UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEWIS WILDER, as Trustee for the Lewis Wilder Revocable Trust, 12/10/2010, and IRON WORKERS LOCAL UNION NO. 17 PENSION FUND,	:	
Plaintiffs,	:	11 CV 4947 (PGG)
and	:	
AVON PENSION FUND, Administered by Bath & North East Somerset Council, Individually and on Behalf of All Others Similarly Situated,	:	ECF Case
Lead Plaintiff,	:	Electronically Filed
vs.	:	
NEWS CORPORATION, NI GROUP LTD., K. RUPERT MURDOCH, JAMES MURDOCH, LES HINTON and REBEKAH BROOKS,	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS NEWS CORPORATION, NI GROUP LIMITED, K. RUPERT MURDOCH AND JAMES MURDOCH'S MOTION TO DISMISS THE CONSOLIDATED AND AMENDED CLASS ACTION COMPLAINT

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TABLE OF CONTENTS

DEADLINE.com

DEADLINE.com

TABLE OF AUTHORITIES

CASES

Page

DEADLINE.com

DEADLINE.com

DEADLINE.com

DEADLINE.com

DEADLINE.com

STATUTES

DEADLINE.com

Defendants News Corporation ("News Corp."), K. Rupert Murdoch and James Murdoch (collectively, the "News Corp. Defendants"), and defendant NI Group Limited ("NI Group"), respectfully submit this memorandum of law in support of their motion to dismiss the Consolidated and Amended Class Action Complaint (the "Complaint" or "CAC").[1]

PRELIMINARY STATEMENT

In bringing this action, Plaintiffs seize upon the improper news gathering and voicemail interception by journalists at a British weekly newspaper, *News of the World* – which occurred years ago – and attempt to transform this into a claim for securities fraud by the newspaper's parent companies, NI Group and News Corp., and certain current and former officers.[2] However, that employees engaged in egregious misconduct, even potentially criminal conduct, does not equate to a claim for securities fraud. This is particularly true here where Plaintiffs purchased their shares after both the discovery of new evidence of misconduct and the reopening of internal and criminal investigations were already disclosed.

Plaintiffs allege that Defendants committed securities fraud during five months between February 15, 2011 and July 18, 2011 (the putative "Class Period") (CAC ¶ 1) by allegedly concealing the extent of the improper news gathering through an assertion that the wrongdoing was committed by one "rogue reporter" who had been convicted and sentenced in early 2007. (*See, e.g.*, CAC ¶¶ 7, 35, 81, 135, 153). But even before the putative Class Period is alleged to have begun (and months before Plaintiffs purchased News Corp. stock), *News of the*

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1 NI Group also moves to dismiss under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction, which is addressed *infra*, Section IX, pp. 34-36.

2 *News of the World* was owned by News Group Newspapers Limited ("NGN"), a subsidiary of NI Group, which was an indirect subsidiary several layers removed in the corporate chain from News Corp. (CAC ¶ 24).

World and NI Group had publicly disclosed in January 2011 that they had (i) discovered new evidence of voicemail interception, (ii) reopened an internal investigation, (iii) terminated an assistant editor based on new evidence, and (iv) voluntarily turned over that evidence to the authorities with whom they were cooperating who reopened their own investigations. (CAC ¶¶ 76-77; Exs. A-F).[3] And *before* either Plaintiff allegedly purchased any News Corp. stock, two additional journalists had been arrested (Exs. G, H) and, on April 8 and April 10, 2011, NI Group and *News of the World*, issued widely publicized apologies, which:

(i) confirmed the discovery of new evidence of journalist misconduct at *News of the World*;

(ii) expressed "genuine regret" over the behavior at *News of the World*;

(iii) disclosed that "[i]t is now apparent that our previous inquiries failed to uncover important evidence";

(iv) stated that NI Group will "continue to co-operate fully" with the Police; and

(v) explained that an investigation would be ongoing and a program would be established to compensate victims. (CAC ¶ 152; Exs. I, J).

Faced with these public disclosures, Plaintiffs cobbled together a selective patchwork of statements about past employee misconduct – most of which were made years before the start of the Class Period. Plaintiffs combined these statements with conclusory allegations that they were knowingly false when made and remained "alive and uncorrected" until July 2011. (*See* CAC ¶¶ 81-134). This theory is internally inconsistent and impermissible as a matter of law. Moreover, when Plaintiffs' hodgepodge of allegations is scrutinized, including examining who made each statement and when, it becomes readily apparent that Plaintiffs fail to allege sufficiently claims under Section 10(b) or 20(a) of the Securities

[3] Exhibits are attached to the Declaration of Scott D. Musoff dated September 25, 2012.

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Exchange Act of 1934 (the "Exchange Act"). Plaintiffs do not satisfy the rigorous pleading requirements under the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). *See* 15 U.S.C. §§ 78u-4. Plaintiffs' claims should be dismissed for, among others, the following reasons:

- The information allegedly concealed – *i.e.*, additional voicemail interception at *News of the World* beyond one journalist (*see e.g.*, CAC ¶¶ 7, 135) – was disclosed prior to and throughout the putative Class Period. *See Anschutz Corp. v. Merrill Lynch & Co.*, 690 F.3d 98, 109 (2d Cir. 2012) (public disclosures vitiated 10(b) claim); *Wilson v. Merrill Lynch & Co*, 671 F.3d 120, 132 (2d Cir. 2011) (same); *In re Yahoo! Inc. Sec. Litig.*, No. C 11-02732 CRB, 2012 WL 3282819, at *22-23 (N.D. Cal. Aug. 10, 2012) (no duty to correct when disclosure was made within reasonable time). Additionally, the random statements challenged during the putative Class Period do not support a securities fraud claim. *See infra* pp. 14-21.

- The pre-Class Period statements are not actionable. Plaintiffs devote over fifty paragraphs of their Complaint to challenging pre-Class Period statements dating back as far as 2006 (CAC ¶¶ 81-134) that are not actionable as a matter of law. *See Lattanzio v. Deloitte & Touche LLP*, 476 F.3d 147, 153 (2d Cir. 2007) (reaffirming that "'[a] defendant . . . is liable only for those statements made during the class period'") (quoting *In re IBM Corporate Sec. Litig.*, 163 F.3d 102, 107 (2d Cir. 1998)). Moreover, when, as here, Plaintiffs challenge pre-Class Period statements as having been knowingly false when made (*see, e.g.*, CAC ¶¶ 137-140, 142), they cannot assert an actionable "duty to correct" securities fraud claim. *Lattanzio*, 476 F.3d at 153. *See infra* pp. 22-23.

- Plaintiffs' pre-Class Period claims are also premised primarily on statements that were not made by News Corp. or its officers and are, therefore, also not actionable. *See Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2302 (2011) (no securities fraud liability if not maker of statement). Moreover, where, as here, the challenged pre-Class Period statements were either true when made or merely aspirational, no duty to correct arose as a matter of law. *See, e.g.*, *ECA & Local 134 IBEW Joint Pension Trust of Chic. v. JP Morgan Chase Co.*, 553 F.3d 187, 205-06 (2d Cir. 2009) (aspirational statements not actionable under Section 10(b)). *See infra* pp. 23-25.

- The Complaint also fails to allege particularized facts that give rise to a strong inference that *each* Defendant acted with scienter – *i.e.*, with the requisite intent to defraud News Corp.'s investors during the putative Class Period. *See Teamsters Allied Benefit Funds v. McGraw*, No. 09 Civ. 140 (PGG), 2010 WL 882883, at *9 (S.D.N.Y. Mar. 11, 2010) (Gardephe, J.). Indeed, the January and April 2011 disclosures undercut any inference of scienter and render Plaintiffs' theory entirely implausible. Neither the News Corp. Defendants nor NI Group are alleged to have obtained any concrete and personal benefits sufficient to support a motive theory. Plaintiffs also do not plead with particularity any specific facts possessed by the News Corp. Defendants or NI Group during the Class Period regarding misconduct at *News of the World* that was not already in the public

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domain by February 2011. *See Borochoff, v. GlaxoSmithKline PLC*, No. 07 Civ. 5574 (LLS), 2008 WL 2073421, at *8 (S.D.N.Y. May 9, 2008) (Defendants' disclosure of information "rebuts any intent to defraud by concealing information"), *aff'd sub nom. Avon Pension Fund v. GlaxoSmithKline PLC*, 343 F. App'x 671 (2d. Cir. 2009) *See infra* pp. 25-32.

- Plaintiffs purchased their stock after the allegedly omitted information was disclosed and cannot, therefore, plead transaction causation (reliance) as a matter of law. *See, e.g.*, *City of Pontiac Gen. Emps. Ret. Sys. v. MBIA, Inc.*, 637 F.3d 169, 176 (2d Cir. 2011); *Brown v. E.F. Hutton Grp., Inc.*, 991 F.2d 1020, 1032 (2d Cir. 1993). *See infra* p. 33.

- Plaintiffs failed not only to plead a primary violation of securities laws, they have not alleged that the News Corp. Defendants or NI Group culpably participated in the alleged fraud or had sufficient control of any of the statements made to state a Section 20(a) claim. *See In re Yukos Oil Co. Sec. Litig.*, No. 04 Civ. 5243 (WHP), 2006 WL 3026024, at *23 (S.D.N.Y. Oct. 25, 2006). *See infra* p. 33.

- Plaintiffs have failed to plead facts sufficient to establish personal jurisdiction over NI Group, a private United Kingdom corporation. Plaintiffs do not satisfy their burden of pleading facts showing that NI Group had sufficient minimum contacts to warrant it being haled into court here. *See, e.g.*, *Tamam v. Fransabank SAL*, 677 F. Supp. 2d 720, 725 (S.D.N.Y. 2010). *See infra* pp. 34-36.

