UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOSHUA KUPFNER, Individually and on Behalf of All Others Similarly Situated

Plaintiff,

vs.

ALTICE USA, INC., *et al.*,

Defendants.

Case No. 1:18-cv-06601-LDH-PK

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT

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Defendants Altice USA, Inc. ("Altice USA"), Altice Europe N.V. ("Altice Europe"), Patrick Drahi, Jeremie Jean Bonnin, Abdelhakim Boubazine, Michel Combes, David P. Connolly, Dexter G. Goei, Victoria M. Mink, Mark Christopher Mullen, Dennis Okhuijsen, Lisa Rosenblum, Charles F. Stewart, Raymond Svider (collectively, the "Individual Defendants"), Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce Fenner & Smith, Inc., Barclays Capital Inc., BNP Paribas Securities Corp., Credit Agricole Securities (USA) Inc., Deutsche Bank Securities Inc., RBC Capital Markets, LLC, Scotia Capital (USA) Inc., SG Americas Securities LLC, and TD Securities (USA) LLC (collectively, the "Underwriter Defendants," and with the Individual Defendants, Altice USA, and Altice Europe, "Defendants") present this Memorandum of Law together with the Affirmation of K. Mallory Brennan and exhibits thereto ("Ex.") in support of their Motion to Dismiss the Amended Class Action Complaint ("Amended Complaint" or "AC") for failure to state a claim under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act Claims") and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 (the "Exchange Act Claims").

PRELIMINARY STATEMENT

Plaintiffs have had ample opportunity to craft a viable complaint, yet they have failed to do so. Their initial complaint in this action was a carbon copy of a complaint they had filed months earlier in state court; they had nearly six months *after* commencing litigation to file the Amended Complaint; and, after reviewing Defendants' pre-motion to dismiss letter, they declined this Court's offer to further amend the Amended Complaint. For the reasons that follow, the claims in the Amended Complaint fail as a matter of law and should be dismissed in their entirety and with prejudice.

Plaintiffs' claims arise out of the June 2017 initial public offering (IPO) of Altice USA, a U.S. cable company that was, at that time, a subsidiary of Altice Europe (then known as Altice N.V.). The IPO Registration Statement and Prospectus (the "Prospectus") is replete with detailed disclosures about Altice USA's business operations and performance, which Plaintiffs do not challenge. Instead, Plaintiffs take issue with the description of a five-principle business strategy referred to as the "Altice Way." Plaintiffs claim that statements describing the Altice Way as "successfully implemented" across Altice Europe subsidiaries were materially misleading in violation of the federal securities laws. This is so, according to Plaintiffs, because a French subsidiary of Altice Europe, SFR, had not adequately improved upon customer service, one of the five principles of the strategy. Plaintiffs' allegations fail to plead a securities law claim for multiple, independent reasons.

First, Plaintiffs' Securities Act Claims are untimely. Plaintiffs filed this lawsuit on November 19, 2018, more than a year after the supposedly corrective disclosures alleged in the Amended Complaint. Thus, the one-year limitations period bars the Securities Act Claims.

Second, Plaintiffs fail to plead an actionable, material misstatement or omission, which is fatal to all of their claims. The statements in the Prospectus about the Altice Way are textbook corporate puffery: high-level descriptions touting the success of a business strategy. Courts routinely deem such marketing speak nonactionable under the securities laws. Moreover, the detailed information in the Prospectus about the operations and finances of Altice USA render immaterial general statements about corporate strategy. This is particularly true given that the only alleged misstatement concerns a single aspect of the business strategy employed by a different company operating in a different country.

Third, the Exchange Act Claims, asserted against Altice USA and its CEO, Dexter Goei, must be dismissed because Plaintiffs come nowhere close to pleading a strong inference of scienter. Plaintiffs assert that Mr. Goei (and by extension, Altice USA) acted with scienter because Mr. Goei sought to preserve his compensation and keep his job—motives possessed by every corporate executive. More is required to establish a motive for fraud. Plaintiffs also fall short of pleading particularized facts suggesting that Mr. Goei knew, or was reckless in not knowing, that statements in the Prospectus about the Altice Way were false. Merely referencing Mr. Goei's role on the Altice Europe Board of Directors does not plead knowledge of falsity.

Fourth, the Amended Complaint establishes that Plaintiffs cannot prove loss causation, an independent basis to dismiss all of their claims. Plaintiffs claim that the revelation that SFR had not fully implemented the Altice Way in France caused their losses. *See* AC ¶¶ 77–80. But on November 15, 2017, the day of the press conference when the purported corrective disclosure was made on this subject, the Altice USA stock price *increased*. The Altice USA stock drop that Plaintiffs assert caused their losses actually happened nearly two weeks earlier, on November 3, 2017, following disappointing earnings reported by Altice Europe, and had nothing to do with news about the Altice Way. This fundamental flaw mandates dismissal of the Exchange Act Claims and bars the Securities Act Claims under a negative causation defense.

Fifth, Plaintiffs' control person claims fail because Plaintiffs do not establish a primary violation or the "culpable participation" required to impose control person liability.

Finally, Plaintiffs cannot sustain their Section 12(a)(2) claim against the Underwriter Defendants because they do not adequately allege that those Defendants are "statutory sellers." This is an independent basis to dismiss the Underwriter Defendants from the Section 12(a)(2) claim.

These defects are incurable. Accordingly, this case should be dismissed with prejudice.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Altice USA and Altice Europe

Altice USA is a cable operator based in the United States that provides broadband communications and video services to customers in 21 states. AC ¶ 6. Altice USA was formed when Altice Europe acquired Suddenlink Communications in 2015. *Id.* ¶ 49. The following year, Altice Europe acquired a majority stake in Cablevision and consolidated it into Altice USA. *Id.* Altice USA is the fourth largest cable provider in the United States, operating under brands such as Altice, Optimum, Lightpath, and Suddenlink. *Id.* ¶ 6. Until June 2018, Altice USA was a subsidiary of Altice Europe. Altice USA is now an independent company operating under the Altice brand, when it was spun out.

