'Greenwashing' Suit Against E-Cig Makers Was Improperly Dismissed, 9th Circuit Told

Mealey's(R) California Section 17200 Report

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Body

E-cigarette consumers filed an opening brief in the Ninth Circuit U.S. Court of Appeals urging it to reverse the dismissal of their putative class lawsuit against e-cigarette companies for "greenwashing" their products by calling them "carbon-neutral" in violation of California's unfair competition law (UCL) and other laws, writing that the lower court misapplied precedent to its evaluation of their false advertising claims (Vanessa Bell, et al. v. R.J. Reynolds Vapor Company, et al., No. 26-1806, 9th Cir.).

(Consumers' opening brief available 04-260811-008B)

'Consumer Greenwashing'

"This is a consumer greenwashing case that the district court resolved on the pleadings by doing what this Court has repeatedly instructed district courts not to do: pick the defendants' preferred reading of an advertising claim, weigh competing factual narratives, and credit the defendants' extra-pleading materials for their truth," consumers Vanessa Bell, Destiney Murrah and Sean Nugent write in their July 15 opening brief.

The consumers are urging the Ninth Circuit to reverse the U.S. District Court for the Northern District of California's Feb. 20 order dismissing their putative class claims against R.J. Reynolds Vapor Co. and R.J. Reynolds Tobacco Co. (collectively RJR) as insufficiently pleaded. They also seek reversal of the District Court's dismissal of their claims against RJR's parent company, British American Tobacco PLC (BAT), for lack of personal jurisdiction.

The consumers claim that they were deceived into paying a price premium for RJR and BAT's Vuse-brand e-cigarette products based on their representations that Vuse was a "carbon-neutral" vape product. The consumers say RJR and BAT based their carbon-neutral claim on "carbon credits" which they bought from nonprofits that then invested in four environmental projects in Uruguay, China and Mongolia. The consumers say these actions did not make Vuse e-cigarettes carbon-neutral.

"[T]he credited reductions would have occurred whether or not the projects existed, the offsets were illusory. In short, the Products were not carbon neutral: Defendants-Appellees' central marketing message, the Carbon Neutral Representation, was literally false," the consumers write.

They say that the District Court erred by applying an improper "manufactured . . . definition of 'carbon neutral'" and by "deciding contested questions of fact against the non-moving party at the pleading stage."

They also say it misapplied the reasonable consumer standard. "[I]nstead of analyzing whether a reasonable consumer would be deceived by the Carbon Neutral Representation, . . . the court mischaracterized Plaintiffs-Appellants' claims as allegations that the Products were either not third-party certified as carbon neutral, or the certifier's methodology was specious." The District Court erroneously based its dismissal on the failure of these arguments, which the consumers say were not the basis of their claims.

They urge the Ninth Circuit to reverse the District Court's judgment against them, reverse its dismissal against all defendants or, in the alternative, remand the case for jurisdictional discovery as to BAT.

Greenwashed Vapes

On May 28, 2025, the consumers sued RJR, Reynolds American Inc. and BAT in the District Court. They later filed a first amended complaint.

The consumers alleged that beginning in 2021, the defendants "prominently and repeatedly touted the Products as 'carbon neutral,' dedicating substantial marketing efforts to highlighting this purported environmental achievement."

The defendants' carbon-neutral claims and related investments were part of the defendants' strategic use of what the consumers defined as "'greenwashing' - the practice of making false or misleading claims about the environmental benefits of a product."

The consumers said that the defendants' forest investments "fail to provide genuine, additional carbon reductions" because those forests already existed and are not in danger of deforestation and that the defendants made these claims to deceptively induce more consumers who valued "sustainability" into purchasing Vuse products.

RJR and Reynolds American filed a motion to dismiss. BAT moved to dismiss for lack of personal jurisdiction. On Jan. 20, 2026, the consumers voluntarily dismissed their claims against Reynolds American.

On Feb. 20, 2026, Judge Trina L. Thompson granted BAT's motion to dismiss for lack of personal jurisdiction. The judge partly granted RJR's motion and dismissed the consumers' claims for violation of UCL, *Cal. Bus. & Prof. Code 17200* et seq., California Consumers Legal Remedies Act (CLRA), *Cal. Civ. Code 1750* et seq., and the California false advertising law (FAL), *Cal. Bus. & Prof. Code 17500* et seq., and for breach of express warranty and dismissed with prejudice their claims for breach of implied warranty and unjust enrichment (*2026 U.S. Dist. LEXIS 74520*).

The consumers notified the court that they would not amend their complaint and asked the District Court to enter final judgment, which it did on March 9.

Counsel

The consumers are represented by Amber L. Schubert of Schubert Jonckheer & Kolbe LLP in San Francisco, Fletch Trammell of Trammell PC in Houston and Don Bivens of Don Bivens PLLC in Scottsdale, Ariz.

RJR is represented by Darren K. Cottriel and Tyler Fields in Irvine, Calif., and Patrick Haney in Washington, D.C., all of Jones Day.

BAT is represented by Bobbie R. Baile and Edward Martinovich of Leader Berkon Colao & Silverstein LLP in Los Angeles, and Maxwell D. Herman of Herbert Smith Freehills Kramer New York LLP in New York.

2nd Circuit Affirms Dismissal Of Securities Fraud Suit For Lack Of Scienter

Mealey's(R) Litigation Report: Class Actions
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A Second Circuit U.S. Court of Appeals panel affirmed the dismissal of investors' putative securities fraud class action against a virtual health care service provider and certain of its executives regarding alleged misstatements they made after the company's $18.5 billion merger with another health care company, finding that the investors had not adequately alleged scienter (*In re Teladoc Health Inc. Securities Litigation, No. 25-1022, 2nd Cir., 2026 U.S. App. LEXIS 22196*).

(Summary order available 57-260810-019R)

Judges Richard J. Sullivan, Joseph F. Bianco and Beth Robinson issued the summary order on July 27, finding that the investors did not prove motive or opportunity to benefit from the alleged misstatements and did not adequately plead that the executives consciously misbehaved or acted recklessly.

Judge Denise Cote of the U.S. District Court for the Southern District of New York dismissed the case against Teladoc Health Inc. and its executives (collectively, Teladoc) on March 21, 2025, finding that the investors who brought the suit had not adequately pleaded scienter. Judge Cote previously dismissed the case for failure to plead falsity, but the Second Circuit reversed that decision in a prior appeal.

