

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19733

In the Matter of

NICHOLAS J. GENOVESE,
Respondent.

DIVISION OF ENFORCEMENT'S MEMORANDUM IN OPPOSITION TO
RESPONDENT'S MOTION FOR DISCOVERY AND SANCTIONS,
DATED MARCH 3, 2024

DIVISION OF ENFORCEMENT
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The Division of Enforcement (“Division”) submits this memorandum in opposition¹ to Respondent Nicholas J. Genovese (“Genovese”)’s Motion For Discovery and Sanctions, dated March 3, 2024.² In his motion, Genovese claims that the Division failed to produce any documentary evidence to him. His motion should be denied because, in 2020, the Division produced all non-privileged documents to Genovese. (March 22 Decl. ¶ 3 Exs. 9 and 10.) Moreover, certain categories of documents Genovese seeks, to the extent they are non-privileged, do not exist, and even if they did exist, they are at most relevant to his liability for violating the federal securities antifraud statutes and rules, which is not at issue since Genovese pled guilty and was criminal convicted.³ (March 22 Decl. Exs. 1, 1B, 1C, 2, 3 and 8.) Genovese also claims that the Division did not produce a privilege log to him in this administrative matter. Rule of Practice 230(c) of the Commission’s Rules of Practice does not require such a privilege log to be produced unless a “hearing officer” requires its production, and that has not happened. The Division does not believe such a privilege log is necessary but is prepared to produce one if ordered under Rule

¹ Facts and exhibits in support of this opposition are attached to the Declaration of Alexander Vasilescu, dated March 22, 2024 (“March 22 Decl.”), which the Division filed on March 22, 2024 in support of its motion for summary disposition. Additional facts are submitted in the Declaration of Alexander M. Vasilescu, dated April 2, 2024 (“April 2 Decl.”)

² Although Genovese’s Motion is dated March 3, 2024, the Division did not receive service of this motion from Genovese either by email or U.S. Mail. Division staff first became aware of this motion on or about March 26, 2024 upon noticing a digital copy of this motion on the SEC’s website (Litigated Administrative Proceedings – Open).
<https://www.sec.gov/files/litigation/apdocuments/3-19733-2024-03-18-motion.pdf>

³ In addition to his guilty plea and criminal conviction in *USA v. Nicholas Joseph Genovese*, 18 Cr. 183 (WHP) (“Criminal Case”), the District Court in the Commission’s enforcement case issued a summary judgment decision against Genovese and found he violated the securities antifraud statutes and rules and entered a final judgment with permanent injunctions and a \$1 million civil penalty. *SEC v. Nicholas J. Genovese*, 18-cv-942, 553 F.Supp.3d 24 (S.D.N.Y. 2021) (“Civil Case”); see March 22 Decl. Exs. 4 & 5.

of Practice 230(c). Accordingly, under these facts, there is no basis for Genovese to seek sanctions against the Division or the undersigned.

I. Relevant Procedural History and Factual Background

A. Division's Production of Documents to Genovese

On June 2, 2020, after Genovese pled guilty and was convicted in the Criminal Case, the Division produced all non-privileged documents from the investigation on a "USB thumb drive" to Genovese in this administrative proceeding. (March 22 Decl. Ex. 9.) The Division simultaneously produced these same documents to Genovese in the Civil Case. (March 22 Decl. Ex. 9.)

In his filing dated July 13, 2020 in the Civil Case, Genovese acknowledged receiving the Division's "USB thumb drive," in which he asked that the Commission again produce those documents on a DVD as he claimed he could not open the "usb thumb drive." Attached as Exhibit 1 to the April 2 Decl. is a copy of Genovese's July 13, 2020 filing. In response to Genovese's filing, on July 21, 2020, the Division staff again produced to Genovese the non-privileged documents in both the Civil Case and this administrative proceeding on a DVD. (March 22 Decl. Ex. 10.) The electronic production on the "USB thumb drive" and the DVD produced to Genovese was Bates-stamped SEC-LIT-EPROD-000000001 to SEC-LIT-EPROD-000007067. (March 22 Decl. ¶ 3.) The Division produced all non-privileged documents in its possession as required by Rule 230 of the Commission's Rules of Practice. (March 22 Decl. ¶ 3.) Among other things, the Division produced all financial and non-financial documents produced to the staff pursuant to subpoenas relating to Genovese and his entities, and communications with, and documents produced by, Genovese's victims/clients. (March 22 Decl. ¶ 3.) As the investigation leading to the Civil Case was expedited and led to an emergency action filed in parallel to the

Criminal Case, there was no investigative testimony taken and thus no transcripts to be produced.

