UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of GREGORY LEMELSON	:	Admin. Proc. File No. 3-20828

RESPONDENT LEMELSON'S MOTION TO DISMISS THE PROCEEDING DUE TO *ULTRA VIRES* DIVISION ACTION AND OTHER INTERNAL CONTROL IRREGULARITIES

PRELIMINARY STATEMENT

Respondent Rev. Fr. Emmanuel Lemelson[1] respectfully moves for prompt dismissal of this administrative follow-on adjudicative proceeding due to (1) the Division of Enforcement's recent unauthorized and apparently unprecedented filing—and then abrupt dismissal—of an *ultra vires* federal court lawsuit against Lemelson, purportedly on behalf of the Commission, and (2) a separate internal control failure that further taints this proceeding. Unless the impending July 7 hearing date is continued, this motion should be briefed and decided on an expedited basis well before the hearing date.

The Division recently admitted that its *ultra vires* federal lawsuit was filed without any prior consultation with or approval by the presidentially appointed and Senate-confirmed Commissioners. Worse yet, the lawsuit enlisted the Commission as an adverse litigant leveling gratuitous, inaccurate, and incendiary allegations against Lemelson at the same time the Commissioners are supposed to be playing the role of neutral, impartial adjudicators of this

[1] The case caption erroneously identifies Respondent by his birth name rather than his ecclesiastical name.

underlying administrative proceeding against Lemelson. As a result—and especially when combined with many previous Commission public statements and court filings that have falsely demonized Lemelson over the past decade—any plausible appearance of a genuinely fair and impartial Commission adjudication of this proceeding has been irreparably destroyed.

And there's more. The Division also recently admitted that due to another internal control failure at the Commission, an unnamed former Division staff member received—presumably unsolicited—an unspecified number of internal, nonpublic Division emails over a recent period of approximately one month after being transferred to the Chairman's office in early April 2025 to serve as counsel to the Chairman, *including emails related to the division's* ultra vires *subpoena enforcement lawsuit against Lemelson*. A far less direct and tangible internal control failure led the Commission to dismiss dozens of pending administrative proceedings just two years ago, and this latest internal control failure should be treated no less seriously.

Given these combined control failures and irregularities, the only adequate remedy is for the Commission to dismiss this proceeding with prejudice. Moreover, given the seriousness of the issues raised herein and the relief requested, Lemelson respectfully submits that this motion should be personally and expeditiously decided in the first instance by the presidentially appointed and Senate-confirmed SEC Commissioners rather than by subordinate employees purporting to act through delegated authority.

RELEVANT BACKGROUND

The Commission's enforcement pursuit of Lemelson began more than a decade ago and has continued ever since in various courts and in this proceeding. In the Commission's April 1, 2025 order denying Respondent Lemelson's application for interlocutory review of the ALJ-issued subpoena at the center of the Division's *ultra vires* federal lawsuit, one of the stated reasons for

the denial involved the timing and ripeness of Lemelson's objections to the subpoena. Specifically, the Commission assuaged Lemelson's concerns about the subpoena by assuring him that "the subpoena order could come before the Commission not only in any eventual appeal of an initial decision, *but perhaps even sooner, in the event Lemelson refuses to comply with the order, and the Commission considers whether to seek judicial enforcement of the subpoena under Exchange Act Section 21(c)*." Commission Order Denying Respondent's Petition for Interlocutory Review and Motion to Stay, *In re Lemelson*, Inv. Adv. Act Rel. No. 6869 (April 1, 2025) (emphasis added).[2] The Commission's clear expectation and intent was that *before* any public subpoena enforcement lawsuit might be filed in a federal court, the presidentially appointed and Senate-confirmed Commissioners would revisit Lemelson's well-grounded and good-faith objections to the lawfulness and reasonableness of the ALJ subpoena (and of the underlying proceeding in general).

The Commission's expectations were fully consistent with the applicable statute. *See* 15 U.S.C. § 80b-9(c) ("*the Commission* may invoke the aid of any court" (emphasis added)). They were also fully consistent with basic notions of public accountability, and with recent precedent when parties have failed to comply with subpoenas issued by ALJs or otherwise outside of the formal investigation context. *See, e.g., In re Mark Feathers*, Exchange Act Rel. No. 90572 (December 4, 2020) (Commission interlocutory order denying—transparently and on the record after briefing—respondent's request to seek judicial enforcement of subpoena issued by ALJ); *In the Matter of the Registration Statement of Kismet, Inc.*, Securities Act Rel.. No. 9758 (April 23, 2015) (order instituting administrative proceeding, rather than federal court lawsuit, to determine

[2] The Commission's order appears to have inadvertently referenced the wrong statute here. This proceeding was commenced only under the Investment Advisers Act, so the correct citation should have been to Advisers Act Section 209(c) rather than Exchange Act Section 21(c).

whether company should be sanctioned for failing to comply with subpoena issued in the course of an examination); *Cf. United States v. Arthrex*, 594 U.S. 1, 11 (2021) (actions taken by the "thousands of officers wield[ing] executive power on behalf of the President in the name of the United States" acquire "legitimacy and accountability to the public through 'a clear and effective chain of command' down from the President, on whom all the people vote" (quoting *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 498 (2010)); *id.* at 13 (inferior officers "must be 'directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate'" (quoting *Edmond v. United States*, 520 U.S. 651, 663 (1997)); Executive Order, *Ensuring Accountability for All Agencies*, Feb. 18, 2025. And Lemelson and his counsel took the Commission at its word, pursuing no further options to quash the ALJ subpoena while awaiting an expected second opportunity to present Lemelson's objections directly to the Commissioners.

But the Division apparently had other ideas. Disregarding the Commission's stated expectations, recent precedent, due process, and basic logic, the Division unilaterally determined that it did not need the Commission's input after all. Instead, on April 30—just days after the new SEC Chairman was sworn in and just weeks after the Commission had officially revoked the Enforcement Director's far less consequential delegated power to simply commence *non-public* investigations[3]—the Division plunged ahead and filed a false and incendiary subpoena enforcement lawsuit against Lemelson in the United States District Court for the District of Massachusetts, putatively on behalf of the Commission but without first seeking the Commission's prior input or approval.[4] Lemelson is aware of no prior case in which the Commission has ever

[3] Final Rule: *Delegation of Authority to the Director of the Division of Enforcement*, SEC Rel. No. 33-11366 (Mar. 10, 2025), 90 Fed. Reg. 12105-06 (Mar. 14, 2025).

