

purposes of FRCP 9(b), this Court appropriately declined to further address the Commission's scheme liability claim,” Pl.s Opp’n at 2, **the Court denies Defendant’s Motion [#121]**, as follows:

1 – “A motion for reconsideration should be granted only when the defendant identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr., 729 F.3d 99, 104 (2d Cir. 2013) (internal quotation marks omitted). “Reconsideration of a court’s previous order is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources.” Cartier a Div. of Richemont N. Am., Inc. v. Aaron Faber, Inc., 396 F. Supp. 2d 356, 363 (S.D.N.Y. 2005) (internal quotation marks omitted).

2 – Plaintiff does not meet the high bar for reconsideration. Among other reasons, which include no intervening change of controlling law, no new evidence, and no need to correct a clear error, the issues that are raised in Plaintiff’s Motion are addressed in the Court’s Decision and Order.

Because the Court has determined that the SEC has adequately plead misstatement liability against Peters under Section 10b-5(b) and 17(a)(2), [], it need not address scheme liability. See In re Alstom SA, 406 F. Supp. 2d at 475 (“[B]ecause the Court has already determined that Plaintiffs have successfully stated a claim for liability under Section 10(b) against [defendants] for the misleading statements made with regard to the [alleged fraud], it need not address the potential applicability of scheme liability under subsections (a) and (c) to this fraud.”).

Shapiro, 2017 WL 4712791, at *6 (citations omitted). In short, courts “need not[] on a motion to dismiss, determine if all statements alleged to be false and misleading are actionable as long as enough misstatements are actionable in order

to state a cause of action.” In re Wireless Facilities, Inc. Sec. Litig., 2007 WL 9667131, at *17 (S.D. Cal. May 7, 2007) (quoting Cooper v. Pickett, 137 F.3d 616, 623 (9th Cir. 1997)); see also In re Oxford Health Plans, Inc., 187 F.R.D. 133, 141 (S.D.N.Y. 1999).

3 – The Court advises Defendants, as it did at a status conference on June 21, 2018, to meet and confer with the SEC and to raise discovery issues that they are not able to mutually resolve with Magistrate Judge Robert W. Lerhburger. See Transcript, dated June 21, 2018, at 10-11.

For planning purposes, the Court hereby adjourns the current trial date from October 1, 2019 to October 21, 2019.

Conclusion & Order

For the reasons stated above, Defendant’s motion for reconsideration [#121] is denied.¹

Dated: New York, New York
November 15, 2018



RICHARD M. BERMAN
U.S.D.J.

¹ Any arguments raised by the parties but not specifically addressed herein have been considered by the Court and rejected.