

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CLERK'S CERTIFICATE AND APPEALS COVER SHEET

ABBREVIATED ELECTRONIC RECORD

Case Caption: In re Aveo Pharmaceuticals Inc. Securities Litigation

District Court Number: 13cv11157-DJC

Fee: Paid? Yes No Government filer *In Forma Pauperis* Yes No

Motions Pending Yes No
If yes, document # _____

Sealed documents Yes No
If yes, document # _____

Ex parte documents Yes No
If yes, document # _____

Transcripts Yes No
If yes, document # 42,66,89

Notice of Appeal filed by: Plaintiff/Petitioner Defendant/Respondent Other:

Appeal from:

#91 Electronic Order on Motion to Dismiss, #92 Order of Dismissal

Other information:

I, Robert M. Farrell, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed electronic documents:

#91, #92, and #93

with the electronic docket sheet, constitute the abbreviated record on appeal in the above entitled case for the Notice of Appeal # 93 filed on December 9, 2015.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on December 9, 2015.

ROBERT M. FARRELL
Clerk of Court

/s/Matthew A. Paine
Deputy Clerk

COURT OF APPEALS DOCKET NUMBER ASSIGNED: _____

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APPEAL,LEAD

**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
Cause: 15:78m(a) Securities Exchange Act

Date Filed: 05/09/2013
Date Terminated: 11/18/2015
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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Patrick V. Dahlstrom

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Plaintiff

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Lead Plaintiff

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Patrick V. Dahlstrom
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Plaintiff

Christine Krause
Individually and on Behalf of All Others
Similarly situated

represented by **Theodore M. Hess–Mahan**
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V.

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Defendant

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Defendant

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Movant

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Movant

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represented by **Theodore M. Hess-Mahan**
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LEAD ATTORNEY
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Date Filed	#	Page	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	<u>4</u>		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	<u>5</u>		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	<u>6</u>		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	<u>7</u>		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	<u>8</u>		CORPORATE DISCLOSURE STATEMENT by Aveo Pharmaceuticals, Inc.. (Jolly, Joseph) (Entered: 07/03/2013)
07/03/2013	<u>9</u>		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	<u>10</u>		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: # <u>1</u> Exhibit A)(Stewart, Adam) (Entered: 07/03/2013)
07/03/2013	<u>11</u>		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	<u>12</u>		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	<u>13</u>		MEMORANDUM in Support re <u>12</u> 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	<u>14</u>		DECLARATION re <u>12</u> 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: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Pastor, David) (Entered: 07/08/2013)
07/08/2013	<u>15</u>		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	<u>16</u>		MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> by Robert Levine, William Windham. (Attachments: # <u>1</u> Exhibit A)(Haber, Edward). Added MOTION to Appoint Counsel on 7/11/2013 (Anderson, Jennifer). (Entered: 07/08/2013)
07/08/2013	<u>17</u>		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: # <u>1</u> Text of Proposed Order)(Hess-Mahan, Theodore) (Entered: 07/08/2013)
07/08/2013	<u>18</u>		MEMORANDUM in Support re <u>17</u> 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	<u>19</u>		AFFIDAVIT in Support re <u>17</u> MOTION to Consolidate Cases MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> filed by Rodney A. Samaan. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit E)(Hess-Mahan, Theodore) (Entered: 07/08/2013)
07/08/2013	<u>20</u>		MEMORANDUM in Support re <u>16</u> 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	<u>21</u>		DECLARATION re <u>16</u> MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> by Robert Levine, William Windham. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(Haber, Edward) (Entered: 07/08/2013)
07/16/2013	<u>22</u>		RESPONSE to Motion re <u>12</u> 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	<u>23</u>		RESPONSE to Motion re <u>16</u> 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	<u>24</u>		RESPONSE to Motion re <u>17</u> 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	<u>25</u>		

		NOTICE by Scott Principi re <u>12</u> 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	<u>26</u>	MEMORANDUM in Support re <u>16</u> 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	<u>27</u>	Opposition re <u>16</u> 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. SAMAAN 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	<u>28</u>	AFFIDAVIT of Theodore M. Hess-Mahan in Opposition re <u>16</u> 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: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Hess-Mahan, Theodore) (Entered: 07/22/2013)
07/23/2013	<u>29</u>	NOTICE by Rodney A. Samaan re <u>16</u> MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel, <u>17</u> MOTION to Consolidate Cases MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> <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</i> (Hess-Mahan, Theodore) (Entered: 07/23/2013)
07/29/2013	<u>30</u>	NOTICE by Robert Levine, William Windham re <u>16</u> MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel <i>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</i> (Stewart, Adam) (Entered: 07/29/2013)
09/25/2013	<u>31</u>	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: # <u>1</u> Exhibit A)(Stewart, Adam) (Entered: 09/25/2013)
09/25/2013	<u>32</u>	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: # <u>1</u> Exhibit A)(Stewart, Adam) (Entered: 09/25/2013)
09/25/2013	<u>33</u>	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: # <u>1</u> Exhibit A)(Stewart, Adam) (Entered: 09/25/2013)