Claims

In a December 2022 second amended complaint, investors including lead plaintiff Leadersel Innotech ESG and additional plaintiff Hui Ma sued the company and CEO Jason Gorevic, Chief Financial Officer Mala Murthy, Chief Marketing & Engagement Officer Stephany Verstraete and Chief Accounting Officer Richard Napolitano, seeking to represent those who purchased Teladoc common stock from Feb. 11, 2021, through July 27, 2022, "and were damaged thereby."

The investors alleged that Teladoc had falsely assured investors that Teladoc was successfully integrating Livongo Health Inc. Additionally, the investors alleged that Teladoc had falsely assuaged investors' concerns about competition, denying that competition was materially affecting Teladoc's business. They alleged that after the truth about these issues was revealed, Teladoc's investors lost billions.

The investors asserted a claim against all defendants for violating Section 10(b) of the Securities Exchange Act of 1934, *15 U.S.C. 78j(b)*, and the accompanying regulation Securities and Exchange Commission Rule 10b-5, *17 C.F.R. 240.10b-5*, and a claim against the executives for violating Section 20(a) of the Exchange Act, *15 U.S.C. 78t(a)*.

Falsity

Teladoc successfully sought dismissal for failure to state a claim, with Judge Cote in July 2023 concluding that many of the integration statements were inactionable puffery and as to the remainder, that the investors did not "adequately plead that any of these representations was false or materially misleading."

Leadersel and Hui Ma appealed, focusing on certain integration statements and the denial of leave to amend. Partway through the briefing, the Second Circuit granted a joint motion to simplify the appeal caption, which the parties said had been inconsistent with the District Court's, "incorrect and potentially misleading."

In a Sept. 24, 2024, ruling, a Second Circuit panel reversed and remanded the case, finding that the complaint adequately pleaded falsity with respect to the challenged statements. The panel said that on four "alleged misstatements regarding the status of the integration itself," it disagreed with the District Court. One of those statements consisted of "the risk warnings in Teladoc's 2021 Form 10-K." Among other things, the panel ruled the allegations were "sufficient to plausibly support a finding that, by the time of the filing of the 2021 Form 10-K in February 2022, the risks regarding the Livongo integration were not merely 'potential difficulties that Teladoc may encounter in the integration process'. . . but had already materialized and resulted in significant disruption to Teladoc's business," citing *Set Cap. LLC v. Credit Suisse Grp. AG, 996 F.3d 64, 85 (2d Cir. 2021)*.

Finally, the panel declined to consider Teladoc's alternative argument that dismissal was warranted for failure "to adequately plead scienter and loss causation," stating that "the district court did not consider those arguments, and we decline to do so here in the first instance." It remanded the case to the lower court to address whether the investors adequately pleaded scienter and loss causation.

Renewed Motion

Back in the District Court, Teladoc filed a renewed motion to dismiss the case, arguing that scienter and loss causation had not been adequately pleaded. The motion addressed the four remaining statements at issue - two statements by Gorevic in early 2021 that the sales teams had been fully integrated; Verstraete's statement in late 2021 that the marketing data and tech stacks had been integrated; and the risk disclosures in Teladoc's 2021 Form 10-K.

On March 21, 2025, Judge Cote granted the motion, finding that the second amended complaint "does not provide strong circumstantial evidence of conscious misbehavior or recklessness with respect to any of the four statements that remain at issue in this case."

Among other things, the judge found that three integration problems covered by the Form 10-K's risk disclosure had materialized by the end of February 2022 and addressed the allegations of scienter for each. Judge Cote said the second amended complaint did not adequately allege that Gorevic knew enough about the sales integration problem with respect to the risk warning to adequately plead scienter. The judge further noted that the second amended complaint failed to plead Verstraete's scienter regarding the statement about the delay in Tableau integration. The lead plaintiff also failed to offer meaningful allegations that Gorevic, Murthy or Napolitano was aware of the salesforce integration issue.

Judge Cote denied the lead plaintiff's request to amend, noting that it had not identified how an amendment would address the second amended complaint's deficiencies and that the lead plaintiff was warned that it would likely not have another opportunity to amend the complaint.

Leadersel and Hui Ma appealed the decision to the Second Circuit.

Scienter

The panel affirmed, finding first that the investors provided no path to motive and opportunity other than the executives' stock sales. It found that "Plaintiffs' contention that Defendants sold stock to profit from their misstatements is far less compelling than the 'opposing inference' that these executives were simply selling their stock in the ordinary course."

It also found that the investors did not adequately plead that the individual defendants acted with conscious misbehavior or recklessness. First, it held that the investors failed to plead any facts suggesting that Gorevic knew that his misstatements about the Legacy Teladoc and Livongo sales teams being fully integrated and vague warnings that Teladoc may encounter integration issues were inaccurate because they were based on confidential witnesses who provided no relevant information.

The panel disagreed with the investors' argument that Murthy and Napolitano consciously misbehaved or were reckless because Murthy discussed increased competition at certain all-hands meetings between fall 2020 and spring 2022. It stated that the investors had not explained why the mention of competition implicitly revealed an understanding of Teladoc's integration issues rather than "any of the other reasons why a large business may struggle with its competitors." Nor did the investors explain how Murthy's knowledge should be imputed on Napolitano. Additionally, it found that "Verstraete's purported misstatement does not carry the same inference of knowledge as an officer's use of specific financial data."

The panel also found that the investors failed to plead scienter under the core-operations doctrine. It stated, "Though Teladoc's acquisition of Livongo for a record-breaking $18.5 billion was plainly important to the core operations of Teladoc, Plaintiffs have not plausibly pleaded that the details of the sales-team staffing arrangements and technical integration of marketing databases are sufficiently 'core' to the acquisition and Teladoc's operations to support a 'core operations' argument."

The panel disagreed with the investors' argument that the District Court erred in rejecting their allegations that Teladoc possessed corporate scienter because the individual defendants and other nondefendant executives possessed scienter. It found that the allegations against the nondefendant executives did not provide evidence of their knowledge of any falsity and did not connect them to the alleged misstatements.

Because the panel found the investors failed to establish that Teladoc violated Rule 10b-5, it found that their Section 20(a) claims against the individuals also failed.