(March 22 Decl. ¶ 3.) The following are the categories of documents produced to Genovese:

- Bank records from JP Morgan Chase, Capital One, and TD Bank;
- Brokerage records from TD Ameritrade;
- Productions from Geoffrey A. Orley⁴, Gar Wood Custom Boats, and the Hacker Boat Company;
- SEC correspondence with Nicholas J. Genovese;
- SEC Temporary Restraining Order, Civil Complaint and other litigation documents;
- SEC proof of service documents / process server documents; and
- Documents related to U.S.A. v. Nicholas Joseph Genovese.

(March 22 Decl. ¶ 3.)

B. Genovese's Prior Allegations About Discovery Were Rejected

In the Civil Case in 2020 and 2021, Genovese raised the same discovery arguments and request for sanctions that he is now seeking in this administrative proceeding. *See SEC v. Nicholas J. Genovese*, 553 F.Supp.3d 24 at 38, 39 (S.D.N.Y. 2021). In its decision granting summary judgment against Genovese, the District Court stated:

Genovese has filed renewed objections to four Orders by Magistrate Judge Moses. Genovese's objections appear to focus primarily on his assertions (1) that he is entitled to further discovery from the SEC, (2) that permitting the SEC to move for summary judgment was improper, (3) that Magistrate Judge Moses was incorrect in noting that the WC Fund and Willow Creek have failed to appear through licensed counsel and that the failure of Genovese, Willow Creek, and the WC Fund to file a timely answer entitled the SEC to a default judgment. Each of these objections is without merit.

553 F.Supp.3d at 38.

In his papers, Genovese has requested sanctions against counsel for the SEC, pursuant to Rule 37, seeking "[a]ll exculpatory and inculpatory evidence ... immediately," as well as "monetary damages" incurred. ECF No. 82, at 7. Genovese has not demonstrated that the SEC has engaged in sanctionable conduct, nor failed to comply with a discovery

⁴ Mr. Orley, a victim, testified at Genovese's sentencing hearing and he is identified in the Civil Case summary judgment decision as the Court cited his affidavit, dated January 31, 2018, that supported the SEC emergency motion in the Civil Case. (March 22 Decl. Ex. 4; 553 F.Supp.3d at 34),

order. Moreover, sanctions under Rule 37 are not warranted, based on the record before the Court at this time. Therefore, Genovese's request for sanctions is denied.

553 F.Supp.3d at 39.

C. Findings of Liability Against Genovese, and Genovese's Repeated Allegations

Genovese is liable for committing violations of the antifraud statutes and rules under the federal securities laws as he pled guilty in the Criminal Case, he was sentenced, and a criminal judgment was entered on February 12, 2020. (July 22 Decl. Ex. 1, 1A, 1B, 2 and 3).⁵

On December 13, 2023, Genovese filed an answer in this administrative proceeding in which he claims, among other things, that "I never received a copy of the investigative file." (Answer). On February 29, 2024, during a prehearing telephone conference with Genovese, he again claimed the Division did not produce the investigative file in this matter. During that February 29 call, Division staff again confirmed that all non-privileged documents had been previously produced. *See* Division's Statement Regarding Efforts For Prehearing Conference Agreement, dated March 5, 2024 ("Division's March 5 filing"). During the February 29 call, the Division:

. . . sought to obtain an agreement with Mr. Genovese to agree that the Division can proceed to file a motion for summary disposition. When Mr. Genovese argued there was no basis for a summary disposition, the Division informed Mr. Genovese that the basis was that this was a follow-on AP and that Mr. Genovese was already convicted with securities felony violations where several victims lost their money. Mr. Genovese then abruptly ended his participation in the telephone conference and did not communicate anymore with the undersigned which was confirmed by the prison employee handling the conference.

Division's March 5 filing.⁶

⁵ Also, in the Civil Case, the District Court granted summary judgment against Genovese finding he committed violations of the antifraud statutes and rules under the federal securities laws, and entered a final judgment on August 4, 2021 and amended summary judgment decision on August 6, 2021. (*SEC v. Genovese*, 553 F.Supp.3d 24; March 22 Decl. Exs. 4 and 5.)

