

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:13-cv-11157-DJC**

In re Aveo Pharmaceuticals Inc. Securities Litigation
Assigned to: Judge Denise J. Casper
related Cases: [1:14-cv-11672-DJC](#)
[1:13-cv-11320-DJC](#)

Case in other court: USCA - First Circuit, 15-02514
Cause: 15:78m(a) Securities Exchange Act

Date Filed: 05/09/2013
Jury Demand: Plaintiff
Nature of Suit: 850 Securities/Commodities
Jurisdiction: Federal Question

Plaintiff

Paul Sanders

*Individually and on Behalf of All Others
Similarly Situated*

represented by **Edward F. Haber**
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Plaintiff

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Plaintiff

William Windham
Lead Plaintiff

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Plaintiff

Christine Krause
Individually and on Behalf of All Others
Similarly situated

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V.

Defendant

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TERMINATED: 09/06/2016

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Defendant**David N. Johnston**

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Defendant

William Slichenmyer

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Defendant

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Movant

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Movant

Rodney A. Samaan

represented by **Theodore M. Hess-Mahan**
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LEAD ATTORNEY
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Date Filed	#	Docket Text
05/09/2013	<u>1</u>	COMPLAINT against David N. Johnston, Tuan Ha-Ngoc, Aveo Pharmaceuticals, Inc., William Slichenmyer Filing fee: \$ 400, receipt number 0101-4449350 (Fee Status: Filing Fee paid), filed by Paul Sanders. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Civil Category Sheet)(Stewart, Adam) (Entered: 05/09/2013)
05/09/2013	<u>2</u>	NOTICE of Appearance by Edward F. Haber on behalf of Paul Sanders (Haber, Edward)

		(Entered: 05/09/2013)
05/09/2013	3	ELECTRONIC NOTICE of Case Assignment. Judge Joseph L. Tauro assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Marianne B. Bowler. (Abaid, Kimberly) (Entered: 05/09/2013)
05/09/2013	4	Summons Issued as to All Defendants. Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service. (Anderson, Jennifer) (Entered: 05/09/2013)
07/03/2013	5	NOTICE of Appearance by Joseph H. Jolly on behalf of Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer (Jolly, Joseph) (Entered: 07/03/2013)
07/03/2013	6	NOTICE of Appearance by William H. Paine on behalf of Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer (Paine, William) (Entered: 07/03/2013)
07/03/2013	7	NOTICE of Appearance by Michael G. Bongiorno on behalf of Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer (Bongiorno, Michael) (Entered: 07/03/2013)
07/03/2013	8	CORPORATE DISCLOSURE STATEMENT by Aveo Pharmaceuticals, Inc.. (Jolly, Joseph) (Entered: 07/03/2013)
07/03/2013	9	STIPULATION (<i>JOINT</i>) by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Jolly, Joseph) (Entered: 07/03/2013)
07/03/2013	10	MOTION for Leave to Appear Pro Hac Vice for admission of Jeremy A. Lieberman Filing fee: \$ 100, receipt number 0101-4529717 by Paul Sanders. (Attachments: # 1 Exhibit A)(Stewart, Adam) (Entered: 07/03/2013)
07/03/2013	11	NOTICE of Appearance by Peter A. Spaeth on behalf of Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer (Spaeth, Peter) (Entered: 07/03/2013)
07/08/2013	12	MOTION to Consolidate Cases <i>Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel</i> by Scott Principi. (Pastor, David) (Entered: 07/08/2013)
07/08/2013	13	MEMORANDUM in Support re 12 MOTION to Consolidate Cases <i>Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel</i> filed by Scott Principi. (Pastor, David) (Entered: 07/08/2013)
07/08/2013	14	DECLARATION re 12 MOTION to Consolidate Cases <i>Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel Declaration of David Pastor in Support of Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel</i> by Scott Principi. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Pastor, David) (Entered: 07/08/2013)
07/08/2013	15	Proposed Document(s) submitted by Scott Principi. Document received: [Proposed] Order Granting Motion for Consolidation, Appointment as Lead Plaintiff and Approval of Lead Counsel. (Pastor, David) (Entered: 07/08/2013)
07/08/2013	16	MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i>