Altice Europe is a Netherlands-based multinational telecommunications company founded by Patrick Drahi, who remains the controlling shareholder of both Altice USA and Altice Europe. *Id.* ¶ 7. Altice Europe is the ultimate parent company of subsidiaries in France, Portugal, Israel, and the Dominican Republic that offer Internet, television, and telephone services, as well as related services and products (with Altice USA, at the time of the IPO, the "Altice Group"). *See id.* ¶ 48. Altice Europe is a named defendant only as to Plaintiffs' control person claims under Sections 15 and 20(a).

Mr. Goei serves as Chief Executive Officer (CEO) of Altice USA, a position he has held since June 28, 2016. AC ¶ 22. He previously served as the CEO of Altice Europe, which he joined in 2009. *Id.* From September 2016 until June of 2018, Mr. Goei also served as President of the Board of Altice Europe, and remained on the Board until October 2018.

B. The June 2017 Altice USA IPO

On June 21, 2017, Altice USA filed the final Prospectus[1] for its IPO with the Securities and Exchange Commission (*id.* ¶ 69), which was signed by Defendants Boubazine, Connolly, Goei, Mink, Rosenblum, and Stewart. *Id.* ¶¶ 25, 26, 107. The next day, Altice USA completed its IPO at $30 per share. *Id.* ¶ 71. The Underwriter Defendants comprised the syndicate that underwrote the IPO offering. *Id.* ¶ 108.

The 400-plus page Prospectus contained extensive disclosures about the terms of the stock offering, the broadband communications and video services industry, the nature of Altice USA's business, and detailed historical and pro forma financial data for Altice USA. Additionally, the Prospectus discussed the "Altice Way" business strategy, which it described as a "founder-inspired owner-operator culture and strategy of operational efficiency, innovation and long-term value creation for stockholders." AC ¶ 51 (citing Prospectus at 144). The five general principles of the Altice Way are to: (i) simplify and optimize corporate structure; (ii) invest savings in infrastructure and content; (iii) invest in sales, marketing, and innovation; (iv) improve the customer experience; and (v) use cross-selling, market share gains, increased efficiency, and new product offerings to drive revenue growth. Prospectus at 144.

The Prospectus stated that Altice USA "believe[d] the Altice Way, which has been successfully implemented across Altice Group, distinguishes us from our U.S. industry peers and competitors." *Id.* Indeed, the Prospectus described how Altice USA combined and improved the legacy Cablevision and Suddenlink operations using the Altice Way business strategy. For example, Altice USA combined the installation and maintenance departments (Prospectus at

[1] Relevant portions of the Prospectus, cited herein as "Prospectus," are excerpted and attached as Exhibit A to the Affirmation of K. Mallory Brennan.

149), enhanced the broadband network across the footprint of both companies (*id.* at 145), increased gross sales via online channels (*id.* at 152), and improved service reliability, resulting in notable decreases in customer service requests. *Id.* The Prospectus disclosed that, by Q1 2017, Altice USA had achieved revenue growth for phone, Internet, and television operations of 3.8% over the prior year. *Id.* at 149.

The Prospectus also set forth extensive "Risk Factors" that cautioned investors about potential risks to Altice USA's business prospects and stock value. Prospectus at 20–48. The Prospectus warned that any "[i]mpairment of Altice Group's reputation could adversely affect current and future customers' perception of Altice USA" because Altice USA's "ability to attract and retain customers depends, in part, upon the external perceptions of Altice Group's reputation, the quality of its products and its corporate and management integrity." *Id.* at 33. The Prospectus also pointed out why this was a significant Risk Factor, explaining that "[t]he broadband communications and video services industry is by its nature more prone to reputational risks than other industries." *Id.* The Prospectus also cautioned that Altice USA might not "be able to successfully implement our growth strategy," warning that the company's "future growth, profitability and results of operation depend on [its] ability to successfully implement [its] business strategy." *Id.* at 24. The Prospectus noted that "achieving the [] objectives" that were part of the business strategy required financial investments without assurance that the anticipated benefits would be achieved. *Id.* Additionally, the Prospectus stated that any "forward-looking statements are based on management's current expectations and beliefs," and, like all projections, were "susceptible to uncertainty and changes in circumstance." Prospectus at 48. The risk factors also made clear that there is "no assurance that [Altice USA] would be able to achieve similar results [as Altice Europe]." *Id.* at 153.

In contrast, the Prospectus contained virtually no information about the past or expected future performance of any of the other Altice companies operating in other countries. Notably, it was silent as to the operations and finances of SFR and Portugal Telecom. Indeed, other than a handful of sentences describing Altice Europe's history of acquisitions (*see id.* at 153), the Prospectus focused entirely on the business prospects and operations of Altice USA.

C. Post-IPO Events

On July 27, 2017, one month after the Altice USA IPO, Altice USA reported year-over-year revenue growth of 3.2%, EBITDA growth of 21.9% and EBITDA margin increase of 6.6%. *See* Ex. B at 1.[2] Altice Europe's Q2 2017 report advised that "[a]ll major markets [were] progressing as expected in Q2" and updated investors on progress with respect to Altice Europe's operations in France and Portugal. *See* Ex. C at 2.

On November 2, 2017, at U.S. market close and before the announcement of Altice Europe and Altice USA's earnings for Q3 2017, Altice USA's stock price was $24.50 per share. *See* AC ¶¶ 76, 79. Altice USA posted a successful third quarter, with year-over-year revenue growth of 3.2%, EBITDA growth of 18.9%, and an EBITDA margin increase of 5.8%. *See* Ex. D at 1. The quarterly results for Altice Europe for Q3 2017 reflected declining revenue and adjusted EBITDA for SFR in France and Portugal Telecom, despite revenue growth of 0.3% across Altice Europe as a whole. AC ¶¶ 76, 81.

An RBC analyst report following the earnings reports attributed the underperformance in France and Portugal to poor subscriber performance in France. AC ¶ 82; Ex. E at 1. And an analyst at Wells Fargo questioned whether Altice Europe could achieve "sustainable revenue

[2] Quarterly earnings releases—like the reports Altice Europe voluntarily makes publicly available on its website—and stock prices are matters of public record properly considered on a motion to dismiss. *Clarry v. United States*, 891 F. Supp. 105, 109 (E.D.N.Y. 1995) ("[T]he Court is permitted to take judicial notice of matters of public record, and documents which are incorporated by reference in the complaint").

growth [] with such deep cost cutting measures." *See* AC ¶ 81; Ex. F at 1. The day after Q3 earnings were reported, Altice USA stock declined by $1.91, to $22.59 per share. AC ¶ 79.