Genovese filed a motion for discovery and sanctions, dated March 18, 2024. In his motion, Genovese claims that the Division (1) failed to produce non-privileged documents, and (2) must produce a privilege log under Federal Rule of Civil Procedure 26. Genovese also seeks sanctions under Federal Rule of Civil Procedure 37.

On March 22, 2024, the Division filed its motion for summary disposition pursuant to the Commission's scheduling order, dated March 11, 2024. The Division became aware of Genovese's motion for discovery and sanctions on March 26, 2024.

D. The Division Sent and Received Ex Parte Emails To and From Decisional Employees about the Allegations

The Division sent emails to and received emails from decisional employees (as defined under 17 CFR Section 200.111(d)(3)) on March 29, 2024, including a copy of the Respondent's Motion.

Because these were *ex parte* communications between Enforcement and decisional employees, copies of the emails are attached to this filing for purposes of placing them in the record. (See Exhibit 2 to April 2 Decl.)

II. The Division Complied With Its Discovery Obligations Under Rule 230 of the Rules of Practice.

Just like in the Civil Case, Genovese failed to show that the Division did not comply with its obligation under Rule 230 of the Rules of Practice. The Division twice produced the non-privileged documents from its investigation to Genovese in the summer of 2020. (March 22 Decl. Exs. 9 and 10.) Genovese's argument in both the Civil Case and this Administrative Proceeding is based on his speculation that there are more non-privileged documents other

⁶ There is no basis for Genovese's spurious claim in his motion that the Division staff engaged in "intimidation and violent outburst" during the February 29 call. April 2 Decl. ¶ 3; Motion at 3.

than what the Division already produced to him in the summer of 2020. On multiple occasions, the Division has explained to Genovese that all non-privileged documents were produced to him in the summer of 2020. In total, the Division produced 7,068 pages of documents to Genovese. (March 22 Decl. ¶ 3.) As stated in the March 22 declaration provided in support of the Division’s motion for summary disposition, there was no investigative testimony taken and thus no investigative transcripts produced to Genovese due to the expedited nature of the underlying investigation,⁷ and the Division produced all financial and non-financial documents produced to it pursuant to subpoena relating to Genovese and his entities, and communications with, and documents produced by, Genovese’s victims/clients. (March 22 Decl. ¶ 3.). As such, there is no basis for Genovese’s claim that the Division did not comply with its discovery obligation.

III. No Privilege Log Has Been Ordered Under Rule 230(c).

In his motion, Genovese argues that the Division was required to produce a privilege log in this Administrative Proceeding under Federal Rule of Civil Procedure 26. However, it is the Commission’s Rules of Practice, and not the Federal Rules of Civil Procedure, that govern this Administrative Proceeding. Rule 230(c) of the Commission’s Rules of Practice require the Division to produce a privilege log only if the “hearing officer” orders such a log to be produced. The relevant language in Rule 230(c) is “*may*,” which indicates that the hearing officer is not

⁷ Genovese did obtain documents of testimony by various victims. In the Civil Case, the SEC provided Genovese with the Declaration of Geoffrey Orley dated January 31, 2018, and then later, the transcript of Genovese’s sentencing hearing in his Criminal Case, which included testimony from four victims. (See sentencing testimonies of victim Dr. Mitchell Levine at March 22 Decl. Ex. 3 at 12:9 to 21:5; victim Mr. Granville Beals at March 22 Decl. Ex. 3 at 21:6 to 28:12; victim Mr. Geoff Orley at March 22 Decl. Ex. 3 at 28:13 to 30:14; and victim Mr. Aaron David Blank at March 22 Decl. Ex. 3 at 30:15 to 31:12).

required to order a privilege log in each instance.⁸ Here, no such order has been issued requiring the Division to produce a privilege log.

The Division does not believe a privilege log is necessary. The investigation leading up to the Civil Case was short and expedited and the privileged documents are generally internal emails and other internal documents that are protected by the attorney-client privilege, the work product doctrine, and other privileges. If, however, the Commission were to order the production of a privilege log, the Division is prepared to create such a log and produce it to Genovese.

IV. Genovese Has No Basis To Seek Sanctions Against the Division.

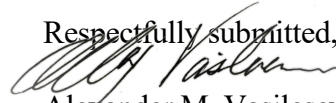
Genovese seeks “discovery sanctions” under Federal Rule of Civil Procedure 37, which does not apply to this Administrative Proceeding. Rule 180 of the Rules of Practice addresses “Sanctions,” and states that “[c]ontemptuous conduct” at any conference, deposition or hearing can be grounds for exclusion or suspension from a proceeding or portion thereof. Rule 180(a), Commission Rules of Practice. Sanctions do not appear to be available for the claim that a party withheld non-privileged documents, as Genovese claims. Regardless, there is no basis for sanctions as the Division complied, in good faith, with its discovery obligations under Rule 230.