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STATEMENT OF FACTS[4]

A. The Parties

1. News Corp. and NI Group

News Corp. is a worldwide media conglomerate with its principal executive offices located in New York, New York. (CAC ¶¶ 2, 23). News Corp. is the parent company to numerous subsidiaries that operate globally in six major industry segments: (1) cable network programming, (2) filmed entertainment, (3) television, (4) direct broadcast satellite television, (5) publishing and (6) other assorted media platforms. (*See* Ex. K at 6, 24-25, 40-45; Ex. L at 2-22, 44-50). News Corp.'s revenues were $33.4 billion for the fiscal year ended June 30, 2011. (Ex. L at 42, 54). News Corp.'s subsidiaries include such well-known businesses as FOX News, MyNetwork TV, SKY Italia, Shine Group, National Geographic Channels, Twentieth Century Fox, Dow Jones, and HarperCollins Publishers. (*See* Ex. L at 2-21).

News Corp.'s publishing segment alone consists primarily of seven subsidiaries that operate a worldwide book publishing business and four national newspapers in the United Kingdom, approximately 146 newspapers in Australia and several newspapers in the United States (such as *The Wall Street Journal* and *New York Post*). (Ex. L at 15-20). Defendant NI

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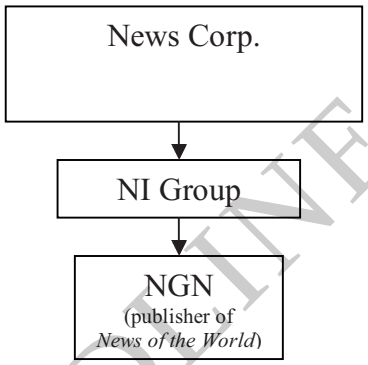
[4] The facts are drawn from the Complaint, "together with those 'documents . . . incorporated in it by reference' and 'matters of which judicial notice may be taken.'" *Wilson*, 671 F.3d at 123 (citation omitted). In deciding a motion to dismiss, the court may consider, among other things, statements or documents incorporated into the complaint by reference. *See Teamsters Allied Benefit Funds*, 2010 WL 882883, at *8. Furthermore, on a motion to dismiss the Court may take judicial notice of the coverage and existence of news articles. *See, e.g.*, *Finn v. Smith Barney*, 471 F. App'x 30, 32 (2d Cir. 2012); *Garber v. Legg Mason Inc.*, 347 F. App'x 665, 669 (2d Cir. 2009); *In re Bank of Am. Corp. Sec., Derivative, & Emp. Ret. Income Sec. Act (ERISA) Litig.*, No. 09 MD 2058 (PKC), 2012 WL 1353523, at *8 (S.D.N.Y. Apr. 12, 2012). Well-pled allegations (and not legal conclusions) are deemed true for purposes of this motion only. *Teamsters Allied Benefit Funds*, 2010 WL 882883, at *4 (holding that on a motion to dismiss "'[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice'") (citation omitted).

Group, formerly known as News International Limited plc, is a private limited company incorporated in the United Kingdom, and one of the many subsidiaries within News Corp.'s publishing segment. (*See* CAC ¶ 24; Ex. L at 15-18). NI Group, through its subsidiaries, publishes United Kingdom newspapers, including *The Sun*, *The Times*, *The Sunday Times* and, until July 10, 2011, *News of the World*. (CAC ¶ 24; Ex. L at 15). One of those United Kingdom subsidiaries, News Group Newspapers Limited ("NGN") published *News of the World*. (*Id.*) Thus, *News of the World* was one of over one hundred newspapers within the global publishing segment and was owned by NGN, which was several entities down the corporate chain from News Corp.:



(CAC ¶¶ 23-24; *see also* Ex. L at 15, Exhibit 21 (List of Subsidiaries) (certain other intervening subsidiaries omitted from above chart)).

2. Individual News Corp. Defendants

Defendant K. Rupert Murdoch is the Chairman and Chief Executive Officer of News Corp. and was a member of the board of directors of NI Group. (CAC ¶ 25). Defendant James Murdoch became News Corp.'s Deputy Chief Operating Officer and Chairman and CEO, International, in March 2011. (CAC ¶ 26). From December 2007 until March 2011, James Murdoch was News Corp.'s Chairman and CEO for Europe and Asia and the Executive Chairman of NI Group. (*Id.*). He also served on the boards of NGN and NI Group from April 2008 until September 19, 2011 and March 2, 2012, respectively. (*Id.*).

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3. Individual defendants formerly employed at NI Group

Defendants Les Hinton and Rebekah Brooks were never and are not alleged to have been officers or directors of News Corp. (CAC ¶¶ 27, 28). Mr. Hinton was the CEO of Dow Jones & Company ("Dow Jones") from December 2007 until shortly before the end of the Class Period on July 15, 2011. (CAC ¶ 27). Before December 2007, Mr. Hinton was Executive Chairman of NI Group, and he served as an NI Group and NGN board member until January 21, 2008. (*Id.*). Ms. Brooks was Chief Executive of NI Group from June 2009 until July 15, 2011, and was a member of the boards of NI Group and NGN from July 23, 2009 to August 8, 2011. (CAC ¶ 28). Rebekah Brooks was the editor of *News of the World* from May 2000 until January 2003. (*Id.*).

4. Plaintiffs

Plaintiffs Avon Pension Fund and Iron Workers Local Union 17 Pension Fund were appointed lead plaintiffs by the Court on June 5, 2012. (Docket Entry 31). They seek to represent a putative class of those who purchased News Corp.'s common stock during the five-month Class Period from February 15, 2011 to July 18, 2011. (CAC ¶ 1). Plaintiffs purportedly made their first purchases of News Corp. stock on April 13, 2011 and April 14, 2011, respectively (Docket Entry 13; CAC ¶¶ 21-22) – *after* NI Group disclosed that it had discovered further instances of voicemail interception, publicly apologized and established a compensation program and *after* additional journalists had been arrested (Exs A-J).

B. Factual Background

1. 2007 – *News of the World* takes action concerning voicemail interception

In 2006, the United Kingdom Metropolitan Police ("Police") investigated voicemail interception after receiving a complaint about an article published by a *News of the World* journalist, Clive Goodman. (CAC ¶¶ 6, 44). As a result of the investigation, Goodman

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and an independent private investigator, Glen Mulcaire, pled guilty to conspiring to intercept communications and were sentenced in early 2007. (CAC ¶¶ 45, 50). *News of the World* responded decisively by (i) accepting the resignation of its managing editor, Andy Coulson; (ii) terminating Goodman, the journalist charged; and (iii) implementing more stringent internal controls. (CAC ¶¶ 50-51, 100; Ex. M at 34 ¶¶ 2, 3, cited in CAC ¶ 92). At the time, Rupert Murdoch expressed disdain for such misconduct, stating that "illegal taping by a private investigator . . . is not part of our culture anywhere in the world." (CAC ¶ 90).

The United Kingdom House of Commons' Culture, Media and Sport Committee (the "Committee" or "CCMS") also conducted an inquiry into the matter. (CAC ¶ 92). No News Corp. employees testified before the Committee. Les Hinton, then Executive Chairman of NI Group, the United Kingdom parent company to *News of the World's* publisher, NGN, testified before the Committee. (CAC ¶¶ 54, 93). The Committee asked Mr. Hinton whether *News of the World* conducted an investigation and if he believed that Goodman was the "only person who knew what was going on." (CAC ¶ 93). In response, Mr. Hinton stated that he "believe[d] [Goodman] was the only person, but that investigation, under the new editor, continues." (*Id.*). The Committee concluded that Mr. Coulson's resignation sent a "clear message" that journalist misconduct "cannot be tolerated." (Ex. M at 34 ¶ 2). Moreover, the Police later described its work to the Committee as "the most careful investigation by very experienced detectives." (Ex. N at Ev 378, cited in CAC ¶ 119). The Police notified certain individuals that their voicemails may have been intercepted and closed the investigation without filing additional charges. (CAC ¶¶ 45, 67).

2. 2009 – The 2005 "Neville email"

On July 8, 2009 – almost two years before the start of the Class Period – *The Guardian* newspaper published an article that referenced evidence the Police had seized from Mr.

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Mulcaire's files during their investigation years earlier. (CAC ¶ 66). British athlete Gordon Taylor had obtained the evidence from the Police in connection with a civil privacy suit. (CAC ¶¶ 49, 57). One of the documents was an email dated June 29, 2005 from a *News of the World* journalist to Mulcaire with a message stating that it was "for Neville," referencing Neville Thurlbeck, a reporter at *News of the World* (the "Neville Email"). (CAC ¶ 49). The Neville Email allegedly included transcribed voicemail messages from the mobile phones of Mr. Taylor and a woman with whom he worked. (*Id.*). The Committee re-opened its earlier inquiry into the *News of the World* matter and conducted public hearings on this subject on July 14 and 21, September 2 and 15 of 2009. (CAC ¶¶ 64, 108, 115; Ex. N). During those hearings, the Police told the Committee that they had known about the Neville Email during their earlier investigation. (CAC ¶ 116; Ex. N at Ev 358-359). The Police also explained that, despite the publicity, there was no new evidence that had surfaced to warrant reopening the Police investigation, and that they stood by their earlier decision to bring no additional charges. (Ex. N at Ev 358-359, 378).