09/27/2013	34	Judge Joseph L. Tauro: ELECTRONIC ORDER entered ALLOWED <u>31</u> 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 <u>32</u> 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 <u>33</u> 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 <u>10</u> 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: <u>16</u> MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel, <u>17</u> MOTION to Consolidate Cases MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> , <u>12</u> 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 <u>12</u> MOTION to Consolidate Cases <i>Motion of Scott Principi for Consolidation of Related Cases, Appointment as Lead Plaintiff and Approval of Lead Counsel</i> , <u>16</u> MOTION to Consolidate Cases , <i>Appoint as Lead Plaintiffs, and for Approval of Counsel</i> MOTION to Appoint Counsel, <u>17</u> 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 <u>16</u> 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, <u>17</u> MOTION to Consolidate Cases MOTION to Appoint Counsel <i>and Appoint Lead Plaintiff</i> filed by Rodney A. Samaan, <u>12</u> 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 <u>12</u> Motion to Consolidate Cases, in light of withdrawal of this motion as stated in Docket Entry # 25; granting <u>16</u> Motion to Consolidate Cases; finding as moot <u>17</u> Motion to Consolidate Cases; finding as moot <u>17</u> Motion to Appoint Counsel, in light of the notice of non-opposition filed on July 23, 2013 (Docket Entry # 29); and granting <u>16</u> Motion to Appoint Counsel (Bowler, Marianne) (Entered: 12/03/2013)
12/03/2013	<u>42</u>	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	<u>44</u>	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	<u>47</u>	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 <u>47</u> 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	<u>49</u>	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	<u>50</u>	NOTICE of Appearance by Joseph H. Jolly on behalf of Ronald DePinho (Jolly, Joseph) (Entered: 03/28/2014)
03/28/2014	<u>51</u>	NOTICE of Appearance by William H. Paine on behalf of Ronald DePinho (Paine, William) (Entered: 03/28/2014)
03/28/2014	<u>52</u>	NOTICE of Appearance by Michael G. Bongiorno on behalf of Ronald DePinho (Bongiorno, Michael) (Entered: 03/28/2014)
03/28/2014	<u>53</u>	NOTICE of Appearance by Peter A. Spaeth on behalf of Ronald DePinho (Spaeth, Peter) (Entered: 03/28/2014)
03/28/2014	<u>54</u>	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	<u>55</u>	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	<u>56</u>	MEMORANDUM in Support re <u>55</u> 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	<u>57</u>	DECLARATION re <u>56</u> Memorandum in Support of Motion, <u>55</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O)(Jolly, Joseph) (Entered: 04/04/2014)
04/09/2014	58	Judge Denise J. Casper: ELECTRONIC ORDER entered granting <u>54</u> Motion for Extension of Time; granting <u>54</u> Motion for Leave to File Excess Pages. (Hourihan, Lisa) (Entered: 04/09/2014)
05/27/2014	<u>59</u>	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	<u>60</u>	MEMORANDUM in Opposition re <u>55</u> 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 <u>55</u> 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	<u>62</u>	NOTICE of Change of Address or Firm Name by Adam M. Stewart (Stewart, Adam) (Entered: 07/01/2014)
07/10/2014	<u>63</u>	REPLY to Response to <u>55</u> 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 <u>55</u> 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 <u>55</u> 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	<u>66</u>	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	<u>68</u>	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: # <u>1</u> Exhibit Notice of Supplemental Authority, # <u>2</u> Exhibit In re Sanofi Sec. Litig.)(Jolly, Joseph) (Entered: 02/06/2015)
02/12/2015	69	Judge Denise J. Casper: ELECTRONIC ORDER entered granting <u>68</u> 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	<u>70</u>	Notice of Supplemental Authorities re <u>55</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , <u>68</u> Joint MOTION for Leave to File <i>Notice of Supplemental Authority</i> (Attachments: # <u>1</u> Exhibit A)(Jolly, Joseph) (Entered: 02/13/2015)
02/13/2015	<u>71</u>	Response by Robert Levine, Paul Sanders, William Windham to <u>70</u> Notice of Supplemental Authorities . (Stewart, Adam) (Entered: 02/13/2015)
02/23/2015	<u>72</u>	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	<u>73</u>	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	<u>74</u>	NOTICE of Withdrawal of Appearance by Joseph H. Jolly (Jolly, Joseph) (Entered: 02/24/2015)
03/20/2015	<u>75</u>	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	<u>76</u>	MOTION to Amend <u>49</u> Amended Complaint <i>Unopposed</i> by Robert Levine, William Windham. (Attachments: # <u>1</u> 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 <u>76</u> 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	<u>78</u>	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	<u>79</u>	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	<u>80</u>	MEMORANDUM in Support re <u>79</u> 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	<u>81</u>	DECLARATION re <u>79</u> MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> , <u>80</u> Memorandum in Support of Motion [<i>CORRECTED</i>] by Aveo Pharmaceuticals, Inc., Ronald DePinho, Tuan Ha–Ngoc, David N. Johnston, William Slichenmyer. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u>

			Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L)(Cohen, Jared) (Entered: 07/21/2015)
07/30/2015	<u>82</u>		Joint MOTION Regarding Briefing re <u>79</u> MOTION to Dismiss <i>SECOND AMENDED COMPLAINT</i> by Robert Levine, William Windham.(Stewart, Adam) (Entered: 07/30/2015)
07/31/2015	<u>83</u>		MEMORANDUM in Opposition re <u>79</u> 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 <u>82</u> Joint Motion regarding briefing (Hourihan, Lisa) (Entered: 08/04/2015)
08/06/2015	85		ELECTRONIC NOTICE Setting Hearing on Motion <u>79</u> 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	<u>86</u>		REPLY to Response to <u>79</u> 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	<u>87</u>		DECLARATION re <u>79</u> MOTION to Dismiss <i>SECOND AMENDED COMPLAINT Supplemental</i> by Aveo Pharmaceuticals, Inc., Tuan Ha-Ngoc, David N. Johnston, William Slichenmyer. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> 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 <u>79</u> 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 <u>79</u> 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	<u>89</u>		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	20	Judge Denise J. Casper: ELECTRONIC ORDER entered re: <u>79</u> 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." Fire & Police Pension Ass'n of Colo. v. Abiomed, Inc., 778 F.3d 228, 240 (1st Cir. 2015) (quoting ACA Fin. Guar. Corp. v. Advest, Inc., 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 to private placement terms onerous enough to bring it to the proverbial brink"), they remain insufficient.

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; In re Sonus Networks, Inc. Sec. Litig., 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.

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, see, e.g., 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, In re Genzyme Corp. Sec. Litig., 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." Advest, 512 F.3d at 59 (quoting Tellabs, 551 U.S. at 314) (internal quotation

			marks and emphasis removed). 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)
11/18/2015	<u>92</u>	24	Judge Denise J. Casper: ORDER entered. ORDER DISMISSING CASE(Hourihan, Lisa) (Entered: 11/18/2015)
12/09/2015	<u>93</u>	25	NOTICE OF APPEAL as to 91 Order on Motion to Dismiss,,,,,,,,,,,,,,,,,,,,, <u>92</u> 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)

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--No Notice Sent:

Message-Id:6344084@mad.uscourts.gov

Subject:Activity in Case 1:13-cv-11157-DJC In re Aveo Pharmaceuticals Inc. Securities Litigation Order on Motion to Dismiss

Content-Type: text/html

United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was entered on 11/18/2015 at 8:22 AM EST and filed on 11/18/2015

Case Name: In re Aveo Pharmaceuticals Inc. Securities Litigation

Case Number: 1:13-cv-11157-DJC

Filer:

Document Number: 91(No document attached)

Docket Text:

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." Fire & Police Pension Ass'n of Colo. v. Abiomed, Inc., 778 F.3d 228, 240 (1st Cir. 2015) (quoting ACA Fin. Guar. Corp. v. Advest, Inc., 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 'b 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 "b" 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 b 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 "b 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 b inference of scienter. As courts have held, "a b 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 b 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 b 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 to private placement terms onerous enough to bring it to the proverbial brink"), they remain insufficient.

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; *In re Sonus Networks, Inc. Sec. Litig.*, 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.

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, see, e.g., 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, In re Genzyme Corp. Sec. Litig., 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." Advest, 512 F.3d at 59 (quoting Tellabs, 551 U.S. at 314) (internal quotation marks and emphasis removed).

