UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH M. SALVANI and JFS INVESTMENTS INC.,

Plaintiffs,

-against-

ADVFN PLC, a company incorporated under the laws of the United Kingdom, INVESTORSHUB.COM, INC., and JOHN DOE, known herein as "brkylnrusso,"

Defendants.

No. 13 Civ. 7082 (ER)

ECF Case

DEFENDANT INVESTORSHUB.COM'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS THE SECOND AMENDED VERIFIED COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

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INTRODUCTION

Pursuant to Federal Rule 12(b), Defendant InvestorsHub.com, Inc. ("iHub") respectfully submits this Memorandum of Law in support of its Motion to Dismiss the Second Amended Verified Complaint for Lack of Subject Matter Jurisdiction. This is a state-law tort case masquerading as a federal case, and the entire case should be dismissed for lack of subject matter jurisdiction.

After Plaintiffs filed their original Complaint on October 4, 2013 (D.E. 1), counsel for iHub sent Plaintiffs' counsel a Rule 11 letter explaining that there was no basis in fact or law for claiming federal subject matter jurisdiction because Plaintiffs' case consisted entirely of state-law claims (defamation, liber per se, and intentional infliction of emotional distress). To overcome this jurisdictional failing, Plaintiffs amended their Complaint on December 10, 2013, to include two purported federal claims under the Securities Exchange Act (the "Exchange Act"), not against iHub, but against a "John Doe" Defendant. (D.E. 7.) Because the Amended Complaint still failed to properly allege subject matter jurisdiction, iHub sought a pre-motion conference with the Court, which was held on January 10, 2014. At the hearing, the Court granted Plaintiffs leave to amend their complaint again, for the third time. (Minute Entry, dated Jan. 13, 2014.)

On January 31, 2014, Plaintiffs served their Second Amended Complaint. (D.E. 14.) In a further effort to create federal subject matter jurisdiction, Plaintiffs have now asserted their Exchange Act claims against both the John Doe Defendant and iHub,[1] but these new claims still

[1] Plaintiff also asserts the claims against iHub's parent corporation, ADVFN PLC. ADVFN PLC has never been served with process and therefore this Motion is filed solely on behalf of iHub.

are not colorable and do not properly invoke this Court's subject matter jurisdiction. The Second Amended Complaint should be dismissed for lack of jurisdiction.

FACTUAL BACKGROUND

Parties

Plaintiff Joseph M. Salvani ("Salvani") is an investment advisor who resides in Florida. (D.E. 14 ¶¶ 11, 20.) Salvani owns Defendant JFS Investments, Inc. ("JFS"), a Florida corporation. (Id. ¶¶ 12, 20.)

Defendant iHub owns and hosts an Internet website that provides a forum for serious investors to gather and share market insights using an advanced discussion platform (the "Site"). (Id. ¶ 2.) The Site is designed to be clean and simple, allowing investors to get the real-time market information they need, quickly and easily. The Site contains electronic bulletin boards ("Boards") on which its members can review and post information related to a variety of investment-related topics.

Defendant John Doe is an unknown individual who has posted messages on iHub's Board under the screen name "brklynrusso." (Id. ¶¶ 16, 17, 38.)

Statements on the Boards

Salvani objects to certain statements made about him on iHub's Boards by John Doe. (Id. ¶ 38.) He claims the statements were false and defamatory (id. ¶¶ 2-5, 9, 10, 26, 27, 32, 34, 35, 38, 40, etc.), and caused him emotional distress (id. ¶ 5, 9, 117).

Salvani also asserts that he and JFS had a contract to provide investment consulting services to a company known as CodeSmart Holdings, Inc. (stock symbol ITEN) (id. ¶¶ 5, 21), and that John Doe and iHub, through John Doe's statements on the Boards, tortiously interfered with that contract (id. ¶110-14).

Purported Federal Claims

As noted above, in response to the original Complaint, iHub served a Rule 11 letter on Plaintiffs asking them to dismiss the Complaint because this Court lacked subject matter jurisdiction. In the Amended Complaint, Salvani and JFS attempted to salvage subject matter jurisdiction by asserting two Exchange Act claims against John Doe, and by stating that this Court can take supplemental jurisdiction over the remaining state-law claims. In the Second Amended Complaint, Plaintiffs have re-asserted their Exchange Act claims, now against John Doe *and* iHub.