Counsel

Leadersel Innotech is represented by Carol C. Villegas, Irina Vasilchenko and Matthew J. Grier of Labaton Keller Sucharow LLP in New York.

Teladoc, et al. are represented by Abigail Frisch Vice in Washington, D.C., and Daniel J. Kramer, Audra J. Soloway and Dylan O. Smith in New York, all of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

(Additional documents available: Leadersel Innotech's appellant brief and special appendix 57-260810-020B

Teladoc, et al's appellee brief 57-260810-021B

Leadersel Innotech's reply brief 57-260810-022B

District Court opinion and order 57-250414-041Z

District Court judgment 57-250414-042X)

9th Circuit Vacates ERISA Class Certification Over Typicality, Adequacy Questions

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Body

Citing a failure "to rigorously analyze whether Rule 23's typicality and adequate representation requirements were satisfied," the Ninth Circuit U.S. Court of Appeals on July 30 issued an unpublished disposition vacating class certification and remanding "for proceedings consistent with this disposition" in an Employee Retirement Income Security Act suit over retirement plan fees and funds (*Aaron Munoz, et al. v. Alorica, Inc., et al., No. 25-7359, 9th Cir., 2026 U.S. App. LEXIS 22819*).

(Unpublished disposition available 54-260810-133Z)

The panel also disagreed with the appellants' argument that named plaintiffs Aaron Munoz and Melissa Olsen lack standing under Article III of the U.S. Constitution, U.S. Const. art. III, for claims that concern plan options they did not invest in.

Quoting *Melendres v. Arpaio, 784 F.3d 1254 (9th Cir. 2015)*, with citation omitted, the panel said, "In the Ninth Circuit, 'once the named plaintiff[s] demonstrate[] [their] individual standing to bring a claim, the standing inquiry is concluded.' . . . Here, it is undisputed that both named plaintiffs invested in at least one of the challenged investment options, and Defendants-Appellants concede standing regarding these investment options. Differences between individual investment options are relevant to the class certification analysis, not to standing."

Rule 23(b)(1) Class

The September 2025 class certification order at issue (*2025 U.S. Dist. LEXIS 250313*) came from U.S. Judge John W. Holcomb of the Central District of California, who had conducted a motion hearing in May 2025.

Judge Holcomb determined that the class of participants in and beneficiaries of the Alorica 401(k) Retirement Plan satisfied the requirements for certification under *Federal Rule of Civil Procedure 23(b)(1)(A)*, *Fed. R. Civ. P. 23(b)(1)(A)*, or alternatively *Federal Rule of Civil Procedure 23(b)(1)(B)*, *Fed. R. Civ. P. 23(b)(1)(B)*.

Plan sponsor Alorica Inc. and related entities were subsequently granted permission to file an interlocutory appeal of the class certification order.

Claims

In their March 2024 second amended complaint, former Alorica employees Munoz and Olsen (together, the participants) named as defendants the company, Alorica Retirement Savings Plan Committee, 10 individual committee members and Alorica employees (collectively, Alorica) and investment adviser Morgan Stanley Smith Barney LLC (MSSB).

The participants alleged that they were injured "by the Defendants' flawed processes" and consequently "invested in subpar investment vehicles and paid additional unnecessary operating expenses and fees with no value to the participants and resulting in a loss of compounded returns." They filed claims under ERISA, *29 U.S.C. 1001 et seq.*, for breach of the fiduciary duty of prudence and breach of the duty to investigate and monitor investments and covered service providers.

In December 2024, Judge Holcomb denied motions in which Alorica sought dismissal of the fiduciary breach claim as to recordkeeping fees and MSSB sought dismissal of the entire complaint (*2024 U.S. Dist. LEXIS 218806*). He allowed the participants to file a third amended complaint, which they did in October 2025.

In a footnote of its opening brief in the interlocutory appeal of the class certification order, Alorica said that the third amended complaint raised "an additional claim, but the amendment does not bear on the class certification order."

Typicality, Adequacy Issues

The Ninth Circuit panel consisted of Circuit Judges Johnnie B. Rawlinson and Gabriel P. Sanchez and, sitting by designation, U.S. Judge Sidney A. Fitzwater of the Northern District of Texas.

A video recording of the oral argument the panel heard on July 10 is available at *https://www.ca9.uscourts.gov/cases/streams-videos/archive?case=25-7359&hearingDate=2026-07-10*.

After addressing standing regarding funds in which the named plaintiffs did not invest, as noted above, the panel said that the participants "have also established by a preponderance of the evidence standing to pursue their breach of fiduciary prudence claim based on Defendants-Appellants' alleged overpayment for recordkeeping fees." In so ruling, the panel said a declaration the participants submitted "is sufficient at the class certification stage to establish that the named plaintiffs suffered individual injuries from Defendants Appellants' choice of recordkeeping services."

However, the panel then faulted the District Court's class certification analysis, saying that its typicality discussion addressed only the recordkeeping theory of liability, not the imprudent investment theory of liability.

Specifically, the panel said, the District Court should have addressed "whether distinctions between investment options rendered the named plaintiffs' claims atypical of those of the remainder of the class." It added, "we suggest no view on this issue."

Similarly, the panel said that the District Court's discussion of "Rule 23's adequate representation requirement . . . did not sufficiently address the evidence presented by Defendants-Appellants that suggested that, even after the recordkeeping fees charged to Plan members were converted to asset-based fees, Plaintiffs-Appellees' loss model would have resulted in certain class members paying higher recordkeeping fees than they actually did during the class period. The district court's failure to resolve this key factual dispute was error."

Counsel

The participants are represented by Christina A. Humphrey of Christina Humphrey Law PC in Santa Barbara, Calif., and James H. White IV of James White Firm LLC in Birmingham, Ala.

Alorica is represented by Michael J. Prame, Andrew D. Salek-Raham, Larry M. Blocho Jr. and Theodore A. Van Beek of Groom Law Group Chartered in Washington, D.C.

(Additional documents available: Alorica's opening brief 54-260810-134B

Participants' answering brief 54-260810-135B

Alorica's reply brief 54-260810-136B

Transcript of May 2025 hearing 54-260810-137T

September 2025 class certification order 54-260810-138R)

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Amicus Tells 9th Circuit Altria, Juul Antitrust Class Action Harms Federalism

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Body

A nonprofit legal foundation on July 28 filed a motion in the Ninth Circuit U.S. Court of Appeals for leave to file an amicus curiae brief in which it urges the court to reverse a federal judge's order certifying several classes of purchasers bringing antitrust claims against Juul Labs Inc. (JLI), Altria Group Inc. and former JLI board members for allegedly seeking to monopolize the e-cigarette market, writing that the ruling would allow California law to be used as "a roving nationwide antitrust enforcer" (In Re Juul Labs, Inc. Antitrust Litigation, No. 26-2626, 9th Cir.).