3. December 2010 through February 15, 2011 – NI Group acts promptly upon discovery of new evidence concerning past voicemail interception

In December 2010, NI Group was made aware of *new* evidence that suggested additional instances of voicemail interception at *News of the World* of which it was not initially aware. (CAC ¶ 77). Based on this, *News of the World* suspended its assistant editor, Ian Edmondson, and subsequently terminated his employment. (CAC ¶ 76). More than a month before the onset of the Class Period, in January 2011, *News of the World* announced Edmondson's suspension and NI Group announced that it was conducting a second internal inquiry into voicemail interception. (Exs. A-C). *News of the World* also issued public statements in January 2011, disclosing:

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> A serious allegation has been made about the conduct of a member of the *News of the World* staff. We have followed our internal procedures and we can confirm that this person was suspended from active duties just before Christmas. The allegation is the subject of litigation and our internal investigation will take place in tandem with that. If the conclusion of the investigation or the litigation is that the allegation is proven, appropriate action will be taken. The *News of the World* has a zero tolerance approach to any wrong-doing.

(Ex. A; *see also* Exs. B-C). NI Group promptly turned the evidence over to the Police and U.K. prosecutors. NI Group, the Police and the Crown Prosecution Services all opened investigations into the matter. (CAC ¶¶ 77, 152; Exs. D-F).

During this time – again prior to the start of the putative Class Period – the media covered the "significant new information" NI Group had provided to the Police and the further investigation of *News of the World*. (*See, e.g.,* Ex. O, "Met launches new hacking probe," Chris Greenwood, *Daily Post*, Jan. 27, 2011 ("The new inquiry is one of the most significant developments in the controversy since the *News of the World's* royal editor was imprisoned in 2007."); Ex. P, "Phone hacking: the next turn of the screw," Cahal Milmo & Oliver Wright, *The Independent*, Jan. 27, 2011 ("The fresh evidence is thought to include emails which could implicate other executives. … Mr. Murdoch is said to be furious at the failure of his managers to end the hacking scandal."); Ex. Q, "Police reopen investigation into hacking at News of the World," Vikram Dodd, James Robinson & Nicholas Watt, *The Guardian*, Jan. 27, 2011; Ex. R, "Metropolitan Police pledges robust phone hacking probe," BBC News, Jan. 27, 2011; *see also* Ex. S (sample of over 150 articles)). On February 9, 2011, less than a week before the start of the putative Class Period, the Police announced that they had begun identifying persons whom they believed may have had their voicemails intercepted and that they were committed to conducting a "robust and thorough investigation." (Ex. F). As expected, this announcement drew continued media focus on the ongoing investigations. (*See* Ex. T, "Scotland Yard Expands

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its Hacking Inquiry," Graham Bowley, *New York Times*, Feb. 8, 2011; *see also* Ex. S). In light of NI Group and *News of the World's* own public announcements, the expanded investigations and this attendant publicity, it is implausible for Plaintiffs to contend that investors from February 15, 2011 through July 2011 believed that voicemail interception was limited to the single "rogue reporter" who had been charged and sentenced four years earlier. (CAC ¶¶ 7, 35, 57, 70, 81, 95, 127, 135).

4. Early April 2011 – NI Group and *News of the World* issue public apologies concerning voicemail interception

The media continued to cover the ongoing investigation throughout February 2011. (*See* Ex. S). On February 15, 2011, the first day of the Class Period, James Murdoch allegedly provided News Corp.'s directors with a "'detailed report[] on . . . . [the] status of the investigation.'" (CAC ¶ 146). The new investigations and cooperation with the Police that NGN had announced in January 2011 bore fruit. On April 5, 2011, the Police announced that it had made two additional arrests concerning voicemail interception. (Ex. G). That same day, NI Group issued a press release reiterating its full cooperation with the Police investigation. (Ex. H). Shortly thereafter, on April 8, 2011, NI Group issued a widely publicized apology, which:

(i) confirmed the discovery of new evidence of journalist misconduct at *News of the World*;

(ii) expressed "genuine regret" over the behavior at *News of the World*;

(iii) disclosed that "[i]t is now apparent that our previous inquiries failed to uncover important evidence";

(iv) stated that NI Group will "continue to co-operate fully" with the Police; and

(v) explained that an investigation would be ongoing and a program would be established to compensate victims.

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(CAC ¶ 152; Ex. I; *see also*, Ex. U, "British Tabloid Accepts Blame in Cell Hacking, Graham Bowley, Jo Becker & Ravi Somaiya, *New York Times*, Apr. 9, 2011 ("Faced with a cascade of lawsuits and a widening police investigation into illegal hacking of phone messages by the News of the World tabloid, its parent company on Friday publicly admitted wrongdoing, apologized and offered to pay damages to some of the people who are alleged to be victims of the paper."); Ex. V, containing citations to numerous media reports of the apology). Two days later, *News of the World* published a second apology. (Ex. J, "Voicemail interception: An apology," *News of the World*, Apr. 10, 2011).

5. Mid-April 2011 – Plaintiffs purchase News Corp. stock

After the public disclosure of: (i) the reopening of the investigation in January 2011; (ii) the termination of the editor at *News of the World*; (iii) the widespread media coverage of the developing investigations discussing the significant new information and its potential ramifications with respect to the *News of the World* matter, (iv) additional arrests of journalists at *News of the World*, and (v) the April apologies and admission that there were more people involved (CAC ¶ 152; Exs. A-J) – Plaintiffs chose to purchase News Corp. stock. *See* Docket Entry 13 (purchasing their shares on April 13 and 14, respectively)).

6. July 2011 – Ongoing developments in the investigations

Media coverage of ongoing developments from the reopening of the investigation of the *News of the World* matter continued. (CAC ¶¶ 168 (e), 174-186). Plaintiffs cherry-pick various media reports in July and label them as the "corrective" disclosures that allegedly affected the market price of News Corp. shares. (CAC ¶¶ 135, 176). For instance, Plaintiffs' alleged primary "corrective" disclosures are July 4, 2011 media reports that identified Milly Dowler as a victim of voicemail interception in 2002. (CAC ¶¶ 11, 174, 178). However, such news coverage did not "correct" any purported "alive" misinformation, but rather it identified a

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specific, particularly poignant victim of voicemail interception, which emanated from the already disclosed ongoing investigations. (CAC ¶ 152). Similarly, contemporaneous media coverage of additional arrests made as the investigation progressed was consistent with, not "corrective" of, previous disclosures detailing the fact that NI Group had uncovered – and shared with Police – new evidence of voicemail interception. (CAC ¶¶ 181-182). Also, NI Group's announcement on July 8, 2011 that it was closing *News of the World* did not "correct" any prior statements; rather, it timely disclosed a proactive business decision taken in light of the previously announced investigations. (CAC ¶¶ 176, 179). Moreover, Plaintiffs also point to media reports on July 14, 2011 that the Federal Bureau of Investigation had opened an inquiry based on unsubstantiated media speculation as to possible voicemail interception of 9/11 victims. (CAC ¶ 185). This is also not a corrective disclosure but rather reports an event – which even if true – had just occurred. Lastly, the fact that the Police allegedly recanted their own prior representations about thoroughness of their previous investigations does not and cannot equate to a "correction" of prior statements allegedly made by any of the Defendants. (CAC ¶ 186). All of these alleged statements emanated solely from the ongoing investigations at *News of the World* – which had been publicly disclosed prior to the putative Class Period.

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ARGUMENT

PLAINTIFFS' COMPLAINT SHOULD BE DISMISSED

I. THE PSLRA'S HEIGHTENED PLEADING STANDARDS

As the Court is aware, to state a cause of action under Section 10(b) and Rule 10b-5 of the Exchange Act, "a plaintiff must plead that 'in connection with the purchase or sale of securities, the defendant, acting with scienter, made a false material representation or omitted to disclose material information and that plaintiff's reliance on defendant's action caused [plaintiff] injury.'" *Acito v. IMCERA Grp., Inc.*, 47 F.3d 47, 52 (2d Cir. 1995) (citation omitted); *see also Lentell v. Merrill Lynch & Co.*, 396 F.3d 161, 172 (2d Cir. 2005). A plaintiff must also satisfy the heightened standards of the PSLRA and Federal Rule of Civil Procedure 9(b), which require that a plaintiff "state *with particularity* the circumstances constituting fraud" and establish that each defendant acted with "the required state of mind" to perpetuate such a fraud. *In re JP Morgan Auction Rate Sec. (ARS) Mkt. Litig.*, Nos. 10 MD 2157 (PGG), 09 Civ. 6199 (PGG), 2012 WL 1097821, at *8-9 (S.D.N.Y. Mar. 31, 2012) (Gardephe, J.) (emphasis added).

II. THE ALLEGEDLY OMITTED INFORMATION WAS DISCLOSED PRIOR TO AND AT THE BEGINNING OF THE PUTATIVE CLASS PERIOD

In January 2011, NI Group disclosed that it had provided "significant new information" Police regarding additional voicemail interception at *News of the World* and that an investigation was being reopened, four years after the sentencing of the "one reporter" previously believed to have been responsible. (Exs. C, E). Hundreds, if not thousands, of articles *prior to the start of the Class Period* reported the reopening of the investigation. (*See* Ex. S, containing citations to sample media articles) (*Id.*). Thus, by January 2011, the market knew, among other things, that: (i) NI Group had uncovered new evidence implicating more journalists in voicemail interception, (ii) *News of the World* fired an editor as a result, (iii) U.K. prosecutors expanded

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their interpretation as to what constituted illegal voicemail interception, and (iv) the police had vowed to conduct a "robust" investigation and to leave "no stone unturned." (*See* Exs. A-E, O-S).