		by Robert Levine, William Windham. (Attachments: # 1 Exhibit A)(Haber, Edward). Added MOTION to Appoint Counsel on 7/11/2013 (Anderson, Jennifer). (Entered: 07/08/2013)
07/08/2013	17	MOTION to Consolidate Cases , MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> (Responses due by 7/22/2013) by Rodney A. Samaan. (Attachments: # 1 Text of Proposed Order)(Hess-Mahan, Theodore) (Entered: 07/08/2013)
07/08/2013	18	MEMORANDUM in Support re 17 MOTION to Consolidate Cases MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> filed by Rodney A. Samaan. (Hess-Mahan, Theodore) (Entered: 07/08/2013)
07/08/2013	19	AFFIDAVIT in Support re 17 MOTION to Consolidate Cases MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> filed by Rodney A. Samaan. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit E) (Hess-Mahan, Theodore) (Entered: 07/08/2013)
07/08/2013	20	MEMORANDUM in Support re 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> filed by Robert Levine, William Windham. (Haber, Edward) (Entered: 07/08/2013)
07/08/2013	21	DECLARATION re 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> by Robert Levine, William Windham. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Haber, Edward) (Entered: 07/08/2013)
07/16/2013	22	RESPONSE to Motion re 12 MOTION to Consolidate Cases <i>Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel</i> filed by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Jolly, Joseph) (Entered: 07/16/2013)
07/16/2013	23	RESPONSE to Motion re 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel filed by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Jolly, Joseph) (Entered: 07/16/2013)
07/16/2013	24	RESPONSE to Motion re 17 MOTION to Consolidate Cases MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> filed by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Jolly, Joseph) (Entered: 07/16/2013)
07/17/2013	25	NOTICE by Scott Principi re 12 MOTION to Consolidate Cases <i>Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel Notice of Withdrawal of Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel</i> (Pastor, David) (Entered: 07/17/2013)
07/22/2013	26	MEMORANDUM in Support re 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel , <i>and in Opposition to Competing Lead Plaintiff Motion</i> filed by Robert Levine, William Windham. (Haber, Edward) (Entered: 07/22/2013)
07/22/2013	27	Opposition re 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel <i>AND IN FURTHER SUPPORT OF THE MOTION OF DR. RODNEY A. SAMAAAN FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF COUNSEL</i> filed by Rodney A. Samaan. (Hess-Mahan, Theodore) (Entered: 07/22/2013)
07/22/2013	28	AFFIDAVIT of Theodore M. Hess-Mahan in Opposition re 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint

		Counsel <i>IN FURTHER SUPPORT OF THE MOTION OF DR. RODNEY A. SAMAAN FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF COUNSEL</i> filed by Rodney A. Samaan. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Hess-Mahan, Theodore) (Entered: 07/22/2013)
07/23/2013	29	NOTICE by Rodney A. Samaan re 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel, 17 MOTION to Consolidate Cases MOTION to Appoint Counsel and <i>Appoint Lead Plaintiff</i> NOTICE OF NON-OPPOSITION TO THE MOTION OF ROBERT LEVINE AND WILLIAM WINDHAM FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFFS AND APPROVAL OF COUNSEL, AND WITHDRAWAL OF THE MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE MOTION OF DR. RODNEY A. SAMAAN FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF COUNSEL (Hess-Mahan, Theodore) (Entered: 07/23/2013)
07/29/2013	30	NOTICE by Robert Levine, William Windham re 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel Notice of Non-Opposition to the Motion of Robert Levine and William Windham for Consolidation of Related Actions, Appointment as Lead Plaintiff, and Approval of Counsel (Stewart, Adam) (Entered: 07/29/2013)
09/25/2013	31	MOTION for Leave to Appear Pro Hac Vice for admission of Patrick V. Dahlstrom Filing fee: \$ 100, receipt number 0101-4649975 by Paul Sanders. (Attachments: # 1 Exhibit A)(Stewart, Adam) (Entered: 09/25/2013)
09/25/2013	32	MOTION for Leave to Appear Pro Hac Vice for admission of Joshua B. Silverman Filing fee: \$ 100, receipt number 0101-4649990 by Paul Sanders. (Attachments: # 1 Exhibit A) (Stewart, Adam) (Entered: 09/25/2013)
09/25/2013	33	MOTION for Leave to Appear Pro Hac Vice for admission of Louis C. Ludwig Filing fee: \$ 100, receipt number 0101-4649995 by Paul Sanders. (Attachments: # 1 Exhibit A) (Stewart, Adam) (Entered: 09/25/2013)
09/27/2013	34	Judge Joseph L. Tauro: ELECTRONIC ORDER entered ALLOWED 31 Motion for Leave to Appear Pro Hac Vice Added Patrick V. Dahlstrom. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Geraldino-Karasek, Clarilde) (Entered: 09/27/2013)
09/27/2013	35	Judge Joseph L. Tauro: ELECTRONIC ORDER entered ALLOWED 32 Motion for Leave to Appear Pro Hac Vice Added Joshua B. Silverman. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Geraldino-Karasek, Clarilde) (Entered: 09/27/2013)
09/27/2013	36	Judge Joseph L. Tauro: ELECTRONIC ORDER entered ALLOWED 33 Motion for Leave to Appear Pro Hac Vice Added Louis C. Ludwig. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Geraldino-Karasek, Clarilde) (Entered: 09/27/2013)