(WLF's motion to file amicus brief with brief attached available 04-260811-006M)

Federalism Implicated

"To hold together two classes spanning 27 jurisdictions, the court built - from the antitrust codes of 26 States and the District of Columbia - a regime that exists in none of them: California's liability rules for every class member, welded to a patchwork of 27 separate damages rules. No legislature enacted that law. No State's voters chose it. It is the district court's own creation, concocted for this case and unknown to any sovereign in the Union," the Washington Legal Foundation (WLF) writes in its amicus curiae brief supporting JLI, Altria, and two former JLI board members, Nicholas Pritzker and Riaz Valani.

WLF supports reversal of the U.S. District Court for the Northern District of California's order certifying three antitrust classes bringing claims against the appellants for allegedly harming competition in the e-cigarette market.

WLF says the District Court should be reversed because it certified two classes of "indirect purchaser plaintiffs" (IPPs) who accuse the appellants of violating the California Cartwright Act, *Cal. Bus. & Prof. Code 16700* et seq., which prohibits anticompetitive conduct.

"The Cartwright Act does not cross California's border, and the trial court never explained why it should," WLF writes. It says the District Court's order "foists California's enforcement policy onto 26 other jurisdictions" in a manner that violated the ordinary rules for certification of a class action.

"The district court's certification order effectively converts California's Cartwright Act into a roving nationwide antitrust enforcer, imposing California's antitrust policy views on other States. This violates the principles of horizontal federalism that are key to our democratic form of government. Certification here thus stands on a premise that the district court never defended: that California's Cartwright Act governs purchases made outside California, by non-Californians, in transactions with no California connection. It doesn't," WLF asserts.

'Frankenstein-Like Mishmash'

The appellants say in their opening brief filed on July 21 that similar antitrust allegations were brought against them by the Federal Trade Commission. They note that FTC's suit alleging that JLI and Altria's 2018 partial merger was anticompetitive was rejected by an administrative law judge, that the partial merger was later unwound and that FTC then withdrew its suit.

"The district court rewarded those efforts by certifying sweeping, multi-jurisdictional classes of disparate groups of direct and indirect purchasers. In so doing, the court badly distorted class-action law," the appellants write.

They assert that predominance was not satisfied for putative class members spanning 27 jurisdictions, and that the District Court "wrongly concluded that all indirect purchasers could sue under California's Cartwright Act," which it says should not apply extraterritorially in this case.

They also say the District Court, to resolve this choice-of-law issue with the classes it certified, "devised an unprecedented procedure under which California law will govern liability elements of class members' claims while other States' laws will govern damages elements - with the details to be sorted out '[a]fter liability is determined.' . . . That process has no support in any source of law and would result in this case being tried under a Frankenstein-like mishmash of legal frameworks matching no State's actual law."

The appellants also say California law imposes a presumption against extraterritorial application of state consumer protection laws, such as the claim against them for violating California's unfair competition law (UCL), *Cal. Bus. & Prof. Code 17200* et seq., unless there is "affirmative evidence that the legislature intended such application."

The appellants further argue that the direct purchaser plaintiffs (DPPs) are not represented by adequate plaintiffs, as they lack proof of common injury.

Therefore, they urge the Ninth Circuit to reverse the class certification ruling.

Certification Challenged

On April 27, 2026, the Ninth Circuit granted the appellants' petition for interlocutory review of the lower court's order certifying multiple classes of plaintiffs bringing antitrust claims against the appellants for allegedly harming competition in the e-cigarette market (*2026 U.S. App. LEXIS 12182*).

The appellants challenge Judge William H. Orrick's short-form ruling granting certification on Feb. 5, 2026, and his Feb. 26 longer order explaining his reasons for granting class certification.

Judge Orrick certified a class of DPPs defined as "All natural persons and entities in the United States that purchased e-cigarette products directly from Defendant Juul Inc. or any of its subsidiaries or affiliates, from October 5, 2018, to the present."

Judge Orrick also certified state subclasses represented by indirect purchaser plaintiffs (IPPs), comprising all people in certain states who bought JLI products indirectly from JLI, and the second set represented by indirect reseller plaintiffs (IRPs), who bought JLI products indirectly from JLI for resale.

Antitrust Claims

The litigation began with a putative class complaint filed in the District Court on April 7, 2020, on behalf of e-cigarette purchasers, after the FTC filed an administrative complaint against JLI and Altria.

The plaintiffs alleged that they were harmed by Altria's $12.8 billion acquisition in December 2018 of a 35% stake in JLI and Altria's subsequent retraction of its own e-cigarette products from the market. They alleged that this constituted anticompetitive conduct that led to supracompetitive pricing of vapor products due to the loss of JLI-Altria competition and competition between Altria and other competitors in the e-cigarette market.

In the IRPs and IPPs' amended complaints filed Sept. 20, 2021, they define the relevant product market as "Closed-System E-Cigarettes" sold in the United States.

The IRPs and IPPs allege that the defendants violated Sections 1 and 3 of the Sherman Act, *15 U.S.C. 1* and *3*, by entering into an anticompetitive agreement, Section 2 of the Sherman Act, *15 U.S.C. 2*, for monopolization, attempted monopolization and conspiracy to monopolize and Section 7 of the Clayton Act, *15 U.S.C. 18*, by making an acquisition to lessen competition in the relevant market.

Under California state law, they accuse the defendants of violating the UCL and the Cartwright Act. They also brought claims for violation of consumer protection laws from the states of Massachusetts, New York, Florida, Hawaii and Rhode Island.

The DPPs in their third amended complaint filed Sept. 7, 2023, bring claims for violation of Sherman Act Section 1 and Clayton Act Section 7 and seek declaratory and injunctive relief.

While the claims were pending, on July 3, 2023, the FTC dismissed its complaint against Altria and JLI after Altria voluntarily unwound its investment in JLI.

Counsel

The DPPs are represented by Joseph R. Saveri of Joseph Saveri Law Firm Inc. in San Francisco.