[4] A copy of this *ultra vires* public court filing is attached hereto as Exhibit A.

sought judicial enforcement of an ALJ or Commission subpoena issued in the context of an administrative adjudicatory proceeding (as opposed to an investigative subpoena issued pursuant to a formal order of investigation), and certainly none where the lawsuit was filed without any prior Commissioner input or approval.

Exactly one month after filing its *ultra vires* lawsuit—and slightly more than a week after Lemelson's counsel advised the Division and the Court that the filing was *ultra vires*—the Division abruptly dismissed the lawsuit, presumably again without seeking or obtaining Commissioner approval. As Gilda Radner's Emily Litella might say, "*never mind*." But rather than admit that the case was filed *ultra vires*, the Division's dismissal notice offered dubious alternative excuses for the abrupt dismissal of the lawsuit.[5]

ARGUMENT

I. DISMISSAL IS WARRANTED BECAUSE THE DIVISION'S UNPRECEDENTED ACTION WAS *ULTRA VIRES* AND HAS IRREPARABLY TAINTED THE APPEARANCE OF COMMISSION NEUTRALITY AND IMPARTIALITY

In a recent letter to Lemelson's counsel and during a subsequent status conference with the Massachusetts federal judge overseeing the Division's *ultra vires* subpoena enforcement lawsuit, the Division claimed that it had delegated authority—the Commission's version of the auto-pen—

[5] The dismissal notice, a copy of which is attached hereto as Exhibit B, cited the upcoming hearing in this proceeding (the date of which had not changed since the subpoena enforcement lawsuit was filed just weeks earlier), along with an expectation that a third party might soon be producing one relatively small sub-category among the sweeping volume of documents demanded by the ALJ subpoena, which included more than five years' worth of Lemelson's private papers and communications having nothing to do with either this follow-on proceeding or the 2018 lawsuit that resulted in the federal court injunction that serves as the purported predicate for this proceeding. Despite previously assuring both the ALJ and a federal court that *all* of this sweeping discovery was essential to this follow-on proceeding, the Division suddenly dismissed the subpoena enforcement lawsuit without explaining why the vast majority of what it had previously demanded wasn't necessary after all.

to file its subpoena enforcement lawsuit against Lemelson. *See* Letter dated May 19, 2025 at 1-2.[6] It did not.

In 1994, the Commission delegated to the Director of the Division the authority to institute federal court subpoena enforcement proceedings, but *only* for subpoenas issued "in connection with *investigations*." Final Rule, Delegation of Authority to Director of Division of Enforcement, 59 Fed. Reg. 23794-01, *codified at* 17 C.F.R. § 200.30-4(a)(10) (emphasis added). Under no plausible reading of that rule—adopted without notice and comment based on a debatable boilerplate finding that the rule "relates solely to agency organization, procedure, or practice" and is not substantive—did the Commission delegate the power to institute federal court lawsuits to enforce subpoenas issued by its ALJs in the context of agency adjudications.[7] Indeed, the Division's own Enforcement Manual correctly instructs that the Commission has delegated authority to the Division Director to file a subpoena enforcement action in federal court "[i]f a person or entity refuses to comply with a subpoena *issued by the staff pursuant to a formal order of investigation*." SEC Enforcement Manual at 25 (2017 online version) (emphasis added). There is no hint that this highly consequential delegated power—which is far more consequential than the recently revoked delegated power merely to open a *non-public* investigation and *issue* subpoenas—extends to court enforcement of subpoenas issued outside the context of a Commission-authorized formal investigation.

---

[6] A copy of this letter is attached hereto as Exhibit C.

[7] Another obvious problem with the Division's claim of delegated authority is that the rule delegates authority only to the "Director" of the Division. 17 C.F.R. § 200.30-4(10). But the Division has not had a Director since January 2025, only an Acting Director. A further problem is that the federal lawsuit may not have been approved even by the Acting Director. The Division's Enforcement Manual indicates that the Director's delegated authority "was sub-delegated to [unspecified] senior officers in the Division," SEC Enforcement Manual at 25 (2017 online version), but nothing in the rule suggests that such a "sub-delegation" was ever even contemplated, much less intended, by the Commission, and there is ample reason to suspect it wasn't.

Logic and fairness confirm this plain and prudent reading of the delegation rule. If the Enforcement Director's delegated power extended to judicial enforcement of ALJ subpoenas, it would create an absurd imbalance of power in administrative enforcement proceedings, which are already notoriously stacked in favor of the Division and against the respondent—*especially* follow-on proceedings like this one, which literally *always* end up in a bar or suspension.[8] In such a world, for example, the Division could routinely invoke its delegated authority to bypass the Commissioners entirely and seek federal court enforcement of any ALJ subpoena that was issued at the behest of the Division, yet a respondent would first need to convince the Commissioners, on the record, to authorize judicial enforcement of any ALJ subpoena issued at the behest of the respondent. (Or perhaps the respondent could instead beg the Division to exercise its purported delegated authority and seek immediate judicial enforcement of even a respondent-requested ALJ subpoena—an utterly ridiculous scenario, especially if the subpoena were directed to the Division itself, as opposed to a third party, thereby putting the Division in the untenable position of suing itself on purported behalf of the Commission.)

In any event, regardless of the exact scenario, in no fair or logical world would the Commission ever appoint the very same Division personnel who are appearing before it as the

[8] According to exhaustive empirical analysis by a leading securities law scholar, the Commission invariably imposes a bar or suspension in *every* follow-on prosecution except the small handful in which the Commission cannot 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 the Commission'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 Enterprise v. FTC* and *Cochran v. SEC*, 598 U.S. 175, 197 n.1 (Thomas, J., concurring) (quoting Ninth Circuit opinion below in that case).

prosecutors in an ongoing adjudicatory proceeding to simultaneously represent the Commission in seeking judicial enforcement of an ALJ subpoena issued to the respondent in that same adjudicatory proceeding. Doing so would create an obvious conflict of interest and appearance of partiality, with the Commission literally taking sides in a dispute between the parties to the underlying adjudicative proceeding pending before it. Yet that is exactly what the Division has wrought here.