10/28/2013	37	ELECTRONIC NOTICE of Reassignment. Pursuant to Judge Joseph L. Tauro's taking of senior status, this case is randomly reassigned to Judge Denise J. Casper. Judge Joseph L. Tauro no longer assigned to case. (Abaid, Kimberly) (Entered: 10/28/2013)
10/30/2013	38	Judge Denise J. Casper: ELECTRONIC ORDER entered granting 10 Motion for Leave to Appear Pro Hac Vice Added Jeremy Lieberman. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Maynard, Timothy) (Entered: 10/30/2013)
10/30/2013	39	Judge Denise J. Casper: ELECTRONIC ORDER entered. REFERRING CASE to Magistrate Judge Marianne B. Bowler Referred for: Events Only (e). Motions referred: 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel, 17 MOTION to Consolidate Cases MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> , 12 MOTION to Consolidate Cases <i>Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel</i> . This referral is for decision, not Report and Recommendations. (Maynard, Timothy) Motions referred to Marianne B. Bowler. (Entered: 10/30/2013)
11/04/2013	40	ELECTRONIC NOTICE Setting Hearing on Motion 12 MOTION to Consolidate Cases <i>Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel</i> , 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel, 17 MOTION to Consolidate Cases MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> : Motion Hearing set for 11/14/2013 02:45 PM in Courtroom 25 before Magistrate Judge Marianne B. Bowler. (Garvin, Brendan) (Entered: 11/04/2013)
11/14/2013	41	ELECTRONIC Clerk's Notes for proceedings held before Magistrate Judge Marianne B. Bowler: Motion Hearing held on 11/14/2013 re 16 MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel filed by Robert Levine, William Windham, 17 MOTION to Consolidate Cases MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> filed by Rodney A. Samaan, 12 MOTION to Consolidate Cases <i>Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel</i> filed by Scott Principi. Court hears arguments on the motions, issues rulings as stated forth on the record in open court. (Court Reporter: Digital Recording - For transcripts or CDs contact Deborah Scalfani by email at deborah_scalfani@mad.uscourts.gov).(Attorneys present: Haber, Stewart, Silverman, Paine, Jolly) (Garvin, Brendan) (Entered: 11/20/2013)
12/03/2013		Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered finding as moot 12 Motion to Consolidate Cases, in light of withdrawal of this motion as stated in Docket Entry # 25; granting 16 Motion to Consolidate Cases; finding as moot 17 Motion to Consolidate Cases; finding as moot 17 Motion to Appoint Counsel, in light of the notice of non-opposition filed on July 23, 2013 (Docket Entry # 29); and granting 16 Motion to Appoint Counsel (Bowler, Marianne) (Entered: 12/03/2013)
12/03/2013	42	Transcript of Motion Hearing held on November 14, 2013, before Magistrate Judge Marianne B. Bowler. The Transcript may be purchased through Judy Bond Gonsalves at 508-984-7003, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name: No Reporter Used. Digital Recording transcribed by Judy Bond Gonsalves. Redaction Request due 12/24/2013. Redacted Transcript Deadline set for 1/3/2014. Release of Transcript Restriction set for 3/3/2014. (Scalfani, Deborah) (Entered: 12/03/2013)
12/03/2013	43	NOTICE is hereby given that an official transcript of a proceeding has been filed by the

		court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at http://www.mad.uscourts.gov/attorneys/general-info.htm (Scalfani, Deborah) (Entered: 12/03/2013)
12/03/2013	44	Magistrate Judge Marianne B. Bowler: ORDER entered. Order consolidating related actions, appointing lead plaintiffs, and approving selection of counsel. Associated Cases: 1:13-cv-11157-DJC, 1:13-cv-11320-DJC(Garvin, Brendan) (Entered: 12/03/2013)
12/04/2013	45	Judge Denise J. Casper: ELECTRONIC ORDER entered. ORDER consolidating cases. All future filings should be filed in 13-cv-11157-DJC. Associated Cases: 1:13-cv-11157-DJC, 1:13-cv-11320-DJC(Maynard, Timothy) (Entered: 12/04/2013)
12/11/2013	46	Case no longer referred to Magistrate Judge Marianne B. Bowler. (Garvin, Brendan) (Entered: 12/11/2013)
12/19/2013	47	Assented to MOTION for Order to Approve Joint Stipulations and Scheduling by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer.(Jolly, Joseph) (Entered: 12/19/2013)
12/27/2013	48	Judge Denise J. Casper: ELECTRONIC ORDER entered granting 47 Motion for Order to Approve Joint Stipulations and Scheduling. Accordingly the Court adopts the following dates: Lead plaintiffs shall file an amended complaint by February 3, 2014. Defendants shall file a response to the amended complaint due April 4, 2014. If the defendants response is a motion to dismiss, lead plaintiffs shall file a response due June 3, 2014, and defendants shall file a reply brief due July 3, 2014. (Maynard, Timothy) (Entered: 12/27/2013)
02/03/2014	49	AMENDED COMPLAINT against Tuan Ha-Ngoc, Aveo Pharmaceuticals, Inc., David N. Johnston, William Slichenmyer, Ronald DePinho, filed by Robert Levine, William Windham.(Stewart, Adam) (Entered: 02/03/2014)
03/28/2014	50	NOTICE of Appearance by Joseph H. Jolly on behalf of Ronald DePinho (Jolly, Joseph) (Entered: 03/28/2014)
03/28/2014	51	NOTICE of Appearance by William H. Paine on behalf of Ronald DePinho (Paine, William) (Entered: 03/28/2014)
03/28/2014	52	NOTICE of Appearance by Michael G. Bongiorno on behalf of Ronald DePinho (Bongiorno, Michael) (Entered: 03/28/2014)
03/28/2014	53	NOTICE of Appearance by Peter A. Spaeth on behalf of Ronald DePinho (Spaeth, Peter) (Entered: 03/28/2014)
03/28/2014	54	Assented to MOTION for Extension of Time <i>for Motion to Dismiss Briefing Schedule and</i> , Assented to MOTION for Leave to File Excess Pages (Responses due by 4/11/2014) by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer.(Jolly, Joseph) (Entered: 03/28/2014)
04/04/2014	55	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer.(Jolly, Joseph) (Entered: 04/04/2014)
04/04/2014	56	MEMORANDUM in Support re 55 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Jolly, Joseph) (Entered: 04/04/2014)
04/04/2014	57	DECLARATION re 56 Memorandum in Support of Motion, 55 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Aveo Pharmaceuticals, Inc., Ronald DePinho,

		Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O)(Jolly, Joseph) (Entered: 04/04/2014)
04/09/2014	58	Judge Denise J. Casper: ELECTRONIC ORDER entered granting 54 Motion for Extension of Time; granting 54 Motion for Leave to File Excess Pages. (Hourihan, Lisa) (Entered: 04/09/2014)
05/27/2014	59	CORPORATE DISCLOSURE STATEMENT by Aveo Pharmaceuticals, Inc. identifying Other Affiliate BlackRock, Inc. for Aveo Pharmaceuticals, Inc... (Jolly, Joseph) (Entered: 05/27/2014)
06/10/2014	60	MEMORANDUM in Opposition re 55 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Robert Levine, William Windham. (Stewart, Adam) (Entered: 06/10/2014)
06/12/2014	61	ELECTRONIC NOTICE Setting Hearing on Motion 55 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM : NOTICE TO COUNSEL re: Cameras in the Courtroom Project. The parties in this case are hereby notified that this scheduled proceeding is eligible for video recording. Counsel are directed to the district court web site at http://www.mad.uscourts.gov/general/cameras.html to determine if they wish to consent to video recording. Responses are due seven days from the date of this notice. A RESPONSE FROM EACH PARTY IS REQUIRED. Motion Hearing set for 7/22/2014 03:00 PM in Courtroom 11 before Judge Denise J. Casper. (Hourihan, Lisa) (Entered: 06/12/2014)
07/01/2014	62	NOTICE of Change of Address or Firm Name by Adam M. Stewart (Stewart, Adam) (Entered: 07/01/2014)
07/10/2014	63	REPLY to Response to 55 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Jolly, Joseph) (Entered: 07/10/2014)
07/22/2014	64	ELECTRONIC Clerk's Notes for proceedings held before Judge Denise J. Casper: Motion Hearing held on 7/22/2014 re 55 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Tuan Ha-Ngoc, Ronald DePinho, David N. Johnston, Aveo Pharmaceuticals, Inc., William Slichenmyer. Arguments. Court takes under advisement 55 Motion to Dismiss for Failure to State a Claim; (Court Reporter: Debra Joyce at joycedebra@gmail.com.)(Attorneys present: Edward Haber, Joshua Silverman and Patrick Dahlstrom for the plaintiffs. Michael Bongiorno and Joseph Jolly for the defendants.) (Hourihan, Lisa) (Entered: 07/23/2014)
12/19/2014	66	Transcript of Motion Hearing held on July 22, 2014, before Judge Denise J. Casper. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Debra Joyce at joycedebra@gmail.com Redaction Request due 1/9/2015. Redacted Transcript Deadline set for 1/19/2015. Release of Transcript Restriction set for 3/19/2015. (Scalfani, Deborah) (Entered: 12/19/2014)
12/19/2014	67	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at http://www.mad.uscourts.gov/attorneys/general-info.htm (Scalfani, Deborah) (Entered: 12/19/2014)
02/06/2015	68	Joint MOTION for Leave to File <i>Notice of Supplemental Authority</i> by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William

