UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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

RESPONDENT'S MOTION TO QUASH SUBPOENA TO PRODUCE DOCUMENTS

Pursuant to the ALJ's Order, dated January 2, 2025, Respondent Fr. Emmanuel Lemelson (identified in the Order Instituting Administrative Proceedings as "Gregory Lemelson") (hereinafter, "Fr. Emmanuel")[1] hereby moves to quash the Securities and Exchange Commission's Subpoena to Produce Documents, dated December 31, 2024 (the "Subpoena") (attached hereto as Exhibit A).

This proceeding is a so-called "follow-on" action from a United States District Court case (District of Massachusetts) in which (i) a jury soundly rejected the Commission's charges that Fr. Emmanuel engaged in a so-called "short and distort" scheme to defraud; (ii) a jury soundly rejected the Commission's charges that Fr. Emmanuel made fraudulent statements about the insolvency of the company he shorted, Ligand Pharmaceuticals; (iii) a jury soundly rejected the Commission's charges that Fr. Emmanuel violated the Investment Advisers Act, even negligently; and (iv) a district court judge rejected the Commission's request for a lifetime injunction and disgorgement against Fr. Emmanuel and awarded only a small fraction of the civil penalties the Commission demanded.[2]

[1] Fr. Emmanuel will shortly be filing a motion to change the caption of this proceeding accordingly.
[2] *SEC v. Lemelson, et al.*, 1:18-cv-11926-PBS (D. Mass.).

After presiding over a trial in which the jury sided with Fr. Emmanuel as to almost all of the Commission's charges, including all of the most serious ones, finding him responsible only for three purported misstatements (including two concerning a non-public company he never traded in) and clearing him of all the allegations he had made about *Ligand* in his written reports, the district court awarded the Commission only 6% of its outrageous monetary demand and imposed only a five-year injunction, specifically finding that the facts of the case did not warrant the permanent injunction the Commission sought. Indeed, although the Court later denied Fr. Emmanuel's bid for costs and fees under the Equal Access to Justice Act, in so doing, the Court ruled that Fr. Emmanuel was a "prevailing party" under EAJA. *SEC v. Lemelson, et al.*, 1:19-cv-11926-PBS (D. Mass.), ECF Dkt. No. 317 at 5.

Notably, the media has accurately reported the Commission's near complete loss in the case. For example, on December 19, 2023, a former Senior Trial Counsel and member of the executive staff of the Commission's Division of Enforcement as Senior Counsel to the Directors authored an article in Reuters, explaining:

> *Not only was the jury unconvinced by the SEC's showing with regard to misstatements, the jury outright rejected the SEC's fraudulent scheme charge; the jury also found the SEC failed to prove a negligent, reckless, or intentional violation of the Investment Advisers Act by either Lemelson or LCM. During the remedies phase of the trial, the court awarded a third-tier civil penalty of just $160,000 in monetary relief and limited the SEC's request for injunctive relief to a five-year period...*
>
> *The Commission brought the widest array of potential claims against Lemelson and his company, and his decision to fight the charges paid off. Most importantly, he turned a lifelong injunction into a term of years. He also succeeded in protecting his advisory business and the fund it managed from any liability whatsoever.*

See "Test their mettle—Defendants' decision to challenge SEC in court is paying off" (attached hereto as Exhibit B). In addition, Law360, which has covered the case for more than six years, summarized the result as follows: "A Greek Orthodox priest and hedge fund founder who ***largely***

beat a U.S. Securities and Exchange commission suit…" (Emphasis added) (full article attached as Exhibit C).

Not to be deterred by the decisions of a jury or a federal judge, on April 20, 2022, the Commission initiated the current follow-on prosecution. The Order Instituting this proceeding claimed it was brought to make two determinations: (1) curiously, whether certain of the Commission's allegations from the district court case—*some of which had already been rejected by the jury in finding Lemelson not liable for engaging in a short-and distort scheme* (i.e., that Lemelson made false statements to drive down the price of Ligand Pharmaceuticals and to shake investor confidence to increase the value of his fund's position) —are true; and (2) what, if any, remedial action is appropriate against Fr. Emmanuel. *See* Section III, Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisors act of 1940.

Next, on June 30, 2022, so cocksure in the righteousness of its nearly-decade-long crusade against Fr. Emmanuel, and notwithstanding the result of the trial and subsequent Judgment, the Commission moved for summary disposition in this proceeding. In so doing, the Commission argued that it is "undisputed" that Fr. Emmanuel should be *permanently barred* from association with investment advisers and other securities-related firms (ignoring that the trial court rejected the Commission's request that it impose a *permanent* injunction and cleared Fr. Lemelson of the Investment Adviser Act charges). The Commission's motion for summary disposition was denied.