More than two weeks later, on November 15, 2017, Mr. Drahi observed at a conference that at SFR, while "[o]ur networks are good [and] [o]ur products are good . . . [w]e need to make the customer happy to be with us . . . we don't talk and deal with little problems of the daily life of the customer, which makes him unhappy . . . . And this is actually what we know best, but that we haven't been focused enough to deliver in this year." Ex. F (Tr. of Morgan Stanley TMT Press Conference Nov. 15, 2017) at 5.[3] In response to a question about the Altice Way, Mr. Drahi explained further that "we're always improving the Altice Way," and that in France, "for many, many reasons [including] labor reorganization . . . we never had the chance to apply [the Altice Way] from A to Z, [and] now we're applying it." *See id.* at 13; AC ¶ 85. Mr. Drahi stated further that the customer experience issues in France *did not* exist with Altice USA, where he believed that the Altice Way was "working very well." Ex. G at 13.

D. Litigation History and Plaintiffs' Allegations

Plaintiffs filed this complaint on November 19, 2018 (ECF No. 1), making it the eighth and last in a series of substantively identical complaints asserting the same causes of action against the same defendants based on the same facts. All of the earlier cases were filed in New York state court between June and October 2018,[4] including the *Garcia* action filed by lead counsel in this case.

The original complaint in this Court asserted claims under Sections 11, 12(a)(2), and 15 of the Securities Act (the "Securities Act Claims"). Plaintiffs filed an Amended Complaint on

[3] The Amended Complaint incorrectly states that this conference occurred on November 14, 2017. *See* AC ¶¶ 85, 94. The conference occurred on November 15, 2017.

[4] *Warner v. Altice USA, Inc.*, No. 709097/2018 (Sup. Ct. Queens Cty. filed June 12, 2018); *Lapoint v. Altice USA, Inc.*, No. 710845/2018 (Sup. Ct. Queens Cty. filed July 16, 2018); *O'Neill v. Altice USA, Inc.*, No. 711788/2018

May 10, 2019, adding claims under Section 10(b), Rule 10b-5 promulgated thereunder, and Section 20 of the Exchange Act (the "Exchange Act Claims"). ECF No. 47.

Plaintiffs contend that the Prospectus for Altice USA's June 2017 IPO was materially misleading because it failed to disclose that the Altice Way was not successfully implemented in France. AC ¶ 75. Plaintiffs assert that performance issues at Altice Europe's business units in France and Portugal were revealed in earnings results announced on November 2, 2017, and that the inadequate implementation of the Altice Way at SFR was revealed by Mr. Drahi at a conference on November 15, 2017. *Id.* ¶¶ 72–89. Though Plaintiffs claim this caused Altice USA's stock to continue to drop (*id.* ¶ 89), Altice USA's stock price actually *increased* from $19.50 per share to close at $20.26 per share in trading on the day of Mr. Drahi's comments. Ex. H (historical stock data).

Defendants filed a pre-motion letter outlining the arguments set forth in this motion on June 25, 2019 (ECF No. 49), to which Plaintiffs replied on July 2, 2019 (ECF No. 50). During a pre-motion conference before Judge Block on September 13, 2019, Judge Block asked if Plaintiffs wished to amend their complaint in light of Defendants' arguments. Plantiffs declined.

ARGUMENT

All of Plaintiffs' claims are "premised on averments of fraud" and thus are subject to the heightened pleading requirements of FRCP 9(b). *Rombach v. Chang*, 355 F.3d 164, 170 (2d Cir. 2004); *accord Tellabs, Inc. v Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). The Amended Complaint describes the contents of the Prospectus as "Materially False and Misleading Statements," and the words "false, "untrue," or "misleading" appear nearly 50 times.

(Sup. Ct. Queens Cty. filed July 31, 2018); *Shenwick v. Altice USA, Inc.*, No. 610261/2018 (Sup. Ct. Nassau Cty. filed Aug 1, 2018); *Richardson v. Altice USA, Inc.*, No. 610258/2018 (Sup. Ct. Nassau Cty. filed Aug. 1, 2018); *Garcia v. Altice USA, Inc.*, No. 712803/2018 (Sup. Ct. Queens Cty. filed Aug. 17, 2018); and *Newman v. Altice USA, Inc.*, No. 716650/2018 (Sup. Ct. Queens Cty. filed Oct. 31, 2018).

These are the "wording and imputations . . . classically associated with fraud." *Rombach*, 355 F.3d at 172. It is of no moment that the Amended Complaint proclaims that the Securities Act claims are based only on negligence (*see* AC ¶ 47). The Second Circuit has made clear that "the conduct alleged" determines whether Rule 9(b) governs, and its reach "is not limited to allegations styled or denominated as fraud." *Rombach*, 355 F.3d at 171. Thus, Plaintiffs' efforts to recast their claims and avoid the heightened pleading standards of Rule 9(b) should be categorically rejected. *See id.* at 172.

I. Plaintiffs' Securities Act Claims Are Time-Barred

Plaintiffs' Securities Act Claims were filed more than a year after the alleged corrective disclosures and are therefore untimely. The Securities Act imposes a one-year limitations period after a plaintiff has actual or constructive notice of his claims. 15 U.S.C. § 77m. As the Second Circuit has explained, when a corrective disclosure provides "precisely the information" that the Prospectus allegedly "should have disclosed," then the date of the corrective disclosure is the date of constructive notice for statute of limitations purposes. *See e.g.*, *Freidus v. Barclays Bank PLC*, 734 F.3d 132, 138 (2d Cir. 2013) (lead plaintiffs "had constructive notice of their claims" on "the date of the [] corrective disclosures"); *accord Amorosa v. AOL Time Warner Inc.*, 409 F. App'x 412, 416 (2d Cir. 2011) ("The corrective disclosure date is the same as the constructive notice date for purposes of limitations.").