The IPPs are represented by Robin F. Zwerling of Zwerling, Schachter & Zwerling LLP in New York and Betsy C. Manifold of Wolf Haldenstein Adler Freeman & Herz LLP in San Diego, Calif.

The IRPs are represented by Robert N. Kaplan and Elana Katcher of Kaplan Fox & Kilsheimer LLP in New York; and C. Andrew Dirksen in Boston and Solomon B. Cera and Pamela A. Markert in San Francisco, all of Cera LLP.

Altria is represented by Beth A. Wilkinson, James M. Rosenthal, Rakesh Kilaru, Daniel Epps, David Friedman, Jenna P. Swarbrick and Guus Duindam of Wilkinson Stekloff LLP in Washington, D.C.

JLI is represented by Lisa Blatt, Charles L. McCloud and Edward Pickup of Williams & Connolly LLP in Washington, Jeremy Barber of Wilkinson Stekloff LLP in New York, and David I. Gelfand, Jeremy J. Calsyn and Nowell D. Bamberger of Cleary Gottlieb Steen & Hamilton LLP in Washington.

Pritzker and Valani are represented by Mark C. Hansen, Michael J. Guzman, David L. Schwarz and Andrew Skaras of Kellogg Hansen Todd Figel & Frederick PLLC in Washington.

Amicus WLF, supporting the appellants, is represented by Cory L. Andrews of WLF in Washington.

(Additional documents available: Appellants' opening brief 04-260811-007B

District Court's Feb26 order 04-260310-017R

Short order certifying classes 04-260210-032R)

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Apple Shareholders Sue Company Heads Over AI Copyright Claims

Aug. 17, 2026, 9:29 AM PDT

Apple's top directors and officers knew of copyright violations while training artificial intelligence models, leading to potentially liabilities and reputational damages, a new investor lawsuit said.

Apple's executives and board members violated their fiduciary duties and acted in bad faith by "knowingly or recklessly" causing the company to engage in copyright infringement, according to shareholder Phil Rosen's derivative lawsuit filed Friday in the US District Court for the Northern District of California.

Multiple tech giants have been sued by shareholders over AI-related claims, including copyright concerns and allegations that they over-hyped capabilities. Apple is also facing separate copyright infringement lawsuits.

Apple trained its models on data sets that included pirated books as well as videos extracted without authorization from YouTube or the copyright of those works, the lawsuit said.

"Apple is now saddled with having to defend itself in copyright infringement and BIPA violation cases as a result of Defendants' misconduct and is facing potentially massive liability and related costs and reputational damages, as well as potential loss of customers and/or claims from Apple customers who unwittingly used the copyright and BIPA infringing Apple services," the lawsuit said, referring to the Illinois Biometric Information Privacy Act.

Rosen is represented by Bottini & Bottini Inc.

A spokesperson for Apple didn't immediately respond to a request for comment.

The case is Rosen v. Cook , N.D. Cal., No. 5:26-cv-08463, case filed 8/14/26 .

To contact the reporter on this story: Rebecca Klar in Washington at rklar@bloombergindustry.com

To contact the editor responsible for this story: Ellen M. Gilmer at egilmer@bloomberglaw.com

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Meta faces major test in states' social media addiction trial

Meta has already been handed a pair of high-profile court losses this year. In April, a Los Angeles jury found it liable for harm caused by a plaintiff's social media addiction, while a New Mexico judge docked the company nearly $1 billion, finding it violated consumer protection laws and its products constituted a public nuisance.

On Monday, it faces what looks -- on paper, at least -- to be its biggest legal battle yet.

A lawsuit brought against the company by 29 attorneys general will head to trial in Oakland, with Chief U.S. District Judge Yvonne Gonzalez Rogers presiding. The states seek $1.4 trillion in penalties, according to court documents, as well as injunctive relief that could reshape Meta's platforms. The plaintiffs say the $1.4 trillion figure applies only if the jury adopts the most expansive definition of social media addiction presented to it, and that Meta has capitalized on that number to make the plaintiffs' demands seem unreasonable. The plaintiffs say a more realistic figure is closer to $200 billion.

Four states -- California, Colorado, Kentucky and New Jersey -- allege that Meta misrepresented the risk of addiction associated with its social media platforms, violating consumer protection laws. The remaining states, as well as those four, claim the company violated the Children's Online Privacy Protection Act by obtaining data on users under 13 without parental consent.

Meta -- represented primarily by Covington & Burling LLP at pretrial hearings and by Wilkinson Stekloff LLP at jury selection -- contends that the statements in question were not misleading, that social media addiction is not a recognized condition and that its conduct is publishing activity protected by the First Amendment.

The company also argues that the alleged harms are caused by third-party content, not the platform itself, and that Section 230 of the Communications Decency Act protects internet platforms from liability based on outside content. The judge narrowed the plaintiffs' claims on that basis to include only features actively implemented by Meta but said the case could still go to trial.

Meta appealed the ruling to the 9th U.S. Circuit Court of Appeals, which declined to hear the issue on interlocutory appeal, leaving it for review after a final judgment. *In re: Social Media*

Adolescent Addiction/Personal Injury Products Liability Litigation, 4:22-md-03047 (N.D. Cal., filed Oct. 6, 2022).

In a sense, Santa Clara University law professor Eric Goldman said, the trial will be the biggest Meta has faced to date in the slew of ongoing litigation over social media addiction.

"It's both, simultaneously," Goldman said. "Yes, because of the fact that the damages request from the state AGs are extraordinary. Were they granted, they would almost certainly end the social media industry as we know it today. And the risk of any order to reform the services' features could also end social media as we know it today."

But Goldman was hesitant to call this case "the big one" when so many other lawsuits over social media addiction are pending in courts across the country.

"The reason that I say no is that this is one of many cases that have been filed, each of which independently contains the same existential threats to social media that this case does," Goldman said. "Even if the social media services completely won the case, they still face a multitude of threats that could be equally dire. So, this case is not necessarily 'the one' that will answer every question."

There are legal and factual differences between the previous cases and the one scheduled to take place over the next six weeks in Oakland. The JCCP case, for example, involved an individual plaintiff. COPPA was not at issue in New Mexico's lawsuit, where the state also presented the theory that Meta was a public nuisance.

But the differences are relatively minor, Goldman said.