In particular, in Count I of the Second Amended Complaint, Salvani alleges that John Doe and iHub violated Section 10(b) of the Exchange Act.[2] In effect, Salvani argues that as a result of the allegedly false and defamatory statements posted about him on the Boards, the price of CodeSmart stock dropped and Salvani was injured. (Id. ¶¶ 78-79.) As the Second Amended Complaint makes clear, however, Salvani himself was not actually misled by any statements on the Board because the statements were about Salvani and he knew whether they were true or false. (Id. ¶¶ 39-41 (alleging that statements about Salvani on iHub's Board were false).)

The Second Amended Complaint asserts that this Court has federal subject matter jurisdiction over the Exchange Act claims and therefore can take supplemental jurisdiction over the state-law claims against iHub pursuant to 28 U.S.C. § 1367.

LEGAL STANDARD

Federal courts must ensure that they have subject matter jurisdiction over the cases pending before them. Thus, "subject-matter delineations must be policed by the courts on their own initiative." Rurhgas AG v. Marathon Oil Co., 526 U.S. 574, 583 (1999). "Whenever it

[2] Count II asserts a claim under Section 9(a)(4) of the Exchange Act solely against John Doe.

appears . . . that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Fed. R. Civ. P. 12(h)(3).

This obligation likewise applies to supplemental jurisdiction over state-law claims. "[I]f a plaintiff's federal claims are dismissed before trial, the state claims should be dismissed as well." Brzak v. United Nations, 597 F.3d 107, 114 (2d Cir. 2010) (internal quotation omitted).

The issue before this Court, then, is whether Plaintiffs have properly invoked this Court's subject matter jurisdiction by asserting two claims under the Exchange Act. "A claim invoking federal-question jurisdiction under 28 U.S.C. § 1331," such as Plaintiffs' Exchange Act claim, "may be dismissed for want of subject matter jurisdiction if it is not colorable." Arbaugh v. Y&H Corp., 546 U.S. 500, 513 n.10 (2006). A claim is not colorable if it is "immaterial and made solely for the purpose of obtaining jurisdiction or is wholly insubstantial and frivolous." Id. (internal quotation omitted). Here, because Plaintiffs' claims under the Exchange Act are not colorable, this Court lacks subject matter jurisdiction over them and over the supplemental state-law claims.[3]

ARGUMENT

I. Plaintiffs' Claims Under The Exchange Act Are Not Colorable And This Court Lacks Subject Matter Jurisdiction Over Them.

In Count I of the Second Amended Complaint, Plaintiffs claim that John Doe and iHub violated Section 10(b) of the Exchange Act, 15 U.S.C. ¶ 78j(b), and Rule 10b-5 as promulgated by the SEC. While neither Section 10(b) nor Rule 10b-5 expressly creates a private right of

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[3] Even if this Court were to take jurisdiction over this matter, iHub is immune from liability pursuant to the Communications Decency Act, 47 U.S.C. § 230. "Section 230" immunizes interactive computer service providers, such as iHub, from any cause of action which treats the provider "as the publisher or speaker of any information provided by another content provider." 47 U.S.C. § 230(c)(1). Here, each of Plaintiffs' claims against iHub treat iHub as the publisher and speaker of content provided by brklynrusso. Section 230 clearly bars such claims.

action, courts have found an implied right of action. But, because the private right of action is only implicit, it must be narrowly construed by this Court. Janus Capital Group, Inc. v. First Derivative Traders, -- U.S. --, 131 S.Ct. 2296, 2302 (2011).

To prevail on a Section 10(b) claim, a plaintiff asserting a private right of action must show: "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, 552 U.S. 148, 157 (2008) (citing Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336, 341-42 (2005)).

Here, Plaintiffs have not pled – and could not plausibly plead – reliance or loss causation.

A. Plaintiffs' Section 10(b) Claim Is Not Colorable Because Plaintiffs Cannot Logically Plead "Reliance."

"Reliance by the plaintiff upon the defendant's deceptive acts is an essential element of the § 10(b) private cause of action." Stoneridge Inv. Partners, 552 U.S. at 159. "This is because proof of reliance ensures that there is a proper connection between a defendant's misrepresentation and a plaintiff's injury." Erica P. John Fund, Inc. v. Halliburton Co., -- U.S. --, 131 S. Ct. 2179, 2184 (2011) (internal quotation omitted).