By invoking a non-existent delegated power and by appointing itself as counsel representing the Commission in yet another hostile litigation against Lemelson, the Division has irreparably destroyed any plausible appearance of Commission objectivity and impartiality in adjudicating this administrative proceeding. At a time when the Commissioners are supposed to be playing the role of the neutral, impartial, and dispassionate final adjudicators of this administrative proceeding, the Division unilaterally and publicly enlisted them as its partners in a joint enterprise—cloaked by a fiduciary attorney-client relationship of trust and confidence between the Commissioners and the Division prosecutors of this administrative proceeding—to initiate hostile adversarial litigation in court *against the other party to the pending adjudicatory proceeding*.[9]

[9] Even before the Division filed its *ultra vires* subpoena enforcement lawsuit, the Commission was already engaged in two other hostile adversarial lawsuits against Lemelson. First, the Commission is actively opposing Lemelson's claim for attorney's fees and costs under the Equal Access to Justice Act based on the Commission's excessive demands made before and after a Massachusetts jury verdict discussed in more detail below. *See SEC v. Lemelson*, No. 24-1754 (1st Cir. May 27, 2025) (opinion vacating and remanding district court's denial of Lemelson's EAJA application). Second, Lemelson is pursuing litigation in another federal court to stop this administrative follow-on prosecution due to various constitutional and other legal violations. *See Lemelson v. SEC*, No. 24-2415 (D.D.C. May 27, 2025) (Memorandum Opinion dismissing complaint) (Notice of Appeal filed May 30, 2025).

Worse yet, the Division has now publicly affixed the Commission's imprimatur to numerous inaccurate and incendiary public representations to the Massachusetts district court about Lemelson. For example, the Commission's application seeking judicial enforcement of the ALJ subpoena falsely, gratuitously, and repeatedly alleges that a Massachusetts federal jury found Lemelson liable for making three "fraudulent" statements. *See* Exh. A hereto at 1, 3, 4. It would be bad enough if these incendiary public allegations—now attributed to the Commission itself—were true.

But they are not. They misstate and invert what the jury actually found. When asked whether the Commission had proved that Lemelson "engag[ed] in a scheme to defraud, *or any act, practice, or course of business which operates or would operate as a fraud or deceit*," the jury unanimously said "no." Jury Verdict Form at 1 (emphasis added).[10] Indeed, the jury likewise unanimously answered "no" when asked whether Lemelson intentionally—or even *negligently*—violated the anti-fraud provisions of the Investment Advisers Act. *Id.* at 2.

To be sure, the jury did find that three isolated sentences or sentence fragments—cherry-picked from Lemelson's 56 pages of detailed and transparently authored written reports and oral online interviews over a decade ago, in which he presciently criticized a publicly traded corporation as being overvalued and poorly managed—were "untrue" or "misleading" within the meaning of SEC Rule 10b-5(b). *See id.* at 1.[11] But the jury did *not* find those statements to be "fraudulent." The jury plainly distinguished between untrue or misleading statements on the one

[10] A copy of the jury verdict form is attached hereto as Exhibit D.

[11] Two of the three statements related to a pre-operational, nonpublic company that Lemelson never traded in. The third was a two-second snippet during one of Lemelson's several unscripted, oral online interviews that collectively filled nearly an hour of total airtime.

hand, and fraud on the other. It repeatedly found that nothing Lemelson wrote, said, or did was "fraudulent." Indeed, neither Rule 10b-5(b) nor its enabling statute (Exchange Act § 10(b))—the only provisions the jury found violated—even mentions the word "fraud," nor any other word with "fraud" as its root.[12] And after the jury verdict, the District Court awarded the Commission only a tiny fraction of the monetary relief it had demanded (*i.e.*, less than seven percent of its $2.3 million overall demand), finding among other things no investor harm caused by Lemelson, no illicit gain to Lemelson, no basis for disgorgement, and no need for a permanent, lifetime injunction. *See SEC v. Lemelson*, 596 F. Supp. 3d 227, 233 (D. Mass. 2022), *aff'd*, 57 F.4th 17, 31-32 (1st Cir.), *cert. denied*, 144 S. Ct. 456 (2023).

The Division's refusal to accept the jury's verdict is troubling enough, but now the Division has ascribed its version of revisionist history to the Commission itself. And this is not the first time. Just after the Massachusetts jury exonerated Lemelson of most of the Commission's charges in 2021—including all charges alleging manipulation, scheme to defraud, or any other acts or practices that operated or would operate as a fraud or even a negligent violation of the Advisers Act—the Commission rushed out a false and disparaging press release headlined "SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme."[13] While boasting about the Commission's purported "win" in proving "fraudulent misrepresentations"—and repeating its unproven allegations of manipulation and scheming despite the jury having unequivocally *rejected* those very charges along with all claims under the Advisers Act—the press release made *no*

[12] A recent award-winning law review article convincingly explains why untrue public statements actionable only under subsection (b) of Rule 10b-5—and not under subsection (a) or (c)—are not "fraudulent" statements; indeed, they are plainly protected speech under the First Amendment. Matthew Lambertson, *The Common Law and SEC Rule 10b-5(b): Narrowing the Securities "Fraud" Exception to the First Amendment*, 77 FLA. L. REV. 777 (2025).

[13] A screenshot of this press release is attached hereto as Exhibit E.

mention whatsoever of the jury's rejection of most of the Commission's case, including all claims of fraud or even negligence under the Advisers Act. A few days later, the Commission issued a separate litigation release that again claimed unqualified victory in purportedly proving "fraudulent misrepresentations" without acknowledging the jury's rejection of most of its claims. Both the press release and the litigation release remain posted on SEC's public website as of today.[14]

Ironically, the Commission of course routinely sues companies and individuals, including Lemelson, for far less egregious (and even unintentional) alleged misstatements and so-called half-truths. Even more ironic, given the Division's longstanding refusal to accept the jury's verdict, is the Division's recent representation to the Massachusetts federal court, in its *ultra vires* subpoena enforcement lawsuit, that the contested ALJ subpoena should be enforced because "the Division believes that Lemelson has made public statements that mischaracterize the outcome of the earlier Massachusetts litigation." Exh. A hereto at 10. That is rich indeed.

Taking all of the cumulative facts surrounding several phases of a "long-running, hard-fought, bitter litigation" between the Commission and Lemelson, *SEC v. Lemelson*, 742 F. Supp. 3d 73, 75 (D. Mass. 2024), capped off by the recent filing and abrupt dismissal of the Division's hostile and *ultra vires* federal lawsuit against Lemelson in the Commission's name, no reasonably objective person could plausibly view the Commission as a neutral, impartial adjudicator of this

[14] *See*, respectively, https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25353 and https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25258. The Commission changed the headline of the press release only after Lemelson's counsel challenged its flagrant misrepresentation of the jury's verdict and demanded that it be taken down. The Commission has never corrected the body of either the press release or the litigation release to acknowledge the jury's rejection of most of its charges.

related parallel adjudicative proceeding against Lemelson. The proceeding should therefore be dismissed.

