SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

In re Altice, USA, Inc. Securities Litigation	Index No. 711788/2018 Commercial Division Hon. Joseph Risi Motion Seq. No. 003

DEFENDANTS' REPLY MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO DISMISS

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Defendants respectfully submit this reply in further support of their Motion to Dismiss, and in response to Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss ("Opposition" or "Opp.").[1]

PRELIMINARY STATEMENT

1. Plaintiffs' Opposition—just like their Amended Complaint—relies on conclusory allegations and overstated rhetoric that does not withstand scrutiny. Instead of responding to Defendants' arguments, Plaintiffs recite a litany of inapposite case law and make only a cursory attempt to distinguish the robust body of legal authority cited in Defendants' Opening Brief that mandates dismissal. This approach confirms that Plaintiffs' allegations fall well short of pleading a Securities Act claim.

2. First, Plaintiffs do not rebut the black-letter law that statements about corporate strategy and the expected benefits are puffery and opinion that are inactionable under the securities laws. Plaintiffs instead try to recast the optimistic statements in the Prospectus about the Altice Way and Altice USA's belief in its effectiveness as factual statements akin to representations about revenues or other quantifiable metrics that are properly the subject of a Securities Act claim. Plaintiffs also point to other statements about the Altice Way that they contend are material, but they never allege that those statements were untrue. A review of the full Prospectus confirms that none of the alleged statements about which Plaintiffs purport to complain are actionable.

3. Second, Plaintiffs cannot show that Defendants either made material omissions or had a duty to disclose the supposedly omitted information. Plaintiffs rely on cases that concern

[1] Defined terms used but not defined herein are as defined in Defendants' Memorandum of Law in Support of Defendants' Motion to Dismiss ("Opening Brief" or "Mot.").

alleged misrepresentations about subsidiaries by *parent* companies whose financial results depend upon the performance of those subsidiaries. Neither PT Telecom nor SFR are subsidiaries of Altice USA, and Plaintiffs do not allege that Altice USA's financial results derived from their revenues. This Court should reject Plaintiffs' invitation to drastically expand the securities laws to require Altice USA to disclose detailed financial information about other companies. Plaintiffs also tacitly concede that they do not plead actual knowledge by Altice USA of supposed trends at SFR and PT Telecom at the time of the IPO, instead claiming that Defendants must have known about problems with SFR and PT Telecom in June 2017 because of Altice Europe's post-IPO financial results, but subsequent developments are, without more, insufficient to plead knowledge at the time of the IPO.

4. Third, Plaintiffs do not, and cannot, dispute that Altice USA's stock price *increased* immediately after investors supposedly learned that SFR had not fully implemented the customer experience component of the Altice Way. Thus Plaintiffs' claims are barred by negative causation, and because the evidence is uncontroverted, the court need look no further than the existing record to dismiss.

5. Last, Plaintiffs' claims against the Underwriter Defendants under Section 12(a)(2) should be dismissed because Plaintiffs fail to allege that the Underwriter Defendants "successfully solicited" the purchases or directly and actively participated in the solicitation of "the immediate sale"—all which is required to plead that the Underwriter Defendants are statutory sellers.

6. For all of the reasons discussed below, as well as those discussed in the Opening Brief, the Amended Complaint should be dismissed in its entirety and with prejudice.

ARGUMENT

I. Plaintiffs Fail To Allege A Material Misrepresentation

7. Plaintiffs do not seriously engage with Defendants' argument that a heightened pleading standard applies, instead rehashing the history of the Security Act's passage. *See* Opp. ¶24. That argument ignores that modern courts have broadly adopted the "sound in fraud" doctrine, which applies to Securities Act claims premised on allegations of fraud. *See, e.g.*, *Moore v. Liberty Power Corp.*, 72 A.D.3d 660, 661 (2d Dep't 2010). Here, every one of Plaintiffs' claims turns on an allegation that Defendants knew certain material information but intentionally did not disclose it. Plaintiffs cannot rely on garden-variety fraud claims and avoid the corresponding heightened pleading standard.

8. Plaintiffs assert three supposed misrepresentations: (i) Altice USA overstated its reliance on and benefit from the Altice Way, (ii) the Altice Way had been tested and successfully implemented at other Altice Group members, and (iii) Altice USA knew of but did not disclose existing trends at SFR and PT Telecom. *See* Opp. ¶26. None of these pleads a viable securities claim, even under a notice pleading standard.