There are two ways for Plaintiffs to prove reliance. First, the "traditional (and most direct) way a plaintiff can demonstrate reliance is by showing that he was aware of a company's statement and engaged in a relevant transaction – *e.g.*, purchasing common stock – based on that specific misrepresentation." Id. at 2185. Here, Salvani does not even attempt to plead that he learned about John Doe's statements on iHub's Board and then relied upon those statements. Such an allegation would be inherently illogical: a plaintiff could not reasonably rely upon a misrepresentation when the misrepresentation itself is *about the plaintiff*. In such a case, the

plaintiff will know that the misrepresentation is false and thus he could never show that he relied upon it. For these reasons, Salvani does not attempt to plead, even in a conclusory fashion, that he relied upon the alleged misrepresentations on iHub's Board. In fact, the words "rely" and "reliance" never appear in the Second Amended Complaint. Under the traditional theory of reliance, Plaintiffs' Section 10(b) claim cannot survive scrutiny.

The second way a plaintiff can prove reliance is by invoking a *rebuttable* presumption of reliance based upon the "fraud on the market" theory. Id. This theory holds that "the market price of shares traded on a well-developed market reflects all publicly available information, and therefore reflects any misrepresentations." Id. (internal quotation omitted). "Because the market transmits information to the investor, we can assume . . . that an investor relies upon public misstatements whenever he buys or sells stock based upon the price set by the market." Id. (internal quotation omitted).

Here, Plaintiffs cannot rely upon the fraud-on-the-market presumption because that presumption is necessarily rebutted by the allegations in the Second Amended Complaint. Salvani alleges that he knew that the statements made by John Doe on the iHub Board were false. (D.E. 14 ¶¶ 40-44, 51-55.) As the Supreme Court has explained, Salvani's knowledge that John Doe's statements were false necessarily means that Salvani did not rely upon the statements and therefore rebuts the presumption of fraud-on-the-market reliance:

> [A] plaintiff who believed that [the company's] statements were false and that [the company] was indeed engaged in merger discussions, and who consequently believed that [the company's] stock was artificially underpriced, but sold his shares nevertheless because of other unrelated concerns . . . could not be said to have relied on the integrity of the price he knew had been manipulated.

Basic Inc. v. Levinson, 485 U.S. 224, 249 (1988). See also GAMCO Investors, Inc. v. Vivendi, S.A., 917 F. Supp. 2d 246, 253 (S.D. N.Y. 2013) (explaining that "a plaintiff who transacts in a security despite having knowledge of the fraud cannot prove reliance"); Ashland Inc. v. Morgan

Stanley & Co., Inc., 700 F. Supp. 2d 453, 469 (S.D. N.Y. 2010) ("An investor may not justifiably rely on a misrepresentation if, through minimal diligence, the investor should have discovered the truth.") (internal quotation omitted).

Plaintiffs' fraud-on-the-market reliance theory also fails because the theory arises only in connection with stocks that are traded on a well-developed or efficient market. According to the Second Amended Complaint, CodeSmart shares trade on the OTC Bulletin Board (D.E. 14 ¶ 54), but Plaintiffs nowhere allege that the OTCBB is a well-developed or efficient market. Moreover, this Court has already distinguished the OTCBB from well-developed markets – such as NASDAQ – and noted that "the Court is unaware of any court holding that the OTCBB . . . meet[s] this . . . standard." Alki Partners, L.P. v. Vatas Holdgin GmbH, 769 F. Supp. 2d 468, 493 (S.D.N.Y. 2011); Burke v. China Aviation Oil (Singapore) Corp., Ltd., 421 F. Supp. 2d 649, 653 (S.D.N.Y. 2005) (same).

For all of these reasons, Plaintiffs have not pled and cannot plead reliance. Because Plaintiffs' Section 10(b) claim is immaterial and made solely for the purpose of obtaining jurisdiction, and is wholly insubstantial and frivolous, it is not colorable and does not provide a basis for invoking this Court's subject matter jurisdiction.

B. Plaintiffs' Section 10(b) Claim is Not Colorable Because Plaintiffs Have Not Pled, and Cannot Prove, "Loss Causation."

Plaintiffs' Second Amended Complaint does not allege – and could not in good faith allege – the final essential element of a Section 10(b) claim: loss causation. Loss causation is "a causal connection between the material misrepresentation and the loss." Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336, 342 (2005). "Loss causation . . . requires a plaintiff to show that a misrepresentation that affected the integrity of the market price *also* caused a subsequent economic loss." Erica P. John Fund, 131 S. Ct. at 2186 (emphasis in original). More

particularly, loss causation requires a showing "that the misstatements were the reason the transaction turned out to be a losing one." First Nationwide Bank v. Gelt Funding Corp., 27 F.3d 763, 769 (2d Cir. 1994). Thus, Plaintiffs must plausibly allege that what John Doe posted on the iHub Boards caused Plaintiffs to sell their shares of CodeSmart at a lower price than the price available after the misrepresentation came to light.