⁸ Federal Rule of Civil Procedure 26 and the SDNY local rules, upon which Genovese incorrectly relies in his motion, contemplate that the opposing party will automatically be required to produce a privilege log at the request of the other party obtaining discovery. Rule 230(c), however, differs as it does not require automatic production by the opposing party in an administrative proceeding.

V. Conclusion

For the foregoing reasons, the Division respectfully requests that the Commission deny Genovese's motion for discovery and sanctions.

Dated: April 2, 2024
New York, New York

Respectfully submitted,

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Certificate of Service

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing Memorandum in Opposition to Respondent Genovese's Motion for Discovery and Sanctions, together with the Declaration of Alexander Vasilescu, dated April 2, 2024, with attached exhibits 1 and 2, was served on the following persons on April 1, 2024, and otherwise sent by the method indicated:

By UPS:
CERTIFIED MAIL
Nicholas J. Genovese, #17079-104
FCI TERRE HAUTE
FEDERAL CORRECTIONAL INSTITUTION
P.O. Box 33
TERRE HAUTE, IN 47808



Alexander Vasilescu,
Counsel for Division of Enforcement

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19733

In the Matter of

NICHOLAS J. GENOVESE,

Respondent.

DECLARATION OF ALEXANDER VASILESCU
IN OPPOSITION TO MOTION FOR DISCOVERY AND SANCTIONS,
DATED MARCH 3, 2024, FILED BY RESPONDENT NICHOLAS J. GENOVESE

I, Alexander Vasilescu, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed as Regional Trial Counsel in the Division of Enforcement (“Division”), the Petitioner in this action. I have been employed in the Commission’s New York Regional Office since 1995. I make this Declaration to oppose the Motion for Discovery and Sanctions, dated March 3, 2024, filed by the Respondent, Nicholas J. Genovese. Although Respondent Genovese’s Motion is dated March 3, 2024, the Division did not receive service of this motion from Respondent Genovese either by email or U.S. Mail as of today. Although the Commission posted a digital copy of this motion on March 18, 2024 on its website (Litigated Administrative Proceedings – Open), the undersigned first obtained notice of this motion on March 26, 2024.

2. In support of the Division’s opposition to Respondent Genovese’s motion for discovery and sanctions, is Genovese’s July 13, 2020 filing in the case *SEC v. Nicholas J. Genovese*, 18-cv-942 (S.D.N.Y. 2021), attached here as Exhibit 1.

3. There is no basis for Respondent Genovese's claim that the undersigned Division counsel engaged in "intimidation and violent outburst" during the phone call on February 29, 2024. On February 29, 2024, the undersigned conducted the required pre-hearing conference with Respondent Genovese while he was in prison. During this telephone call, the undersigned asked Respondent Genovese if he would agree with the Division's proposed briefing schedule for its motion for summary disposition. When Respondent Genovese argued there was no basis to move for summary disposition, Division staff explained to him that by pleading guilty to securities fraud in the criminal matter, he was criminally convicted and that his criminal conviction formed the basis for its motion for summary disposition. Moreover, Division staff reminded Respondent Genovese that at his sentencing, victims testified as to how he destroyed their lives. Respondent Genovese then refused to further communicate with the undersigned during that phone call. He walked away from the phone, and the prison employee who facilitated the call told the undersigned that Respondent Genovese refused to continue the call.

4. Attached as Exhibit 2 are emails to and received emails from decisional employees (as defined under 17 CFR Section 200.111(d)(3)) on March 29, 2024, including a copy of the Respondent's Motion.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Dated: New York, New York
April 2, 2024

By: /s/ Alexander Vasilescu
Alexander Vasilescu

EXHIBIT 1

FROM: 17079104
TO:
SUBJECT: Motion for Rule 26 (f) Report/Plan
DATE: 07/14/2020 02:01:48 PM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff ,

18-CV-942 (JGK) (BCM)
MOTION FOR RULE 26 (f) REPORT/PLAN

-against-

NICHOLAS J. GENOVESE, et.al.,
Defendants

I Nicholas J. Genovese, appearing ProSe and on behalf of myself Nicholas J. Genovese, Willow Creek Investments LP, and Willow Creek Advisors LLC.

