

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

In the Matter of the Application of
REKOR SYSTEMS, INC.,

Petitioner,

For an Order, Pursuant to Section 3102(c)
of the Civil Practice Law and Rules, to compel
pre-action disclosure from

SEEKING ALPHA, INC., MARINER
RESEARCH GROUP, AND WESTERN EDGE,

Respondents.

Index No.

**PETITION FOR PRE-ACTION
DISCLOSURE**

Petitioner Rekor Systems, Inc. (“Rekor” or “Petitioner”), by and through its attorneys, Latham & Watkins LLP, as and for its petition in this proceeding seeking pre-action disclosure pursuant to [CPLR 3102\(c\)](#), hereby alleges the following:

INTRODUCTION

Rekor submits this petition for pre-action disclosure from Respondents Seeking Alpha, Inc. (“Seeking Alpha”), the entity known as Mariner Research Group (“Mariner Research”), and the entity known as “Western Edge,” (collectively, the “Respondents”) so that Rekor may (i) sue by name persons who made false, derogatory, and damaging statements about Rekor, and (ii) better frame, and particularize, its prospective action against the parties responsible for such false and derogatory statements. Rekor respectfully requests that this Court order Respondent Seeking Alpha to make the disclosures described herein so that Rekor can sue and serve the appropriate parties that have participated in the false and derogatory statements, and obtain and preserve crucial evidence in support of such claims.

PARTIES

1. Petitioner Rekor is a Delaware corporation with a principal place of business in Maryland.
2. Respondent Seeking Alpha is a Delaware corporation with its principal place of business located at 52 Vanderbilt Avenue, 13th Floor, New York, New York 10017. Respondent owns and maintains a website known as seekingalpha.com, and is authorized to do business in New York. Seeking Alpha states that it is “the world’s largest investing community.” *See* Ex. 1.¹
3. Respondent Mariner Research Group is the pseudonym of an entity that posts content to Respondent Seeking Alpha’s website.
4. Respondent Western Edge is the pseudonym of an entity that posts content to Respondent Seeking Alpha’s website.

JURISDICTION AND VENUE

5. This Court has personal and subject matter jurisdiction over this special proceeding pursuant to [CPLR §§ 301](#) and [302](#) because Seeking Alpha’s principal office is based in New York County and a substantial part of the events giving rise to this Petition and Rekor’s prospective claims occurred in New York County.

FACTUAL ALLEGATIONS

6. Rekor is a public company headquartered in Columbia, Maryland and its stock is traded on the Nasdaq exchange. Rekor develops and licenses revolutionary artificial intelligence and machine learning technologies.

¹ Citations to “Ex. ___” refer to the documents attached to the Affirmation of Christopher Clark, submitted herewith.

7. One of Rekor’s technologies enables ordinary video cameras to recognize and record license plate numbers and vehicle characteristics (*i.e.*, make, model, color) inexpensively and with a high degree of accuracy. This technology has proved valuable to public and private entities alike, and for a wide variety of purposes. The State of Oklahoma, for example, contracts to use Rekor’s technology to enforce compliance with automobile liability insurance laws. Rekor’s successes and future business prospects led to significant, positive media coverage and enthusiasm from investors.

8. The success of Rekor’s technology and associated increase in its share price earlier this year also attracted attention from so-called “short sellers.” “Short selling is an investment or trading strategy that speculates on the decline in a stock or other security’s price.” *See* INVESTOPEDIA, *Short Selling*, available at <https://www.investopedia.com/terms/s/shortselling.asp>. That is, short sellers essentially take out bets *against* a company—hoping that its stock price will decline in value, which will result in profits to the short seller.

9. Respondent Western Edge is the pseudonym of a Rekor short seller. *See* Ex. 2, at 18 (Western Edge stating that he or she is a private investor and “short REKR,” the ticker symbol for Rekor’s stock). Western Edge is listed as a “Contributor” to Respondent Seeking Alpha’s website, seekingalpha.com. *See* Ex. 4 (identifying Western Edge as a contributor to Seeking Alpha). Western Edge posts purported investment analysis on Seeking Alpha and receives compensation from Seeking Alpha for doing so. *See id.*; Ex. 2, at 18 (acknowledging that Western Edge receives compensation from Seeking Alpha).

10. Respondent Mariner Research is also the pseudonym of a Rekor short seller. *See* Ex. 3, at 20 (Mariner Research stating that he or she is “short REKR,” the ticker symbol for Rekor’s stock). Like Western Edge, Mariner Research is listed as a “Contributor” to

Seeking Alpha and posts purported investment analysis on the Seeking Alpha website. *See* Ex. 5 (identifying Mariner Research as a contributor). Mariner Research offers little information about itself on its Seeking Alpha contributor page, other than that it “specialize[s] in deep research, forensic accounting, and general cynicism.”² *Id.*

11. On May 26, 2021, Western Edge and Mariner Research each published articles that were posted to Seeking Alpha’s website plainly designed to cause a drop in Rekor’s stock price, which would benefit them financially as short sellers.³ The articles were replete with inflammatory, false, and derogatory statements about Rekor’s business and its executives. For example, Western Edge (i) proclaimed that the “[r]eality is that Rekor is guiding investors to a fantasy world,” (ii) suggested that Rekor “tr[ies] to pump up investors by bragging about how much money they think they can make fining poor people via a big brother oriented surveillance technology,” and falsely claimed that Rekor’s CEO conveyed to investors that Rekor “had an exclusive monopoly on [a] project” to use license plate recognition technology to facilitate payment in drive-through lanes at a fast food chain. *See* Ex. 2, at 8, 10, 13. Each of those claims is false.