Then on April 8, 2011, NI Group issued yet another press release reconfirming the discovery of further evidence of voicemail interception and expressing "genuine regret." (CAC ¶ 152). And, NI Group further explained that the investigation would be "on going" and that it was establishing a program to compensate justifiable claims "fairly and efficiently." (*Id.*). Thus, Plaintiffs' theory that the News Corp. Defendants perpetuated a fraud by deliberately concealing "until July 2011" further evidence of voicemail interception at *News of the World* is flatly contradicted by abundant public disclosures prior to, and in the beginning of, the putative Class Period. (CAC ¶¶ 107, 135, 174; Exs. A-J, O-S) *See Anschutz Corp.*, 690 F.3d at 109 (public disclosures vitiated 10(b) claim); *Wilson*, 671 F.3d at 132 (same); *In re Avon Prods., Inc. Sec. Litig.*, No. 05 Civ. 6803 (LAK)(MHD), 2009 WL 848017, at *24-25 (S.D.N.Y. Feb. 23, 2009) (no securities fraud given media publicity of alleged misconduct).[5]

Implicitly recognizing that NI Group's April 8 apology by its plain language disclosed the very information Plaintiffs allege was omitted, Plaintiffs nonetheless mischaracterize it as a "misstatement." (CAC ¶ 153). However, the text of the disclosure belies Plaintiffs' allegations because the April 8, 2011 press release did not "falsely perpetuate defendants' rogue reporter cover story." (*Id.*). Rather, this candid apology fully disclosed that:

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[5] Even if the Court were to ignore the hundreds of press reports in early 2011, NI Group's public apology was promptly made and therefore liability cannot arise given that disclosure was made within a "reasonable time." *In re Yahoo! Inc. Sec. Litig.*, 2012 WL 3282819, at *22-23 (no duty to correct; explaining that "'[p]rudent managers conduct inquiries rather than jump the gun with half-formed stories as soon as a problem comes to their attention'") (citation omitted). *See also Slayton v. Am. Express Co.*, 604 F.3d 758, 763-64, 774, 777 (2d Cir. 2010) (affirming dismissal; taking two months to "ascertain and disclose future losses" is "'both proper and lawful'") (citation omitted).

"It is now apparent that [NI Group's] previous inquiries failed to uncover important evidence." (CAC ¶ 152 (emphasis added); *see, e.g.*, Ex. U, "British Tabloid Accepts Blame in Cell Hacking, Graham Bowley, Jo Becker & Ravi Somaiya, *New York Times*, Apr. 9, 2011; Ex. W, containing citations to numerous media reports of the apology).[6] To the extent Plaintiffs are suggesting that NI Group's apology should have disclosed a more negative picture of the *News of the World* matter, a company is not obligated to "paint themselves in the most unflattering light possible." *See Solow v. Citigroup, Inc.*, No. 10 Civ. 2927(RWS), 2012 WL 1813277, at *4 (S.D.N.Y. May 18, 2012); *Ciresi v. Citicorp*, 782 F. Supp. 819, 823 (S.D.N.Y. 1991) ("[T]he law does not impose a duty to disclose uncharged, unadjudicated wrongdoing or mismanagement."), *aff'd*, 956 F.2d 1161 (2d Cir. 1992).

Plaintiffs' challenge to a handful of statements made during the Class Period also fails. For example, Plaintiffs allege that in March 2011, the News Corp. Defendants were allegedly "concealing" further undisclosed instances of voicemail interception at *News of the World*. (CAC ¶¶ 148-150). But, as Plaintiffs' own allegations and the disclosures upon which they rely make clear, just the opposite was true. The market and Plaintiffs knew, both prior to and continuously throughout the putative Class Period, of additional evidence of voicemail

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[6] Plaintiffs' "'naked assertion'" that the April 8 press release "falsely" stated that NI Group was committed to "ferreting out misconduct within its own ranks" (CAC ¶ 153) is conclusory and belied by Plaintiffs' own allegations (*see, e.g.*, CAC ¶¶ 13, 15, 76-77). *Teamsters Allied Benefit Funds*, 2010 WL 882883, at *8 (citation omitted). "[P]laintiffs must do more than say that the statements in the press releases were false and misleading; they must demonstrate with specificity why and how that is so." *Rombach v. Chang*, 355 F.3d 164, 174 (2d Cir. 2004). Similarly, Plaintiffs' allegation that NI Group had "misleadingly" suggested that "many of the hacking allegations were the result of politically-motivated attacks by persons unhappy with the editorial positions taken by Murdoch's papers in the U.K." (CAC ¶ 153) is neither stated nor suggested in the disclosure. *Teamsters Allied Benefit Funds*, 2010 WL 882883, at *9 (holding that plaintiffs do not have a "'license to base claims of fraud on speculation and conclusory allegations'") (citation omitted).

interception at *News of the World* and that an investigation would be ongoing. Plaintiffs conveniently ignore the widely publicized reopening of the investigation *prior to the Class Period* (Exs. A-F, O-T) – which the media described as "one of the most significant developments" since the 2007 investigation (Exs. C, O). In any event, the Complaint acknowledges that the allegedly concealed information was disclosed weeks later by NI Group's April 8, 2011 apology. (CAC ¶ 152). Thus, as a matter of law, Plaintiffs fail to state an omission claim. *See Fried v. Lehman Bros. Real Estate Assoc. III, L.P.*, No. 09 Civ. 9100 (BSJ), 2011 WL 1345097, at *8 (S.D.N.Y. Mar. 29, 2011) ("Where the allegedly omitted facts are disclosed to the market, there can be no omission for the purposes of a securities fraud claim."); *SRM Global Fund L.P. v. Countrywide Fin. Corp.*, No. 09 Civ. 5064 (RMB), 2010 WL 2473595, at *8 (S.D.N.Y. June 17, 2010), *aff'd*, 448 F. App'x 116 (2d Cir. 2011); *In re Progress Energy, Inc.*, 371 F. Supp. 2d 548, 552 (S.D.N.Y. 2005).

Indeed, NI Group's April 8 disclosure dispels Plaintiffs' theory that it was unknown until July that misconduct extended beyond a "rogue reporter." (CAC ¶¶ 7, 152-53). *See City of Monroe Emps' Ret. Sys. v. The Hartford Fin. Servs. Grp., Inc.*, No. 10 Civ. 2835 (NRB), 2011 WL 4357368, at *17 (S.D.N.Y. Sept. 19, 2011) ("If defendants were willingly engaged in a substantial fraud . . ., it would be extremely illogical for them to disclose the fraudulent numbers at the end of the year."); *Starr v. Georgeson S'holder, Inc.*, 287 F. Supp. 2d 410, 413 (S.D.N.Y. 2003) ("'[S]ecurities laws require disclosure of information *that is not otherwise in the public domain* . . . .'") (citations omitted) (emphasis in original), *aff'd*, 412 F.3d 103 (2d Cir. 2005).

Moreover, even though Plaintiffs cannot state a securities fraud claim because the purportedly omitted information was in fact disclosed, Plaintiffs' claim still fails when viewed

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through the lens of a "truth on the market" defense. The Court has held on several occasions that this defense can be grounds for granting a motion to dismiss. *See, e.g.*, *White v. H & R Block, Inc.*, No. 02 Civ. 8965(MBM), 2004 WL 1698628, at *12 (S.D.N.Y. July 28, 2004) (citing *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 167 (2d Cir. 2000)).[7] *See also, e.g.*, *In re Bank of Am. Corp. Sec., Derivative, & Emp. Ret. Income Sec. Act (ERISA) Litig.*, 2012 WL 1353523, at *8; *see also In re Pfizer, Inc. Sec. Litig.*, 538 F. Supp. 2d 621, 632-33 (S.D.N.Y. 2008); *In re Yukos Oil*, 2006 WL 3026024, at *22. Here, it is indisputable that the market was inundated with media reports and news articles, including press releases from NI Group and *News of the World*, discussing the allegedly concealed misconduct. *See Garber*, 347 F. App'x at 668-69 (no materiality where information was already in public domain as it was disclosed in three newspaper articles); *In re Yukos Oil*, 2006 WL 3026024, at *22 (granting dismissal where two major international newspapers reported on allegedly concealed information and therefore no reasonable investor could have been misled). Plaintiffs concede as much. (CAC ¶ 168(e) (alleging "developments in the phone hacking scandal" were "widely reported by the worldwide media")). Thus, as the Court put it, Plaintiffs cannot state a securities fraud claim when "*the truth was all over the market.*" *White*, 2004 WL 1698628, at *12 (emphasis added).[8]

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[7] While in *Ganino v. Citizens Utilities Co.*, 228 F.3d at 167, the Second Circuit held that the truth-on-the-market defense "is rarely an appropriate basis for dismissing a § 10(b) complaint for failure to plead materiality," in *White v. H & R Block, Inc.*, this court explained that "rarely appropriate" is not the same as "never appropriate." 2004 WL 1698628, at *12. Here, the Court need not reach the "truth on the market" defense as Plaintiffs do not, nor could they, state an omissions claim given that the allegedly omitted information was publicly disclosed in the market. Nonetheless, to the extent the Court considers this defense, this case falls within the rare exception discussed in *Ganino* and applied in *White* and the cases cited above.

