuticals Inc. and profit from a short position in Ligand's stock.

The final judgment entered by the U.S. District Court for the District of Massachusetts enjoins Lemelson and LCM from violating the anti-fraud provisions of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder for a period of five years. The final judgment further orders Lemelson to pay a third-tier civil penalty in the amount of $160,000.

On November 5, 2021, a jury found Lemelson and LCM liable (https://www.sec.gov/news/press-release/2021-224) for making three false and misleading statements about Ligand. The jury did not find the defendants liable on certain other charges and allegations. The false statements Lemelson and LCM were found liable for include assertions that Ligand's investor relations firm had agreed that Ligand's most profitable drug was "going away" and that Ligand had entered into a sham transaction with an unaudited shell company in order to pad its balance sheet. The evidence also showed that Lemelson had boasted about bringing down Ligand's stock price through his "multi-month battle" against the company.

The SEC's litigation was conducted by Marc J. Jones and Alfred A. Day of the Boston Regional Office. The SEC's investigation was conducted by Virginia Rosado Desilets, Sonia Torrico, and Jennifer Clark, and supervised by David A. Becker and Carolyn Welshhans.

- Judgment (/litigation/litreleases/2022/judgment25353.pdf)

RESOURCES

- **Judgment**

Exhibit 10

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6000 / April 20, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20828

In the Matter of **GREGORY LEMELSON,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Gregory Lemelson ("Respondent" or "Lemelson").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. **Gregory Lemelson**, 45, resides in Shelburne, Vermont. He is the Chief Investment Officer of Lemelson Capital Management LLC ("LCM"), a private investment firm. He managed The Amvona Fund LP and, subsequently in 2021, The Spruce Peak Fund LP. At all relevant times, Lemelson was and remains an "investment adviser" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)].

B. ENTRY OF THE INJUNCTION

2. On March 30, 2022, final judgment was entered against Lemelson, enjoining him for a period of five years from future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Lemelson, et al., Civil Action Number 1:18-cv-11926-PBS, in the United States District Court for the District of Massachusetts. Entry of the injunction followed a jury trial in the District Court, in which, on November 5, 2021, the jury found that Lemelson

made three materially false and misleading statements about Ligand in violation of Exchange Act Section 10(b) and Rule 10b-5. The jury found that Lemelson was not liable as to a fourth statement, as well as to charges that they violated of Exchange Act Rule 10b-5(a) and (c) and Advisers Act Section 206(4) and Rule 206(4)-8 thereunder.

3. The Commission's complaint against Lemelson alleged that he, acting with LCM, made false and misleading statements to drive down the price of San Diego-based Ligand Pharmaceuticals Inc. ("Ligand"). The complaint alleged that after establishing a short position in Ligand through his hedge fund, The Amvona Fund LP, Lemelson made a series of false statements to shake investor confidence in Ligand and lower its stock price, thereby increasing the value of his fund's position. The complaint further alleged that the false statements included assertions that Ligand's investor relations firm had agreed that Ligand's most profitable drug was "going away" and that Ligand had entered into a sham transaction with an unaudited shell company in order to pad its balance sheet. The complaint also alleged that Lemelson boasted about bringing down Ligand's stock price through his "multi-month battle" against the company.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed

with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. § 201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(a), (b), and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(a), (b), and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed electronically in administrative proceedings using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system access through the Commission's website, www.sec.gov, at http://www.sec.gov/eFAP. Respondent also must serve and accept service of documents electronically. All motions, objections, or applications will be decided by the Commission.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of

a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

Exhibit 11

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF **GREGORY LEMELSON** **Respondent.**	)	ADMINISTRATIVE PROCEEDING FILE NO. 3-20828

RESPONDENT'S MOTION FOR STAY OF PROCEEDING PENDING THE OUTCOME OF LAWSUIT

Respondent Rev. Father Emmanuel Lemelson respectfully moves for a stay of this proceeding pending the outcome of a lawsuit he recently filed against the Commission in the United States District Court for the District of Columbia. A copy of the complaint in that lawsuit is attached as Appendix A.