		Slichenmyer. (Attachments: # 1 Exhibit Notice of Supplemental Authority, # 2 Exhibit In re Sanofi Sec. Litig.)(Jolly, Joseph) (Entered: 02/06/2015)
02/12/2015	69	Judge Denise J. Casper: ELECTRONIC ORDER entered granting 68 Motion for Leave to File Notice of Supplemental Authority by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Hourihan, Lisa) (Entered: 02/12/2015)
02/13/2015	70	Notice of Supplemental Authorities re 55 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 68 Joint MOTION for Leave to File <i>Notice of Supplemental Authority</i> (Attachments: # 1 Exhibit A)(Jolly, Joseph) (Entered: 02/13/2015)
02/13/2015	71	Response by Robert Levine, Paul Sanders, William Windham to 70 Notice of Supplemental Authorities . (Stewart, Adam) (Entered: 02/13/2015)
02/23/2015	72	NOTICE of Appearance by Jared B. Cohen on behalf of Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer (Cohen, Jared) (Entered: 02/23/2015)
02/23/2015	73	NOTICE of Appearance by Eric D. Wolkoff on behalf of Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer (Wolkoff, Eric) (Entered: 02/23/2015)
02/24/2015	74	NOTICE of Withdrawal of Appearance by Joseph H. Jolly (Jolly, Joseph) (Entered: 02/24/2015)
03/20/2015	75	Judge Denise J. Casper: ORDER entered. MEMORANDUM AND ORDER - The Court ALLOWS Defendants' motion to dismiss, D. 55. Such dismissal shall be without prejudice. (Hourihan, Lisa) (Entered: 03/20/2015)
04/17/2015	76	MOTION to Amend 49 Amended Complaint <i>Unopposed</i> by Robert Levine, William Windham. (Attachments: # 1 Exhibit 1 [Proposed] Second Consolidated Amended Complaint)(Stewart, Adam) (Entered: 04/17/2015)
06/26/2015	77	Judge Denise J. Casper: ELECTRONIC ORDER entered granting 76 Motion for Leave to Amend. The Defendants have until July 17, 2015 to answer or otherwise respond. (Hourihan, Lisa) (Entered: 06/26/2015)
07/14/2015	78	NOTICE of Appearance by Alexandra B. Bonneau on behalf of Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer (Bonneau, Alexandra) (Entered: 07/14/2015)
07/17/2015	79	MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Wolkoff, Eric) (Entered: 07/17/2015)
07/17/2015	80	MEMORANDUM in Support re 79 MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> filed by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Wolkoff, Eric) (Entered: 07/17/2015)
07/21/2015	81	DECLARATION re 79 MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> , 80 Memorandum in Support of Motion [<i>CORRECTED</i>] by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L)(Cohen, Jared) (Entered: 07/21/2015)

07/30/2015	82	Joint MOTION Regarding Briefing re 79 MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> by Robert Levine, William Windham.(Stewart, Adam) (Entered: 07/30/2015)
07/31/2015	83	MEMORANDUM in Opposition re 79 MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> filed by Robert Levine, William Windham. (Stewart, Adam) (Entered: 07/31/2015)
08/04/2015	84	Judge Denise J. Casper: ELECTRONIC ORDER entered granting 82 Joint Motion regarding briefing (Hourihan, Lisa) (Entered: 08/04/2015)
08/06/2015	85	ELECTRONIC NOTICE Setting Hearing on Motion 79 MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> : Motion Hearing set for 9/24/2015 03:00 PM in Courtroom 11 before Judge Denise J. Casper. (Hourihan, Lisa) (Entered: 08/06/2015)
08/14/2015	86	REPLY to Response to 79 MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> filed by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Cohen, Jared) (Entered: 08/14/2015)
08/14/2015	87	DECLARATION re 79 MOTION to Dismiss <i>SECOND AMENDED COMPLAINT Supplemental</i> by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Cohen, Jared) (Entered: 08/14/2015)
09/24/2015	88	ELECTRONIC Clerk's Notes for proceedings held before Judge Denise J. Casper: Motion Hearing held on 9/24/2015 re 79 MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> filed by Tuan Ha-Ngoc, Ronald DePinho, David N. Johnston, Aveo Pharmaceuticals, Inc., William Slichenmyer. Arguments. Court takes under advisement 79 MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> . (Court Reporter: Debra Joyce at joycedebra@gmail.com.) (Attorneys present: Silverman, Dahlstrom, Steward for the plaintiffs; Bongiorno and Cohen for the defendants) (Maynard, Timothy) (Entered: 09/24/2015)
09/29/2015	89	Transcript of Motion Hearing held on September 24, 2015, before Judge Denise J. Casper. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Debra Joyce at joycedebra@gmail.com Redaction Request due 10/20/2015. Redacted Transcript Deadline set for 10/30/2015. Release of Transcript Restriction set for 12/28/2015. (Scalfani, Deborah) (Entered: 09/29/2015)
09/29/2015	90	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at http://www.mad.uscourts.gov/attorneys/general-info.htm (Scalfani, Deborah) (Entered: 09/29/2015)
11/18/2015	91	Judge Denise J. Casper: ELECTRONIC ORDER entered re: 79 Motion to Dismiss Second Amended Complaint. Lead Plaintiffs Robert Levine and Williams Windham ("Plaintiffs") bring this securities class action against Aveo Pharmaceuticals, Inc. ("Aveo"), Tuan Ha-Ngoc ("Ha-Ngoc"), David N. Johnston ("Johnston") and William Slichenmyer ("Slichenmyer") (collectively, "Defendants"). Defendants now move to dismiss the second amended complaint. D. 79. For the reasons discussed below, the Court ALLOWS Defendants' motion. The Private Securities Litigation Reform Act imposes "a rigorous pleading standard on allegations of scienter." <i>Fire & Police Pension Ass'n of Colo. v. Abiomed, Inc.</i> , 778 F.3d 228, 240 (1st Cir. 2015) (quoting <i>ACA Fin. Guar. Corp. v. Advest, Inc.</i> , 512 F.3d 46, 58

(1st Cir. 2008)) (internal quotation mark omitted). A complaint will survive a motion to dismiss "only if it states with particularity facts giving rise to a 'strong inference' that defendants acted with a conscious intent 'to deceive or defraud investors by controlling or artificially affecting the price of securities' or 'acted with a high degree of recklessness.'" Id. (quoting City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Waters Corp., 632 F.3d 751, 757 (1st Cir. 2011)). A scienter inference is "strong" if "a reasonable person would deem it cogent and at least as compelling as any opposing inference one could draw from the facts alleged." Id. (quoting Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 324 (2007)) (internal quotation marks and brackets omitted).