Plaintiffs allege only one misrepresentation: that the Altice Way had been successfully implemented across the Altice Group. *See* AC ¶ 75. Plaintiffs allege that this purported misrepresentation was corrected by disclosures made on November 2, 2017 and November 15, 2017 when, following the November 2 earnings release, Mr. Drahi stated that SFR had "never applied the Altice Way from A to Z" in France. AC ¶ 85. In Plaintiffs' own words, Mr. Drahi's statements revealed that Altice Europe "had never fully implemented the Alice Way"—precisely

the information that Plaintiffs claim was misrepresented or omitted. *Id.* Thus the date of constructive notice is no later than November 15, 2017, and the statute of limitations expired by November 15, 2018 at the latest—four days before Plaintiffs initiated this lawsuit (but weeks and months after seven other lawsuits were filed, including one by lead counsel in this action).[5] The Securities Act Claims must therefore be dismissed as time-barred. *See Thea v. Kleinhandler*, 807 F.3d 492, 501 (2d Cir. 2015) ("[A] statute of limitations defense may be decided on a Rule 12(b)(6) motion if the defense appears on the face of the complaint.").

II. Plaintiffs' Securities Act Claims Fail as a Matter of Law

Even if Plaintiffs Securities Act Claims were not time-barred, they must be dismissed for multiple, independent reasons. To state a claim under Section 11 and 12(a)(2) the Securities Act, Plaintiffs must plausibly allege facts establishing the existence of a misstatement or omission of a material fact necessary to make an affirmative statement not misleading. 15 U.S.C. §§ 77k(a), 77*l*(a)(2); *see Litwin v. Blackstone Grp., L.P.*, 634 F.3d 706, 715 (2d Cir. 2011). Because Plaintiffs' Securities Act Claims rely on the same alleged misstatements, the same legal standards and analysis apply. *See In re Agria Corp. Sec. Litig.*, 672 F. Supp. 2d 520, 525 (S.D.N.Y. 2009) (failure to plead a §11 claim also means failure to plead a §12(a)(2) claim).

A. The Prospectus Contained No Material Misstatements

The crux of Plaintiffs' claim rests on statements that are neither false nor material.

First, Plaintiffs point to statements that Altice USA believed its corporate strategy was a competitive strength that would benefit the company by yielding growth and distinguishing it from competitors. AC ¶¶ 72–74. These statements are, at their very core, based on Altice

[5] The state court actions remain pending and separate from this litigation, so Plaintiffs cannot rely on those lawsuits to convert their untimely complaint to a timely action.

USA's opinion that implementing the Altice Way in the United States would be good for the company. Because the Complaint fails to allege that Altice USA did not actually believe it would benefit, or that Altice USA was not implementing the Altice Way, these statements cannot constitute actionable misrepresentations. *See Omnicare v. Laborers Dist. Council Constr. Indus. Pension Fund*, 135 S. Ct. 1318, 1327 (2015) (pure statements of opinion are false and therefore actionable only "if the speaker did not hold the belief she professed").

Second, Plaintiffs' assertions about the purported inadequacy of the implementation of one aspect of the Altice Way at one company does not render false a broad statement about the successful implementation of the strategy. *See In re Coty Inc. Sec. Litig.*, No. 14-cv-919 (RJS), 2016 WL 1271065, at *9 (S.D.N.Y. Mar. 29, 2016). In *Coty*, the court dismissed plaintiff's Securities Act claim that, like Plaintiffs' here, rested on a single alleged departure from a general statement. *See id.* The court explained that "termination of a single product line sold in the United States" did not render untrue defendant's statement that its "brand was expanding globally." *Id*. Similarly, the Sixth Circuit has rejected claims that statements about adherence to supplier standards were rendered false by "a few suppliers [who] did not adhere to the standards," pointing out that "it is not reasonable to interpret [the Company's] statements as a guarantee." *Bondali v. Yum! Brands, Inc.*, 620 F. App'x 483, 489 (6th Cir. 2015). The Court should do the same here. Altice USA never represented that the Altice Way had been perfected in all respects by all companies associated with Altice Europe in every country around the world, nor did Altice USA guarantee infallible future performance.

Third, even if Plaintiffs could allege that the statements in the Prospectus were false, the statements are not material to Altice USA stockholders. Descriptions of the unique benefits of the "Altice Way" strategy are classic corporate puffery that cannot give rise to a securities

violation. *See Lasker v. N.Y. Elec. & Gas Corp.*, 85 F.3d 55, 59 (2d Cir. 1996) (statements that "business strategies [would] lead to continued prosperity" were inactionable puffery). Indeed, courts routinely dismiss securities claims based on generic statements praising the effectiveness or uniqueness of a company's business model and expressing optimism that the model will bring future success.

For example, in *ECA & Local 134*, the Second Circuit affirmed dismissal of a case where plaintiffs alleged that the defendants "made numerous misrepresentations regarding its 'highly disciplined' risk management and its standard-setting reputation for integrity." *ECA & Local 134 EBEW Joint Pension Trust of Chi. v. JP Morgan Chase Co.*, 553 F.3d 187, 205 (2d Cir. 2009). The Second Circuit found statements that these risk management processes would "continue to reposition and strengthen [the company's] franchises" "did not, and could not, amount to a guarantee that [the company's] choices would prevent failures in its risk management practices," and that these "generalizations regarding [a company's] business practices . . . are precisely the type of puffery that this and other circuits have consistently held to be inactionable." *Id.* at 206.

Similarly, in *Horizon Pharma PLC*, the court dismissed Securities Act claims after finding that "statements by Defendants extolling their unique commercial business model, noting that the company was on track, and highlighting that prescription growth was exceeding [their] expectations" were "textbook cases of corporate puffery or optimism" that were "not actionable under the securities laws." *Schaffer v. Horizon Pharma PLC*, No. 16-cv-1763 (JMF), 2018 WL 481883, at *9 (S.D.N.Y. Jan. 18, 2018). Plaintiffs' claims rest on equally inactionable statements: that Altice Europe had successfully implemented the Altice Way and that Altice USA hoped to do the same in the future. Put simply, such statements are "too general to cause a

reasonable investor to rely upon them," and thus are immaterial as a matter of law. *ECA & Local 134*, 553 F.3d at 206; *cf. Lasker*, 85 F.3d at 59 (dismissing Securities Act claims asserting that statements of previously successful business strategy "insur[ed] that . . . the stock price would not decline").[6]