II. THE COMMISSION'S LATEST INTERNAL CONTROL DEFICIENCY ALSO REQUIRES DISMISSAL OF THIS PROCEEDING

The Division's *ultra vires* lawsuit is not the only recent irregularity that fatally taints this proceeding. In its recent letter to Lemelson's counsel claiming delegated authority, the Division also admitted to Lemelson's counsel that, allegedly due to "a technical issue with the email system," a former Division staff member continued to receive internal Division emails for approximately a month after being transferred to the Chairman's office in early April to serve as counsel to the Chairman. Exh. C hereto at 1-2. Importantly, "[t]hese emails would have included emails concerning the [*ultra vires*] subpoena enforcement action [against Lemelson]." *Id.*

This latest breach of the separation of functions at the Commission is far more direct and tangible than the hypothetical access Division staff recently had, due to a previous internal control failure, to memoranda drafted by staff from the Adjudication Group in the Commission's Office of the General Counsel. That previous breach resulted in the Commission's wholesale dismissal of dozens of cases then pending on its administrative adjudication docket—indeed, it appears that virtually every case then pending was dismissed outright. *See* Order Dismissing Proceedings, *In re Pending Administrative Proceedings*, Securities Act Rel. No. 11198 (June 2, 2023); *see also* "Second Commission Statement Relating to Certain Administrative Adjudications," June 2, 2023. The breach here deserves a no less effective and cleansing remedy.

* * * *

This unfortunate episode presents a timely and cautionary tale about the perils associated with the Commission's prolific delegations of statutory responsibility over many decades. Counting only the delegations codified in Subpart A of Part 200 of Title 17 of the Code of Federal

Regulations, there are literally hundreds of such delegations scattered across more than a dozen Commission employees and offices, collectively spanning more than 35 single-spaced, fine-print pages of the hard-copy version of the Code. *See* 17 C.F.R. §§ 200.30-1 through 200.30-19. That count doesn't include an unknown number of other delegations embedded elsewhere in the Commission's rules, such as the delegation that allowed the ALJ to issue the subpoena at issue here in the first instance. *See* 17 C.F.R. § 201.111(b); *cf. Arthrex*, 594 U.S. at 15 ("diffusion of power carries with it a diffusion of accountability" (quoting *Free Enter. Fund*, 561 U.S. at 497)). It likewise doesn't count an unknown number of questionable "sub-delegations" made by the primary delegees with or without the Commission's consent, or the unknowable number of actions that are taken under misinterpretations of the breadth of the actual delegations (as apparently happened here).

The diffusion of Commission accountability resulting from its patchwork of intersectant delegations is on full display here. Lemelson reasonably suspects that the Commissioners did not personally issue the Order Instituting Proceedings in this case; that task was presumably performed by the Office of the Secretary acting pursuant to authority delegated by 17 C.F.R. § 200.30-7(a)(12).[15] Likewise, the Commissioners obviously did not personally issue the subpoena at the

[15] If Lemelson's suspicion is correct, the legitimacy of that exercise of delegated authority was also questionable. Although Lemelson has no access to any of the various *ex parte* communications between Division staff and the Commissioners surrounding of the various successive enforcement proceedings brought against him over the past decade, he reasonably suspects that the *ex parte* communications surrounding the initial enforcement action in 2018 sought and obtained authorization to commence this follow-on proceeding if and only in the event that the "anticipated" court injunction was entered. But the hypothetical injunction that was anticipated in 2018 likely bore little resemblance to the injunction the Commission actually obtained in that case more than three years later. Among other differences, the anticipated injunction was likely a permanent one that would enjoin Lemelson and his firm against violations of the Advisers Act and against all three subsections of Exchange Act Rule 10b-5 (including "schemes" to defraud and "acts, practices, and courses of business that operate or would operate as a fraud"). Yet the actual injunction lasts only five years (expiring less than two years from

center of this motion; it was, as previously noted, issued by the ALJ pursuant to authority delegated by 17 C.F.R. § 201.111(b). Then, when Lemelson unsuccessfully sought the Commissioners' interlocutory review of the ALJ subpoena and of the ALJ's denial of Lemelson's motion to quash it, the Commissioners possibly were again personally uninvolved, because the Commission has delegated to the General Counsel the power "[t]o consider an application for review of any interlocutory ruling which an administrative law judge has refused to certify, and to deny such application upon determining that the administrative law judge did not err in refusing to certify the matter." 17 C.F.R. § 200.30-14(h)(1)(i). All of these highly consequential steps took place in a powerful agency's law enforcement proceeding that threatens the liberty, livelihood, and reputation of a private citizen, yet it is quite possible that no Commissioner played any role in any of those steps.

Alas, however, the Commissioners have—at least until now—retained exclusively to themselves the power to initiate nearly all Commission lawsuits in federal court that can irreparably damage the reputations, careers, and fortunes of those accused. Yet even that last firewall has been breached here, with the Division filing—and then abruptly dismissing—an *ultra vires* federal lawsuit launched under an ill-considered arrogation of delegated authority, and in the process destroying any remaining appearance of Commission neutrality and impartiality as the ultimate adjudicator of this proceeding.[16]

---

now), does not enjoin *any* conduct under the Advisers Act and, read as broadly as permissible under prevailing law, enjoins nothing more than the making of untrue or misleading public statements about publicly traded corporations. Given those significant differences between what was anticipated in 2018 and the time-limited prior restraint the Commission actually obtained in 2022, it is at best questionable whether any exercise of delegated authority by the Secretary under the applicable rule was legitimate.