PRELIMINARY MATTERS AND CONTEXT

Before filing this motion, undersigned counsel contacted counsel for the Division of Enforcement to determine whether the Division might either join the motion, consent to the requested stay, or at least not oppose it. Counsel responded that the Division does not agree to the stay "since the case is fully briefed and awaiting Commission decision, after which Lemelson can seek judicial review if he so chooses."

The Division's premise is both wrong and presumptuous. This proceeding is far from over. The only briefing that has occurred so far is on the Division's motion seeking, through summary disposition, to preemptively avoid further proceedings, including oral argument and the hearing on the merits explicitly required by both the Investment Advisers Act and the Administrative Procedure Act. *See* 15 U.S.C. § 80b-3(f); 5 U.S.C. §§ 554(b)(1), 554(c)(2), 556(d). While the Division may assume summary disposition is a foregone conclusion—based on its uncanny 100%

success rate with the Commission on such motions in prior follow-on proceedings like this one, according to academic research, *see* Urska Velikonja, *Reporting Agency Performance: Behind the SEC's Enforcement Statistics*, 101 CORNELL L. REV. 901, 963, 967 (2016), and at least one former Commission ALJ, *see In re Maher F. Kara*, SEC Initial Decision Rel. No. 979, 2016 WL 1019197, at *7 (Mar. 15, 2016)—surely the Commission as adjudicator cannot assume such inevitability.

At a minimum, we presume the Commission will at least schedule oral argument and/or an evidentiary hearing before ruling on the pending summary disposition motion, as Respondent has requested. Indeed, even if it denies a stay, given the stakes involved, we respectfully suggest that the Commission might consider inviting supplemental briefing to help it assess: (1) whether, in light of the Supreme Court's recent decision in *Loper-Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Dep't of Commerce*, 144 S. Ct. 2244, 2273 (2024) (overruling *Chevron* deference), the Commission's summary disposition rules are permissible interpretations of the Commission's powers under the Advisers Act and (2) whether, more fundamentally, in light of the Supreme Court's recent decision in *SEC v. Jarkesy*, 144 S. Ct. 2117, 2132 (2024), the Commission would act unconstitutionally if it punished Father Lemelson with an industry bar or suspension, thereby depriving him of his private liberty and property rights, outside of an Article III court and without a jury trial—whether through summary disposition or otherwise.

For these reasons and those that follow, we respectfully submit the Commission exercise prudence and humility by staying this proceeding until all these weighty issues (and more) can first be resolved in the venue demanded by the constitution: an Article III court of law.

ADDITIONAL REASONS FOR STAY

Father Lemelson's federal court lawsuit seeks declaratory and injunctive relief to prevent the Commission from adjudicating this "follow-on" administrative proceeding on several

constitutional and statutory grounds. Those grounds are set forth in detail in the complaint, and are summarized below:

1. *Openly hostile and biased adjudicator in violation of due process of law under the Fifth Amendment*. For nearly the past decade, the Commission has been a hostile adversary against Father Lemelson . The Commission publicly sued him in Massachusetts federal court for allegedly conducting a manipulative scheme to defraud not only the market but also his own investors, and then issued an incendiary press release that included false statements to maximize public media coverage of those charges, going so far as to issue another press release, following the trial, declaring victory —emblazoned with the false headline "SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme"—which omitted any reference to the highly material fact that the jury in fact *rejected* most of the Commission's case, including all of its most incendiary charges. The Commission's decade-old adversarial relationship against Father Lemelson obviously precludes it from now pretending to be an objective and neutral adjudicator of its own follow-on administrative proceeding against him, especially given that Father Lemelson's adversary in this proceeding—the Division of Enforcement—has simultaneously been serving as the Commission's fiduciary legal counsel in connection with the Massachusetts enforcement litigation against Father Lemelson.

2. *Usurpation of judicial power in violation of Article III*. The Commission is not a court of law, and its Commissioners are not independent judges with life tenure. The Commission therefore has no lawful power to decide cases or controversies, especially ones like this one, in which it cannot plausibly be fair and impartial.

3. *Deprivation of jury trial in violation of the Seventh Amendment*. This follow-on proceeding seeks to bar or suspend Father Lemelson from the securities industry, thereby depriving

him of his personal liberty and property rights. The Commission cannot lawfully do so without affording him a jury trial in which the factors relevant to a bar or suspension are decided by a jury of his peers. *Cf. SEC v. Jarkesy*, 144 S. Ct. 2117, 2132 (2024).

