

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
: Admin. Proc. File No. 3-20828
GREGORY LEMELSON :
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**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 Lemelson¹ 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* investigations³—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