A. The Challenged Statements Are Inactionable Puffery And Opinion

9. Plaintiffs' claim, in sum, is that the Altice Way was not as good a business strategy as Defendants believed it to be. Opp. ¶¶34, 36; AC ¶¶67–70. Plaintiffs do not claim that the Prospectus inaccurately described the elements of the strategy, that Altice USA failed to implement the strategy, or that Defendants did not actually believe in the Altice Way or the benefits described in the Prospectus. Instead, Plaintiffs assert that the Prospectus overstated the benefits of the strategy and the competitive strengths it presented for Altice USA. Opp. ¶12. Descriptions of a business strategy and its benefits are textbook corporate puffery, and the Opposition makes no attempt to distinguish the substantial body of law that makes clear that

such statements are inactionable. For example, Plaintiffs do not address *In re Netshoes*, a case directly on point in which the Commercial Division recently dismissed Securities Act claims premised on the defendant's praise of its "'high margin' business model specializing in 'easy-to-ship items with high margins and short replacement cycle.'" 2019 WL 3227251, at *4 (Sup. Ct. N.Y. Cty. July 16, 2019). Nor do they address *Brewer v. Breen*, where the court expressly held that statements about a "business model at a high level are exactly the kind of 'puffery'…insufficient to generate liability." 2018 WL 565267, at *9 (S.D.N.Y. 2018); *Compare* Mot. ¶31.

10. Instead, Plaintiffs rely on cases where, unlike Defendants' discussion of the Altice Way, the alleged misstatement concerned concrete and measurable facts, such as investment performance, test results, and side effects of pharmaceutical drugs. *See* Opp. ¶¶32–36 (citing *In re Ambac Fin. Grp., Inc. Sec. Litig.*, 693 F. Supp. 2d 241, 271–72 (S.D.N.Y. 2010) (high-level comments accompanied by "concrete and measurable" false statements that portfolio was outperforming market indices were not puffery); *Antipodean Domestic Partners, LP v. Clovis Oncology, Inc.*, 2018 WL 2045541, at *6–7 (Sup. Ct. N.Y. Cty. Apr. 30, 2018) (defendants failed to disclose that specific test results included "unconfirmed" results); *Galestan v. OneMain Holding, Inc.*, 348 F. Supp. 3d 282, 289, 303 (S.D.N.Y. 2018) (allegations based on statements by eleven former employees detailing defendants' awareness "of material productivity and delinquency concerns"); *Ark. Teacher Ret. Sys. v. Bankrate, Inc.*, 18 F. Supp. 3d 482, 485 (S.D.N.Y. 2014) (statements about "high quality" of assets were overtly false when allegations established that defendants knew assets were "entirely worthless"); *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 93 F. Supp. 2d 424, 443, 447 (S.D.N.Y. 2000) (multiple financial

restatements due to fraudulent scheme rendered CEO's statements about the value of the company actionable).

11. These cases sustained claims that challenged quantifiable factual disclosures—precisely the types of disclosures to which the securities laws apply. Here, by contrast, Plaintiffs challenge none of the specific information disclosed in the Prospectus about the financial performance of Altice USA or metrics of its business operations. Thus, none of the authority that Plaintiffs rely on bears even a remote resemblance to the corporate strategy and competitive advantages described in the Prospectus and that courts routinely deem inactionable. *See Galati v. Commerce Bancorp, Inc*., 220 F. App'x 97, 102 (3d Cir. 2007) ("statements concerning [a] 'unique business model' constitute nothing more than mere 'puffery'"); *Schaffer v. Horizon Pharma PLC*, 2018 WL 481883, at *1, *9 (S.D.N.Y. Jan. 18, 2018) (statements "extolling 'their unique commercial business model'" inactionable under the securities laws).

B. The Challenged Statements Are Not Material Misstatements

12. Contrary to Plaintiffs' assertions that materiality is a fact issue, failure to plead materiality warrants dismissal where, as here, "plaintiffs' allegations do not, as a matter of law, establish materiality." *Plumbers, Pipefitters & MES Local Union No. 392 Pension Fund v. Fairfax Fin. Holdings Ltd.*, 886 F. Supp. 2d 328, 337 (S.D.N.Y. 2012); *accord ECA & Local 134 IBEW Joint Pension Tr. of Chi. v. JP Morgan Chase Co.*, 553 F.3d 187, 197 (2d Cir. 2009).