"There are different remedies available to attorneys general as opposed to individual victims. There are different claims that might be in play in one case over the other - like in the MDL I believe there's a COPPA-based claim that wasn't in the New Mexico case and that couldn't be in the JCCP," Goldman said. "But they're basically the same. They're all riffing off the same basic set of theories."

Like its predecessors, the states' case will primarily turn on four questions, Goldman said: whether social media platforms can be treated as products for liability purposes; whether the plaintiffs can prove that social media caused the alleged harms; whether Section 230 protects Meta from liability based on third-party content; and whether its platforms constitute publishing activity protected by the First Amendment.

The product liability issue, Goldman said, is "hotly contested" in courts across the country, with case law supporting both arguments. A series of early-2020s decisions favoring defendants in lawsuits involving terrorist organizations' use of social media suggests the causation issue could favor Meta, Goldman said.

The Section 230 and First Amendment issues both revolve around the same question -- "whether or not the services are exercising editorial discretion with respect to the things that allegedly caused the harm" -- and both could favor Meta, Goldman said.

"Stepping back from all the detail, it is so transparently obvious to me that social media services are publishing content," Goldman said. "And telling them how to publish content is a First Amendment problem."

Even if the plaintiffs win in district court, Goldman said he expects them to have a difficult time on appeal, pointing to the 9th Circuit's 2025 decision in *Doe v. Grindr*, which held that Section 230 covers content algorithms.

"The 9th Circuit has issued several rulings that I think are flatly inconsistent with the arguments that are proceeding to trial," Goldman said. "So, from my perspective, we have very specific, good reasons to believe that the district court's proceedings are not the final word on the matter."

Gonzalez Rogers has proven difficult for Meta to persuade so far, and the company likely believes it will have better luck on appeal, Goldman said, although he added that the judge is making the best of what has proven to be a difficult case to oversee.

"In general, I would say, especially more recently, the judge has made every discretionary inference against the social media services," Goldman said. "I don't see that as a matter of bias, but either way, the social media services are getting no breaks from the judge at all."

While the judge will ultimately decide the case, she will have an advisory jury to make findings on factual issues. The panel was seated Wednesday during a hearing at which some prospective jurors expressed strong views on teen social media use, the company or its CEO, Mark Zuckerberg, who is expected to testify.

However, Goldman said he does not believe jurors will necessarily be biased against the defendant.

"Having said that, there is a massive amount of 'tech-lash' among the jury pool but also among judges," Goldman said. "So, the social media defendants are always fighting upstream a little bit." Whatever decision the judge and jury reach, Goldman said he expects the U.S. Supreme Court to have the final word. "Ultimately, we're going to need the Supreme Court to weigh in on several of the questions at issue in these cases, whether it's through this case or one of the parallel cases," Goldman said. "Until we hear from the Supreme Court, everything is subject to change." Opening statements are scheduled for Tuesday, Aug. 18.

Pump-and-Dump Securities Suit Filing Trend Continues to Build

dandodiary.com/2026/08/articles/market-manipulation/pump-and-dump-securities-suit-filing-trend-continues-to-build

The wave of securities class actions alleging market manipulation involving recently public, low-float companies continues to grow. Notably, many of these lawsuits have involved non-U.S. companies that recently completed IPOs on U.S. exchanges. Two new pump-and-dump lawsuits, filed within a day of one another in the Southern District of New York against China-based iTonic Holdings Ltd. and Park Ha Biological Technology Co., Ltd., increase the number of market manipulation cases filed in 2026 to 13.

The two complaints present a similar, and familiar, fact pattern. Both companies are China-based operating businesses organized through Cayman Islands holding companies that completed small IPOs on U.S. exchanges at $4 per share and maintained highly concentrated insider ownership following their offerings. In each instance, the company's share price rose sharply without any corresponding business developments before plunging by more than 90% in a single trading session. The complaints allege that the run-ups were fueled by social media campaigns in which imposters masquerading as investment professionals and promoted fictitious relationships with well-known companies.

As discussed in more detail below, the allegations not only reflect the recurring fact pattern underlying these low-float stock-manipulation cases. but could also provide important insights for D&O underwriters evaluating the risks associated with low-float offerings.

A copy of the complaint against iTonic can be found here. A copy of the complaint against Park Ha can be found here.

The iTonic SCA

iTonic Holdings Ltd., formerly known as Pheton Holdings Ltd., is a Cayman Islands holding company that operates through a Beijing-based subsidiary developing cancer-radiation treatment planning software.

On July 29, 2026, investors filed a securities class action lawsuit against the company, certain directors and officers, its auditor, and its IPO underwriters (the iTonic SCA). The complaint alleges that Pheton's September 2024 IPO raised approximately $9 million through the sale of 2.25 million shares at $4 per share, while insiders retained most outstanding shares. The company's stock subsequently climbed to an intraday high of $32 on July 28, 2025, despite the absence of material business developments.

Plaintiffs allege that the increase was fueled by an online promotion campaign in which individuals posing as financial advisors circulated false claims, including fabricated reports that U.S.-based biopharmaceutical company Gilead Sciences was considering an acquisition of, or partnership with, the company.

On July 29, 2025, the alleged scheme unraveled after The Bear Cave published a report questioning the stock's dramatic appreciation and comparing it to other purported pump-and-dump schemes involving Chinese microcap issuers. Following multiple volatility-related trading halts, the company's shares fell approximately 95%, from a prior closing price of $30.96 to $1.65. Several days later, on August 1, 2025, the company denied any involvement in stock-price manipulation and stated that the purported Gilead transaction reports were false.

The plaintiffs contend that the defendants failed to disclose the alleged promotion scheme, the company's susceptibility to stock-price manipulation, and the purported involvement of the auditor and underwriters in other foreign microcap IPOs exhibiting similar trading patterns. The iTonic SCA asserts claims under the Securities Act of 1933, the Securities Exchange Act of 1934, and Rule 10b-5.

The Park Ha SCA

Park Ha Biological Technology (Park Ha) is a Cayman Islands holding company with operations in China that develops and sells skincare and cosmetic products under the Park Ha brand and operates a network of franchise beauty stores.

On July 28, 2026, investors filed their securities class action lawsuit against Park Ha, its controlling shareholder, certain directors and officers, its auditor, and its IPO underwriters (Park Ha SCA). According to the complaint, the company completed its IPO in December 2024, selling 1.2 million shares at $4 per share and raising approximately $4.8 million. The offering allegedly represented less than 5% of the company's outstanding shares, leaving insiders with more than 95% ownership.