[8] In *White v. H&R Bock, Inc.*, the Court explained that plaintiffs cannot have it both ways. Plaintiffs cannot claim they are entitled to a presumption that the stock price reflected defendants' purported misstatements, but not other statements made by defendants and

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III. THE ISOLATED AFFIRMATIVE STATEMENTS CHALLENGED DURING THE PUTATIVE CLASS PERIOD ARE ALSO NOT ACTIONABLE

Additionally, Plaintiffs cherry-pick three random statements allegedly made after the April 8 apology, but none of them support a securities fraud claim. Plaintiffs point to (i) an interview by television talk show host Charlie Rose with James Murdoch; (ii) a letter from Rebekah Brooks regarding a 2003 comment she made to the Home Affairs Committee and (iii) News Corp.'s revised 2011 Standards of Conduct. (CAC ¶¶ 154-156, 160-166). Plaintiffs mischaracterize the contents of these statements and argue that – not individually – but allegedly "[t]aken together," they were somehow false and misleading. (CAC ¶ 157). Plaintiffs selectively quote from portions of James Murdoch's April 8, 2011 interview with Charlie Rose. For example, in answering informal questions at a seminar, James Murdoch said that it felt like the "world [was] collapsing" and that, while "you talk about a reputation crisis," News Corp. was "doing really well." (CAC ¶ 154). Plaintiffs identify nothing to suggest that he was perpetuating a fraud or that he did not believe that News Corp.'s business was "doing really well." (*Id.*). *See Solow*, 2012 WL 1813277, at *4 (granting motion to dismiss securities fraud claims and holding that defendant was under no duty to direct conclusory accusations at itself or to characterize company's behavior in a pejorative manner).

With respect to an April 11, 2011 letter that Rebekah Brooks wrote to the Home Affairs Committee, Plaintiffs do not allege an actionable misstatement. *First*, there are no allegations that this letter was made on behalf of, or authorized by, News Corp. *See Janus*, 131 S. Ct. at 2302. In fact, Plaintiffs concede that Ms. Brooks wrote this letter solely to clarify a

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numerous newspaper articles. 2004 WL 1698628, at *12 (market price of a stock is presumed to reflect *all* publicly available information).

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comment that she made to a Parliamentary committee eight years earlier in 2003, when she was editor of *The Sun*. (CAC ¶ 156). *Second*, nowhere in this letter does she discuss voicemail interception at *News of the World*. (CAC ¶ 156; Ex. W). *Third*, Ms. Brooks' letter does not constitute a "statement" actionable under the securities laws. As Plaintiffs acknowledge, this was a letter written to a member of a United Kingdom government committee. (CAC ¶ 155). It was not directed to investors of the parent, News Corp., and certainly there are no allegations in the Complaint demonstrating that the letter was intended to commit securities fraud on News Corp. investors. *See, e.g.*, *Lindblom v. Mobile Telecomms. Techs. Corp.*, 985 F. Supp. 161, 163 (D.D.C. 1997). Indeed, to hold this letter actionable would extend the reach of the securities laws far beyond that which was intended by Congress and would subject anyone to a securities fraud claim for any comment made anywhere in the world regardless of its intended purpose no matter how remote from transactions in United States' securities.

Lastly, News Corp.'s revision in May 2011 of its Standards of Conduct does not as a matter of law support a securities fraud claim. (CAC ¶¶ 160-166). Neither the existence of a code of conduct nor the violation of such code could alone support a securities fraud claim. *See, e.g.*, *City of Roseville Emps. Ret. Sys. v. Horizon Lines, Inc.*, 686 F. Supp. 2d 404, 415 (D. Del. 2009) (courts have "soundly rejected" the notion that issuance of a code of ethics could import Section 10(b) liability), *aff'd*, 442 F. App'x 672 (3d Cir. 2011); *Andropolis v. Red Robin Gourmet Burgers, Inc.*, 505 F. Supp. 2d 662, 685-86 (D. Col. 2007). In particular, courts have held that a company's code of conduct "is [not] equivalent to a representation that the code is not being violated" and therefore cannot be considered false or misleading. *Horizon Lines, Inc.*, 686 F. Supp. 2d at 415; *see also Andropolis*, 505 F. Supp. 2d at 686 (codes of conduct are "inherently aspirational" and cannot be a representation that all officers and directors are following them).

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"[I]t simply cannot be that every time a violation of that code occurs, a company is liable under federal law for having chosen to adopt the code at all, particularly when the adoption of such a code is effectively mandatory" under SEC rules. *Andropolis*, 505 F. Supp. 2d at 686; *Horizon Lines, Inc.*, 686 F. Supp. 2d at 415. Moreover, Plaintiffs' contention that News Corp.'s Standards of Conduct were a representation that no wrongdoing occurred is inconsistent with the standards themselves, which provide guidelines and procedures for reporting wrongdoing. (CAC ¶¶ 160-166; Ex. X). Furthermore, contrary to Plaintiffs' assertions that the revision evinced an intent to commit securities fraud, the more compelling inference is that the revised code demonstrates that News Corp. was proactively and responsibly reacting to the events as they unfolded and was reaffirming that [t]he "Company expects that every employee, at every level, will strive to conduct himself or herself with integrity." (Ex. X, at 49).[9]

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[9] For these same reasons, Plaintiffs' challenges to News Corp.'s earlier 2006 Standards of Conduct are not actionable. (CAC ¶¶ 82-88). *See Horizon Lines, Inc.*, 686 F. Supp. 2d at 415 (holding that neither the publishing of a code of conduct nor the violation of such code could alone support a securities fraud claim); *Andropolis*, 505 F. Supp. 2d at 686. Likewise, Plaintiffs' challenges to other pre-Class Period statements, including R. Murdoch's statements were he essentially reiterated News Corp.'s Standards Of Business Conduct (CAC ¶¶ 90, 131-133), are not actionable. For example, R. Murdoch allegedly said prior to the Class Period that (i) "illegal taping by a private investigator . . . is not part of our culture anywhere in the world. Least of all in Britain." (CAC ¶ 90); (ii) "[w]e have very, very strict rules. . . . If any evidence comes to light, we would take immediate action as we did before" (CAC ¶ 131); and (iii) "[w]e will vigorously pursue the truth – and we will not tolerate wrongdoing." (CAC ¶ 133). These statements were all true when made and essentially track News Corp.'s established policies prohibiting journalist misconduct. *See In re IBM Corporate Sec. Litig.*, 163 F.3d at 109 (no duty to correct if statement not false when made). In any event, because these statements are plainly aspirational, R. Murdoch had no duty to correct them. *See ECA & Local 134 IBEW Joint Pension Trust of Chic.*, 553 F.3d at 205-06 (affirming dismissal; finding statements regarding company's "highly disciplined risk management and its standard-setting reputation for integrity" were non-actionable "puffery" under the law).

IV. THE PRE-CLASS PERIOD STATEMENTS ARE NOT ACTIONABLE

A. There Is No Duty To Correct The Alleged Pre-Class Period Statements

Despite the fact that the alleged putative Class Period in this action consists of five months in 2011 (CAC ¶ 1), Plaintiffs rest half their Complaint on statements allegedly made as much as *five years* ago. (CAC ¶¶ 81-134). Plaintiffs allege that these pre-Class Period statements were knowingly false *before* the putative Class Period (CAC ¶ 138) and that they "remained alive" indefinitely as to be actionable under some endless duty to correct. (CAC at p. 31). Plaintiffs are wrong as a matter of law.

As the Second Circuit has made clear, a "'defendant . . . is liable only for those statements made during the class period.'" *Lattanzio*, 476 F.3d at 153 (quoting *In re IBM Corporate Sec. Litig.*, 163 F.3d at 107). In *Lattanzio*, the Second Circuit affirmed dismissal of securities claims based on challenges to statements made three months before the start of the class period – much less where, as here, Plaintiffs challenge statements made *years prior* to the Class Period (*see, e.g.*, CAC ¶¶ 81-134). *See id.* at 153; *see also In re IBM Corporate Sec. Litig.*, 163 F.3d at 107 (defendant not liable for alleged misstatement when made one day prior to class period). The Second Circuit also rejected the plaintiffs' attempt to "surmount this hurdle" by arguing that the defendant had a "duty to correct" alleged misstatements that "extended into the Class Period." *Lattanzio*, 476 F.3d at 153-54. The Second Circuit explained that, even assuming there was a "duty to correct," such duty arose when the defendant learned that its prior statement was untrue. *Id.* The Second Circuit held that, where, as is the case here, a plaintiff alleges that the defendants became aware of errors *prior to the Class Period* (CAC ¶¶ 4, 9, 11, 16, 43, 77, 80-81, 137-140, 142), such cannot as a matter of law constitute any actionable securities claim during the Class Period. *See Lattanzio*, 476 F.3d at 154 (affirming dismissal and holding that a

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duty to correct claim could only arise (i) if and when a defendant becomes aware that his prior statement was false and (ii) if such occurred *within the alleged class period*).

As the Second Circuit explained, to hold otherwise would permit a plaintiff to allege that any pre-class period knowing misstatement which remained uncorrected would "endless[ly]" be actionable under an omission theory – thereby circumventing the settled rule that a defendant is liable "only for those statements made during the class period." *Lattanzio*, 476 F.3d at 154 (explaining if the court adopted plaintiff's duty to correct argument "little would be left" of the "limitation" that only statements made during the class period are actionable) (citing *In re The Warnaco Grp., Inc. Sec. Litig.*, 388 F. Supp. 2d 307, 315 (S.D.N.Y. 2005) (recognizing that if the court were to adopt plaintiffs' endless breach argument, "all knowing misstatements made before the class period, which remain uncorrected, would be actionable within the class period on an omission theory")); *see also In re Openwave Sys. Sec. Litig.*, 528 F. Supp. 2d 236, 254 (S.D.N.Y. 2007) (a plaintiff cannot hold defendants liable on the theory that they are in "'endless breach'" of some "nebulous 'duty to correct'") (citations omitted). For this reason alone, Plaintiffs' claims premised on statements made before the Class Period are inactionable as a matter of law.[10]

B. The News Corp. Defendants and NI Group Had No Duty To Correct Statements They Did Not Make

A defendant has no duty to correct statements it did not make. *See Janus*, 131 S. Ct. at 2302; *In re Bristol-Myers Squibb Sec. Litig.*, 312 F. Supp. 2d 549, 560 (S.D.N.Y. 2004) ("A party has no duty to correct statements not attributable to it."). *See also Ho v. Duoyuan*

[10] Plaintiffs perhaps contrive this non-actionable "duty to correct" theory because they seek to challenge statements made years prior to the Class Period that would otherwise be barred by the statute of limitations. *See Cohain v. Klimley*, No. Civ 10584(PGG), 2010 WL 3701362, at *7 (S.D.N.Y. Sept. 20, 2010) (Gardephe, J.).