"The Second Circuit has outlined two possible methods of pleading loss causation, the 'corrective disclosure' theory, and the 'materialization of concealed risk' theory." Lighthouse Fin. Grp. v. Royal Bank of Scotland Grp., PLC, No. 11 Civ. 398(GBD), 2013 WL 4405538, *9 (S.D.N.Y. Aug. 5, 2013) (citing In re Omnicom Grp., Inc. Sec. Litig., 597 F.3d 501, 411 (2d Cir. 2010)). See also Wilamowsky v. Take-Two Interactive Software, Inc., 818 F. Supp. 2d 744, 751 (S.D.N.Y. 2011) (identifying same two theories as accepted in the Second Circuit). Plaintiffs have not pled – and could not legitimately plead – either of these theories.

1. Plaintiffs Have Not Alleged a "Corrective Disclosure."

The corrective disclosure theory assumes that the defendant made a false statement or failed to disclose material information about a security, and requires an allegation that "the market reacted negatively to a 'corrective disclosure,' which revealed an alleged misstatement's falsity or disclosed that allegedly material information had been omitted." Wilamowsky, 818 F. Supp. 2d at 751 (quoting In re AOL Time Warner, Inc. Sec. Litig., 503 F. Supp. 2d 666, 677 (S.D.N.Y. 2007)). When the corrective disclosure is made, and the market realizes that it has been trading based upon false information or omitted material information, the market reacts by "correcting" the price of the security to where it would have been in the absence of the false statement or omission.

Here, to plead loss causation through corrective disclosure, Plaintiffs would have to allege that John Doe's false statements about Plaintiffs caused the price of CodeSmart shares to drop, Plaintiffs sold their shares while the price was depressed, a corrective disclosure was made, and the market reacted by increasing (*i.e.*, correcting) the price to where it would have been in the absence of the false statements.

The Second Amended Complaint does not allege a corrective disclosure. It seems to claim that John Doe made his allegedly false statement on September 5, 2013, that the price of CodeSmart stock fell after September 6, that Plaintiffs sold shares of CodeSmart after September 6, and therefore that Plaintiffs suffered an economic loss. (D.E. 14 ¶¶ 46-49.) But the Second Amended Complaint never alleges that a corrective disclosure was made after September 5, let alone that the market reacted to such a corrective disclosure by correcting upwards the price of CodeSmart shares. To the contrary, it alleges that the price of CodeSmart shares was $3.97 on September 6 and continued to drop down to $1.82 per share in November, 2013. (Id. ¶¶ 47, 48.) No corrective disclosure was made, and the market did not "correct" the price of CodeSmart shares.

Because the Second Amended Complaint does not allege a corrective disclosure and the concomitant market correction after the disclosure, it does not allege a theory of corrective disclosure loss causation.

2. Plaintiffs Have Not Alleged a "Materialization of Risk."

Loss causation may also be alleged "by showing that the loss was foreseeable and caused by the materialization of the risk concealed by the fraudulent statement." Wiliamowsky, 818 F. Supp. 2d at 751 (quoting In re Omnicon Grp., Inc. Sec. Litig., 597 F.3d 501, 513 (2d Cir. 2010)). In other words, "where the alleged misstatement *conceals* a condition or event which then occurs

and causes the plaintiff's loss, a plaintiff may plead that it is the materialization of the undisclosed condition or event that causes the loss." Id. (internal quotations omitted) (emphasis added).

Here, the Second Amended Complaint does not allege that John Doe concealed any condition or event relating to Plaintiffs or CodeSmart. Rather, it alleges that he falsely described CodeSmart as being a "pump and dump" scheme.[4] (D.E. 14 ¶¶ 38, 43, 45, 46.) Because the Second Amended Complaint does not allege the concealing of any material condition or event, it also does not allege that any undisclosed condition or event materialized and caused Plaintiffs' loss. Thus, the Amended Condition does not allege loss causation under a materialization of risk theory.