13. Even if statements in the Prospectus about Altice USA's corporate strategy were not puffery—and they are—the statements that Plaintiffs challenge are not material misstatements. Plaintiffs claim that references in the Prospectus to the Altice Way as a strategy "developed and tested" in other countries, including France, and "successfully implemented across Altice Group" were false. *See* Opp. ¶¶9, 11. They argue that these statements were false because Mr. Drahi later acknowledged that one of the five prongs of the Altice Way, an

enhanced customer experience, had not yet been perfected at SFR in France. *Id.* ¶13; AC ¶89.[2] But the Prospectus did not represent that the Altice Way was perfectly executed in all respects and all jurisdictions: it said only that the Altice Way had been developed, tested and successfully implemented across the Altice Group. That one of the five aspects of the Altice Way was not yet perfected in one market of the Altice Group does not render such a general statement false. *In re Coty Inc. Sec. Litig.*, 2016 WL 1271065, at *9 (S.D.N.Y. 2016) ("termination of a single product line sold in the United States" did not render untrue defendant's statement that its "brand was expanding globally").

14. Plaintiffs try to get around this problem by pointing out that the market in France comprised 47% of Altice Europe's operations and quoting analyst reports that described "[l]everaging operational efficiency" and deployment of the Altice USA strategy in the United States as "the key to Altice USA's ability to compete successfully." Opp. ¶¶16, 7. But Plaintiffs don't dispute that Altice USA leveraged operational efficiency or implemented the Altice Way effectively, nor do they challenge the detailed information in the Prospectus about the relevant market for IPO investors: the United States. As Plaintiffs' own arguments confirm, the significance of the Altice Way was not that it had been perfected, but rather that Altice USA could learn from the learning process that other operations had already undertaken. *See* AC ¶¶67–69, 72; Opp. ¶¶9–11. Plaintiffs' attempt to manufacture materiality misses the mark. *Antipodean Domestic Partners, LP v. Clovis Oncology, Inc.*, 2018 WL 2045541, at *5 (Sup. Ct. N.Y. Cty. Apr. 30, 2018) (statements and omissions are "material" only if there is a

[2] Plaintiffs selectively quote Mr. Drahi to obscure the fact that his comments were narrowly addressed to ongoing efforts to improve customer experience in France. *Compare* AC ¶89 *with* Mot. ¶29.

"substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information available").

15. Equally flawed is Plaintiffs' suggestion that Altice USA had to provide detailed financial information about PT Telecom and SFR. *See* Opp. ¶13. The Prospectus provided no specific information about Altice Europe's financial performance, much less about its performance in a future quarter that had not even begun at the time of the IPO. *See* Mot. ¶37. Plaintiffs do not allege that any statement in the Prospectus about Altice Europe's financial performance was materially inaccurate. Plaintiffs nevertheless rely on cases concerning alleged misstatements by a parent company concerning revenues of subsidiaries that impacted the financial results of the parent. *Compare* Opp. ¶28 (citing *In re Van der Moolen Holding N.V. Sec. Litig.*, 405 F. Supp. 2d 388, 401 (S.D.N.Y. 2005) (parent was required to disclose that its subsidiary's revenues were generated by illegal trades because the defendant had made numerous statements "concerning the sources and significance of the revenue generated by [the subsidiary]"); *In re Grupo Televisa Sec. Litig.*, 368 F. Supp. 3d 711, 721 (S.D.N.Y. 2019) (defendant was required to disclose that its subsidiary engaged in bribery because the defendant had "put its source of revenue at issue")). Here, Plaintiffs do not, and cannot, allege that Altice USA's financial results derived from SFR and PT Telecom.