4. *Deprivation of hearing required by the Investment Advisers Act and the Administrative Procedure Act*. Both of these statutes prevent the Commission from adjudicating this follow-on proceeding without affording Father Lemelson a hearing to present evidence and to challenge the evidence proffered against him. *See* 15 U.S.C. § 80b-3(f); 5 U.S.C. §§ 554(b)(1), 554(c)(2), 556(d). But the bar or suspension sought by the Division of Enforcement in this case stems from events and transactions that occurred a decade ago. This follow-on proceeding has been pending before the Commission since April 2022 and was fully briefed—on the Division of Enforcement's motion for summary disposition—more than two years ago, and the Commission has given no indication that it intends to conduct any hearing before deciding the matter.

5. *Res judicata*. The Commission had a full and fair opportunity to litigate its differences with Father Lemelson in the Massachusetts enforcement case. It could have sought an injunction in that case to prevent him from participating in the securities industry either permanently or temporarily, but it chose not to seek such relief. Well-settled principles of res judicata preclude the Commission from using a new adjudicative forum to seek relief it could have sought in the Massachusetts enforcement case.

Father Lemelson's complaint against the Commission raises serious constitutional objections of national importance and public interest, with one recent article calling the case "Jarkesy 2.0." *See, e.g.*, Jessica Corso, *'Jarkesy 2.0': SEC Sees New Attack On In-House Courts*, Law360, Aug. 26, 2024. The Commission should pause its follow-on proceeding against Father Lemelson to allow our Article III courts to decide whether this proceeding complies with the

constitution and the rule of law. *See, e.g.*, *SEC v. Cochran*, 143 S. Ct. 890 (2023) (affirming propriety of federal court challenge to constitutionality of SEC administrative proceeding before entry of SEC final order, pending which SEC had stayed the proceeding). This proceeding is based on decade-old events and has been pending without Commission action for more than two years, so there is obviously no urgency or other reason why it cannot be formally stayed in the interests of justice. Absent a stay, Father Lemelson will seek appropriate preliminary injunctive relief in his federal court lawsuit, but burdening the Court with such an emergency request should not be necessary.

CONCLUSION

The Commission should stay this proceeding pending federal court resolution of his lawsuit challenging its constitutionality.

Respectfully submitted,

REV. FR. EMMANUEL LEMELSON,

By: */s/ Douglas S. Brooks*
Douglas S. Brooks (BBO No. 636697)
LIBBY HOOPES BROOKS & MULVEY, P.C.
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Dated: September 20, 2024

Exhibit 12

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6755 / October 23, 2024

Admin. Proc. File No. 3-20828

In the Matter of

GREGORY LEMELSON

ORDER DENYING GREGORY LEMELSON'S MOTION FOR STAY OF PROCEEDINGS, DENYING THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION, AND CONVENING PUBLIC HEARING

On April 20, 2022, an order instituting proceedings ("OIP") was issued against Gregory Lemelson pursuant to Section 203(f) of the Investment Advisers Act of 1940, alleging among other things that he was enjoined from antifraud violations of the securities laws and that he was an investment adviser from the time of the underlying misconduct through the date of the OIP.[1] The OIP initiated proceedings to determine whether the allegations contained therein were true and whether remedial action was appropriate in the public interest. Lemelson filed an answer admitting the existence of the injunction and his investment adviser status. The Division has filed a motion for summary disposition, and Lemelson has filed an opposition to that motion.[2] Lemelson has also filed a motion for a stay of this administrative proceeding pending a civil action he filed in federal district court against the Commission alleging that this proceeding is unconstitutional.

We construe Lemelson's request for a stay—which the Division opposes—as one for postponement under Rule of Practice 161.[3] That rule authorizes adjournments and postponements for "good cause shown."[4] But motions to postpone a proceeding are "strongly disfavor[ed]" unless the movant makes "a strong showing that the denial of the request or motion

1 *Gregory Lemelson*, Advisers Act Release No. 6000, 2022 WL 1184458 (Apr. 20, 2022).

