SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREW BORROK** **PART** **IAS MOTION 53EFM**

Justice

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MATTHEW LEUNG,

Plaintiff,

- v -

HEXO CORP., SEBASTIEN ST-LOUIS, ADAM MIRON, MICHAEL MUNZAR, JASON EWART, VINCENT CHIARA, NATHALIE BOURQUE, ED CHAPLIN, CIBC WORLD MARKETS INC.,BMO NESBITT BURNS INC.,OPPENHEIMER & CO. INC.,ALTACORP CAPITAL INC.,BEACON SECURITIES LIMITED, BRYAN, GARNIER & CO LTD, CORMARK SECURITIES INC.,EIGHT CAPITAL, GMP SECURITIES L.P., LAURENTIAN BANK SECURITIES INC, PI FINANCIAL CORP., ROTH CAPITAL PARTNERS, LLC

Defendant.

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INDEX NO. 150444/2020

MOTION DATE 07/13/2020

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 54, 55, 56, 57, 58, 59, 60, 63, 64

were read on this motion to/for DISMISS.

Upon the foregoing documents and for reasons set forth on the record (June 3, 2021), the defendants' joint motion to dismiss the complaint pursuant to CPLR 3211 is granted.

The complaint fails to state violations of the Securities Act of 1933 (the **1933 Act**) because the plaintiff fails to identify any contemporaneous facts showing that the defendants knew, ***at the time of the offering***, of the subsequent issues that arose with respect to the Québec's government-run cannabis dispensary (**SQDC**). As the Federal Court recently explained in *In re HEXO Corp. Sec. Litig*., when it dismissed a first-filed action alleging substantially similar claims against the same defendants arising out of the same offering:

> Plaintiffs do not allege that the Securities Act Defendants knew any information in January 2019, when they issued the Prospectus, upon which to conclude that HEXO would not sell the Purchase Obligation to the SQDC by October 2019. After all, January 2019 was just three months after the Legalization, when it was reasonably difficult to anticipate demand. Specifically, plaintiffs do not allege that the Securities Act Defendants knew in January 2019 that the SQDC could not meet its commitment by October 2019, or that the Securities Act Defendants should have had any reason to know that demand for their product would not increase. Nor do plaintiffs allege any particular facts indicating that the Securities Act Defendants knew at the time of the IPO that they would later exercise their business judgment and relieve the SQDC of its obligations under the ToP provision.

(2021 WL 878589, at *8-11 [SD NY March 8, 2021] [citing *Uxin Ltd. Sec. Litig. v XXX*, 66 Misc3d 1232[A] [NY Cnty Sup Ct 2020]).

This court has noted before that whether a statement is materially false or misleading is viewed at the time such statement is made – not retroactively, in hindsight (*Uxin, supra*; *In the Matter of Netshoes Sec. Litig.*, 64 Misc3d 926 [Sup Ct NY Cnty 2019]).

In any event, to the extent that the plaintiff identifies alleged misrepresentations in the offering documents, the claims as to those allegations are barred under the bespeaks caution doctrine as the offering documents contained ample cautionary statements (*Halperin v eBanker USA.com, Inc.*, 295 F3d 352, 357 [2d Cir 2002] ["alleged misrepresentations in a stock offering are immaterial as a matter of law [where] it cannot be said that any reasonable investor could consider them important in light of adequate cautionary language set out in the same offering"]). To wit, among other things:

"[i]f any of the SQDC [or other provincial government-run dispensaries] decides to purchase lower volumes of products from HEXO than HEXO expects, alters its purchasing patterns at any

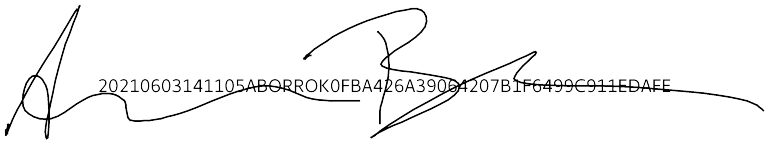
time with limited notice or decides not to continue to purchase HEXO's cannabis products at all, HEXO's revenues could be materially adversely affected …" (NYSCEF Doc. No. 40 at S-17). Plaintiff also does not state a claim under Regulation S-K because they fail to identity any facts which were known or should be known which rendered the offering documents materially misleading at the time they were issued.

The court has considered the plaintiff's remaining arguments and finds them unavailing.

Because (i) the plaintiff has failed to adequately plead its section 11 claims, his section 15 claims also necessarily fail as a matter of law, and (ii) the Federal Court dismissed the first filed action, the application for a stay in the alternative is moot.

Accordingly, it is

ORDERED that the defendants' motion is granted, the action is dismissed, and the clerk is directed to enter judgment accordingly.



6/3/2021
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[X]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**