Finally, Plaintiffs' claim that Altice Europe's performance after the IPO harmed the value of Altice USA's stock fails because the Risk Factors in the Prospectus warned Plaintiffs of this very risk. The Prospectus *expressly* cautioned that the reputation of the Altice Group could impact performance at Altice USA. Prospectus at 33. The Prospectus also warned that all "forward-looking statements are based on management's current expectations and beliefs" and are, as with any projection, "susceptible to uncertainty and changes in circumstance." *Id*. at 48. In light of detailed disclosures about Altice USA's concrete operational changes and the financial impact of incorporating the Altice Way at Altice USA, as well as the Risk Factor warnings that Altice Europe's reputation could impact Altice USA's perceived value, Plaintiffs' attempt to concoct a claim based on corporate puffery about the benefits of the Altice Way does not plead a material misstatement.[7]

B. The Prospectus Contained No Material Omissions

The Amended Complaint also fails to allege that the Prospectus contained a material

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[6] The Prospectus described the concrete operational steps and resulting financial impact of incorporating the principles of the Altice Way at Altice USA—critical information for IPO investors. The Prospectus described how Altice USA integrated and improved legacy Cablevision and Suddenlink operations, and discussed the impact of those efforts. *See supra* at 5, 6. In the face of detailed disclosures of this key information about Altice USA, generic statements about the Altice Way and its implementation in other countries were not material.

[7] Plaintiffs also allege that statements about the Altice Way were material because Altice USA paid Altice Europe $30 million per year to use the Altice Way. AC ¶¶ 62–65. This is a red herring. The consulting and advisory agreement was for the services of Altice Europe executives with extensive experience operating cable companies, and was fully disclosed in the Prospectus. *See* AC ¶ 64 (services provided by executives "represent very specialized knowledge and skills of executives at Altice N.V. and are not comparable to other services in the market"); Prospectus at 44.

omission. To plead a claim by omission, a plaintiff must establish either (i) "an omission of information that is necessary to prevent existing disclosures from being misleading," or (ii) "an omission in contravention of an affirmative legal disclosure obligation." *In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 360 (2d Cir. 2010).

Plaintiffs never specify what information Altice USA *should* have disclosed about SFR and Portugal, claiming only that "as a result of the disclosure of material adverse facts omitted from Altice USA's registration statement, Altice USA's stock price has plummeted over 40% from the IPO price." AC ¶ 5.

The Prospectus provided virtually no information about other Altice companies' business operations or performance. Indeed, other than four sentences summarizing Altice Europe's five largest acquisitions (Prospectus at 153), the Prospectus is silent about financial and operating results for other Altice Group entities. The securities laws do not impose a "general duty…to provide the public with all material information." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1432 (3d Cir. 1997); *accord Dalberth v. Xerox Corp.*, 766 F.3d 172, 183 (2d Cir. 2014) ("[A]n omission is actionable . . . only when the corporation is subject to a duty to disclose the omitted facts"). This is particularly true where, as here, information about the financial performance of SFR and Portugal was publicly available. *See In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 272 F. Supp. 2d 243, 249–50 (S.D.N.Y. 2003) ("Sections 11 and 12(a)(2) do not require the disclosure of publicly available information.").[8]

[8] The doctrine of negative causation also bars Plaintiffs' Securities Act Claims, as discussed *infra* at 24.

C. Plaintiffs Fail To Allege that the Underwriter Defendants Are Statutory Sellers

Under Section 12(a)(2), Plaintiffs may bring a claim only against a "statutory seller," which the Supreme Court has defined as either (i) the person "who passed title, or other interest in the security, to the buyer" or (ii) "the person who successfully solicits the purchase" of the security. *Pinter v. Dahl*, 486 U.S. 622, 642, 647 (1988). Plaintiffs plead neither.

First, Plaintiffs plead no facts at all about who sold them Altice USA securities, much less, that they purchased the securities from any Underwriter Defendants. This precludes Plaintiffs' Section 12(a)(2) claim. *See, e.g.*, *Freidus*, 734 F.3d at 141 ("[T]o have standing under § 12(a)(2), . . . plaintiffs must have purchased securities directly from the defendants."); *Stadnick v. Vivint Solar, Inc.*, 2015 WL 8492757, at *16 (S.D.N.Y. Dec. 10, 2015), *aff'd*, 861 F.3d 31 (2d Cir. 2017) (dismissing § 12(a)(2) claims against underwriters because plaintiff was "not alleged to have purchased his shares . . . directly from the Underwriter Defendants").[9]

Courts have repeatedly rejected vague allegations that plaintiffs acquired securities "pursuant and/or traceable to" an IPO (*see* AC ¶¶ 14–17) as insufficient to plead standing. *See, e.g.*, *Pub. Emps.' Ret. Sys. of Miss.* v. *Merrill Lynch*, 714 F. Supp. 2d 475, 484 (S.D.N.Y. 2010) (allegation that purchase was "pursuant and/or traceable to" offering documents is "insufficient . . . [e]ven under the modest requirements of Rule 8(a)"); *N.J. Carpenters Health Fund v. DLJ Mortg. Capital, Inc.*, 2010 WL 1473288, at *4 (S.D.N.Y. Mar. 29, 2010) (standing not satisfied

[9] Other federal courts have reached the same conclusion. *See, e.g.*, *In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132, 1183 (C.D. Cal. 2008) (dismissing claims against underwriters where plaintiffs failed to allege they had "purchased the securities directly from specific underwriters"); *DeMaria v. Andersen*, 153 F. Supp. 2d 300, 307 (S.D.N.Y. 2001) (dismissing claim against underwriters where "complaint [did] not aver that any defendant was the immediate seller to any named plaintiff"); *In re WebSecure, Inc. Sec. Litig.*, 182 F.R.D. 364, 367, 369 (D. Mass. 1998) (dismissing claim where complaint alleged that plaintiffs purchased "pursuant to or traceable to" the challenged offering documents but "not . . . directly from [the underwriter defendant]").

where plaintiff alleged purchase of securities "pursuant and traceable" to offering materials); *In re Sterling Foster & Co. Sec. Litig.*, 222 F. Supp. 2d 216, 245 (E.D.N.Y. 2002) (same).