[16] As previously noted in footnote 7 above, it is possible that the *ultra vires* lawsuit was not even approved by the Acting Director of Enforcement, but only by a subordinate officer, because the

CONCLUSION

The Commission should promptly dismiss this aged and ill-begotten proceeding, with prejudice. Should the Commission determine that discovery or internal investigation is warranted before deciding this motion, or that Division personnel responsible for the actions described herein should be disqualified, the hearing should be postponed and the proceeding otherwise stayed until all such processes have been completed.[17]

Dated: June 3, 2025

Respectfully submitted,

/s/ *Russell G. Ryan*

Russell G. Ryan
John J. Vecchione
Andreia Trifoi
NEW CIVIL LIBERTIES ALLIANCE
4250 N. Fairfax Dr., Suite 300
Arlington, VA 22203
(202) 869-5210
russ.ryan@ncla.legal

Douglas S. Brooks
LIBBY HOOPES BROOKS & MULVEY, P.C.
260 Franklin Street
Boston, MA 02110
(617) 338-9300
dbrooks@lhbmlegal.com

Counsel for Respondent Lemelson

CERTIFICATE OF SERVICE

I, Russell G. Ryan, do hereby certify that I served the foregoing document on counsel for the Division, Marc Jones, Esq. and Alfred Day, Esq., by email on June 3, 2025.

s/ *Russell G. Ryan*

Enforcement Manual says that the delegated power has been "sub-delegated" to an unknown number of such off senior officers within the Division.

[17] Contemporaneously with the filing of this motion, Lemelson is separately requesting that the ALJ issue a limited and targeted subpoena to the Division to seek relevant documents and that the hearing date be postponed until the Commission decides this motion.

Counsel for Respondent Lemelson

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION, Applicant,	)	No.
v.	)	
GREGORY LEMELSON, Respondent.	)	

APPLICATION FOR ORDER TO SHOW CAUSE AND
FOR ORDER TO COMPLY WITH ADMINISTRATIVE SUBPOENA

Respondent Gregory Lemelson (a/k/a Fr. Emmanuel Lemelson) ("Lemelson") has refused to comply with a document subpoena issued by an Administrative Law Judge ("ALJ") overseeing an administrative proceeding ("AP") before the Securities and Exchange Commission. The AP is a "follow-on" proceeding instituted by the Commission after a jury in the District of Massachusetts, on November 5, 2021, found Lemelson liable for making three fraudulent statements in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5(b) thereunder.[1] The Commission instituted the AP to determine whether it is in the public interest to bar Lemelson from associating with any broker, dealer, investment adviser, or other designated securities-related firm (an "associational bar") based on the district court injunction.

In the AP, the SEC's Division of Enforcement ("Division") requested that the ALJ issue a document subpoena in advance of a hearing on the merits set for July 7, 2025. Lemelson made

[1] The jury rendered a split verdict. Respondent was found not liable for a fourth statement. And the jury declined to find him liable under (1) Rules 10b-5(a) and (c) promulgated under Section 10(b) of the Exchange Act (scheme liability) and Section 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-8 thereunder.

a motion to quash the subpoena, which the ALJ granted in part and denied in part. Specifically, the ALJ narrowed the 18 categories of documents the Division sought and instead issued a subpoena for four categories of documents the ALJ found to be relevant and not "unreasonable, oppressive, excessive in scope, or unduly burdensome." 17 CFR § 201.232(b). The narrowed subpoena issued on January 31, 2025, and after some extensions due to briefing by the parties described below, had a return date of March 31, 2025.[2]

Lemelson moved to stay the AP and for interlocutory review of the ALJ's order issuing the narrowed subpoena, all of which were denied by both the ALJ and the Commission.[3] Significantly, in those various motions, Lemelson never claimed that the subpoena was improperly issued or that service was ineffective.

Nevertheless, on April 3, 2025, Lemelson's counsel unequivocally stated that Respondent will not comply with the subpoena and will not produce documents unless ordered to do so by a United States District Court:

> In light of the strong legal arguments we have presented [in the DDC Action] regarding what we view as the unlawful nature of the administrative proceeding in general, and the subpoena in particular, my client will not produce any documents unless and until compelled by a court of competent jurisdiction to do so.

[Ex. A (email from Lemelson counsel to Division counsel).]

The Division therefore asks this Court to order Lemelson to show cause why he should not comply with the administrative subpoena. A Proposed Order is attached.

---

[2] The original return date of the narrowed subpoena was February 21, 2025.

[3] Lemelson also moved for a preliminary injunction in federal district court seeking to enjoin the AP. That motion, along with the Commission's motion to dismiss, remains pending. *See Lemelson v. Securities Exchange Commission*, No. 1:24-cv-02415-SLS (D.D.C., filed Aug. 21, 2024) (the "DDC Action").

BACKGROUND

A. The District Court Action

Lemelson has served as Chief Investment Officer of investment adviser Lemelson Capital Management ("LCM") from at least 2014 to the present. Both Lemelson and LCM are investment advisers, subject to the Investment Advisers Act of 1940 ("Advisers Act"). At all relevant times, Lemelson, through LCM, managed a hedge fund called the Amvona Fund LP, and he made all investment decisions for that fund.

Between May 2014 and October 2014, Lemelson and LCM took short positions in the stock of Ligand Pharmaceuticals Inc. ("Ligand") on behalf of The Amvona Fund. Between June and August 2014, Lemelson published reports concerning Ligand, and also gave an interview in which he discussed the company.

In September 2018, the Commission sued Lemelson and LCM. The complaint alleged that they reaped illegal profits by making false and fraudulent statements to drive down the price of Ligand, thereby increasing the value of their short position. The Commission charged Lemelson and LCM with violations of Exchange Act Section 10(b) and Rule 10b-5 and Advisers Act Section 206(4) and Rule 206(4)-8.

On November 5, 2021, after a nine-day trial, the jury found that Lemelson (and by extension LCM) made three materially false and fraudulent statements about Ligand and its business partner in violation of Exchange Act Section 10(b) and Rule 10b-5 and that he did so with scienter, *i.e.*, a state of mind reflecting fraudulent intent or recklessness. The jury found that each of these statements violated Exchange Act Section 10(b) and Rule 10b-5(b).

B. Jury Trial and Final Judgment

Following the jury verdict, the parties proceeded to the remedies phase of the litigation. In its Memorandum and Order on remedies, the District Court found, among other things, that:

- One of the three fraudulent statements made by Lemelson "was particularly egregious";
- Lemelson would be in a position to violate again "as he continues to work as an investment adviser and recently started a new fund, Spruce Peak Fund. Investors will continue to look to his advice and rely on the truthfulness of his reports"; and
- "Lemelson continues to unabashedly defend his actions. [He] does not recognize the wrongfulness of his conduct or acknowledge when he was clearly wrong . . . . His pugilistic approach to the litigation . . . indicated he has not learned his lesson."

[*Securities and Exchange Commission v. Lemelson*, No. 1:18-cv-11926-PBS (D. Mass. filed Sept. 12, 2018) ("Remedies Order"), ECF No. 273 at 9-10.]