16. Plaintiffs resort to the "presumption" of materiality, theorizing that Altice USA's stock dropped because of Altice Europe's Q3 Earnings release on November 2, 2017. Opp. ¶39. Altice Europe's financial results did not, as Plaintiffs suggest, "correct" market misperception about the relationship between Altice USA and Altice Europe. First, the Altice Europe Q3 Earnings Release was not a corrective disclosure—it said nothing about the Altice Way. *See* Mot. ¶37. Second, even if Altice USA's stock fell in response to Altice Europe's results (which

Defendants dispute), it does not follow that Altice USA misrepresented the relationship between the companies. To the contrary, the Prospectus expressly warned that "external perceptions of Altice Group's reputation, the quality of its products, and its corporate and management integrity" could impact investors' perception of Altice USA and that its stock price could experience "wide fluctuations" as a result of "variations in Altice [Europe's operating results and the market price of its shares." AC ¶80. In other words, Plaintiffs complain that one of the investment risks about which they were warned came to fruition. That is not sufficient to state a securities claim.

17. This is particularly so because, unlike the stocks at issue in the cases cited by Plaintiffs (which dropped following alleged corrective disclosures), Altice USA's stock *increased* by 73 cents after Mr. Drahi's statements. *See* Mot. ¶43. Plaintiffs cannot credibly claim that movements in Altice USA's stock price show that the customer experience at SFR in France was material to Altice USA's investors.

II. Plaintiffs Do Not Plead An Actionable Omission

A. Altice USA Had No Duty To Disclose Information About Other Companies

18. Plaintiffs essentially argue that Altice USA was required to disclose in-depth information about other companies because the Prospectus stated that Altice USA benefits from being part of an international group of Altice companies. Opp. ¶37. That argument, if adopted, would stretch the securities laws to impose new and seemingly endless disclosure duties. Altice USA had no duty to overload investors with financial figures from foreign companies, particularly given that such information already was publicly available. Mot. ¶37, n.6.

19. The legal authority on which Plaintiffs rely does not hold otherwise. Both *Van der Moolen Holding* and *Grupo Televisa* involved misstatements by a parent company about revenues that the parent derived from a subsidiary. *See supra* ¶16. SFR and PT Telecom are not

subsidiaries of Altice USA, and Altice USA did not control those companies or rely on their revenues. Plaintiffs' reliance on those cases to argue that Altice USA should have disclosed financial information about other companies is misplaced.

B. Plaintiffs' "Trend" Allegations Fail As A Matter of Law

20. Plaintiffs further argue that Defendants violated affirmative duties to disclose known material adverse trends, events, uncertainties, and risks. They are wrong again, for at least two reasons. First, they fail to adequately plead that the "trends" cited in the Complaint had come to fruition at the time of the IPO. Second, and relatedly, Plaintiffs fail to allege that Defendants knew about such "trends" before the IPO—one cannot know about events that have not yet transpired. Mot. ¶¶39, 40.

21. Plaintiffs allege no facts in support of their supposition that "trends" were "already occurring" at SFR and PT Telecom at the time of the IPO. *Id.* ¶38. Plaintiffs try to avoid this problem by insisting that the existence of a trend is a fact issue that the court cannot decide now. Opp. ¶31. Plaintiffs misapprehend the law. A litigant must plead more than conclusory conjecture to state a claim, and the rulings cited in the Opening Brief confirm that the failure to adequately plead a trend mandates dismissal. *See* Mot. ¶25.

22. The sole case Plaintiffs offer on this point, *In re CPI Card Grp. Inc. Sec. Litig.*, 2017 WL 4941597 (S.D.N.Y. 2017), is again inapposite. In *CPI*, plaintiffs claimed that the company suffered problems with customer relationships and inventory tracking for nearly a year before the IPO, relying on detailed evidence from a confidential witness. *Id.* at *4, *3 n.38. Taken together with the fact that the sales drop-off at the company occurred within a couple months of the IPO, the court found the allegations of a trend sufficient. *Id.* at *4.

23. The factual allegations here come nowhere close to those in *CPI.* Here, Plaintiffs claim that a "trend" of poor financial performance at Altice Europe was "already

occurring" at the time of the IPO, AC ¶77, because of Altice Europe's quarterly financial results announced one month after the IPO. *Id.* ¶82. Yet Plaintiffs concede that Altice Europe's Q2 2017 results were consistent with guidance announced *before* the IPO in connection with Altice Europe's Q1 2017 results. *See* Mot. ¶38. For poor financial performance to constitute an undisclosed trend, more is required. *See In re Noah Educ. Holdings, Ltd. Sec. Litig.*, 2010 WL 1372709, at *6 (S.D.N.Y. Mar. 31, 2010) (dismissing for failure to plead facts demonstrating a trend where cost spike occurred over just a two-month period); *Kapps v. Torch Offshore, Inc.*, 379 F.3d 207, 211 (5th Cir. 2004) (affirming dismissal because a 60% drop in natural gas over a two-month period before the filing of a prospectus, followed by a gradual decline, was not a trend requiring disclosure).