Plaintiffs' failure to plead two of the essential elements of a Section 10(b) claim (*i.e.*, reliance or loss causation) demonstrates the insubstantial and frivolous nature of the claim. Plaintiffs have asserted a Section 10(b) claim merely for the purpose of manufacturing subject matter jurisdiction. Because the claim is not colorable, this Court lacks jurisdiction over it, and the Second Amended Complaint should be dismissed. Arbaugh v. Y&H Corp., 546 U.S. 500, 513 n.10 (2006).

C. Plaintiffs' Section 9(a)(4) Claim is Not Colorable.

Plaintiffs' claim under Section 9(a)(4), 15 U.S.C. § 78i(a)(4) – Count II of the Second Amended Complaint – likewise is not colorable and was asserted merely to obtain federal jurisdiction. A Section 9(a)(4) claim "closely parallels Rule 10b-5." Panfil v. ACC Corp., 768 F. Supp. 54, 59 (S.D.N.Y. 1991). In fact, a Section 9(a)(4) claim is more difficult to plead and prove than a Section 19(b) claim. See id. (Explaining that a Section 10(b) claim "requires no

[4] A "pump and dump" scheme arises when false information about a stock is used to artificially inflate the stock's price. See U.S. v. Gushlack, 728 F.3d 184, 196 (2d Cir. 2013).

additional proof of facts creating a *higher* burden of proof when compared to subsection 9(a)(4). In fact, Rule 10b-5 creates a lower burden of proof than does subsection 9(a)(4) and contains no elements that compensate for this change.") (quoting Chemetron Corp. v. Business Funds, Inc., 682 F.2d 1149, 1162 (5th Cir. 1982), rev'd on other grounds, 460 U.S. 1007 (1983)). In other words, where a plaintiff's Section 10(b) claim fails, his Section 9(a)(4) claim also necessarily fails. Here, Plaintiffs' Section 9(a)(4) claim is not colorable for the same reasons their Section 10(b) claim is not colorable.

In addition, to be liable under Section 9(a)(4), the defendant must, among other things, sell or offer to sell, or purchase or offer to purchase, a security, 15 U.S.C. § § 78i(a)(4); Gulf Corp. v. Mesa Petroleum Co., 582 F. Supp. 1100, 1122 (D. Del. 1984) (explaining that Section 9(a)(4) defendant must be a seller or purchaser of the security), and must make a false or misleading statement about the security "for the purpose of inducing the purchase or sale" of the security. 15 U.S.C. § 78i(a)(4). Plaintiffs cannot and do not make these allegations.

In fact, the Second Amended Complaint acknowledges that the identity of John Doe "is unknown to plaintiffs at this time" (D.E. 14 ¶ 17) and that shares in CodeSmart are traded on the OTC Bulletin Board (id. ¶ 54), meaning they are traded anonymously. As a result, Plaintiffs cannot possibly know if John Doe sold or offered to sell CodeSmart shares, and they cannot know whether he made the allegedly false statements about Plaintiffs and CodeSmart "for the purpose of inducing the purchase or sale of such security." 15 U.S.C. § § 78i(a)(4). Because Plaintiffs have no knowledge about these issues, the Second Amended Complaint contains no factual allegations concerning John Doe's possible sale or purchase of CodeSmart shares.

Plaintiffs' Section 9(a)(4) is not a colorable claim, but is merely a gimmick used to invoke federal-question jurisdiction.[5]

Plaintiffs have no legitimate basis for asserting claims under the Exchange Act, and have done so simply to create the impression that this Court has supplemental subject matter jurisdiction over their state-law tort claims. As a result, the Second Amended Complaint should be dismissed for lack of subject matter jurisdiction. Arbaugh, 546 U.S. at 513 n.10.

II. Plaintiffs' State Law Claims Substantially Predominate Over Their Exchange Act Claims.

This Court may decline to exercise supplemental jurisdiction over supplemental state-law claims even when the federal claims – unlike the claims here – are legitimate and colorable. In particular, the Court may decline to exercise supplemental jurisdiction when "the [state law] claim substantially predominates over the claim or claims over which the district court has original jurisdiction." 28 U.S.C. § 1367(c)(2).