12. Western Edge also purports to issue “warnings” and describe supposed “red flags” (*id.* at 2, 17) about Rekor’s business prospects—but in doing so, refers back to points that Rekor has freely disclosed for years. For example, Western Edge writes that “Rekor is

² Observers of Mariner Research have noted, for example, that “they post very negative ‘reviews’ of companies,” and “[i]t looks like they get their facts wrong and basically trigger marked plunges in stock prices. There is no information in this website as to who they are.” *See* STOCK GUMSHOE, *Who are ‘Mariner Research’* (March 3, 2021), available at <https://www.stockgumshoe.com/2021/03/microblog-who-are-mariner-research/>.

³ Mariner Research published its article on May 26, 2021, and it was posted to Seeking Alpha on the morning of May 27, 2021. *See* Ex. 7 ¶ 49 (stating that the Mariner Research report was initially published on May 26).

bringing a water pistol to [a] gunfight” because “[g]lobal competitors are miles ahead and have already established beach-heads in hot new markets,” *id.* at 1, but Rekor discloses to investors the risk to its business posed by global competitors and the advantage that that comes with being established in existing markets. *See, e.g.*, Ex. 6, at 23 (disclosing that “[w]e operate in highly competitive industries, some with low barriers to entry, and may be unable to compete successfully against existing or new competitors. Our business is competitive, and we compete with companies in highly competitive industries that may have greater name recognition and financial resources . . .”).

13. Similarly, Mariner Research purported to “show investors that a meaningful part of REKR’s revenues [have been] non-recurring,” that Rekor has “a fragmented revenue base consisting of relatively small ticket clients,” and that its revenue estimates are “pipe dreams.” Ex. 3, at 16. Mariner Research also baselessly called into question “the credibility of the REKR’s management team,” and alleged “audit deficiencies [that] should cause investors to cast a jaundiced eye,” even though that allegation was based on an auditor’s work for a separate company, predating its work with Rekor. *Id.* at 19. Like the Western Edge article, Mariner Research’s claims are false and plainly designed to cause a drop in Rekor’s stock price that would benefit Mariner Research.

14. These false statements accomplished the authors’ apparent purpose, causing a drop in Rekor’s stock price and fueling a meritless shareholder litigation against Rekor which has further depressed Rekor’s stock price. For example, on June 29, 2021, a plaintiff filed a purported class action complaint against Rekor and certain of its executives, which is based in significant part on the false and derogatory Western Edge and Mariner Research articles. *See* Class Action Complaint, *Miller v. Rekor Systems, Inc. et al.*, No. 21-cv-1604 (D. Md. June 29

2021), ECF No. 1 (attached hereto as Ex. 7). The *Miller* complaint relies heavily on the false and derogatory statements in those articles and states that “[f]ollowing publication of the Western Edge and Mariner [Research] reports, Rekor’s stock price fell \$0.44 per share, or 3.93%, to close at \$10.77 per share on May 26, 2021.” *Id.* ¶ 51.

**CLAIMS AGAINST WESTERN EDGE AND MARINER RESEARCH FOR
DEFAMATION AND INJURIOUS FALSEHOOD**

15. Western Edge and Mariner Research, through their publications on Seeking Alpha’s website, made multiple false and derogatory statements as described above, including for example that “Rekor is guiding investors to a fantasy world” and that its revenue estimates are “pipe dreams.” Ex. 2, at 8; Ex. 3, at 19. At the time that Western Edge and Mariner Research made these representations, they knew or should have known that the statements were false.

16. Western Edge and Mariner Research intended that Rekor investors would act in reliance on these false and derogatory statements upon reading them on Seeking Alpha. As set forth above (¶¶ 8-10), Western Edge and Mariner Research are both short sellers of Rekor’s stock, and both stood to benefit financially if they caused a drop in Rekor’s stock price. In fact, the publication of the articles coincided with the expiration of certain Rekor stock options—further suggesting that Western Edge and Mariner Research intended their purported analysis to cause a drop in Rekor’s stock price. Clark Aff. ¶ 8.⁴ On information and belief, Western Edge and Mariner Research intended investors to rely on their false and derogatory statements about Rekor, causing a drop in Rekor’s stock price and spurring shareholder litigation against Rekor which would further depress its stock price.

⁴ Citations to “Clark Aff. ¶ ___” refer to the affirmation of Christopher Clark filed herewith, dated July 13, 2021.