2 *See Gregory Lemelson*, Advisers Act Release No. 6054, 2022 WL 2218172 (June 21, 2022) (order scheduling summary disposition briefing).

3 17 C.F.R. § 201.161; *see Donald J. Fowler*, Exchange Act Release No. 89226, 2020 WL 3791560, at *1 (July 6, 2020) (construing motion for stay as request for adjournment or postponement under Rule of Practice 161).

4 17 C.F.R. § 201.161(a).

would substantially prejudice [his] case."[5] Lemelson has failed to show such good cause. Nor does Lemelson even claim that, absent a postponement, he will suffer substantial prejudice as to his ability to present his case or his defenses. Rather, he urges the Commission to stay this proceeding so that "an Article III court" can first resolve his various challenges to the proceeding.[6] But he will be able to develop and raise those challenges in the course of this proceeding. And he will also be able to appeal any eventual Commission decision to an Article III court, if the decision is adverse to him.[7] Indeed, Lemelson will still be able to pursue his federal district court case, even if we deny a stay, and he has indicated he will seek injunctive relief from that court if we deny a stay. Nor are we persuaded that we should grant a stay here simply because the Division, in the exercise of its prosecutorial discretion, sought to stay and then dismiss other administrative proceedings brought under different statutory provisions involving different facts. Accordingly, we DENY Lemelson's request for a stay of this administrative proceeding.

Turning to the Division's pending motion for summary disposition, the Division requests that the Commission bar Lemelson from the securities industry, alleging that Lemelson was enjoined for a period of five years from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5, following civil proceedings in which a jury found that Lemelson made three materially false and misleading statements about a public company.[8] The Division also alleges that Lemelson engaged in additional misconduct outside

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[5] *Id.* § 201.161(b). Although we ordered that "all reasonable requests for extensions of time will not be disfavored" with respect to the filing and service of papers, *Pending Administrative Proceedings*, Securities Act Release No. 10767, 2020 WL 1322001 (Mar. 18, 2020), that order does not apply to requests such as this to adjourn or postpone the proceeding itself. *See, e.g.*, *Fowler*, 2020 WL 3791560, at *1 n.10 (holding that the order does not apply to requests "to adjourn or postpone the proceeding itself pending an appeal of the underlying" follow-on predicate).

[6] Lemelson's challenges to this proceeding include that the Commission is biased against him and that he is entitled to a jury trial. Because these all relate to the validity of the final remedial order that the Commission might ultimately issue as a result of this administrative proceeding, rather than whether resolution of the proceeding should be postponed, we do not address them at this time.

[7] *See* Advisers Act Section 213(a), 15 U.S.C. § 80b-13(a) (providing that Commission orders under the Advisers Act may be appealed to a court of appeals); *see also, e.g.*, *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980) (holding that the "expense and disruption of defending" oneself in an agency adjudicatory proceeding does not constitute irreparable injury). Lemelson can also seek to stay, pending judicial review, any sanction that the Commission may impose against him, by filing a motion either to the Commission (while it retains jurisdiction) or to the relevant court of appeals. *See* Rule of Practice 401(c), 17 C.F.R. § 201.401(c); Advisers Act Section 213(b), 15 U.S.C. § 80b-13(b).

[8] *See SEC v. Lemelson*, 596 F. Supp. 3d 227 (D. Mass. 2022), *aff'd*, 57 F.4th 17 (1st Cir. 2023), *cert. denied*, 144 S. Ct. 486 (2023).

the period at issue in the civil proceeding, which the Division argues further supports its request. Lemelson opposes the Division's request, arguing, among other things, that the jury rejected some of the Division's theories of liability, and the district court suggested that a lifetime bar would not be warranted under the circumstances. Lemelson further disputes the Division's allegation that he committed misconduct outside the period at issue in the civil proceeding.