Whether the state-law claims substantially predominate is not merely a question of counting up the state and federal counts in the Second Amended Complaint. "In general, the question of whether state law predominates must be answered by looking to the nature of the claims as set forth in the pleading and by determining whether the state law claims are more complex or require more judicial resources to adjudicate or are more salient in the case as a whole than the federal law claims." In re Methyl Tertiary Butyl Ether Products Liability

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[5] To be clear, in paragraph 82 of the Second Amended Complaint, Plaintiffs recite the black-letter elements of a Section 9(a)(4) claim, but this recitation of legal conclusions does not constitute the pleading of plausible facts required by the Federal Rules. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) ("a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face") (internal quotation omitted). "[A] plaintiff's obligation to provide the grounds for his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Starr v. Sony BMG Music Entm't, 592 F.3d 314, 321 (2d Cir. 2010).

Litigation, 613 F. Supp. 2d 437, 442-43 (S.D.N.Y. 2009) (internal quotation omitted). "The 'substantially predominates' standard is met if the state claim constitutes the real body of a case, to which the federal claim is only an appendage and litigation of all claims in the district court can accurately be described as allowing a federal tail to wag what is in substance a state dog." Id. at 443 (internal quotation omitted).

Here, the federal claims are appendages that were added after it became apparent that Plaintiffs could not properly invoke federal subject matter jurisdiction in the original Complaint. The state law claims, particularly the defamation claim, are the true heart of this dispute. The Second Amended Complaint's primary focus is on the allegation that John Doe, on iHub's Board, stated that Plaintiff Salvani "was a former broker barred from the financial industry," that he promotes stocks and "gets paid off with cash in a bag," and that Salvani had knowledge of the "pump n dump" scheme for selling CodeSmart shares. (D.E. 14 ¶ 38.)

The predominance of Plaintiffs' state law claims is manifest in the Second Amended Complaint's allegations. For instance, the word "defamation," in one form or another, appears in the Second Amended Complaint more than sixty (60) times. (Id. ¶¶ 2-5, 9, 10, 26, 27, 32, 34, 35, 38-40, 45, 51, 52, 57-60, 62, 72, 73, 75, 85, 86, 90-94, 98, 101, 104, 108, 115, 117, 118.) The Second Amended Complaint mentions Salvani's reputation more than a dozen times. (Id. ¶¶ 5, 24, 27, 50, 87, 89, 95, 98, 199, 105, 108, 115.) Plaintiffs repeatedly try to plead around the Communications Decency Act, 47 U.S.C. 230(c)(1), which is iHub's primary defense to their defamation claim, by alleging that iHub's Boards invite defamation or that John Doe is somehow affiliated with iHub. These allegations also appear at least a dozen times in the Second Amended Complaint. (Id. ¶¶ 4, 26, 27, 40, 41, 60, 62, 70-73, 91.) The allegations in the Second

Amended Complaint relating specifically to Plaintiffs' Exchange Act claims are few and far between.

Similarly, Plaintiffs do not claim any specific amount of damages attributable to their so-called federal claims. By contrast, they specifically demand $2,000,000 for their defamation claim, $2,000,000 for their tortious interference claim, $5,000,000 for aiding and abetting the state law torts, and $5,000,000 for their emotional distress claim. (Id., Prayer for Relief, at 33-35.) These enormous (and grossly unrealistic) damages claims are based on state law only and greatly predominate over the Exchange Act claims, which fail even to plead a specific recoverable loss.

What these allegations show is that litigating this matter will really mean litigating the defamation and emotional distress claims. The Exchange Act claims are nothing more than window dressing.

As explained above, Plaintiffs' federal claims are not colorable and do not provide a basis for asserting supplemental jurisdiction over Plaintiffs' state law claims. But even if this Court were to conclude that the Exchange Act claims meet the threshold for being colorable, they are not the focus of this litigation. This case is about the alleged injury to Salvani's reputation and emotional well-being, not about securities trading. Plaintiffs' state law claims, the claims that formed the exclusive basis of Plaintiffs' original Complaint, substantially predominate over the Exchange Act claims, and therefore this Court should decline to exercise supplemental jurisdiction over them.

CONCLUSION

WHEREFORE, Defendant InvestorsHub.com, Inc. respectfully requests that the Court grant this Motion and dismiss the Amended Complaint for lack of subject matter jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document will be served by electronic service through the Clerk of the Court's CM/ECF filing system on Douglas R. Dollinger, Esq., Douglas R. Dollinger, Esq., P.C. & Associates, 50 Main Street, Suite 1000, White Plains, NY 10606 (info@ddollingerlaw.com). I further certify that the foregoing document will be mailed by first class mail, postage prepaid, to any parties that do not participate in the CM/ECF filing system.

Dated: February 28, 2014.

/s/ James J. McGuire