In March 2015, the Court dismissed Plaintiffs' first amended complaint because Plaintiffs did not sufficiently plead scienter. D. 75 at 18. The Court noted that "[a]lthough there is no checklist for [a] showing of scienter, little of the indicia usually relied upon" to show scienter was alleged. Id. A strong inference of scienter was particularly lacking because "the nature of the false and misleading statements, although sufficient to survive a motion to dismiss..., is at least debatable." Id. at 19. "At most, the showing of scienter... amounts to the allegedly knowingly false or misleading statements made by Ha-Ngoc, Slichenmyer and Johnston, the suspect timing of at least the statements made on the heels of the May 2012 meeting with the FDA, and generalized implications about the Defendants' self-interest in making such statements to maintain their positions and salaries" at Aveo. Id. at 21. Such dismissal was entered without prejudice, D. 75, and Plaintiffs filed a second amended complaint shortly thereafter. D. 76.

The now operative, second amended complaint is still inadequate. Taking all of the facts alleged collectively, Tellabs, 551 U.S. at 323, and in light of the debatable nature of the alleged misstatements, the Court concludes that Plaintiffs still "fail to make a showing beyond the nature of the statements made, particularly as to the Defendants' motive and opportunity." D. 75 at 19; Waters Corp., 632 F.3d at 757 (affirming dismissal of securities fraud class action for failing to meet "strong inference" of scienter standard and noting that "[i]f it is questionable whether a fact is material or its materiality is marginal, that tends to undercut the argument that defendants acted with the requisite intent or extreme recklessness in not disclosing the fact").

First, Plaintiffs allege that the capital raise can support an inference of scienter because the omissions allowed Aveo to raise over \$50 million and without it, Aveo allegedly would have lasted only another year (through the end of 2013). D. 83 at 25-26. The new details, however, still fail to contribute to a strong inference of scienter. As courts have held, "a strong inference of fraud does not arise merely from seeking capital to support a risky venture. Indeed, the motivations to raise capital or increase one's own compensation are common to every company and thus add little" to scienter. Cozzarelli v. Inspire Pharm. Inc., 549 F.3d 618, 625, 627 (4th Cir. 2008) (affirming dismissal and holding that plaintiffs failed to raise a strong inference of scienter even though they alleged that the defendant company was "losing money in 2004 and needed to raise capital"); Battle Const. Co. v. InVivo Therapeutics Holdings Corp., No. 14-cv-13180-RGS, 2015 WL 1523481, at *2, 5 n.6, *6 (D. Mass. Apr. 3, 2015) (granting motion to dismiss and concluding that allegations of scienter were insufficient because the desire to raise capital is "too generic" to support a strong inference of scienter, despite assertions that the company was "in dire financial straits and desperate for an infusion of capital," with "so little in reserve that one analyst predicted it had only a year left on the clock before depleting all of its available funds"), appeal docketed, No. 15-1544 (1st Cir. May 6, 2015). Because the allegations do not show that the motive to raise capital was skewed beyond the usual incentives, see Brumbaugh v. Wave Sys. Corp., 416 F. Supp. 2d 239, 253 (D. Mass. 2006) (finding scienter where the complaint painted "[a] picture of a company nearly a quarter billion dollars in debt and so desperate for cash it would agree