The District Court enjoined Lemelson from violating Exchange Act Section 10(b) and Rule 10b-5 for five years,[4] and ordered him to pay a Tier III civil penalty of $160,000.[5] [*Id.* at 24.] The jury's verdict and the District Court's Remedies Order were affirmed by the First Circuit Court of Appeals and the Supreme Court denied Lemelson's petition for a writ of certiorari.

C. The Follow-On Administrative Proceeding

The Commission issued an Order Instituting Proceedings on April 20, 2022. The

[4] The District Court wrote that it was imposing a five-year injunction, instead of a permanent one, because "Lemelson's conduct warrants an injunction, but his violation was not as severe as in many of the cases where courts ordered permanent injunctions." [Remedies Order at 10.]

[5] Tier III penalties are reserved for those violations of the federal securities laws that (i) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement and (ii) directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

Commission later denied the Division's motion for summary disposition (the analog of a motion for summary judgment) and assigned the matter to an ALJ for a hearing on the merits. That hearing is set to begin on July 7, 2025, in Boston.

In the AP, the Division requested that the ALJ issue a document subpoena to Lemelson. Lemelson moved to quash the subpoena. That motion was granted in part and denied in part. As noted above, the ALJ narrowed the subpoena to four categories of documents. [*See* Ex. B (January 30 Order).] The ALJ found that these four categories of documents are relevant to the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981), which bear on the appropriateness of an associational bar:

> 1. A list of names and contact information for Respondent's present investor clients and former investors who had been clients at some point from January 2020 to present.
>
> 2. All communications concerning any complaints by investors and prospective investors in any funds managed by Respondent from January 2020 to present.
>
> 3. All communications from Respondent to investor clients or the public concerning *SEC v. Lemelson* from January 2020 to present.
>
> 4. A list of any litigation, arbitration, enforcement action by any state, federal, or international securities regulator, criminal authority, or self-regulatory agency, or other proceeding to which Respondent was a party from January 2020 to the present and all documents filed and served by Respondent in those proceedings, and the transcripts of Respondent's testimony in them. And, for the FINRA arbitration proceeding titled *The Amvona Fund, LP v. Clear St., LLC*, No. 20- 01555, Clear Street's exhibits 128, 130, 132, 134, 135, 136, 137, 138, and 139.

[*Id.*]

The narrowed subpoena issued on January 31, 2025. [Ex. C (January 31 subpoena).] After denying a series of motions to stay and to seek interlocutory appeal to the Commission, the

ALJ ordered a revised subpoena return date of March 31. On April 3, Respondent's counsel unequivocally stated that Respondent will not comply with the subpoena and will not produce documents until ordered to do so by a "court of competent jurisdiction". [Ex. A.]

ARGUMENT

I. THIS COURT HAS JURISDICTION TO ENFORCE SEC SUBPOENAS IN A SUMMARY PROCEEDING

The Commission's Rules of Practice govern the conduct of APs. *See* 17 CFR § 201.100, *et seq*. Under Section 203(f) of the Advisers Act, the Commission may impose an associational bar against Lemelson if: (1) at the time of the alleged misconduct, he was associated with an investment adviser; (2) he is "temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction . . . from engaging in or continuing any conduct or practice in connection with . . . the purchase and sale of a security;" (3) it is in the public interest to do so; and (4) it does so " on the record after notice and opportunity for hearing". 15 U.S.C. § 80b-3(e)(4), (f).

In an AP, the presiding ALJ may issue subpoenas at the request of a party. 17 C.F.R. §§ 201.111(b), 201.232(a). If a respondent does not comply with a subpoena, the Exchange Act expressly gives this Court jurisdiction to order the respondent to comply. 15 U.S.C. § 78u(c). As for venue, Exchange Act Section 21(c) authorizes the United States District Court where the Commission is carrying on a proceeding to enforce the Commission's subpoenas. 15 U.S.C. § 78u(c) ("In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation *or proceeding* is carried on . . . in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records.") (emphasis added). Here, the AP will be heard by the ALJ in Boston. Subpoena

enforcement actions apply to subpoenas issued in Commission investigations *and* those issued in Commission proceedings. *Id.* The same standards apply.

The Exchange Act authorizes the Commission to seek an order from this Court requiring compliance with a subpoena through a summary proceeding. 15 U.S.C. § 78u(c); Fed. R. Civ. P. 81(a)(5). *See also SEC v. McCarthy*, 322 F.3d 650, 658 (9th Cir. 2003) (summary proceedings are appropriate for SEC subpoena enforcement actions); *SEC v. Sprecher*, 594 F.2d 317, 319-20 (2d Cir. 1979) (same); *SEC v. Harman Wright Grp., LLC*, 2018 WL 6102758, at *2 (D. Colo. Nov. 21, 2018) (compelling compliance with SEC administrative subpoenas). Accordingly, the Commission requests the Court promptly hear and rule on the Commission's application to avoid delay in the hearing scheduled to begin July 7, 2025. *SEC v. First Sec. Bank*, 447 F.2d 166, 168 (10th Cir. 1971) ("Questions concerning agency subpoenas should be promptly determined so that the subpoenas, if valid, may be speedily enforced.") (citing *United States v. Davey*, 426 F.2d 842, 845 (2d Cir. 1970)).

II. THE COURT SHOULD ENFORCE THE SUBPOENA

To enforce an administrative subpoena, a court must be satisfied that: the inquiry must be for a proper purpose; the information sought must be relevant to that purpose; and statutory procedures must be observed. *SEC v. Howatt*, 525 F.2d 226, 229 (1st Cir. 1975) (citing *United States v. Powell*, 379 U.S. 48, 57-58 (1964)) (applying the *Powell* standard and enforcing SEC administrative subpoena in District of Massachusetts).

Once the Commission meets these criteria, the respondent bears the burden of establishing that the Commission's purpose was unlawful or its subpoena unreasonable. *SEC v. Arthur Young & Co.*, 584 F.2d 1018 (D.C. Cir. 1978) (enforcing SEC subpoena when respondent did not demonstrate that subpoena was an unreasonable burden); *Howatt*, 525 F.2d at 229

(enforcing SEC subpoena where respondent did not demonstrate that agency was acting in bad faith); *SEC v. Murray Dir. Affiliates, Inc.*, 426 F. Supp. 684, 687 (S.D.N.Y. 1976) (applying *Powell* and enforcing subpoena when "it would not be abusive for this court to compel compliance with the subpoena").