Advisers Act Section 203(f) authorizes the Commission to censure, place limitations on the activities of, suspend for up to 12 months, or bar a person from the securities industry if it finds, as relevant here, that (1) the person was enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, (2) the person was associated with an investment adviser at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[9] In assessing the public interest element, the Commission considers the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of the conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[10]

Commission Rule of Practice 250(b) provides that the Commission may resolve an administrative proceeding on a party's motion for summary disposition if "there is no genuine issue with regard to any material fact" and the moving party is "entitled to summary disposition as a matter of law."[11] Here, Lemelson maintains that while no bar is warranted, at minimum, the Commission should "hold a hearing to assess the public interest factors." We agree that an

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[9] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4)); *see also id.* § 80b-3(e)(4) (discussing applicable injunctions).

[10] *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

[11] 17 C.F.R. § 201.250(b); *see also ERHC Energy, Inc.*, Exchange Act Release No. 90517, 2020 WL 6891409, at *2 (Nov. 24, 2020) (discussing standard).

evidentiary hearing is warranted given the circumstances of this case.[12] We further find that it would serve the interests of justice and not result in prejudice to any party to specify further procedures in this matter.[13]

Accordingly, IT IS ORDERED that the Division of Enforcement's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that a public hearing for purposes of taking evidence on the questions set forth in Section III of the OIP shall be convened before an Administrative Law Judge as provided by Rule of Practice 110.[14] The Chief Administrative Law Judge shall designate, by rotation to the extent practicable, an Administrative Law Judge to be the presiding hearing officer.[15] The presiding hearing officer shall specify the time and place of the hearing by further order. The presiding hearing officer shall exercise the full powers conferred by the Commission's Rules of Practice and the Administrative Procedure Act.[16]

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[12] Although Lemelson has argued that a hearing is warranted in this case, he also argues that the removal restrictions for the Commission's administrative law judges are unconstitutional and that the case should not proceed until this "constitutional infirmity" is resolved. The Commission has, however, previously rejected such claims, and we endorse the Department of Justice's analysis of the issue in other proceedings. *See, e.g.*, *optionsXpress, Inc.*, Exchange Act Release No. 78621, 2016 WL 4413227, at *49-52 (Aug. 18, 2016), *abrogated in part on other grounds*, *Lucia v. SEC*, 585 U.S. 237 (2018); Defendants' Suggestions in Opposition to Plaintiffs' Motion for Preliminary Injunction § II, *H&R Block Inc. v. Himes*, No. 24-00198-CV-W-BP, 2024 WL 3742310 (W.D. Mo. Aug. 1, 2024), *appeal filed*, 2024 WL 2836827 (April 2024 Department of Justice brief); Br. For Appellees § II.A.3, *Leachco, Inc. v. Consumer Prod. Safety Comm'n*, 103 F.4th 748 (10th Cir. 2024) (No. 22-7060), 2023 WL 2155632, at *31-43 (February 2023 Department of Justice brief). Moreover, although Lemelson cites a Fifth Circuit case in support of his position on the ALJ removal issue, the Tenth Circuit has disagreed with that case, and Lemelson has not asserted that he resides in, or has his principal place of business in, the Fifth Circuit. *See* Advisers Act Section 213(a), 15 U.S.C. § 80b-13(a) (providing the courts of appeals where petitions for review of Commission decisions can be filed); *Jarkesy v. SEC*, 34 F.4th 446, 463-65 (5th Cir. 2022), *aff'd on other grounds*, 144 S. Ct. 2117 (2024); *Leachco*, 103 F.4th at 764-65 (disagreeing with the Fifth Circuit's *Jarkesy* decision at the preliminary injunction stage), *pet. for cert. filed*.

[13] *See* Rule of Practice 100(c), 17 C.F.R. § 201.100(c). To the extent conflicting, the procedures in this order supersede those specified in the OIP.

[14] 17 C.F.R. § 201.110.

[15] 17 C.F.R. § 200.30-10(a)(2).

[16] *See, e.g.*, 5 U.S.C. § 556; Rule of Practice 111, 17 C.F.R. § 201.111.

All motions, objections, or applications shall be directed to and decided by the presiding hearing officer.[17] This includes, without limitation, filings under Rules of Practice 210, 221, 222, 230, 231, 232, 233, and 250.[18] The parties should comply with the hearing officer's instructions regarding the provision of electronic courtesy copies. Any proposals for procedural schedules shall be directed to and decided by the presiding hearing officer.