24. Plaintiffs' Opposition also ignores that, as a matter of law, they must allege facts showing Defendants *actually knew* about the purported "trends" at issue in order to plead a misstatement by omission. *See Silverstrand Invs. v. AMAG Pharm., Inc.*, 707 F.3d 95, 103 (1st Cir. 2013); *accord Panther Partners, Inc. v. Ikanos Commc'ns, Inc.*, 538 F. Supp. 2d 662, 669 (S.D.N.Y. 2008). Plaintiffs claim that, under *CPI*, knowledge can be inferred from the "temporal proximity" between the June 2017 IPO and the November 2, 2017 announcement of Altice Europe's Q3 2017 results, which Plaintiffs erroneously characterize as a corrective disclosure. *See* Opp. ¶30. That mischaracterizes *CPI*. That complaint alleged detailed facts about the defendants' knowledge, taken in part from a confidential employee witness, which together with temporal proximity warranted an inference of actual knowledge. 2017 WL 4941597, at *4. Plaintiffs here rely exclusively on "temporal proximity," which courts have made clear is insufficient. *See Pearlstein v. BlackBerry Ltd.*, 93 F. Supp. 3d 233, 247 (S.D.N.Y. 2015) (dismissing complaint for failure to plead knowledge and holding that "temporal proximity alone

does *not* raise a circumstantial inference") (emphasis in original); *In re Parametric Tech. Corp.*, 300 F. Supp. 2d 206, 223 (D. Mass. 2001) ("[T]emporal proximity alone does not suffice to justify the inference."); *Welgus v. TriNet Grp. Inc.*, 2017 WL 6466264, at *24 (N.D. Cal. 2017) (dismissing Regulation S-K claims because "one-off allegation does not support an inference that the 'adverse trends' were…known by defendants…").

25. Further undercutting Plaintiffs' position is that the purported "trends" that they allege should have been disclosed concerned companies halfway around the world whose performance was neither controlled by nor relied upon for financial revenues by Altice USA. None of the cases on which Plaintiffs rely addresses comparable claims: all concern trends allegedly occurring at the defendant companies. *Compare* Opp. ¶30 (citing *Litwin v. Blackstone Grp., L.P.*, 634 F.3d 706, 718 (2d Cir. 2011) (alleged omission concerned two portfolio companies that were part of entity that was going public); *In re CPI Card*, 2017 WL 4941597, at *4–5 (allegations concerned trend for sales of the company launching the IPO); *Okla. Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc.*, 367 F. Supp. 3d 16, 35 (S.D.N.Y. 2019) (alleged omission concerned problems with defendant's own sales channels). Plaintiffs have not come close to adequately alleging either that a "trend" was already occurring or that Defendants knew about such events at PT Telecom and SFR.

III. Plaintiffs' Claims Are Barred by Negative Causation

26. Plaintiffs erroneously insist that dismissal on negative causation grounds is premature. It is well settled that courts dismiss securities cases where, as here, "the absence of loss causation is apparent on the face of the complaint." *Blackmoss Invs., Inc. v. ACA Capital Holdings, Inc.*, 2010 WL 148617, at *11 (S.D.N.Y. 2010); Mot. ¶¶42–43. Plaintiffs ignore both this law and that their own allegations *disprove* loss causation because Altice USA's stock price *went up* after Mr. Drahi's statements about SFR. *See id.* ¶43.

27. Plaintiffs' cited authority is inapplicable here. For example, Plaintiffs rely on *McMahan & Co. v. Wherehouse Entertainment* to argue that a stock price decline is "presumed to be caused by the misrepresentation." 65 F.3d 1044, 1048 (2d Cir. 1995). *See* Opp. ¶45. But here, it is irrefutable that Altice USA's stock *increased* following Mr. Drahi's comments.

28. Plaintiffs also suggest that negative causation requires expert testimony. Opp. ¶46. But the case they rely on noted that claims *should* be dismissed on the pleadings when it is apparent from the complaint that plaintiff's losses were not caused by the alleged misstatement. *In re Giant Interactive Grp., Inc. Sec. Litig.*, 643 F. Supp. 2d 562, 572 (S.D.N.Y. 2009).