The allegations in the Amended Complaint suggest that at least two named plaintiffs did *not* purchase securities from the Underwriter Defendants or through the IPO, which further weakens their claims. *See Stadnick*, 2015 WL 8492757, at *16 (no standing where plaintiff bought stock above the offering price, "which necessarily means that he did not buy through the [IPO]"). Plaintiff Hadzimichalis allegedly purchased shares in early 2018—more than six months after the IPO. *See* ECF No. 10-2; *see also* AC ¶ 71. Plaintiff Chauvin purportedly purchased shares several days after the IPO at a higher price than the offering price of $30 per share. *See* ECF No. 47-1; *see also* AC ¶ 71.

Second, the Complaint does not adequately allege that any Underwriter Defendant solicited Plaintiffs' purchase of shares. Under the *Pinter* standard, a statutory seller must "direct[ly] and active[ly] participat[e] in the solicitation *of the immediate sale*." *Maher v. Durango Metals, Inc.*, 144 F.3d 1302, 1307 (10th Cir. 1998) (emphasis added) (quoting *In re Westinghouse Sec. Litig.*, 90 F.3d 696, 717 n.19 (3d Cir. 1996)). At minimum, "solicitation" requires the seller to "directly communicate" with the buyer. *See, e.g.*, *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 871 (5th Cir. 2003); *Craftmatic Sec. Litig. v. Kraftsow*, 890 F.2d 628, 636 (3d Cir. 1989) (plaintiff "must demonstrate *direct and active participation* in the solicitation of the *immediate sale* to hold the [defendant] liable as a § 12(2) seller" (emphasis added)).

Here, the Amended Complaint makes generalized allegations that the Underwriter Defendants "sold and solicited sales of Altice USA stock to the investing public," and "pitched and sold Altice USA stock to investors," through their "approval and distribution of the Registration Statement, their approval and use of the roadshow, and through direct

communications with investors." AC ¶¶ 115–16. This is insufficient to plead that the Underwriter Defendants "successfully solicit[ed] [Plaintiffs'] purchase." *Pinter*, 486 U.S. at 647. This deficiency is particularly damning where, as discussed above, Plaintiffs make only bare allegations about the circumstances of their purported share purchases. *See, e.g.*, *In re UBS AG Sec. Litig.*, 2012 WL 4471265, at *26–27 (S.D.N.Y. Sept. 28, 2012) (dismissing Section 12(a)(2) claim where complaint failed to plead "the manner in which the underwriters solicited the sale of securities or whether any of its solicitations were actually successful"), *aff'd*, 752 F.3d 173 (2d Cir. 2014). Plaintiffs' claims against the Underwriter Defendants should therefore be dismissed.

D. Plaintiffs' Control Person Claim Under Section 15 Fails

Plaintiffs cannot plead a Section 15 control person claim against Mr. Drahi or Altice Europe because they fail to plead a primary violation of Sections 11 or 12(a)(2). To plead a Section 15 claim, Plaintiffs must allege not only control "by or through stock ownership, agency, or otherwise," 15 U.S.C. §77o(a) but also "a primary violation by the controlled person." *See ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 108 (2d Cir. 2007). Where no primary violation of Sections 11 and 12(a)(2) is pleaded, Plaintiffs "likewise fail to state a claim under Section 15." *Altayyar v. Etsy, Inc.*, 242 F. Supp. 3d 161, 186 (E.D.N.Y. 2017).

III. Plaintiffs' Exchange Act Claims Fail as a Matter Of Law

Plaintiffs' Exchange Act Claims rest on the same factual allegations as their Securities Act Claims and fail for many of the same reasons, plus a few more. To plead a Section 10(b) securities fraud claim, Plaintiffs "must establish that 'the defendant, in connection with the purchase or sale of securities, made a materially false statement or omitted a material fact, with scienter," and that their reliance on the alleged misstatement or omission caused them injury. *ECA & Local 134*, 553 F.3d at 197. To state a Section 20(a) control person claim, Plaintiffs must plead specific facts alleging "(1) a primary violation by the controlled person, (2) control of

the primary violator by the defendant, and (3) that the defendant was, in some meaningful sense, a culpable participant in the controlled person's fraud." *Audet v. Fraser*, 2017 WL 4542386 at *6 (D. Conn. Oct. 11, 2017); *ATSI*, 493 F. 3d at 108. Plaintiffs plead none of these.

A. Plaintiffs Do Not Plead an Actionable Material Misstatement or Omission

Plaintiffs fail to allege a material misstatement or omission for the reasons set forth in Sections II.A-B, *supra*, which also requires dismissal of their Exchange Act Claims. 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b–5(b); *see Harris v. AmTrust Fin. Servs., Inc.*, 135 F. Supp. 3d 155, 170 n.26 ("the false or misleading statement [under Section 10(b)] must be material"); *accord In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d at 360 ("[t]he definition of materiality is the same" for Sections 11 and 12(a)(2) of the Securities Act and Section 10(b)) of the Exchange Act.

B. Plaintiffs Fail To Allege Scienter

Even if the Amended Complaint adequately alleged an actionable misstatement or omission—which it does not—Plaintiffs' securities fraud claim fail because the allegations of scienter fall well short of the heightened pleading requirements of the Private Securities Litigation Reform Act (PSLRA) and Rule 9(b). Plaintiffs must state with particularity facts giving rise to a strong inference that the defendant acted with "a mental state embracing intent to deceive, manipulate, or defraud." *Tellabs*, 551 U.S. at 319. Thus, Plaintiffs must allege particularized "facts to show either (1) that defendants had the motive and opportunity to commit fraud, or (2) strong circumstantial evidence of conscious misbehavior or recklessness." *ECA & Local 134*, 553 F.3d at 198. The inference of scienter "must be cogent and at least as compelling

as any opposing inference of nonfraudulent intent." *Tellabs*, 551 U.S. at 314. Plaintiffs come nowhere close to carrying this burden.

1. Plaintiffs Fail To Plead Scienter by Motive against Mr. Goei

Plaintiffs' assertion that Mr. Goei defrauded investors because he was financially incented to remain employed (*see* AC ¶ 91) is insufficient to plead motive. *Novak v. Kasaks*, 216 F.3d 300, 307–08 (2d Cir. 2000). As the Second Circuit has explained, "[m]otives that are common to most corporate officers, such as the desire for the corporation to appear profitable and the desire to keep stock prices high to increase officer compensation, do not constitute 'motive' for purposes of this inquiry." *ECA & Local 134*, 553 F.3d at 198.