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Global Water, Inc., No. 10 Civ. 7233 (GBD), 2012 WL 3647043, at *16 n.13, 19-20 (S.D.N.Y. Aug. 24, 2012) (parent umbrella not liable for member's statements and individuals not liable for failing to correct statements made by others).

Nonetheless, Plaintiffs seek to hold the News Corp. Defendants liable for failing to correct pre-Class Period statements, nearly all of which *they did not make*. For example, Plaintiffs point to (i) editorials in *The Sun* and *News of the World*, (ii) public testimony or communications by subsidiary employees directed at Parliament and (iii) press releases published by News Corp. subsidiaries. (*See, e.g.*, CAC ¶¶ 92-96, 100-118, 120, 122-125, 127, 137(c)-(h)). However, the fact remains that these pre-Class Period statements were *not* made by News Corp. or employees of News Corp. (*Id.*). *See Janus*, 131 S. Ct. at 2303; *Ho*, 2012 WL 3647043, at *16 n.13 (non-"maker" has no duty to correct because such would be "in tension with *Janus*"), at *19-20 (umbrella corporation not liable under § 10(b) for influence over member company statements); *see also Fulton Cnty. Emps. Ret. Sys. v. MGIC Inv. Corp.*, 675 F.3d 1047, 1051-52 (7th Cir. 2012) (Easterbrook, C.J.) (rejecting plaintiff's claim that entity had duty to correct statement made by employees of company in which it held interest; noting that ruling otherwise would be contrary to *Janus*).[11] Plaintiffs cannot evade this controlling authority by deliberately misidentifying the author of the challenged pre-Class Period statements – *i.e.*, alleging that "News Corp." made certain statements that were plainly made by subsidiaries or

[11] *See also United States v. Schiff*, 602 F.3d 152, 165-68 (3d Cir. 2010) (officer had no duty to rectify statements of another officer as liability would be limitless); *Raab v. Gen. Physics Corp.*, 4 F.3d 286, 288 (4th Cir. 1993) ("The securities laws . . . do not require the company to police statements made by third parties for inaccuracies, even if the third party attributes the statement to [the company].").

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employees of subsidiaries, *not* by any of the News Corp. Defendants.[12] *See In re JP Morgan*, 2012 WL 1097821, at *12 (rejecting plaintiffs' theory when contradicted by data provided by plaintiff); *Rapoport v. Asia Elecs. Holding Co.*, 88 F. Supp. 2d 179, 184 (S.D.N.Y. 2000) ("If [incorporated] documents contradict the allegations of the . . . complaint, the documents control . . . ."). NI Group also cannot face securities fraud liability for pre-Class Period statements NI Group or any of its officers did not make. (*See, e.g.*, CAC ¶ 137(f) (testimony by employees of subsidiary NGN); *Id.* ¶ 137(g) (testimony by former officer of NI Group); *id.* ¶ 137 (h) (letter by *News of the World* editor)). *See also Janus*, 131 S. Ct. at 2303; *Ho*, 2012 WL 3647043, at *16 n.13; *Lindblom*, 985 F. Supp. at 163 ("A wholly owned corporate subsidiary of a corporate parent is not liable for the . . . statements of its parent corporation.").

V. PLAINTIFFS FAIL TO PLEAD PARTICULARIZED FACTS OF SCIENTER

Other infirmities aside, Plaintiffs' Complaint fails adequately to plead scienter – *i.e.*, "facts that give rise to a strong inference of fraudulent intent" by the News Corp. Defendants or NI Group to commit securities fraud. *Teamsters*, 2010 WL 882883, at *9. "In the Second Circuit, a 'strong inference' of scienter 'may be established either (a) by alleging facts to show that defendants had both motive and opportunity to commit fraud, or (b) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness.'" *Id.* (citation omitted). Under either approach, Plaintiffs must plead a strong inference of scienter as to *each* defendant that is "'cogent and at least as compelling as any opposing inference'" of non-

[12] Plaintiffs misidentify the makers of statements repeatedly throughout their Complaint. (*See, e.g.*, CAC ¶ 98 (misquoting *Guardian* article by stating that "News Corp." paid settlement money when paying entity was NGN); CAC ¶¶ 100-101, 106 (misidentifying press release as issued by "News Corp." when they were issued by NI Group); CAC ¶¶ 127-28 (mischaracterizing letter from an employee of a subsidiary as being "News Corp.'s" response); CAC ¶ 137(c) (incorrectly referring to Clive Goodman as a "News Corp." employee when he was employed by a subsidiary)).

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fraudulent intent. *Id.* (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 324 (2007)).

Plaintiffs do not allege that any of the Defendants engaged in any News Corp. stock sales or other suspicious trading activity. This failure alone raises a *non-culpable* inference that undercuts scienter. *See In re Sec. Capital Assurance, Ltd. Sec. Litig.*, 729 F. Supp. 2d 569, 594 (S.D.N.Y. 2010) ("That Defendants . . . did not sell their stock prior to a price drop 'suggest[s] the absence of any nefarious motives.'") (citation omitted). Indeed, "nothing in the Complaint indicates 'that [D]efendants benefited in some concrete and personal way from the purported fraud." *See Teamsters*, 2010 WL 882883, at *9.

Instead, Plaintiffs rely on generic motive allegations that could be ascribed to any corporate officer or for-profit enterprise. Plaintiffs allege that the News Corp. Defendants were motivated to keep their discovery of new information about *News of the World* "under wraps" so as to not interfere with regulatory approval of its proposal to acquire U.K. broadcasting company, British Sky Broadcasting Group plc ("BSkyB"). (CAC ¶ 147). Such generic motive allegations "fall squarely within the category deemed insufficient [by the Second Circuit]." *Teamsters*, 2010 WL 882883, at *9 (citing *Kalnit v. Eichler*, 264 F.3d 131, 139, 141 (2d Cir. 2001) (holding that "the desire to achieve the most lucrative acquisition proposal can be attributed to virtually every company seeking to be acquired" and does "not establish scienter")); *see also Chill v. Gen. Elec. Co.*, 101 F.3d 263, 268 (2d Cir. 1996) (parent company's "motive to maintain the appearance of corporate profitability, or of the success of an investment, will naturally involve benefit to a corporation, but does not 'entail concrete benefits'"); *Tamar v. Mind C.T.I., LTD.*, 723 F. Supp. 2d 546, 555 (S.D.N.Y. 2010) ("The motives ascribed by Plaintiff . . . [to] pursue strategic acquisitions . . . have been routinely rejected by courts within the Second Circuit as insufficient

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to establish scienter."). Such allegations are routinely rejected as inadequate to raise a strong inference of scienter and they are no more compelling here. *Id.* Furthermore, as the Second Circuit explained in *Kalnit*, seeking to achieve a successful merger proposal "does not demonstrate [D]efendants' intent to benefit themselves at the expense of the shareholders because the shareholders themselves would benefit from a superior transaction." 264 F.3d at 140.

In addition, Plaintiffs' theory is not even plausible, let alone cogent or compelling. The notion that News Corp. was deliberately keeping evidence about *News of the World*'s interception "under wraps" is belied by the widely publicized reopening of the police investigation in January 2011, and the public apologies in April 2011, both in the midst of News Corp.'s BSkyB non-binding proposal. (CAC ¶¶ 147, 152; Exs. A-J, O-V). Had Defendants intended to "deliberate[ly] cover up" this information, NI Group would not have searched for new evidence, voluntarily turned it over to authorities, reopened the investigation and then publicly disclosed these efforts *prior* to receiving final regulatory approval of the BSkyB proposal. (CAC ¶¶ 152, 174; Exs. A-C, H-J). NI Group's disclosures and the re-opening of the investigations also further undercut any inference of scienter, as "[i]t is hard to see what benefits accrue from a short respite from an inevitable day of reckoning." *Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1130 (2d Cir. 1994).[13]

Moreover, where, as here, alleged misconduct occurred at a newspaper owned by a subsidiary (which was several layers down the corporate chain), a plaintiff faces an even

[13] To the extent Plaintiffs are arguing that Rupert or James Murdoch were motivated to engage in fraud to protect their professional reputations, the Court has held that such allegations are "at the very least, strained." *In re Loral Space & Commc'ns Ltd. Sec. Litig.*, No. 01 Civ. 4388(JGK), 2004 WL 376442, at *7 (S.D.N.Y. Feb. 27, 2004) (rejecting allegation because "[i]t would be difficult to find a corporate officer who does not wish to protect his or her professional reputation").