IT IS FURTHER ORDERED that, pursuant to Rule of Practice 360(a)(2),[19] the hearing officer shall issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) the completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) where the hearing officer has determined that no public hearing is necessary, upon completion of briefing on a motion pursuant to Rule of Practice 250;[20] or (C) the determination by the hearing officer that a party is deemed to be in default under Rule of Practice 155 and no public hearing is necessary.[21] This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i) for the purposes of applying Rules of Practice 233 and 250.[22]

IT IS FURTHER ORDERED that the initial decision be issued on the basis of the record before the hearing officer, as defined by Rule of Practice 350,[23] and that the record index shall be prepared and certified in accordance with Rule of Practice 351.[24]

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17 *See* 17 C.F.R. § 201.151(b)-(c) (explaining how to file and how to direct filings when a matter is assigned to hearing officer).

18 17 C.F.R. §§ 201.210, .221, .222, .230, .231, .232, .233, .250.

19 17 C.F.R. § 201.360(a)(2).

20 17 C.F.R. § 201.250.

21 17 C.F.R. § 201.155.

22 17 C.F.R. §§ 201.233, .250, .360(a)(2)(i).

23 17 C.F.R. § 201.350.

24 17 C.F.R. § 201.351.

IT IS FURTHER ORDERED that, upon issuance of an initial decision, Rules of Practice 360(d), 410, and 411 shall govern further Commission consideration of this matter.[25]

By the Commission.

Vanessa A. Countryman
Secretary

[25] 17 C.F.R. §§ 201.360(d), .410, .411. Prior to issuance of an initial decision, interlocutory Commission review shall be governed by Rule of Practice 400, 17 C.F.R. § 201.400.

Exhibit 13

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceedings Rulings
Release No. 6912 / November 14, 2024

Administrative Proceeding
File No. 3-20828

In the Matter of

Gregory Lemelson[1]

Scheduling Order

The parties held a prehearing conference on November 6, 2024, and submitted a joint report proposing a schedule and addressing other issues. The parties specified a date for the completion of deposition testimony, which I will include in the schedule. As the Commission directed that this proceeding follow the 75-day timeline under 17 C.F.R. § 201.360(a)(2), any request for a deposition subpoena must explain why the deposition meets the requirements of Rule 233(b), 17 C.F.R. § 201.233(b). *See* Order Convening Public Hearing, Investment Advisers Act of 1940 Release No. 6755 (Oct. 23, 2024), https://www.sec.gov/files/litigation/opinions/2024/ia-6755.pdf.

Based on the parties' proposal, I set the following procedural schedule:

January 6, 2025: The Division of Enforcement must make available to Respondent all documents specified in Rule 230, if it has not already done so. 17 C.F.R. § 201.230.

January 10, 2025: Deadline to submit to my office any requests for subpoenas requiring the production of documents. 17 C.F.R. § 201.232. A copy of the document subpoena

[1] Respondent intends to file a motion requesting that the caption of the proceeding be changed to his ecclesiastical name, Father Emmanuel Lemelson. Respondent may do so by December 9, 2024, and any response should be filed by December 16, 2024. An affidavit or other evidence supporting the request should accompany the motion. The parties should also address whether both names may be used in the caption, as was done in *SEC v. Lemelson*, 57 F.4th 17 (1st Cir. 2023).

	form is available at https://www.sec.gov/files/alj/subpoena-produce_0.pdf.
January 31, 2025:	Close of document discovery.
February 7, 2025:	Deadline to submit to my office any requests for subpoenas to appear and testify at a deposition. A copy of the deposition subpoena form is available at https://www.sec.gov/files/subpoena-to-appear-depos.pdf.
February 28, 2025:	Close of deposition discovery.
June 9, 2025:	Submit to my office any requests for subpoenas requiring a person to appear and testify at the hearing. A copy of the appearance subpoena form is available at https://www.sec.gov/files/subpoena-to-appear.pdf.
	Exchange witness lists, exhibit lists, and exhibits. Please send a courtesy copy of the lists to alj@sec.gov. Exhibits are not filed with the Office of the Secretary until the close of the hearing.
June 16, 2025:	File motions in limine, including objections to exhibits and witnesses. I will not entertain a prehearing motion seeking to preemptively preclude hearing objections based on the failure to raise objections by this deadline. I may, however, consider the failure to raise an objection by this deadline in resolving objections at the hearing.
	File stipulations, admissions of fact, and requests for official notice.
June 23, 2025:	File oppositions to motions in limine and requests for official notice.
June 30, 2025:	Final telephonic prehearing conference at 4:00 p.m. EDT.
July 7, 2025:	Hearing begins at a location to be determined in the Boston area, Massachusetts. My office will secure a hearing location. The Division of Enforcement must

arrange for a court reporter. The hearing is expected to last three to five days.