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. Id. at 67–68. Defendants' motion to dismiss is ALLOWED, D. 79. (Hourihan, Lisa)

1:13–cv–11157–DJC Notice has been electronically mailed to:

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**IN RE AVEO PHARMACEUTICALS INC.
SECURITIES LITIGATION**

CIVIL ACTION NO. 13-11157-DJC

ORDER OF DISMISSAL

CASPER, D.J.

In accordance with the ECF Order dated November 18, 2015, the Court Orders that Defendants' Motion to Dismiss is Allowed and the above-entitled action be and hereby is DISMISSED.

November 18, 2015

/s/ Lisa M. Hourihan
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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IN RE: AVEO Pharmaceuticals, Inc. Securities Litigation) Civ. A. No. 1:13-cv-11157-DJC
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This Document Relates To)
ALL CASES)
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NOTICE OF APPEAL

Notice is hereby given that Robert Levine and William Windham, Lead Plaintiffs, by and through counsel, hereby appeal to the United States District Court of Appeals for the First Circuit from the District Court’s Order allowing Defendants’ motion to dismiss Lead Plaintiffs’ Second Amended Complaint (Dkt. No. 91) and the Order of Dismissal (Dkt. No. 92) entered on the 18th day of November 2015.

Dated: December 9, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF System will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: December 9, 2015

/s/ Adam M. Stewart
Adam M. Stewart

United States Court of Appeals For the First Circuit

No. 15-2514

IN RE: AVEO PHARMACEUTICALS, INC. SECURITIES LITIGATION

ROBERT LEVINE; WILLIAM WINDHAM

Plaintiffs - Appellants

PAUL SANDERS, individually and on behalf of all others similarly situated;
CHRISTINE KRAUSE, individually and on behalf of all others similarly situated

Plaintiffs

v.

AVEO PHARMACEUTICALS, INC.; TUAN HA-NGOC;
DAVID N. JOHNSTON; WILLIAM SLICHENMYER; RONALD DEPINHO

Defendants - Appellees

CASE OPENING NOTICE

Issued: December 29, 2015

The above-captioned appeal was docketed in this court today pursuant to Rule 12 of the Federal Rules of Appellate Procedure. The above case number and caption should be used on all papers subsequently submitted to this court. If any party disagrees with the clerk's office's designation of the parties on appeal, it must file a motion to amend the caption with any supporting documentation attached. Absent an order granting such a motion, the parties are directed to use the above caption on all pleadings related to this case.

Appellant must complete and return the following forms to the clerk's office by **January 12, 2016** to be deemed timely filed:

- [Appearance Form](#)
- [Transcript Report/Order Form](#) (Please carefully read the instructions for completing and filing this form.)

- [Docketing Statement](#)

These forms are available on the court's website at www.ca1.uscourts.gov, under "Forms & Notices." Failure to comply with the deadlines set by the court may result in dismissal of the appeal for lack of diligent prosecution. See 1st Cir. R. 3.0, 10.0, and 45.0.

Upon confirmation by the circuit clerk that the record is complete either because no hearing was held, no transcript is necessary, or the transcript is on file, the clerk's office will set the briefing schedule and forward a scheduling notice to the parties.

Within seven days of filing the notice of appeal, appellant must pay the filing fee to the district court clerk. An indigent appellant who seeks to appeal in forma pauperis must file a motion and financial affidavit in the district court in compliance with Fed. R. App. P. 24. Unless this court is provided with notice of paying the filing fee to the clerk of the district court or filing a motion seeking in forma pauperis status within fourteen days of the date of this notice, this appeal may be dismissed for lack of prosecution. 1st Cir. R. 3.0(b).

An appearance form should be completed and returned immediately by any attorney who wishes to file pleadings in this court. 1st Cir. R. 12.0(a) and 46.0(a)(2). Any attorney who has not been admitted to practice before the First Circuit Court of Appeals must submit an application and fee for admission using the court's Case Management/Electronic Case Files ("CM/ECF") system prior to filing an appearance form. 1st Cir. R. 46.0(a). *Pro se* parties are not required to file an appearance form.

Dockets, opinions, rules, forms, attorney admission applications, the court calendar and general notices can be obtained from the court's website at www.ca1.uscourts.gov. Your attention is called specifically to the notice(s) listed below:

- [Notice to Counsel and Pro Se Litigants](#)
- [Transcript Notice](#)

If you wish to inquire about your case by telephone, please contact the case manager at the direct extension listed below.