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greater burden of alleging scienter as to the parent company and its officers. Because Plaintiffs fail to allege particularized facts that anyone at the parent company had undisclosed knowledge about voicemail interception at *News of the World*,[14] they do not and cannot plead scienter against News Corp. *See Frederick v. Mechel OAO*, 475 F. App'x 353, 356 (2d Cir. 2012); *Chill*, 101 F.3d at 269; *In re Baesa Sec. Litig.,* 969 F. Supp. 238, 242-43 (S.D.N.Y. 1997); *see also Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital Inc.*, 531 F.3d 190, 197 (2d Cir. 2008) (no corporate scienter given that no person at company who was "responsible for the statements made to investors" had requisite scienter).

There is a "significant burden" on a plaintiff seeking to state a fraud claim against a parent company for misconduct that occurred at one of its subsidiaries. *Chill*, 101 F.3d at 269-70. As the Second Circuit has held, "[f]raud cannot be inferred simply because [the parent] might have been . . . concerned about the activity at [the subsidiary]." *Id.*; *see also id.* at 271 ("[I]ntentional misconduct or recklessness cannot be presumed from a parent's reliance on its subsidiary's internal controls."). Here, Plaintiffs fail to plead particularized facts that News Corp. acted recklessly or with an intent to defraud its investors by failing to disclose conduct that

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[14] As to Rupert Murdoch and James Murdoch, there are no particularized facts establishing a strong inference that they had any involvement, or possessed material undisclosed information, regarding the alleged misconduct at *News of the World* that was not otherwise disclosed. Any information that the Murdochs allegedly possessed was either admittedly already in the public domain or promptly disclosed upon receipt. (*See, e.g.*, CAC ¶¶ 57-65, 70, 98 138(f)). *See Borochoff*, 2008 WL 2073421, at *8 (holding that defendants' disclosure of information "rebuts any intent to defraud by concealing information"), *aff'd sub nom. Avon Pension Fund v. GlaxoSmithKline PLC*, 343 F. App'x 671 (2d. Cir. 2009); *White*, 2004 WL 1698628, at *12 (no scienter given the wealth of public information on allegedly concealed conduct). Moreover, there is tellingly not a single "confidential witness," let alone one that would suggest that News Corp. or the Murdochs were aware of information contrary to any of News Corp's disclosures. *See City of Monroe Emps.' Ret. Sys.*, 2011 WL 4357368, at *1 (dismissing action; noting that "plaintiffs d[id] not rely on a single confidential witness" to support their allegations).

occurred at a newspaper that was owned by a foreign subsidiary. *See In re Baesa Sec. Litig.*, 969 F. Supp. at 243 (dismissing 10(b) claim against parent because "a subsidiary's fraud cannot automatically be imputed to its corporate parent" and a parent's "mere knowledge of [subsidiary's] mismanagement" does not create a sufficient inference of parent's knowledge of subsidiary's alleged wrongdoing).[15]

Furthermore, Plaintiffs' generalized allegation that the News Corp. Defendants had "close relationships" with "participants in the illegal conduct" and that they "conceal[ed] their alleged misconduct in order to avoid criminal and civil liability for their actions" (CAC ¶ 139; *see also, e.g.*, CAC ¶¶ 32-34) is conclusory and entirely unfounded. *See, e.g.*, *Campo v. Sears Holdings Corp.*, 371 F. App'x 212, 216 n.3 (2d Cir. 2010) (rejecting as "deficient" conclusory allegation that defendants' motive was to "prevent [their] earlier machinations from coming to light"); *Kalnit*, 264 F.3d at 140 (characterizing an "avoidance of personal liability motive" as "too speculative and conclusory to support scienter"); *City of Philadelphia v. Flemings Cos.*, 264 F.3d 1245, 1269-70 (10th Cir. 2001) (holding that desire to avoid future litigation was an incognizable "shared business motive" generic to all corporations).

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[15] *See also Horizon Lines, Inc.*, 442 F. App'x at 677 (parent not liable for securities fraud where direct subsidiary engaged in misconduct because those who made statements on behalf of parent did not have scienter as to subsidiary misdconduct); *Globis Capital Partners, L.P. v. Stonepath Grp., Inc.*, 241 F. App'x 832, 835-37 (3d Cir. 2007) (failure to plead parent's scienter where allegations of recklessness amounted to mere corporate mismanagement of subsidiary, which does not support a securities fraud claim); *In re Alpharma Sec. Litig.*, 372 F.3d 137, 149-50 (3d Cir. 2004) (complaint failed to allege that senior management who made statements to securities market were aware of wrongdoing in Brazilian division); *In re Bausch & Lomb, Inc. Sec. Litig.*, 592 F. Supp. 2d 323, 341 (W.D.N.Y. 2008) (dismissing action; rejecting argument that parent "must have known" in advance about its foreign subsidiary's misconduct that was later uncovered due to the investigation performed by the parent); *Pathfinder Mgmt., Inc. v. Mayne Pharma, Inc.*, No. 06-2204 (WJM), 2009 WL 4250061, at *9 (D.N.J. Nov. 25, 2009) (parent companies not liable for securities fraud based on subsidiary employee misconduct).

Plaintiffs also do not sufficiently allege scienter against NI Group, which was the immediate parent to *News of the World's* publisher, NGN. *See Chill*, 101 F.3d at 269. There are no allegations in the Complaint whatsoever demonstrating that NI Group, or its officers, had a compelling motive to commit securities fraud on stockholders of its parent, News Corp.[16] *See In re Citigroup, Inc. Sec. Litig.*, 330 F. Supp. 2d 367, 377 (S.D.N.Y. 2004) ("[A] plaintiff must allege deceptive or manipulative conduct ***in connection with transactions in the securities the plaintiff purchased or sold."***) (emphasis added), *aff'd*, 165 F. App'x 928 (2d Cir. 2006); *see also Oughtred v. E*Trade Fin. Corp.*, No. 08 Civ. 3295 (SHS), 2011 WL 1210198, at *12 (S.D.N.Y. Mar. 31, 2011); *Pugh v. Tribune Co.*, 521 F.3d 686, 698 (7th Cir. 2008) (no scienter as to subsidiary newspaper employees where plaintiffs did not allege that subsidiary employees were motivated to commit securities fraud to benefit the parent company); *Lindblom*, 985 F. Supp. at 163.[17]

Moreover, far from suggesting an intent to commit securities fraud, the non-culpable inferences from the Complaint are that as NI Group discovered additional voicemail interception in late 2010 and thereafter, it publicly disclosed that evidence, voluntarily turned it over to the Police and cooperated with authorities. (CAC ¶¶ 77, 152). *See Tellabs, Inc.*, 551 U.S.

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[16] Plaintiffs do not plead particularized facts of scienter against Les Hinton or Rebekah Brooks, who were former officers of NI Group. As to Mr. Hinton, he could not have scienter during the Class Period, as Plaintiffs concede that he left NI Group three years *prior* to the Class Period in January 2008. (CAC ¶ 27). With respect to Ms. Brooks, there are no particularized allegations that the statement she made during the Class Period was knowingly false or that she had any motive to commit securities fraud on News Corp. investors.

[17] NI Group is a private wholly owned subsidiary with no public stock. (CAC ¶ 24). It cannot face securities fraud liability for making, or failing to correct, statements that were not made in connection with or intended to deceive investors in securities of its *parent, News Corp. See Lindblom*, 985 F. Supp. at 163; *see also LaSala v. Bank of Cyprus Pub. Co.*, 510 F. Supp. 2d 246, 276 (S.D.N.Y. 2007) (holding that "any connection to securities [was] simply too attenuated"); *Hemming v. Alfin Fragrances, Inc.*, 690 F. Supp. 239, 244-45 (S.D.N.Y. 1988).

at 326; *In re JP Morgan*, 2012 WL 1097821, at *14 ("Because Plaintiff has not pled facts demonstrating 'corresponding fraudulent intent,' his allegations that JP Morgan failed to comply with industry standards are insufficient to establish scienter.") (citation omitted). Moreover, NI Group throughout made public disclosures about its continuing investigations. *See Borochoff*, 2008 WL 2073421, at *8 (no intent to defraud if information was disclosed); *see also In re PXRE Grp., Ltd., Sec. Litig.*, 600 F. Supp. 2d 510, 533-34 (S.D.N.Y. 2009) (holding that "[p]laintiff's inference of scienter is further belied by . . . Defendants' willingness to issue a steady stream of press releases"), *aff'd sub nom. Condra v. PXRE Grp., Ltd.*, 357 F. App'x 393 (2d Cir. 2009). Furthermore, as the Second Circuit has explained, investigations launched upon discovery of misconduct are "a prudent course of action that weaken[] rather than strengthen[] an inference of scienter." *Slayton v. Am. Express Co.*, 604 F.3d 758, 777 (2d Cir. 2010).

Pugh v. Tribune Co., 521 F.3d 686 (7th Cir. 2008), is squarely on point. In that case, plaintiff stockholders brought a putative securities class action against Tribune Company, its officers and employees of its subsidiary newspapers, *Newsday* and *Hoy*. *Id.* at 690-91. The action arose out of the fraudulent misconduct by the newspapers' employees of deliberately overstating their circulation figures to charge higher advertising rates. *Id.* To effectuate the fraud, employees at the subsidiary newspapers employed such schemes as preparing false affidavits, directing subordinates to pay distributors for bogus deliveries of newspapers and delivering newspapers to people who had not paid for them. *Id.* Criminal charges were brought against several of the newspaper employees and many pled guilty to the fraud. *Id.* at 691 n.1.

