UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20828

In the Matter of

GREGORY LEMELSON,

Respondent.

DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S MOTION IN LIMINE

Respondent filed a single motion *in limine* ("MIL") that makes two arguments. First, Respondent claims that the Division seeks to "relitigate" the district court action in which Respondent was found by a jury to have made three false and fraudulent statements in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5(b) thereunder. The court then enjoined Respondent from violating the Exchange Act for a period of five years and ordered him to pay a civil penalty of $160,000. Second, Respondent seeks to preclude the Division from introducing evidence of various public statements he has made, all of which bear on his acceptance of responsibility and assurances against future violations. Respondent's motion should be denied.

I. Materials From the District Court Proceeding Are Relevant and Admissible.

The Division does not seek to relitigate the jury's verdict. Rather, the jury's findings and the district court's orders are relevant to the *Steadman* factors that are the focus of this proceeding. Specifically, without limitation, the degree of scienter, recurrent nature of Respondent's violations, egregiousness of Respondent's conduct, and likelihood of future

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violations. None of these factors require "relitigation" of the jury's verdict or the district court's orders. Respondent concedes that "findings of fact and conclusions of law made in the underlying action are immune from attack in a follow-on administrative proceeding." [MIL at 1 (citing *Ted Harold Westerfield*, Exchange Act Release No. 41126 (Mar. 1, 1999), 54 S.E.C. 25, 32 n.22 (collecting cases).] Consistent with this precedent, the Division only seeks to admit factual findings and conclusions of law established in the underlying district court action.[1]

As to Respondent's degree of scienter, the jury found that he violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder on three separate occasions and that he acted with scienter. The Division does not seek to upset the jury's verdict. But the verdict, specifically the jury's finding that Respondent made false statements with scienter on three occasions, is relevant to this Tribunal's assessment of the degree of Respondent's scienter and the egregiousness of his conduct. And the facts supporting the jury's verdict are similarly relevant.

The jury also found that Respondent violated, on three occasions, a core anti-fraud provision of the Exchange Act – Exchange Act Section 10(b) and Rule 10b-5(b). His conduct was therefore recurrent, not "isolated". [Division Ex. D (Jury Verdict).] Nothing about this evidence requires this Tribunal to "relitigate" the jury's verdict.

The district court found that one of Respondent's false and fraudulent statements was "particularly egregious". [Division Ex. E (Remedies Order) at 9 ("I find that one of the three statements, that Bruce Voss agreed that Promacta, Ligand's key product, was going away, was particularly egregious.")] This finding need not be relitigated, either. The district court's finding should stand.

[1] The Division submits that this Tribunal may consider facts introduced at trial and make independent factual findings relevant to the *Steadman* factors, which are the subject of this proceeding.

There are yet other aspects of the district court litigation that this Tribunal may consider in assessing Respondent's conduct, including his lack of sincerity in assuring against future violations and the absence of any recognition by Respondent of the wrongful nature of his conduct. For example:

- The district court sanctioned Respondent for leaking confidential discovery materials to the press and admonished Respondent and his counsel for sending a threatening letter to a priest who was a potential witness. [Division Ex. BB (Order on Sanctions) at 2 and Ex. DD (district court judge: "I was deeply, deeply troubled by that letter.").] This conduct shows contempt for the district court proceeding and suggests that Respondent does not take the gravity of his offenses seriously. And it evinces a failure to make assurances against future misconduct.

- Respondent disavowed responsibility for his actions, stating "I'll never regret the things I did." [Division Ex. EE (Remedies Hearing) at 2.] This statement is relevant to Respondent's failure to accept responsibility for his conduct and likewise evinces a failure to make assurances against future misconduct.

- Respondent leveled accusations of misconduct against undersigned counsel during the underlying district court litigation, all of which were dismissed on summary judgment. *SEC v. Lemelson*, 532 F. Supp. 3d 30, 45-46 (D. Mass. 2021). Respondent's unfounded accusations, which continue to this day, again evince a failure to take responsibility for his actions and instead attempt to deflect attention from his fraudulent conduct.

There is more, and the Division reserves the right to introduce additional findings from the underlying district court action, as appropriate, without "relitigating" any matters.

II. Post-Litigation Conduct Is Relevant and Admissible.

Respondent next claims that post-litigation conduct is off-limits and admitting evidence on the subject somehow violates his First Amendment rights. Not so. Post-litigation statements by Respondent bear directly on his acceptance of responsibility and assurances against future misconduct, among other things. Introducing such statements does not violate Respondent's First Amendment rights – he is free to say whatever he wants but to the extent his statements evince a lack of acceptance of responsibility or a lack of assurances against future misconduct, those statements are relevant to the questions before this Tribunal. There is a difference between

the right to say what one wishes and an entitlement to have no consequence from doing so. *Cf. SEC v. Pirate Inv'r LLC*, 580 F.3d 233, 255 (4th Cir. 2009) ("Punishing fraud, whether it be common law fraud or securities fraud, simply does not violate the First Amendment.").

And, indeed, the Division's proposed exhibits do reflect conduct and statements that show a lack of remorse and failure to abide by court orders:

- Respondent has not paid the $160,000 penalty imposed by the district court despite numerous failed attempts to stay the judgment. [Division Ex. SS.] This evinces Respondent's continued failure to accept responsibility or provide assurances against future misconduct.

- Respondent has repeatedly said he was "absolved" of liability by the jury, which could not be further from the truth. [*E.g.*, Division Ex. S ("A Boston federal jury on Friday absolved a Greek Orthodox priest of fraud claims . . . .").] This is more evidence of Respondent's failure to accept responsibility and willingness to publicly dissemble about the jury's verdict.

And there is much more, which the Division again asserts is both relevant and admissible.

Respondent has engaged in other conduct that may inform this Tribunal's consideration of the *Steadman* public interest factors. Among other things, a FINRA arbitration panel found as follows:

> The Panel does take exception to the actions of representative or affiliate of Claimant sending threatening and harassing emails to Clear Street staff and management between March 16 and 27, 2020 (Respondent's exhibits #128, 130, 132, 134 thru 139). This action is unprofessional and shall not happen again.

[Award, FINRA Dispute Resolution Services Arbitration No. 20-01555 (Feb. 9, 2024) at 5 (available at https://www.finra.org/sites/default/files/aao_documents/20-01555.pdf).] Respondent's unprofessional harassment of a financial services firm's personnel bears on his fitness to participate in the securities industry.

In the end, Respondent has engaged in a years-long pattern of publicly mischaracterizing the jury's verdict, showing a complete unwillingness to accept responsibility for his actions, and a continued failure to provide assurances against future misconduct.

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Respondent's motion *in limine* should be denied.

Dated: June 23, 2025

Respectfully submitted,

/s/ Alfred A. Day

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CERTIFICATE OF SERVICE

I, Alfred A. Day, hereby certify that on June 23, 2025, the above was served via electronic mail pursuant to Rule 150(c) on the following counsel of record for Respondent:

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/s/ Alfred A. Day

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