The complaint alleges that Park Ha's share price rose from its $4 IPO price to an intraday high of $41.49 on July 7, 2025, despite the absence of material corporate developments that would justify the increase. Shareholder plaintiffs allege that individuals using the stolen identities of legitimate financial advisors directed investors from social media advertisements into WhatsApp groups, where they promoted Park Ha shares and falsely claimed that the company was preparing to announce a partnership with L'Oréal, one of the world's largest beauty and cosmetics companies. The purported advisors allegedly projected returns of between 200% and 300%.

On July 8, 2025, the company’s shares fell approximately 93%, from a prior closing price of $41.01 to $2.99, erasing nearly $1 billion in market capitalization in a single trading session. The plaintiffs allege that the defendants failed to disclose the purported promotion campaign, the artificial trading activity allegedly driving the share price, and the risks associated with the company’s extremely limited public float. The complaint further contends that the IPO was structured in a manner that facilitated the alleged manipulation scheme and asserts claims under the Securities Act of 1933, the Securities Exchange Act of 1934, and Rule 10b-5.

Discussion

The iTonic and Park Ha complaints fit within a growing body of securities litigation involving low-float issuers and underscore several themes of interest to D&O underwriters, including stock-promotion risks and potential liability for offering gatekeepers. Both actions also follow a fact pattern that has become increasingly familiar in recent market-manipulation-related securities lawsuits, many of which involve non-U.S. companies, frequently China-based companies, that recently completed IPOs on U.S. exchanges.

The iTonic and Park Ha lawsuits closely resemble the actions previously filed against Charming Medical, PomDoctor, China Liberal Education Holdings, and Picard Medical. Significantly, these cases also appear to share another common characteristic: they involve foreign issuers, many are China-based companies or issuers with substantial operations in China, that accessed U.S. capital markets through relatively small IPOs. In each case, plaintiffs allege a familiar pattern: a low-float IPO with concentrated insider ownership, a dramatic stock-price increase unsupported by company-specific developments, extensive social-media promotion directed at retail investors, and an eventual collapse that wiped out most of the company’s market value.

Another notable feature of the iTonic and Park Ha SCAs is the increasingly standardized nature of the alleged promotion campaigns. According to both complaints, social-media advertisements directed investors to WhatsApp groups where individuals posing as investment professionals promoted the stocks. A new feature of both lawsuits is the allegation that the companies were purportedly planning partnerships with well-known Western companies. In the iTonic case, the alleged rumors involved Gilead Sciences, while the Park Ha complaint centers on claims of a potential relationship with L’Oréal.

As in many of the earlier low-float cases, the central challenge for plaintiffs will be connecting the alleged conduct of unidentified third-party promoters to the issuer, its executives, and other offering participants. The complaints seek to bridge that gap by alleging that the offerings were structured in a manner that enabled manipulation or that the defendants failed to disclose known risks associated with the companies’ limited public floats and susceptibility to promotional activity. The suits also name the companies' underwriters and auditors as defendants, reflecting plaintiffs' continued efforts to extend liability beyond the issuers themselves.

For D&O underwriters, the growing number of pump-and-dump securities suits may reinforce the importance of evaluating low-float structures, concentrated ownership, and controls designed to detect unusual trading activity and online stock promotion. The recent cases also suggest that underwriters should pay particular attention to foreign issuers seeking to access U.S. capital markets through small public offerings, especially where insiders retain overwhelming control following the IPO.

To the extent that a substantial number of these cases involve China-based companies listing on U.S. exchanges, that characteristic may also warrant heightened scrutiny as part of the underwriting process. Whether these allegations ultimately prove sufficient to establish issuer or gatekeeper liability remains to be seen, but the continued filing of similar lawsuits suggests that low-float IPOs may become a significant area of emerging D&O risk.

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Ex-Luminar Executive Reaches $5.5 Million Investor Settlement

Aug. 17, 2026, 8:20 AM PDT

The former CEO of Luminar Technologies Inc.'s semiconductor subsidiary agreed to pay $5.5 million to resolve allegations that he and the company misled shareholders with an image of a competitor's technology in a presentation.

The payment will be covered either by ex-CEO Mike McAuliffe or his insurers, according to court filings seeking the proposed class settlement's preliminary approval. The deal, if approved by the US District Court for the Middle District of Florida, would apply to investors who got the failed car sensor tech maker's securities from Feb. 28, 2023, to March 17, 2023, said the settlement stipulation filed Aug. 14.

Luminar, which liquidated, was dropped as a defendant this year after it filed for bankruptcy

The investor leading the case sufficiently alleged McAuliffe knew or should've known that the challenged image wasn't of Luminar's chip, Judge Julie S. Sneed said last year, letting the proposed class action proceed past a motion to dismiss

Displaying the image at an event where the company advertised it would unveil its long-term product plausibly misled shareholders, Sneed said at the time

Faruqi & Faruqi LLP is lead counsel for the proposed settlement class. Orrick, Herrington & Sutcliffe LLP and GrayRobinson PA represent McAuliffe, who denied wrongdoing through the deal. None of these law firms immediately responded to emails seeking comment.

The case is Alms v. Luminar Techs., Inc. , M.D. Fla., No. 6:23-cv-00982, stipulation 8/14/26 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Brian Flood at bflood@bloombergindustry.com

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Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System: Defendants' Second Line Of Defense In Securities Class Actions

Mealey's(R) Litigation Report: Class Actions

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Body

By Douglas W. Greene, Zachary R. Taylor and Carla Caliendo

Introduction

Defense counsel and D&O insurers have seen a troubling rise in a particularly frustrating strain of securities class actions over the past decade. The plaintiff's bar has increasingly been filing securities cases that attack issuers' broad and often generic statements about their business, claiming that they were fraudulent in light of specific subsequent negative developments. A subset of these is the so-called event-driven securities class action. Given that every company will, at some point, experience some sort of challenge or setback, this strain of securities class action complaint is particularly concerning.