The parties are reminded that all papers should be filed electronically with the Office of the Secretary as provided by Rules 151 and 152, 17 C.F.R. §§ 201.151, .152. The parties have agreed to serve each other by email. In addition, they are asked to email courtesy copies of filings to alj@sec.gov. Electronic copies of exhibits should not be combined into a single PDF file, but sent as separate attachments, and should be provided in text-searchable format whenever practicable.

Guidelines

I will follow the general guidelines described below during these proceedings. The parties should review what follows *and promptly raise any objections they may have to these guidelines*.

Subpoenas. A party's motion to quash a subpoena will be due within five business days of the submission of the subpoena for signing. Any opposition to the motion to quash will be due within five business days thereafter. A party moving to quash a subpoena to produce documents based on a claim of privilege must support its motion with a declaration and privilege log. *Accord Dorf & Stanton Commc'ns, Inc. v. Molson Breweries*, 100 F.3d 919, 923 (Fed. Cir. 1996); *Caudle v. District of Columbia*, 263 F.R.D. 29, 35 (D.D.C. 2009).

Witness Lists. Witness lists must include witnesses' names, occupations, city and state of residence, and a brief summary of their expected testimony. 17 C.F.R. § 201.222(a)(4). Home addresses should not be included in the filing. The party making the filing should promptly make complete witness information, including a witness's address, available to another party upon request.

Exhibits. The parties should confer and attempt to stipulate to the admissibility of exhibits. To avoid duplication of exhibits, the parties should identify joint exhibits. Exhibits are not filed with the Office of the Secretary until the close of the hearing at my instruction.

Exhibit lists. A comprehensive exhibit list prevents a party opponent from being surprised in the middle of the hearing. An exhibit list must not be excessively long, vague, or confusing to the point of prejudicing the opponent's ability to raise prehearing objections or to prepare its case. Exhibit lists shall be exchanged among the parties and should include all documents that a party expects to use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or that may be subject to admissibility objections. Each party should serve its opponent with any

amendments to its exhibit list. Because I rely on the parties' exhibit lists, the parties should provide me with a paper copy of their final exhibit lists at the beginning of the hearing. Following the hearing, I will issue a separate order directing the parties to file a list of all exhibits—both admitted and offered but not admitted—together with citations to the record indicating when each exhibit was admitted.

A party may offer an exhibit not included on the exhibit list if good cause, for example the need to respond to unexpected testimony, can be shown.

Hearing schedule. The first day of the proceeding will begin at 10:00 a.m. Unless circumstances require a different schedule, we will begin each subsequent day at 9:00 a.m. Each day of the proceeding should last until at least 5:00 p.m. I generally take one break in the morning, lasting about fifteen minutes, and at least one break in the afternoon. I generally break for lunch around 12:30 p.m., for about one hour.

Witness examination.

a. In general, the Division presents its case first because it has the burden of proof. Respondent then presents his case. If necessary, the parties may agree to proceed in some other order and may take witnesses out of order.

b. If the Division calls a non-party witness that Respondent also wishes to call as a witness, Respondent's cross-examination of the witness may exceed the scope of what was covered by Division's direct examination of that same witness. This will avoid the need to recall a witness just so the witness can testify for Respondent's case.

c. In general, cross-examination may be conducted by leading questions, even as to Division witnesses that Respondent wishes to call in his own case. If a Commission employee is called as a witness for Respondent, the Division may not ask leading questions on cross-examination.

d. Avoid leading questions on direct examination. Leading questions during direct examination of a non-hostile witness are objectionable. Repeatedly having to rephrase leading questions slows down the hearing.

/s/ Jason S. Patil
Administrative Law Judge