Margaret Carter, Clerk

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FOR THE FIRST CIRCUIT
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United States Court of Appeals For the First Circuit

NOTICE OF ELECTRONIC AVAILABILITY OF CASE INFORMATION

The First Circuit has implemented the Federal Judiciary's Case Management/Electronic Case Files System ("CM/ECF") which permits documents to be filed electronically. In addition, most documents filed in paper are scanned and attached to the docket. In social security and immigration cases, members of the general public have remote electronic access through PACER only to opinions, orders, judgments or other dispositions of the court. Otherwise, public filings on the court's docket are remotely available to the general public through PACER. Accordingly, parties should not include in their public filings (including attachments or appendices) information that is too private or sensitive to be posted on the internet.

Specifically, Fed. R. App. P. 25(a)(5), Fed. R. Bank. P. 9037, Fed. R. Civ. P. 5.2 and Fed. R. Cr. P. 49.1 require that parties not include, or partially redact where inclusion is necessary, the following personal data identifiers from documents filed with the court unless an exemption applies:

- **Social Security or Taxpayer Identification Numbers.** If an individual's social security or taxpayer identification number must be included, only the last four digits of that number should be used.
- **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- **Dates of Birth.** If an individual's date of birth must be included, only the year should be used.
- **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.
- **Home Addresses in Criminal Cases.** If a home address must be included, only the city and state should be listed.

See also Rule 12 of this court's Administrative Order Regarding Case Management/Electronic Case Files System.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend caption to redact the identifier.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, national security information, and sensitive security information as described in 49 U.S.C. § 114.

Attorneys are urged to share this notice with their clients so that an informed decision can be made about inclusion of sensitive information. The clerk will not review filings for redaction. Filers are advised that it is the experience of this court that failure to comply with redaction requirements is most apt to occur in attachments, addenda, or appendices, and, thus, special attention should be given to them. For further information, including a list of exemptions from the redaction requirement, see <http://www.privacy.uscourts.gov/>.

United States Court of Appeals For the First Circuit

NOTICE TO COUNSEL REGARDING MANDATORY REGISTRATION AND TRAINING FOR ELECTRONIC FILING (CM/ECF)

Beginning January 1, 2010, CM/ECF is mandatory for all attorneys filing in this court. Therefore, we strongly encourage all attorneys who practice in this court to register as an ECF Filer as soon as possible and become familiar with the system. Before you may file documents electronically in the CM/ECF system, you must complete the following steps.

- **Complete both of the mandatory Electronic Learning Modules (ELMs) located at www.ca1.uscourts.gov** on the CM/ECF (Electronic Filing) page. The lessons provide a step-by-step overview of how to file various types of documents, as well as how to avoid common filing errors.
- **Apply for admission if you are not a member of this court's bar.** In order to register as an ECF Filer, attorneys must be admitted to the bar of this court. For information on attorney admission, go to the Forms & Instructions page on the First Circuit's website at www.ca1.uscourts.gov.
- **Register for a PACER account at <http://www.pacer.psc.uscourts.gov>** if you or your law firm have not previously done so. A PACER account is required to view docket reports and electronically filed documents.
- **Register with PACER for a First Circuit Appellate ECF Filer account at <http://www.pacer.psc.uscourts.gov>.** You must register for an ECF Filer account with this court order to electronically file documents through the court's CM/ECF system. If you previously registered through PACER for electronic noticing in the First Circuit, and you are a member of the bar of the First Circuit Court of Appeals, you do not have to re-register for an appellate CM/ECF account.
- **Review the Administrative Order Regarding CM/ECF (which sets forth rules governing electronic filing) and the CM/ECF User's Guide.** Complete information about CM/ECF is available on the First Circuit's website at www.ca1.uscourts.gov.

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United States Court of Appeals For the First Circuit

NOTICE TO ALL CM/ECF USERS REGARDING "NATIVE" PDF REQUIREMENT

All documents filed electronically with the court must be submitted as "native" Portable Document ("PDF") files. See Rule 1 of the [Administrative Order](#) Regarding Case Management/Electronic Case Files System ("CM/ECF"). A **native PDF file** is created by electronically converting a word processing document to PDF using Adobe Acrobat or similar software. A **scanned PDF file** is created by putting a paper document through an optical scanner. Use a scanner ONLY if you do not have access to an electronic version of the document that would enable you to prepare a native PDF file.

If you fail to file a document in the correct format, you will be asked to resubmit it. Instructions for converting Word or WordPerfect documents to PDF are available on the court's website at http://www.ca1.uscourts.gov/sites/ca1/files/WP_Conversion.pdf.