The First Circuit has recognized that Congress committed investigations and certain administrative proceedings to the Commission and "it is not the court's role to intrude into the [Commission's] function." *Howatt*, 525 F.2d at 229. As a result, the respondent's burden of showing unreasonableness "is not easily met." *SEC v. Brigadoon Scotch Dist. Co.*, 480 F.2d 1047, 1056 (2d Cir. 1973) (refusing respondent's request for the court to determine whether subject of inquiry was within SEC's jurisdiction and enforcing SEC subpoena where the inquiry was for a legitimate purpose and the information sought was relevant to the inquiry). Here—particularly when the ALJ has already reviewed and limited the subpoena—the Commission's subpoena satisfies all applicable standards, and Respondent cannot meet his burden of demonstrating that the Commission's actions are unreasonable or unlawful.

A. The Division's requested subpoena was issued for a proper purpose.

The ALJ-issued subpoena ordered production of documents that may be relevant to the *Steadman* factors, which will be the focus of the July 7 hearing. Such a proceeding is authorized by law, as set forth above, and the subpoena was therefore issued for the proper purpose of advancing the contested administrative proceeding.

B. The subpoena satisfies all administrative requirements.

The subpoena issued to Lemelson satisfies all applicable administrative requirements. As set forth above, the ALJ may issue document subpoenas at the request of a party. 17 C.F.R. §§ 201.111(b); 201.232(a)-(c). Lemelson does not contend that the subpoena was issued

improperly or that service was ineffective. Lemelson also moved to quash the subpoena, as authorized under the SEC Rules of Practice. 17 CFR § 201.232(e). In short, the subpoena was validly issued in compliance with the Rules of Practice, and Lemelson availed himself of available remedies.

C. The Division is seeking relevant information.

For purposes of subpoena enforcement, relevance is established when the information sought is not "plainly incompetent or irrelevant for any lawful purpose." *Arthur Young & Co.*, 584 F.2d at 1029 (citing *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943)). The court in *Arthur Young* held that "the test is relevance to the specific purpose, and the purpose is determined by [Commission staff]." *Id.* at 1031 (citation omitted).

The information sought is plainly relevant. As noted above, the ALJ already determined that the documents sought are relevant to the proceeding, which will focus on the *Steadman* factors to determine whether an associational bar is in the public interest:

1. The egregiousness of the respondent's actions.
2. The isolated or recurrent nature of the infraction.
3. The degree of scienter involved.
4. The sincerity of the respondent's assurances against future violations.
5. The respondent's recognition of the wrongful nature of his conduct.
6. The likelihood that the respondent's occupation will present opportunities for future violations.

603 F.2d 1126 at 1140.

The ALJ approved the four categories of documents noted above, all of which concern Lemelson's conduct and the appropriateness of an associational bar. Request 1 seeks to identify

potential witnesses who were or are investors in Lemelson's fund(s). Requests 2 and 3 seek public statements and communications with Lemelson's current and former investors to determine whether he has made misrepresentations or engaged in other misconduct. For example, as specifically called for in Request 3, the Division believes that Lemelson has made public statements that mischaracterize the outcome of the underlying *SEC v. Lemelson* civil action. Request 4 relates to a FINRA arbitration brought by Lemelson against his broker seeking damages resulting from a March 2020 margin call that Lemelson was unable to meet, which is relevant to his professional conduct following the jury verdict. Finally, in issuing the subpoena, the ALJ necessarily found that the revised subpoena was not "unreasonable, oppressive, excessive in scope, or unduly burdensome." 17 CFR § 201.232(b).

CONCLUSION

For these reasons, the Commission asks the Court to issue an order to show cause, if any exists, why Lemelson should not comply with the administrative subpoena.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

By its attorneys,

/s/ Alfred A. Day

Alfred A. Day (Mass. BBO No. 654436)
Marc Jones (Mass BBO No. 645910)
Senior Trial Counsel
Boston Regional Office
33 Arch Street, 24th Floor
Boston, MA 02110
(617) 573-8900 (Main)
daya@sec.gov

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,	)	
Applicant,	)	
v.	)	No. 25-cv-91207-ADB
GREGORY LEMELSON,	)	
Respondent.	)	

PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL

Plaintiff, the United States Securities and Exchange Commission (the "Commission"), hereby provides notice of voluntary dismissal of this subpoena enforcement action, pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. As grounds for dismissal, the Commission expects to obtain from a third party a number of documents called for in the original administrative subpoena issued to respondent Gregory Lemelson (a/k/a Fr. Emmanuel Lemelson) ("Lemelson") with which he refused, and continues to refuse, to comply. Further, a merits hearing in the underlying administrative proceeding ("AP") is set to begin on July 7, 2025, and the Commission intends to go forward on that date without any delay that may be occasioned by resolution of this action. For these reasons, the Commission voluntarily dismisses this action.

BACKGROUND

Lemelson refused to comply with a document subpoena issued by an Administrative Law Judge ("ALJ") overseeing the AP. The AP is a "follow-on" proceeding instituted by the Commission after a jury in the District of Massachusetts, on November 5, 2021, found Lemelson liable for making three fraudulent statements in violation of Section 10(b) of the Securities

Exchange Act of 1934 ("Exchange Act") and Rule 10b-5(b) thereunder.[1] The Commission instituted the AP to determine whether it is in the public interest to bar Lemelson from associating with any broker, dealer, investment adviser, or other designated securities-related firm (an "associational bar") based on a five-year injunction imposed on Lemelson by the district court following the jury's verdict.

In the AP, the Division sought to subpoena certain documents from Lemelson in advance of the July 7, 2025, merits hearing. Lemelson moved to quash the subpoena, which motion was granted in part and denied in part. Specifically, the ALJ narrowed the categories of documents sought by the Division and instead issued a subpoena for four categories of documents. The ALJ found that the four categories of documents are relevant to determining whether it is in the public interest to impose an associational bar on Lemelson. [*See* ECF No. 1, Ex. A (January 31 Order).] The ALJ issued a subpoena to Lemelson on January 31 with a return date of March 31, 2025. [Ex. B (January 31 subpoena).] Lemelson did not produce any documents and, on April 3, 2025, Lemelson's counsel unequivocally stated that Respondent will not comply with the administrative subpoena and will not produce documents unless ordered to do so by this Court. [ECF No. 1, Ex. C.] This action followed.