29. Plaintiffs also wrongly suggest that Defendants have ignored their allegations "that the disclosures of deterioration in Altice N.V.'s performance and brand perception in November 2017 resulted in a sharp decline in Altice USA's stock price." Opp. ¶30. Not so. But that proves only that the risk factors in the Prospectus were accurate. The stock price's rise following Mr. Drahi's statements about the customer experience refutes Plaintiffs' conclusory assertion that the market was negatively reacting to statements in the Prospectus about the Altice Way.

IV. Plaintiffs Do Not Allege That The Underwriter Defendants Are Statutory Sellers

30. Plaintiffs fail to allege that the Underwriter Defendants are "statutory sellers" under Section 12(a)(2). *Pinter v. Dahl*, 486 U.S. 622, 642, 647 (1988). Though Plaintiffs erroneously assert that the statutory seller defense is a factual question that cannot be decided now, the authority cited in the Opening Brief confirms that courts routinely dismiss complaints for failure to adequately allege that defendants are statutory sellers. *E.g.*, *David v. Simware*, 1997 N.Y. Misc. LEXIS 201, at *10 (Sup. Ct. N.Y. Cty. 1997) (dismissing §12(a)(2) claims under CPLR 3211 for failure to plead defendant was a statutory seller); *Stadnick v. Vivint Solar,*

Inc., 2015 WL 8492757, at *16 (S.D.N.Y. 2015), *aff'd*, 861 F.3d 31 (2d Cir. 2017) (granting motion to dismiss §12(a)(2) claim on same basis).

31. Plaintiffs ignore their failure to plead that the Underwriter Defendants directly passed title to the securities to Plaintiffs and have no answer to the fact that Plaintiffs LaPoint and Newman made their purchases *after* the IPO at prices higher than the $30 offering price. Instead, Plaintiffs allege only that "the Underwriter Defendants solicited the purchase of securities for their own and the securities owners' interests." Opp. ¶47. This allegation does not satisfy *Pinter*'s requirement that a statutory seller must "***successfully*** solicit[]" the purchase.[3] *See In re UBS AG Sec. Litig.*, 2012 WL 4471265, at *27 (S.D.N.Y. Sept. 28, 2012) (dismissing Section 12(a)(2) claim where complaint failed to adequately allege "whether any of [the underwriter defendants'] solicitations were actually successful"), *aff'd*, 752 F.3d 173 (2d Cir. 2014).

32. Plaintiffs likewise ignore the requirement under *Pinter* that, to engage in successful solicitation, 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)), and must "directly communicate" with the buyer, *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 871 (5th Cir. 2003). The AC contains no allegations at all regarding the immediate sales at issue.[4]

[3] The federal district court's decision in *Worldcom* does not change the clear requirements of *Pinter* or save Plaintiffs' deficient pleadings. Among other things, unlike in *Worldcom*, Plaintiffs here do not allege that they purchased the securities in any particular offering. *See In re Worldcom, Inc. Sec. Litig.*, 294 F. Supp. 2d 392, 423 (S.D.N.Y. 2003).

[4] Plaintiffs claim in a footnote that they are not required to allege "direct participation in the offering." However, the authority Plaintiffs cite merely stands for the proposition that, if the Underwriter Defendants sold securities to Plaintiffs in the immediate aftermath of the offering and were required to issue a Prospectus in connection with the sale, then the Underwriter Defendants could potentially be liable under Section 12(a)(2). However, since the AC

V. Plaintiffs' Section 15 Claims Also Fail

33. Plaintiffs' Section 15 claims fail because their underlying Section 11 and 12(a)(2) claims fail. *See* Mot. ¶49.

34. For these reasons, and those set forth in Defendants' Opening Brief, the Amended Complaint should be dismissed with prejudice.

contains no details regarding the circumstances of Plaintiffs' purchases, Plaintiffs have alleged no facts supporting such a theory.

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Respectfully submitted,

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WORD COUNT CERTIFICATION

I, K. Mallory Brennan, hereby certify that this memorandum contains 4,135 words.

Date: August 12, 2019

/s/ K. Mallory Brennan
K. Mallory Brennan