In accordance with U.S. Magistrate Judge Barbara Moses order dated June 18, 2020, requiring the filing of a Rule 26(f) Discovery Report with a deadline for submission by July 24, 2020, I am submitting this Rule 26(f) Report/Plan.

1. On May 15, 2020, I filed a Motion for Discovery with Hon. Judge Koeltl and I received from the Plaintiff on June 5, 2020 a USB Thumb Drive, which is NOT allowed by the Bureau of Prisons. Only CD-ROM or DVD-ROM Discs are allowed in.

On June 9, 2020, the Bureau (BOP) sent it back to the Plaintiff with a BPA0328 Notice of return to sender.

2. On June 6, 2020, I sent a letter to the Plaintiff's attorney, Vasilescu notifying him that the only acceptable digital form that I can receive the Discovery in is either a CD-ROM or DVD-ROM disc.

3. As of July 13, 2020, I have yet to receive any Discovery from the Plaintiff that I can examine in either a CD-ROM or DVD-ROM disc, nor have I received any communication in response from Vasilescu regarding this.

Discovery Plan

1. I hereby request, in accordance with Rule 26(f)(3)(c) that the Discovery I requested via Motion on May 15, 2020 be disclosed to me in the format that is acceptable to the BOP Regulations, which is either a CD-ROM or DVD-ROM disc. These are the only two digital formats that the regulations will allow.

Respectfully submitted this 13th Day of July 2020.

Nicholas J. Genovese
Willow Creek Investments LP
Willow Creek Advisors LLC

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1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

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24. *Journal of the American Medical Association*, 279:1225-1226, 1997.

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2. **THEORETICAL BACKGROUND: CONCEPTS AND CONCEPTUALIZATION**

DATE: 2016-09-09 14:00:00

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

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UNITED STATES DEPARTMENT OF COMMERCE

EXHIBIT 2

Gottesman, David J.

From: Gottesman, David J.
Sent: Friday, March 29, 2024 4:44 PM
To: Chair's Counsel
Cc: Choe, Olivia
Subject: Allegations of wrongdoing by respondent
Attachments: Def Mo for Sanctions 3-19733-2024-03-18-motion.pdf

Chair's Counsel,

I write once again just to let you know of another apparently baseless allegation of wrongdoing submitted by a pro se respondent against one of our attorneys.

ITMO Nicholas J. Genovese is a follow-on AP in which the pro se respondent (in prison) filed a "Motion for Discovery and Sanctions" with the Commission. He apparently filed it on March 18, but did not serve us. The team only recently noticed it on the AP docket. It is directed against [REDACTED], and alleges a failure to provide discovery responses. [REDACTED] tells us he provided the required non-privileged materials in 2020. In any event, Genovese alleges (at 2) "a scheme to defraud the commission and myself to withhold full Discovery in hopes of any easy rigged conviction." He goes on to make other allegations against [REDACTED], and asks for sanctions under Rule 37 (which of course does not apply in APs).

The allegations appear baseless, but nonetheless I am sending it just to keep you apprised. I also will send to OGC.

Do you want me to send to the other Commissioners' counsels?

Thanks.

David J. Gottesman
Deputy Chief Litigation Counsel
Division of Enforcement
Securities and Exchange Commission
Tel. [REDACTED] | Cell [REDACTED]

Gottesman, David J.

From: Chair's Counsel
Sent: Friday, March 29, 2024 4:44 PM
To: Gottesman, David J.
Subject: Automatic reply: Allegations of wrongdoing by respondent

I am out of the office, returning April 1, 2024, with limited access to email for periods. I will respond to your email as soon as possible.

If this is urgent, please call my office line [REDACTED] which will ring through to my cell phone.

From: [Gottesman, David J.](#)
To: [McFadden, Elizabeth](#); [Helvin, Lisa](#); [REDACTED]
Cc: [Choe, Olivia](#)
Subject: Allegations against ENF attorney - ITMO Genovese
Date: Friday, March 29, 2024 4:47:00 PM
Attachments: [Def Mo for Sanctions 3-19733-2024-03-18-motion.pdf](#)

Elizabeth, Lisa and [REDACTED],

I write once again just to let you know of another apparently baseless allegation of wrongdoing submitted by a pro se respondent against one of our attorneys.