Now, the Commission seeks a subpoena demanding ***eighteen*** new and distinct categories of documents, each burdensome to collect and produce and entirely irrelevant to this proceeding. These demands follow four investigative subpoenas, in addition to document requests that sought 33 separate categories of documents in the underlying litigation, which Fr. Emmanual dutifully

responded to by turning over his entire hard drive—including attorney-client-privileged communications—to the Commission. Fr. Emmanuel also has already sat for an outlandish *47 hours* of depositions in both Washington DC and Boston and has not once sought to recover his costs associated with those extraordinary demands. The Commission's belated and oppressive new requests seek *additional* documents concerning, among other things: (i) an unrelated litigation, (ii) ***all*** communications Fr. Emmanuel has had with ***any*** investor or potential investor for the past ***seven*** **years** (without regard to the topic of such communications, meaning the request sweeps in all communications Fr. Emmanuel has had with his *wife*, who had an investment in his fund), (iii) ***all*** documents concerning any short investment Fr. Emmanuel has taken over the past five years, and (iv) the calculations of the performance of any fund or investment portfolio that Fr. Emmanuel has managed, notwithstanding that none of this information has any bearing on any issues relevant here. In short, the Subpoena is abusive and retaliatory; it is intended solely to harass and punish Fr. Emmanuel for his vigorous and successful defense, as spelled out in the EAJA ruling, against the Commission over the past decade and to send an in terrorem message to anyone else who might consider deigning to challenge the Commission's enforcement power.

Multiple separate and independent grounds exist for quashing this oppressive subpoena:

First, 15 U.S.C. § 78u(c) and 17 CFR § 201.232 purport to authorize the ALJ to issue binding subpoenas, with potential criminal penalties for noncompliance (including incarceration), without any prior application to a court of law. That purported authority violates the Fourth and Fifth Amendments to the United States Constitution. *See generally City of Los Angeles v. Patel*, 576 U.S. 409 (2015); *Spirit Aerosystems v. Paxton*, No. 24-CV-472-DII (W.D.

Tex. 2024, Magistrate R&S filed Nov. 1, 2024) (adopted by district court and currently on appeal).

Second, beyond the Constitutional infirmities inherent in the authority purportedly vested by the above-referenced statute and regulation, those provisions prohibit subpoenas that are "unreasonable, oppressive, excessive in scope, or unduly burdensome." For the reasons stated above, the Subpoena at issue is all of those things—and then some.

Third, the Commission has intrusively and abusively been investigating Fr. Emmanuel for more than a decade. During that period, it has already taken an outlandish seven days of sworn testimony from him (including three days of investigative testimony, two days of deposition testimony, and two days of trial testimony), probing every conceivable area of his professional, personal, and religious life. Indeed, during the underlying litigation, the Commission shamefully accused Fr. Emmanuel of lying about being a Greek Orthodox Priest, a baseless allegation that cost him thousands of dollars in legal fees to refute. The Commission has also extracted from him countless thousands of pages of private and personal documents, including photographs of his wife and minor children. The Commission's insatiable and interminable desire to intrude on Fr. Emmanuel's private personal and professional activities is already well beyond anything any member of a civilized society should have to tolerate from governmental officials.

Fourth, the purported basis for the draconian sanction the Commission seeks in this case was the temporary injunction issued by the district court in 2022, which in turn was based on events that took place more than a decade ago. As set forth above, the Commission previously moved for summary disposition, demonstrating its belief that it had all the evidence it needed to prevail in this proceeding. The latest wave of discovery is therefore, by definition, unnecessary,

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unreasonable, oppressive, and excessive in scope. It is also hard to read the Subpoena as anything but a blatantly vindictive effort to "send a message" to anyone who might in the future elect to oppose the Commission's routine motions for summary disposition, as Fr. Emmanuel successfully did here.

Fifth, the purpose of a follow-on action like the one at bar is not to provide the Commission with *carte blanche* authority to reopen its investigation of the respondent and commence a fishing expedition to find something—*anything*—new to accuse him of. Its purpose is to determine whether—based on what the Commission has *previously* accused the respondent of and convinced a judge to enjoin him based on—the respondent deserves the further administrative punishment of a bar or suspension.

Sixth, issuing the proposed Subpoena would be bad policy. Allowing the Commission to effectively reopen its investigation would perversely incentivize the Commission to slow-walk its follow-on cases (as it has here for the past two-plus years) to give the Commission free reign to essentially monitor and surveille the respondent's day-to-day activities indefinitely (as it has also done here).

Seventh, Fr. Emmanuel has pending before a federal district court in Washington, D.C, a complaint and motion to preliminarily (and ultimately permanently) enjoin this ALJ proceeding and, therefore, at a minimum, any discovery—much less the profoundly overbroad discovery at issue here—should await the court's ruling on that pending motion. See Plaintiff's Application for a Preliminary Injunction, *Lemelson v. SEC*, No. 24-cv-2415 (D.D.C.), ECF Dkt. No. 11 (filed Dec. 17, 2024).

For the foregoing reasons, Fr. Emmanuel respectfully requests that the ALJ quash the Commission's Subpoena.

Respectfully submitted,

Fr. Emmanuel Lemelson

By his Attorneys

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Dated: January 15, 2025

CERTIFICATE OF SERVICE

I, Douglas S. Brooks, do hereby certify that I served the foregoing document on counsel for the Commission, Marc Jones, Esq. and Alfred Day, Esq., by email on January 15, 2025.

/s/ Douglas S. Brooks
Douglas S. Brooks