

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RETIREMENT BOARD OF THE
POLICEMEN'S ANNUITY AND BENEFIT
FUND OF CHICAGO ON BEHALF OF THE
POLICEMEN'S ANNUITY AND BENEFIT
FUND OF CHICAGO, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

-against-

FXCM INC., DROR NIV, and
ROBERT LANDE,

Defendants.
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USDS SDNY
DOCUMENT
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15-CV-3599 (KMW)
Opinion and Order

Currently before the Court are Plaintiff's motions for an indicative ruling and relief from this Court's final judgment pursuant to Federal Rules of Civil Procedure 60(b)(2), 15(a), and 62.1(a)(3). On May 8, 2015, Plaintiff Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago, on behalf of the Policemen's Annuity and Benefit Fund of Chicago, brought a putative class action against FXCM, Dror Niv, and Robert Lande (collectively "Defendants").

Plaintiff asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"). (Compl. ¶¶ 1, 128-140 [Doc. No. 50]). On August 18, 2016, this Court granted Defendants' motion to dismiss the complaint, finding that Plaintiff failed to allege particularized facts sufficient to raise the strong inference of scienter on the part of the Defendants. (Doc. No. 73). Final judgment was entered on October 7, 2017. (Doc. No. 76).

Plaintiff filed a notice of appeal on November 30, 2016. (Doc. No. 78). After this Court granted Defendant's motion to dismiss, and while Plaintiff's appeal was pending, the U.S.

Commodity Futures Trading Commission (the “CFTC”) filed two separate enforcement actions against Forex Capital markets, LLC, the U.S. trading subsidiary of FXCM (“FXCM U.S.”).

Plaintiff now argues that newly available information relating to the results of the two enforcement actions (“the enforcement evidence”) would change this Court’s previous assessment with regard to Defendants’ scienter. On July 27, 2017, in light of the newly available enforcement evidence, the Second Circuit vacated this Court’s previous judgment and remanded for further proceedings consistent with its Summary Order. The Second Circuit’s Order obviates Plaintiff’s request for 62.1(a)(3) and 60(b) relief, and those motions are DENIED. Plaintiff’s motion to file an amended complaint, which incorporates the enforcement evidence, is GRANTED. Plaintiff must file an amended complaint by August 25, 2017. This order resolves Docket Entry 79.

SO ORDERED.

Dated: New York, New York

July 27, 2017

Kimba M. Wood

KIMBA M. WOOD

UNITED STATES DISTRICT JUDGE