		<p>to private placement terms onerous enough to bring it to the proverbial brink"), they remain insufficient.</p> <p>Second, Plaintiffs allege that scienter can be met because the cash incentive bonuses of the individual Defendants "were tied in large part to advancing tivozanib." D. 83 at 26. But as the individual Defendants point out, their compensation was tied to the success of the drug, not Aveo's stock price, which undercuts the allegations' salience. D. 80 at 16; <u>In re Sonus Networks, Inc. Sec. Litig.</u>, No. 04-cv-10294-DPW, 2006 WL 1308165, at *15 (D. Mass. May 10, 2006) (stating that the "motive and opportunity allegations do little, if anything, to support" the inference of scienter because "[d]irectors and officers of all public companies feel the same pressure to maximize the company's value and project optimism to Wall Street"). And although "advancement of the tivozanib program" accounted for approximately half of their performance incentives, other corporate goals-achievement of certain financial metrics, advancement of the ficlatuzumab program and the antibody pipeline-were relevant too. D. 81-12 at 33.</p> <p>Finally, Plaintiffs argue that scienter can be inferred because the omissions allowed Slichenmyer to hide his "scientific misconduct" and Ha-Ngoc to advance his "strategic vision" and his "10-year plan." D. 83 at 27-28. Aveo, however, disclosed the crossover feature and the geographic scope of its drug trial, <u>see, e.g.</u>, D. 76-1 (second amended complaint) ¶¶ 101, 104, 110; D. 81-3 (May 16, 2012 Aveo press release) at 4, which diminishes the inference of scienter, <u>In re Genzyme Corp. Sec. Litig.</u>, 754 F.3d 31, 42-43 (1st Cir. 2014). The allegations here about Ha-Ngoc's motive are also weak. As Defendants note, the ultimate test of Ha-Ngoc's vision would have been the Food and Drug Administration's acceptance and approval of a new drug application for tivozanib, not Aveo's statements to the public. D. 86 at 16. Even if the Court were to credit Plaintiffs' argument that this motive is "far from implausible," D. 83 at 28 (citation omitted), the law requires that the inference of scienter "must be more than merely plausible or reasonable; it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent." <u>Advest</u>, 512 F.3d at 59 (quoting <u>Tellabs</u>, 551 U.S. at 314) (internal quotation marks and emphasis removed).</p> <p>Because the Court concludes that Plaintiffs have failed to state a claim under section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, their section 20(a) claim fails as well. <u>Id.</u> at 67-68. Defendants' motion to dismiss is ALLOWED, D. 79. (Hourihan, Lisa) (Entered: 11/18/2015)</p>
11/18/2015	92	Judge Denise J. Casper: ORDER entered. ORDER DISMISSING CASE(Hourihan, Lisa) (Entered: 11/18/2015)
12/09/2015	93	NOTICE OF APPEAL as to 91 Order on Motion to Dismiss,,,,,,,,,,,,,,,,,,,,,,,,,,,,, 92 Order Dismissing Case by Robert Levine, William Windham Filing fee: \$ 505, receipt number 0101-5880863 Fee Status: Not Exempt. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 12/29/2015. (Stewart, Adam) (Entered: 12/09/2015)
12/09/2015	94	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 93 Notice of Appeal. (Paine, Matthew) (Entered: 12/09/2015)

12/09/2015	95	USCA Case Number 15-2514 for 93 Notice of Appeal filed by Robert Levine, William Windham. (Paine, Matthew) (Entered: 12/09/2015)
04/04/2016	96	MOTION to Set Aside Judgment <i>Expedited Motion to Consider Newly-Discovered Evidence Under Federal Rule of Civil Procedure 60(B)(2)</i> by Robert Levine, William Windham.(Stewart, Adam) (Entered: 04/04/2016)
04/04/2016	97	MEMORANDUM in Support re 96 MOTION to Set Aside Judgment <i>Expedited Motion to Consider Newly-Discovered Evidence Under Federal Rule of Civil Procedure 60(B)(2)</i> filed by Robert Levine, William Windham. (Stewart, Adam) (Entered: 04/04/2016)
04/04/2016	98	AFFIDAVIT of Joshua B. Silverman in Support re 96 MOTION to Set Aside Judgment <i>Expedited Motion to Consider Newly-Discovered Evidence Under Federal Rule of Civil Procedure 60(B)(2)</i> filed by Robert Levine, William Windham. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Stewart, Adam) (Entered: 04/04/2016)
04/07/2016	99	Opposition re 96 MOTION to Set Aside Judgment <i>Expedited Motion to Consider Newly-Discovered Evidence Under Federal Rule of Civil Procedure 60(B)(2)</i> filed by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Cohen, Jared) (Entered: 04/07/2016)
04/08/2016	100	Unopposed MOTION for Leave to File <i>Instantly a Reply In Support of Expedited Motion to Consider Newly-Discovered Evidence Under Federal Rule of Civil Procedure 60(B)(2)</i> by Robert Levine, William Windham. (Attachments: # 1 Proposed Reply)(Stewart, Adam) Modified on 4/12/2016 (Maynard, Timothy). (Entered: 04/08/2016)
05/10/2016	101	<p>Judge Denise J. Casper: ELECTRONIC ORDER entered. The Court has considered Plaintiffs expedited motion under Fed. R. Civ. P. 60(b)(2), D. 96, 97, 100, and the opposition to same, D. 99. Although the Court is not yet prepared to rule on the motion, the Court recognizes that Plaintiffs have at least raised a colorable basis for the Court to consider vacating the dismissal and judgment entered in light of new evidence reflected in the March 29, 2016 SEC complaint. D. 97 at 4-6. At a minimum, such newly discovered evidence raises a question about "no divergence of internal reports and external statements on the same subject," D. 75 at 19, that the Court cited in its initial decision as, at least in part, not amounting to a strong inference of scienter. Before resolving this motion, the Court would like to have further briefing from the parties about, assuming <i>arguendo</i> that this evidence could not have discovered earlier with reasonable diligence, whether this evidence is not merely cumulative and whether such evidence is of such a nature that it would change the outcome of the Defendants' motion to dismiss.</p> <p>The Court is aware that this matter is pending on appeal, but understands that the First Circuit has recently granted a motion to extend the deadline for the filing of Plaintiffs' briefs. Accordingly, the Court gives Plaintiffs until May 17, 2016 to file additional briefing on this matter, not to exceed twenty (20) pages; and gives Defendants until May 24, 2016 to respond to that filing, again not to exceed twenty (20) pages. (Hourihan, Lisa) (Entered: 05/10/2016)</p>
05/11/2016	102	Supplemental Record on Appeal transmitted to US Court of Appeals re 93 Notice of Appeal Documents included: ECF Nos. 96, 97,98,99,101 (Paine, Matthew) (Entered: 05/11/2016)
05/17/2016	103	RESPONSE TO COURT ORDER by Robert Levine, William Windham re 101 Order,,,,,, <i>Supplemental Brief in Support of Motion to Consider Newly-Discovered Evidence.</i> (Stewart, Adam) (Entered: 05/17/2016)
05/17/2016	104	AFFIDAVIT in Support re 103 Response to Court Order . (Attachments: # 1 Exhibit 1, #