The Seventh Circuit affirmed dismissal of the action with prejudice despite the fact that several of the newspapers pled guilty to serious criminal fraud, because the plaintiffs had not pled *securities fraud*. *Id.* at 702. Specifically, the Seventh Circuit found that the

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plaintiffs had not pled a strong inference of scienter against Tribune and its officers given that the Tribune (i) commenced an investigation into the alleged fraud, and (ii) as the investigation continued and more information became available, it disclosed it to the public. *Id.* at 695. According to the Seventh Circuit, "[t]his is exactly what they should have done." *Id.* The Seventh Circuit also found that the plaintiffs failed to plead scienter against the subsidiary employees as there were no particularized facts that these employees intended to commit securities fraud on the parent's investors. *Id.* at 696-97. *See also, e.g.*, *Horizon Lines, Inc.*, 686 F. Supp. 2d at 425-27 (dismissing securities action despite allegations that subsidiary employees engaged in an illegal rate-fixing scheme because such criminal misconduct did not equate to securities fraud), *aff'd*, 442 F. App'x at 675.

VI. CLAIMS OF MISMANAGEMENT DO NOT STATE A SECURITIES FRAUD CLAIM

Even if Plaintiffs disagree about how the misconduct at *News of the World* was handled, their claims sound in mismanagement, which does not as a matter of law state a securities fraud claim. (*See, e.g.*, CAC ¶ 4 ("[D]efendants failed to exert their control to prevent the activities from occurring, continuing or being publicly concealed."); *id.* ¶ 80 (alleging "failings of corporate governance")). It is well-settled that a plaintiff cannot bootstrap mismanagement claims into a federal securities law action. *See Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 477 (1977) (explaining that Congress did not intend to bring instances of corporate mismanagement within the scope of § 10(b)); *In re Citigroup*, 330 F. Supp. 2d at 375 ("[A]llegations of mismanagement, even where a plaintiff claims that it would not have invested in an entity had it known of the management issues, are insufficient to support a securities fraud claim.").

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VII. PLAINTIFFS CANNOT PLEAD TRANSACTION CAUSATION

Plaintiffs' claims should also be dismissed for the separate and independent reason that they fail to adequately allege transaction causation. The Second Circuit has explained that transaction causation is "akin to reliance" and requires a plaintiff to plead that "'but for the claimed misrepresentations or omissions, the plaintiff would not have entered into the detrimental securities transaction.'" *Lentell*, 396 F.3d at 172 (citation omitted). Here, however, as discussed *infra*, the putative Class members did not purchase News Corp. stock until well *after* the facts which Plaintiffs allege were concealed were, in fact, revealed publicly. Therefore, Plaintiffs cannot plead transaction causation. *See, e.g.*, *E.F. Hutton Grp., Inc.*, 991 F.2d at 1032 (holding that as a matter of law "[a]n investor may not justifiably rely on a misrepresentation if, through minimal diligence, the investor should have discovered the truth"); *see also City of Pontiac Gen. Emps Ret. Sys.*, 637 F.3d at 176 (observing reliance and causational problems where facts came to light prior to purchase).

VIII. PLAINTIFFS FAIL TO STATE A SECTION 20(a) CLAIM

"Because Plaintiff's Section 10(b) claim must be dismissed," the Section 20(a) claim asserted against the same News Corp. Defendants and NI Group should "likewise be dismissed." *Teamsters*, 2010 WL 882883, at *11; *In re JP Morgan*, 2012 WL 1097821, at *17. Furthermore, for many of the same reasons addressed above, Plaintiffs have not pled any of the other required elements of a Section 20(a) claim, including (i) actual control by each defendant and (ii) controlling person's culpable participation in the primary violation. *See In re Yukos Oil*, 2006 WL 3026024, at *23 (no control person liability without showing that the controlling person was in some meaningful sense a culpable participant in the fraud); *see also In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 3288 (DLC), 2004 WL 1097786, *3 (S.D.N.Y. May 18, 2004) (parent/subsidiary relationship not a sufficient basis alone to infer control).

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IX. NI GROUP SHOULD BE DISMISSED FROM THE ACTION DUE TO LACK OF PERSONAL JURISDICTION

Plaintiffs have failed to plead facts sufficient to establish personal jurisdiction over NI Group, a private United Kingdom corporation. "On a motion to dismiss pursuant to Rule 12(b)(2), plaintiffs bear the burden of establishing the court's jurisdiction over the defendants." *In re Rhodia S.A. Sec. Litig.*, 531 F. Supp. 2d 527, 542 (S.D.N.Y. 2007). To satisfy this burden, a "'plaintiff must plead facts which, if true, are sufficient in themselves to establish jurisdiction.'" *Tamam*, 677 F. Supp. 2d at 725 (holding that the court need not "draw 'argumentative inferences' in the plaintiff's favor" and "conclusory non-fact-specific jurisdictional allegations" will not establish a *prima facie* showing of jurisdiction) (citations omitted). Specifically, a plaintiff must establish that the defendant has sufficient "minimum contacts" to comport with due process such that the defendant could foresee being haled into the forum state. *See In re Rhodia S.A. Sec. Litig.*, 531 F. Supp. 2d at 542; *see also Tamam*, 677 F. Supp. 2d at 731 (explaining that a plaintiff must establish that the defendant had sufficient contacts with the forum such that "'maintenance of the suit does not offend traditional notions of fair play and substantial justice'") (citation omitted); *Bayer Schera Pharma AG v. Sandoz, Inc.*, No. 08 Civ. 03710 (PGG), 2009 WL 440381, at *6 (S.D.N.Y. Feb. 18, 2009) (Gardephe, J.) (holding that court lacked personal jurisdiction over party).[18]

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[18] "Prior to discovery, a plaintiff challenged by a jurisdiction testing motion may defeat the motion by pleading in good faith, *see* Fed. R. Civ. P. 11, legally sufficient allegations of jurisdiction." *Ball v. Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990). At this stage of litigation and because the burden is on Plaintiffs to demonstrate personal jurisdiction, NI Group does not need to submit an affidavit with respect to lack of contacts with the United States; nor is it otherwise requesting an evidentiary hearing as it is clear that the allegations do not suffice to establish a *prima facie* showing of personal jurisdiction. *See, e.g.*, *Credit Lyonnais Sec. (USA), Inc. v. Alcantara*, 183 F.3d 151, 153 (2d Cir. 1999) ("[T]he court need only determine whether the facts alleged by the plaintiff, if true, are sufficient to establish [personal] jurisdiction; no evidentiary hearing or factual determination is necessary *(cont'd)*

Here, the Complaint fails to allege facts establishing that NI Group has sufficient minimum contacts within the forum state to warrant it being haled into this court. Instead, the Complaint acknowledges that NI Group is a United Kingdom corporation and appears to premise jurisdiction on an allegation relating to its subsidiary, NGN, as the publisher of four United Kingdom newspapers. (CAC ¶ 24). Paragraph 24 of the Complaint generally alleges that NI Group – "through NGN and its newspapers" – allegedly "solicits advertisers from the United States" and that NGN's United Kingdom newspapers have United Kingdom "websites accessible from the United States." (*Id.* (alleging ".uk" website addresses)). However, Plaintiffs' generalized allegations regarding the United Kingdom subsidiary, NGN, are insufficient to establish personal jurisdiction over the parent, NI Group. *See Jazini v. Nissan Motor Co.*, 148 F.3d 181, 184 (2d Cir. 1998) (refusing to find personal jurisdiction based on parent/subsidiary relationship); *see also Cent. States, Southeast & Southwest Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 943 (7th Cir. 2000) (holding that constitutional due process requires that personal jurisdiction cannot be premised alone on parent/subsidiary relationship); *Pathfinder Mgmt. v. Mayne Pharma PTY*, No. 06-CV-2204 (WJM), 2008 WL 3192563, at *5-7 D.N.J. Aug. 5, 2008).

Moreover, Plaintiffs' allegations that the United Kingdom newspapers' websites were accessible from the United States, and that the papers purportedly solicited United States advertisers, considered, individually or together, fall far short of the minimum contacts required by the due process requirements even as to the newspapers or NGN, let alone NI Group. Courts

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for that purpose."); *Madison Models, Inc. v. Casta*, No. 01 Civ. 9323 (LTS)(THK), 2003 WL 21978628, at *2, *6 (S.D.N.Y. Aug. 20, 2003) (dismissing complaint without evidentiary hearing for failure to satisfy *prima facie* burden of alleging facts establishing personal jurisdiction).

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have held that the mere existence of an international website is not enough, by itself, to subject a defendant to personal jurisdiction in the forum state. *See, e.g.*, *Scottevest, Inc. v. AyeGear Glasgow Ltd.*, No. 12 Civ. 851 (PKC), 2012 WL 1372166, at *3-4 (S.D.N.Y. Apr. 17, 2012); *Bensusan Rest. Corp. v. King*, 937 F. Supp. 295, 301 (S.D.N.Y. 1996) (creating a website "may be felt nationwide – or even worldwide – but, without more, it is not an act purposefully directed toward the forum state"), *aff'd*, 126 F.3d 25 (2d Cir. 1997). Also, Plaintiffs' allegation that the newspapers allegedly solicited United States advertisers is insufficient to confer jurisdiction. *See Realuyo v. Villa Abrille*, No. 01 Civ. 10158 (JGK), 2003 WL 21537754, at *3-4 (S.D.N.Y. July 8, 2003), *aff'd*, 93 F. App'x 297 (2d Cir. 2004); *see also Wood v. Santa Barbara Chamber of Commerce, Inc.*, 705 F.2d 1515, 1522 (9th Cir. 1983).

Accordingly, NI Group should be dismissed from this action for lack of personal jurisdiction.

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CONCLUSION

For all of the reasons set forth above, the Complaint should be dismissed with prejudice against News Corp., NI Group, K. Rupert Murdoch and James Murdoch.

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Respectfully submitted,

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