Plaintiffs attempt to bolster their theory of motive by describing various aspects of Mr. Goei's compensation, such as time-vesting stocks and access to various forms of transportation (AC ¶ 91). But the Second Circuit requires "more than merely charg[ing] that executives aim to prolong the benefits of the positions they hold." *Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1130 (2d Cir. 1994). Indeed, "it is well settled in this Circuit that general allegations of a profit or prestige motive are insufficient to allege scienter." *Strougo v. Barclays PLC*, 105 F. Supp. 3d 330, 350 (S.D.N.Y. 2015); *see also Kalnit v. Eichler*, 264 F.3d 131, 140 (2d Cir. 2001) ("an allegation that defendants were motivated by a desire to maintain or increase executive compensation is insufficient [to demonstrate scienter] because such a desire can be imputed to all corporate officers"). A contrary ruling would "expose virtually every company in the United States that suffered a dip in stock price to allegations of securities fraud." *In re Gilat Satellite Networks, Ltd.*, 2005 WL 2277476 at *19 (E.D.N.Y. Sept. 19, 2005).

Finally, Plaintiffs aver that Mr. Goei was controlled by Mr. Drahi, who was himself motivated to "make false statements regarding the efficacy of the Altice Way to justify the large payments to Altice N.V. and Drahi." AC ¶¶ 91, 92. This is just a variation on a fundamentally

flawed theme. Mr. Drahi's desire to run a profitable business is insufficient to allege motive to commit fraud. *See Shields*, 25 F.3d at 1130 ("[t]o allege a motive sufficient to support the inference that optimistic but erroneous statements were fraudulently made, a plaintiff must do more than merely charge that executives aim to prolong the benefits of the positions they hold"). It is equally insufficient to show that Mr. Goei, an employee, shared a fraudulent motive.

2. Plaintiffs Fail To Plead Scienter by Conscious Misbehavior Or Recklessness against Mr. Goei

Plaintiffs also fail to plead that Mr. Goei engaged in conscious misbehavior. "Conscious misbehavior generally consists of deliberate, illegal behavior." *In re Lululemon Sec. Litig.*, 14 F. Supp. 3d 553, 573 (S.D.N.Y. 2014), *aff'd*, 604 F. App'x 62 (2d Cir. 2015) (quoting *Novak*, 216 F.3d at 308). To plead scienter based on "circumstances indicating conscious misbehavior by the defendant . . . the strength of the circumstantial allegations must be correspondingly greater." *See Kalnit*, 264 F.3d at 142 (to plead scienter based on "circumstances indicating conscious behavior by the defendant . . . the strength of the circumstantial allegations must be correspondingly greater.").

Plaintiffs do not even attempt to meet this standard and instead assert that Mr. Goei knew or recklessly ignored the facts that he learned through his position on the Board of Directors of Altice Europe (AC ¶ 93). But it is not enough to merely plead "a heightened form of negligence." *In re Wachovia Equity Sec. Litig.*, 753 F. Supp. 2d 326, 351 (S.D.N.Y. 2011). The law requires that Plaintiffs plead that Mr. Goei "either (1) knew facts or had access to information contradicting [the company's] public statements, or (2) failed to review or check information [he] had a duty to monitor." *Id.* (no recklessness where plaintiffs alleged that defendants "received reports detailing significant and widespread problems with Wachovia's lending" but failed to identify a specific report that contained contradictory information).

The Amended Complaint does not identify *any* "specific contradictory information" that was supposedly available to Mr. Goei at the time of the IPO. The most Plaintiffs can muster is an assertion that Mr. Goei *should have known* about SFR's customer service challenges because of his role on the Altice Europe board. That is not enough. *See Dobina v. Weatherford Int'l Ltd.*, 909 F. Supp. 2d 228, 249 (S.D.N.Y. 2012) (failure to plead recklessness where the complaint alleges access to information but "stops short of actually alleging that the spreadsheet contained sufficient information" to reveal contradictory facts); *In re The Hain Celestial Grp. Inc. Sec. Litig.*, 2019 WL 1429560, at *19 (E.D.N.Y. Mar. 29, 2019) (no recklessness where plaintiff failed to identify specific reports with information that contradicted representations).[10]

3. Plaintiffs Fail To Allege Corporate Scienter Against Altice USA

Plaintiffs' allegations of corporate scienter against Altice USA also fail. Without specific factual allegations that "create a strong inference that someone whose intent could be imputed to the corporation acted with the requisite scienter," corporate scienter is not well pleaded. *Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital Inc.*, 531 F.3d 190, 195 (2d Cir. 2008); *C.D.T.S. v. UBS AG*, No. 12 Civ. 4924(KBF), 2013 WL 6576031, at *6 (S.D.N.Y. Dec. 13, 2013) ("Scienter must be separately pled and individually supportable as to each defendant"), *aff'd sub nom. Westchester Teamsters Pension Fund v. UBS AG*, 604 F. App'x 5

[10] To the extent Plaintiffs purport to rely on the "core operations" doctrine, which imputes to key officers knowledge of facts related to a company's core operations, this argument also fails. This doctrine, which predates the PSLRA, "cannot establish scienter independently." *City of Austin Police Ret. Sys. v. Kinross Gold Corp.*, 957 F. Supp. 2d 277, 296 (S.D.N.Y. 2013) (quoting *New Orleans Emps. Ret. Sys. v. Celestica, Inc.*, 455 F. App'x. 10, 14 (2d Cir. 2011)); *see also In re Wachovia Equity Sec. Litig.*, 753 F. Supp. 2d at 353 ("the Court considers 'core operations' allegations to constitute supplementary but not independently sufficient means to plead scienter"). The doctrine is in any event inapplicable here because the Altice Way was a high-level strategy, not a "core operation" such as financial results or liquidity availability. *Cf. In re Atlas Air Worldwide Holdings, Inc. Sec. Litig.*, 324 F. Supp. 2d 474, 490 (S.D.N.Y. 2004) (company's financial statements constituted "core operations" such that defendant officers knew or should have known the information therein); *In re Reserve Fund Sec. & Derivative Litig.*, 732 F. Supp. 2d 310, 323 (S.D.N.Y. 2010) (a fund's liquidity crisis and inability to satisfy redemption requests went to the fund's "core operations" such that the fund's partners should have been aware).