		2 Exhibit 2, # 3 Exhibit 3)(Stewart, Adam) (Entered: 05/17/2016)
05/24/2016	105	RESPONSE TO COURT ORDER by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer re 101 Order,,,,, 103 Response to Court Order . (Cohen, Jared) (Entered: 05/24/2016)
09/02/2016	106	NOTICE of Withdrawal of Appearance by Jared B. Cohen (Cohen, Jared) (Entered: 09/02/2016)
10/27/2016	107	Notice of Supplemental Authorities re 96 MOTION to Set Aside Judgment <i>Expedited Motion to Consider Newly-Discovered Evidence Under Federal Rule of Civil Procedure 60(B)(2)</i> (Attachments: # 1 Exhibit 1)(Stewart, Adam) (Entered: 10/27/2016)
10/31/2016	108	Response by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer to 107 Notice of Supplemental Authorities . (Wolkoff, Eric) (Entered: 10/31/2016)
01/03/2017	109	Judge Denise J. Casper: ELECTRONIC ORDER entered granting 100 Motion for Leave to File Instantly a Reply In Support of Expedited Motion to Consider Newly-Discovered Evidence Under Federal Rule of Civil Procedure 60(B)(2) by Robert Levine, William Windham <i>nunc pro tunc</i> . The Court considered the reply brief, D. 100-1 in resolution of D. 96. (Hourihan, Lisa) (Entered: 01/03/2017)
01/03/2017	110	Judge Denise J. Casper: ELECTRONIC ORDER entered re: 96 Motion to Set Aside Judgment. After consideration of the motion papers and opposition, reply brief and supplemental filings, the Court GRANTS Plaintiffs' motion to vacate the dismissal and judgment entered against them in this case pursuant to Fed. R. Civ. P. 60(b)(2), Under Rule 60(b)(2), such relief is warranted in the light of "newly discovered evidence that, with reasonable diligence, could not have discovered" earlier. The Court is aware, given the strong interest in the finality of judgments, that relief under Rule 60(b)(2) should not be freely given, but here, Plaintiffs have made the requisite showing for such relief. First, Plaintiffs have shown that this evidence has been discovered since judgment was entered (with the filing of the SEC complaint, D. 98-1). Second, they have shown that such evidence could not have been discovered earlier even with due diligence by them since although Plaintiffs were aware of the ongoing SEC investigation, as the Defendants have noted, D. 99 at 5, they were not given access to documents referenced therein, which they now cite in their motion papers, D. 98-2; D. 100-1 at 6. Third, the Court, even with the benefit of the additional briefing it solicited, D. 103, 105, cannot say that this newly discovered evidence is merely cumulative of other evidence alleged by Plaintiffs in the prior complaints found deficient by the Court, D. 75, 91, particularly as to the divergence of internal reports and external statements about the importance of a second trial to drug approval. Fourth and finally, this newly discovered evidence strikes at the heart of what the Court previously found lacking in the complaint--a strong inference of scienter--as it concerns the divergence of internal reports and external statements, one of the indicia of scienter that the Court found lacking in Plaintiffs' previous pleadings. D. 75 at 19; D. 91; <u>see U.S. Steel v. M. DeMatteo Const. Co.</u> , 315 F.3d 43, 52 (1st Cir. 2002). Although the Defendants argue that this new evidence does not shed new light on the nature of Plaintiffs' claims and allegations, with the benefit of this new evidence regarding the importance that the Defendants attached to the FDA's recommendation, the Court would be inclined to answer affirmatively the key question of "[w]hen the [amended in light of the newly discovered evidence] allegations are accepted as true and taken collectively, would a reasonable person deem the inference of scienter at least as strong as any opposing inference?" <u>Tellabs, Inc. v. Makor Issues & Rights, Ltd.</u> , 551 U.S. 308, 325 (2007).

		For all of these reasons, the Court GRANTS the motion, D. 96, and D. 92, the order dismissing this case, is VACATED. (Hourihan, Lisa) (Entered: 01/03/2017)
01/03/2017	111	Supplemental Record on Appeal transmitted to US Court of Appeals re 93 Notice of Appeal Documents included: ECF Nos. 109 and 110 (Paine, Matthew) (Entered: 01/03/2017)
01/03/2017		Case reopened. (adminn,) (Entered: 01/03/2017)

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