ITMO Nicholas J. Genovese is a follow-on AP in which the pro se respondent (in prison) filed a "Motion for Discovery and Sanctions" with the Commission. He apparently filed it on March 18, but did not serve us. The team only recently noticed it on the AP docket. It is directed against our NYRO Regional Trial Counsel [REDACTED], and alleges a failure to provide discovery responses. [REDACTED] tells us he provided the required non-privileged materials in 2020. In any event, Genovese alleges (at 2) "a scheme to defraud the commission and myself to withhold full Discovery in hopes of any easy rigged conviction." He goes on to make other allegations against [REDACTED], and asks for sanctions under Fed.R.Civ.P. Rule 37 (which of course does not apply in APs).

The allegations appear baseless, but nonetheless I am sending it just to keep you apprised.

Please let us know if you have any questions.

David J. Gottesman
Deputy Chief Litigation Counsel
Division of Enforcement
Securities and Exchange Commission
Tel. [REDACTED] | Cell [REDACTED]

Gottesman, David J.

From: Chair's Counsel
Sent: Friday, March 29, 2024 4:51 PM
To: Gottesman, David J.
Cc: Choe, Olivia
Subject: Re: Allegations of wrongdoing by respondent

Thanks. And yes, please let the other offices know. And have a great weekend.

From: Gottesman, David J. [REDACTED]
Sent: Friday, March 29, 2024 4:43:57 PM
To: Chair's Counsel [REDACTED]
Cc: Choe, Olivia [REDACTED]
Subject: Allegations of wrongdoing by respondent

Chair's Counsel,
[REDACTED]

I write once again just to let you know of another apparently baseless allegation of wrongdoing submitted by a pro se respondent against one of our attorneys.

ITMO Nicholas J. Genovese is a follow-on AP in which the pro se respondent (in prison) filed a "Motion for Discovery and Sanctions" with the Commission. He apparently filed it on March 18, but did not serve us. The team only recently noticed it on the AP docket. It is directed against [REDACTED], and alleges a failure to provide discovery responses. [REDACTED] tells us he provided the required non-privileged materials in 2020. In any event, Genovese alleges (at 2) "a scheme to defraud the commission and myself to withhold full Discovery in hopes of any easy rigged conviction." He goes on to make other allegations against [REDACTED], and asks for sanctions under Rule 37 (which of course does not apply in APs).

The allegations appear baseless, but nonetheless I am sending it just to keep you apprised. I also will send to OGC.

Do you want me to send to the other Commissioners' counsels?

Thanks.

David J. Gottesman
Deputy Chief Litigation Counsel
Division of Enforcement
Securities and Exchange Commission
Tel. [REDACTED] | Cell [REDACTED]

From: [Helvin, Lisa](#)
To: [Gottesman, David J.](#); [McFadden, Elizabeth](#); [REDACTED]
Cc: [Choe, Olivia](#)
Subject: Re: Allegations against ENF attorney - ITMO Genovese
Date: Saturday, March 30, 2024 3:32:36 AM

Thanks, David. I'll sit out of any discussion of this one, since it's an AP.

From: Gottesman, David J. [REDACTED]
Sent: Friday, March 29, 2024 4:47:43 PM
To: [McFadden, Elizabeth](#) [REDACTED]; [Helvin, Lisa](#) [REDACTED]; [REDACTED]
[REDACTED]
Cc: [Choe, Olivia](#) [REDACTED]
Subject: Allegations against ENF attorney - ITMO Genovese

Elizabeth, Lisa and [REDACTED],

I write once again just to let you know of another apparently baseless allegation of wrongdoing submitted by a pro se respondent against one of our attorneys.

ITMO Nicholas J. Genovese is a follow-on AP in which the pro se respondent (in prison) filed a "Motion for Discovery and Sanctions" with the Commission. He apparently filed it on March 18, but did not serve us. The team only recently noticed it on the AP docket. It is directed against our NYRO Regional Trial Counsel [REDACTED], and alleges a failure to provide discovery responses. [REDACTED] tells us he provided the required non-privileged materials in 2020. In any event, Genovese alleges (at 2) "a scheme to defraud the commission and myself to withhold full Discovery in hopes of any easy rigged conviction." He goes on to make other allegations against [REDACTED], and asks for sanctions under Fed.R.Civ.P. Rule 37 (which of course does not apply in APs).

The allegations appear baseless, but nonetheless I am sending it just to keep you apprised.

Please let us know if you have any questions.

David J. Gottesman
Deputy Chief Litigation Counsel
Division of Enforcement
Securities and Exchange Commission
Tel. [REDACTED] | Cell [REDACTED]