(2d Cir. 2015). Thus, Plaintiffs must plead that someone—such as an individual defendant—"responsible for the statements made to investors" had the requisite fraudulent intent. *Teamsters*, 531 F.3d at 197, 195.

As explained above, Plaintiffs fail to raise an inference of scienter against Mr. Goei. Plaintiffs' sole allegation against Mr. Drahi—who is not even a named defendant as to the Section 10(b) claim but is the only other potential source of corporate scienter for Altice USA—also fails. Plaintiffs assert that Mr. Drahi was motivated to defraud investors about whether the Altice Way had been successfully implemented in France in order to collect consulting fees. *See* AC ¶ 94. The desire to earn management fees is a motive possessed by virtually every person involved in the securities industry. *See, e.g.*, *In re Fannie Mae 2008 Sec. Litig.*, 742 F. Supp. 2d 382, 396 (S.D.N.Y. 2010) (hedge fund managers' desire to earn fees will not "suffice to allege a concrete and personal benefit resulting from fraud") (quoting *Edison Fund v. Cogent Inv. Strategies Fund, Ltd.*, 551 F. Supp. 2d 210, 227 (S.D.N.Y. 2008)); *In re Citigroup Auction Rate Sec. Litig*., 700 F. Supp. 2d 294, 305 (S.D.N.Y. Sept. 11, 2009) ("courts have repeatedly rejected conclusory allegations regarding the motivation to earn unspecified fees as a basis for inferring scienter"); *In re Salomon Analyst Winstar Litig*., 2006 WL 510526, at *10 (S.D.N.Y. Feb. 28, 2006) (because "all firms in the securities industry want to increase profits and all individuals are assumed to desire to increase their compensation," allegations of motive to increase revenues and worth are too generalized to allege scienter); *see supra* at 20, 21. These allegations do not impute scienter to Mr. Drahi, much less to Altice USA.[11]

[11] Nor is the purported misrepresentation here so dramatically different that the supposed revelation can itself constitute evidence of scienter. *Compare Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 710 (7th Cir. 2008) (if "General Motors announced that it had sold one million SUVs in 2006, and the actual number was zero" this might be sufficient evidence of corporate scienter).

C. Plaintiffs Fail To Plead Loss Causation

The allegations in the Amended Complaint disprove loss causation, which requires dismissal. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 342 (2005); *see also Lattanzio v. Deloitte & Touche LLP*, 476 F.3d 147, 157–58 (2d Cir. 2007).

Plaintiffs contend that Altice USA's stock dropped on November 3, 2017, following news that Altice Europe's foreign divisions in Portugal and France were performing poorly. *See* AC ¶¶ 78, 80 ("[T]his decline in Altice USA stock was due to investors' lack of confidence in Altice management due to the disappointing results in Europe."). But nowhere do Plaintiffs allege that Altice USA's stock dropped following the supposed corrective statement by Mr. Drahi that the Altice Way had not been successfully implemented in France—nor could they. Altice USA's stock price actually rose immediately following the November 15, 2017 conference where Mr. Drahi made the relevant remarks. *See supra* at 9. Tellingly, the alleged class period ends on November 3, 2017, the first day the market opened after Altice Europe's earnings report was released, *not* the day after Mr. Drahi's commentary. *See* AC ¶ 95. Thus, Plaintiffs themselves acknowledge that their harm was due to Altice Europe's worse-than-expected financial performance, not due to the falsity of any statement in the Prospectus about the effectiveness of the Altice Way.[12]

D. Plaintiffs' Control Person Claim Under Section 20(a) Fails

Plaintiffs' Section 20(a) claim fails because Plaintiffs have not shown a primary violation

[12] Because the facts on the face of the Amended Complaint disprove loss causation, Plaintiffs' Section 11 and 12(a)(2) claims should also be dismissed under the doctrine of negative causation. *See Blackmoss Invs. Inc. v. ACA Capital Holdings, Inc.*, No. 07 Civ. 10528, 2010 WL 148617, at *11 (The negative causation defense, which "precludes recovery for price declines that are not the result of an alleged misrepresentation . . . may be considered on a dismissal motion where the absence of loss causation is apparent on the face of the complaint"); *accord Pani v. Empire Blue Cross Blue Shield*, 152 F.3d 67, 74 (2d Cir. 1998) ("[a]n affirmative defense may be raised" on a motion to dismiss "if the defense appears on the face of the complaint").

of the Exchange Act. *See supra* at 18, 19. This claim fails for the additional reason that the Amended Complaint does not allege that any of the named defendants (Altice Europe, Mr. Goei, or Mr. Drahi) were "in some meaningful sense a culpable participant in the fraud perpetrated by the controlled person." *S.E.C. v. First Jersey, Inc.*, 101 F.3d 1450, 1472 (2d Cir. 1996) (internal quotations omitted).

"To adequately plead culpable participation, Plaintiffs must plead at a minimum particularized facts establishing a controlling person's conscious misbehavior or recklessness in the sense required by Section 10(b)." *Floyd v. Liechtung*, No. 10 Civ. 4254(PAC), 2013 WL 1195114 at *6 (S.D.N.Y. Mar. 25, 2013) (internal quotations removed). Plaintiffs do no such thing, instead impermissibly lumping together Altice Europe, Mr. Goei, and Mr. Drahi by asserting that each was a culpable participant because of "their ownership and control over Altice USA, or their positions as directors and/or senior officers." *See* AC ¶¶ 123, 21–31. This is insufficient to establish control person liability. *See Audet*, 2017 WL 4542386 at *6 ("A person's status as an officer, director, or shareholder, absent more, is not enough to trigger liability under section 20(a)") (quoting *Patriot Exploration, LLC, v. SandRidge Energy, Inc.*, 951 F. Supp. 2d 331, 362 (D. Conn. 2013) (finding that plaintiffs failed to establish control person liability where they merely state that the defendants were directors of the company).

CONCLUSION

For all of the foregoing reasons, the Amended Complaint should be dismissed in its entirety with prejudice.

Date: October 14, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served Defendants' Memorandum of Law in Support of Defendants' Motion to Dismiss the Amended Class Action Complaint dated October 14, 2019 by email to the following counsel for Plaintiffs on October 14, 2019:

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