17. Investors did act in reliance on the false and/or derogatory statements Western Edge and Mariner Research posted on Seeking Alpha’s website. Indeed, a plaintiff filed a purported class action complaint against Rekor based upon the Western Edge and Mariner Research allegations, noting that those articles caused a drop in Rekor’s stock price immediately upon publication. *See* Ex. 7 ¶ 51 (stating that “[f]ollowing publication of the Western Edge and Mariner reports, Rekor’s stock price fell \$0.44 per share, or 3.93%, to close at \$10.77 per share on May 26, 2021”). Rekor has suffered significant pecuniary damages resulting from both the drop in its stock price and the resulting putative class action complaint arising from the Western Edge and Mariner Research articles. Clark Aff. ¶¶ 13, 20.

NEED FOR RELIEF AND LACK OF SUBSTANTIAL BURDEN

18. Respondent Seeking Alpha is the only source known to Rekor that can identify Western Edge and Mariner Research by their true names. The relief requested herein is therefore necessary in order for Rekor to include Western Edge’s and Mariner Research’s true names in the caption of the case Rekor intends to commence against them, alleging at least the claims set forth above.

19. The information Rekor seeks is also readily available to Seeking Alpha. Western Edge and Mariner Research are each identified on seekingalpha.com as an anonymous “contributor.” According to the Seeking Alpha website, while it permits contributors to post anonymously, “[t]here are firm limits to this anonymity.” *See* Ex. 8. Seeking Alpha says that it “holds [its] pseudonymous contributors to the same compliance and biographical standards as contributors who write under their own name,” and “insist[s] on receiving the author’s real name and contact information.” *See id.*

20. Moreover, both Western Edge and Mariner Research have expressly agreed to disclosure of their identities under the circumstances alleged in this petition. Any person using seekingalpha.com “agree[s] to be bound by [the] Terms of Use (the ‘TOU’)” published on the site. *See* Ex. 9 ¶ 1. The TOU expressly provides that “[w]e reserve the right to access, read, preserve, and disclose any User Submissions (whether published or not) or any other information we believe is reasonably necessary to (a) comply with any applicable law, regulation, legal process, subpoena or governmental or regulatory request, (b) enforce these TOU, including investigation of potential violations of it, (c) detect, prevent, or otherwise address fraud, security or technical issues, (d) respond to user support requests, or (e) protect the rights, property or safety of Seeking Alpha, its users, yourself or the public.” *Id.* ¶ 11.

21. Rekor is thus not only entitled to the disclosure sought under New York law and the CPLR, that disclosure is also expressly contemplated by the express terms of Seeking Alpha’s TOU, because it is necessary to “protect the rights [and] property” of Rekor and is the subject of “legal process.” *Id.* The disclosure sought by Rekor is also necessary to address a blatant violation of Seeking Alpha’s Terms of Use, which forbid (i) the “[u]se [of] the Site for any unlawful purpose,” and (ii) posting “about a stock with the intention to boost or reduce the stock’s price and sell (or buy) the stock into the resulting strength or weakness.” *Id.* ¶¶ 6, 8. Having violated these express terms of use of Seeking Alpha, Western Edge, and Mariner Research can have no reasonable expectation that their identities will remain concealed by Seeking Alpha.

22. Finally, the relief requested would impose virtually no burden on Seeking Alpha, which need only check the records it insists on receiving from all pseudonymous contributors—including the “real name and contact information” for Western Edge and

Mariner Research—and turn that information over to Rekor.⁵ Ex. 8.

PRAYER FOR RELIEF

WHEREFORE, it is respectfully demanded that the Court (i) order Respondent Seeking Alpha to disclose the true names and contact information of the Seeking Alpha contributors using the pseudonyms Western Edge and Mariner Research or (ii) grant leave to Rekor to serve upon Seeking Alpha discovery requests narrowly tailored to identify such information, so as to enable Rekor to sue them by name, and serve process on the appropriate parties that have participated in the false and/or derogatory statements, and so as to enable Rekor to procure and preserve critical evidence in support of such suit; and that it grant Rekor such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 13, 2021

Respectfully submitted,

/s/ Christopher Clark
Christopher Clark

LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
Telephone: (212) 906-1200
Chris.Clark@lw.com

Attorneys for Petitioner

⁵ Rekor recognizes that [Section 202.7\(a\)](#) of the Court’s rules imposes an obligation to “confer[] with counsel for the opposing party” prior to filing “a motion relating to disclosure.” However, Rekor brings a Petition, rather than a motion; the requested relief is not a traditional discovery dispute; and the Respondent cannot be served until Petitioner’s order to show cause is executed, and therefore Petitioner respectfully requests that the Court accept the Petition without requiring a conference under [Section 202.7\(a\)](#).

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMIT

I hereby certify that the foregoing document complies with the word count limit set forth in Section 202.8-b of the Uniform Civil Rules for the Supreme Court, because it contains 2,439 words, excluding the caption and signature block. In making this calculation, I have relied on the word count of the word-processing system used to prepare the document.

Dated: July 13, 2021
New York, New York

LATHAM & WATKINS LLP

By: /s/ Christopher Clark
Christopher Clark

1271 Avenue of the Americas
New York, New York 10020
Tel: 212.906.1200
Email: chris.clark@lw.com

Attorneys for Petitioner