Lemelson subsequently asked this Court to delay this proceeding pending resolution of a case he brought in the United States District Court for the District of Columbia. [ECF No. 7 at 3 ("There is no good reason to allow the SEC to game the court system by racing ahead in this Court when substantially overlapping issues are already briefed in the D.C. district court.").] In

[1] The jury rendered a split verdict. Respondent was found not liable for a fourth statement. And the jury declined to find him liable under (1) Rules 10b-5(a) and (c) promulgated under Section 10(b) of the Exchange Act (sometimes referred to as "scheme liability"), and (2) Section 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-8 thereunder.

that case, Lemelson challenged the Constitutionality of the AP process, generally, and sought a preliminary injunction. *See Lemelson v. Securities Exchange Commission*, No. 1:24-cv-02415-SLS (D.D.C., filed Aug. 21, 2024) (the "DDC action"). On May 27, 2025, the United States District Court for the District of Columbia granted the Commission's motion to dismiss the DDC action and denied Lemelson's request for a preliminary injunction. [*Id.* at ECF No. 24.]

In parallel with pursuing this action, the Commission's Division of Enforcement ("Division") requested that the ALJ issue a subpoena to third party Clear Street, LLC, a broker-dealer that was embroiled in a dispute with Lemelson that ultimately led to a FINRA arbitration.[2] The ALJ issued the requested subpoena to Clear Street on May 16, 2025. Lemelson moved to quash the Clear Street subpoena, which motion was denied by the ALJ on May 28, 2025. The Division understands that Clear Street intends to produce the subpoenaed documents the week of June 2, 2025, and the Division will promptly produce to Lemelson all documents received from Clear Street.

Lemelson has made clear that he does not intend to produce the subpoenaed documents in advance of the July 7, 2025, merits hearing. The Division nevertheless intends to go forward on July 7, 2025. The DDC action has been resolved against Lemelson and the Division expects to promptly receive from Clear Street a number of documents Lemelson refused to produce.[3] There is therefore no further reason for delay of the July 7, 2025, merits hearing.

[2] In the original administrative subpoena to Lemelson, the Division sought, among other things, documents related to "the FINRA arbitration proceeding titled *The Amvona Fund, LP v. Clear Street, LLC*, No. 20- 01555, Clear Street's exhibits 128, 130, 132, 134, 135, 136, 137, 138, and 139." [ECF No. 1, Ex. C.]

[3] The Division reserves the right to seek sanctions and adverse inferences against Lemelson in the AP based upon his noncompliance with the ALJ's subpoena.

NOTICE

Fed. R. Civ. P. 41(a)(1)(A)(i) provides for voluntary dismissal of an action when a plaintiff files "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Here, Lemelson has not filed an answer or other substantive response in this action.[4] The Commission is therefore entitled to voluntarily dismiss this action without a court order.

CONCLUSION

For these reasons, the Commission voluntarily dismisses this action.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

By its attorneys,

/s/ Alfred A. Day

Alfred A. Day (Mass. BBO No. 654436)
Marc Jones (Mass BBO No. 645910)
Senior Trial Counsel
Boston Regional Office
33 Arch Street, 24th Floor
Boston, MA 02110
(617) 573-8900 (Main)
daya@sec.gov

[4] Lemelson opposed the Commission's request for a hearing date or status conference. [ECF No. 7.] The Court held a status conference on May 25, 2025, and ordered Lemelson to file a substantive response to the Commission's application by June 12, 2025. [ECF No. 13.]

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-participants on May 30, 2025.

/s/ Alfred A. Day

EXHIBIT C

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Boston Regional Office
33 Arch St., 24th Floor
Boston, MA 02110-1424
Telecopier: (617) 573-4590

DIVISION OF ENFORCEMENT

Marc Jones
Senior Trial Counsel
(617) 573-8947

May 19, 2025

By Email

Douglas Brooks, Esq.
Libby Hoopes Brooks & Mulvey P.C.
260 Franklin Street, Suite 1920
Boston, MA 02110
dbrooks@lhbmlegal.com

Re: ***In the Matter of Gregory Lemelson (a/k/a Father Emmanuel Lemelson)***
Admin. Proceeding File No. 3-20828

***SEC v. Gregory Lemelson*, Case No. 1:25-mc-91207-ADB**

Dear Doug:

This letter follows up on our conversation with you concerning the Lemelson administrative proceeding and subpoena enforcement action. We continue to maintain that your client is not entitled to discovery in the subpoena enforcement summary proceeding.

During our conversation Thursday, we confirmed for you that the subpoena enforcement action against your client was approved within the Commission's Division of Enforcement, ultimately by the Acting Director of Enforcement (the "Director"). This approval to file the action was pursuant to 17 C.F.R. § 200.30-4(a)(10), which delegates the authority to institute subpoena enforcement actions to the Director. The Commissioners were not consulted concerning approval of the subpoena enforcement action.

Accordingly, we believe that, were the Court to order us to answer the discovery requests you sent in your May 13, 2025, email, there would be no substantive answer to the interrogatory seeking "the processes and procedures by which the SEC Division of Enforcement staff sought and obtained SEC authorization to file the Application" as the action was approved by the Director without any involvement of any Commissioner. In turn, there would be no "documents identified in the answer to the foregoing interrogatory" responsive to your request for production.

We do wish to alert you that, in following up on our discussion, we learned that a member of the Division of Enforcement staff was, on or around April 7, 2025, transferred to the Office of the Chairman to serve as counsel to the Chairman. We believe that for a period of

approximately one month after that, the staff person continued to receive emails sent to a Division of Enforcement email distribution list because of a technical issue with the email system. These emails would have included emails concerning the subpoena enforcement action. We have confirmed that during the period the staff member was receiving these emails, she did not read and deleted any email she received from that distribution list. The staff person was not consulted, received no briefs or memos, did not provide any input on the subpoena enforcement, and did not relay any information or emails about the subpoena enforcement action to any Commissioner.

To reiterate, no Commissioner or Commissioner's staff person was consulted or involved in approval of the subpoena enforcement action. We therefore do not believe that the receipt of certain emails described above is responsive to your discovery requests.

We hope that this will put to rest the issue your raised in your Response to our Request for Order and Hearing Date [ECF No. 6].

Sincerely,

Marc Jones
Senior Trial Counsel
Division of Enforcement

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

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 Michaelangelo
Foreperson

EXHIBIT E

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.

###

Related Materials

- SEC Complaint