To be sure, broad-statement securities class actions typically face significant hurdles at the motion to dismiss stage. Often, these prior broad statements are statements of opinion subject to the high substantive standard for falsity under *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund, 575 U.S. 175 (2015)*. In Omnicare, the Supreme Court raised the bar for showing the falsity of a defendant's statement of opinion: For a statement of opinion to be false or misleading under Omnicare, a plaintiff must do more than allege that it turned out to be incorrect: he must plead (1) facts sufficient to show that the speaker did not actually hold the stated belief at the time the statement was made; or (2) "particular (and material) facts going to the basis for the issuer's opinion . . . whose omission makes the opinion statement at issue misleading to a reasonable person reading the statement fairly and in context." *575 U.S. at 188-89, 194*.

Omnicare is a powerful tool to contest the falsity of the alleged misrepresentations on a motion to dismiss (and beyond). Since Omnicare, courts have found broad statements concerning, among other things, a company's current operational and future performance,1 financial statements and internal controls,2 and compliance with laws and regulations,3 to be statements of opinion under the securities laws. For instance, in *Strezsak v. Ardelyx Inc., 2024 U.S. Dist. LEXIS 47461, 2024 WL 1160900, at *5 (N.D. Cal. Mar. 18, 2024)*, the court found defendants' statements that interactions with the FDA "have gone exceedingly well," and descriptions of "successful" clinical trials, to be statements of opinion, and that plaintiffs failed to plead any facts that rendered the statements false. Similarly, in *In re Diebold Nixdorf, Inc., Securities Litigation, 2021 U.S. Dist. LEXIS 62449, 2021 WL 1226627, at *9-*

10 (S.D.N.Y. Mar. 30, 2021), the court concluded that the defendants' statements describing the company's "excellence" in finance, operations, and sales, and "confidence" in a merger, were statements of opinion that plaintiffs did not adequately plead were false.

Yet some complaints that allege opinion misrepresentations still manage to survive.4 But that should not mean that defense counsel should either march along into the burdensome, expensive, and often contentious discovery process or throw up the white flag of surrender and settle. Defense counsel should be prepared to immediately deliver a second wave of attack to knock out such claims at class certification utilizing the Supreme Court decision in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System, 594 U.S. 113 (2021)*.

Goldman provides defense counsel with a way to defeat a securities class action as a class action by attacking the "back-end" of a complaint's allegations, i.e., by analyzing whether the later disclosed adverse event (i.e., the alleged "corrective disclosure") was sufficiently related to the prior alleged misrepresentation. Where there is a "mismatch" between the nature, contents, and/or subject matter of the alleged misrepresentation and the alleged corrective disclosure, a plaintiff may not be able to establish reliance at class certification, which would strip the case of its class action status and virtually eliminate defendants' and D&O insurers' financial exposure to such claims.5

Given the one-two punch Omnicare and Goldman afford defendants in securities class actions, defense counsel should be prepared from the outset of the case to analyze and develop the strength of its arguments at class certification should the case proceed past the motion to dismiss stage. Further, defense counsel should seek to brief class certification early on and stay discovery (or at least limit discovery to class discovery) pending resolution of class certification.6

The Supreme Court Decision in Goldman

The claims in Goldman arose around the time of the Great Recession. At issue in that case were certain alleged conflicts of interest that existed for a series of transactions in collateralized debt obligations ("CDO") involving subprime mortgages.7 Goldman allegedly marketed the CDO transactions as "ordinary asset-backed securities, through which investors could buy shares in bundles of mortgages and that investors, and presumably Goldman, hoped would succeed."8 However, Goldman purportedly allowed an outside hedge fund, Paulson & Co., to play an active role in selecting the mortgages that constituted the CDOs, and Paulson was actively betting against those investments through short sales.9 Goldman had not publicly disclosed Paulson's involvement in the mortgage portfolio selection for the CDOs.10

The Goldman plaintiff alleged that Goldman's stock price declined on the news of three government enforcement actions related to the CDO transactions and that they revealed the falsity of Goldman's prior broad statements concerning its controls for conflicts of interest generally and the company's integrity.11 Representative examples of some the alleged misrepresentations, which are statements common to issuers in their SEC filings and elsewhere, included:

* "Our reputation is one of our most important assets. As we have expanded the scope of our business and our client base, we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interest of another client . . . ."

* "We have extensive procedures and controls that are designed to identify and address conflicts of interest . . . ."

* "Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow . . . ."

* "We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard . . . ."

* "Most importantly, and the basic reason for our success, is our extraordinary focus on our clients . . . ."

* "Integrity and honesty are at the heart of our business."12

Having successfully defeated the motion to dismiss, the parties entered discovery and class certification briefing. The district court certified the class and after a near decade long series of appeals, the class certification issue reached the Supreme Court.

At issue in the Goldman decision was whether the shareholders were entitled to the fraud-on-the-market presumption of reliance under *Basic Inc. v. Levinson, 485 U.S. 224 (1988)*, at class certification. The fraud-on-the-market theory asserts "that an investor presumptively relies on a misrepresentation so long as it was reflected in the market price at the time of his transaction."13 At class certification, a defendant may rebut the Basic presumption of reliance by showing that the alleged misrepresentations had no impact on the stock price.14 "Any showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price, will be sufficient to rebut the presumption of reliance."15

In Goldman, the plaintiff asserted that the alleged misrepresentations maintained an artificial inflation in the stock price for years, which was exposed and dissipated on the announcements of the corrective disclosures described above.16 This is commonly known as a "price maintenance" theory of price impact. Under a price maintenance theory, the artificial inflation embedded in a company's stock price at the beginning of the class period can be shown through the "back-end" stock price decline attributed to the corrective disclosures.17 In other words, "the misrepresentation prevents preexisting inflation in a stock price from dissipating, but does not cause a price uptick. Instead, the back-end price drop-what happens when the truth is finally disclosed-operates as an indirect proxy for the front-end inflation, or the amount that the misrepresentation fraudulently propped up the stock price. Simply put, the theory goes: back-end price drop equals front-end inflation."18

By showing such embedded artificial inflation at the beginning of the class period, a plaintiff may invoke the Basic presumption of reliance at class certification based on a price-maintenance theory.19

Goldman argued that there was a "mismatch" between the alleged misrepresentations-general and generic statements-and the alleged corrective disclosures-specific events-such that any stock price drops attributable to the corrective disclosures did not support an inference that the alleged misrepresentations caused any embedded artificial inflation. In other words, by "severing the link" between the alleged corrective disclosures that revealed the alleged artificial inflation, and the alleged misrepresentations that purportedly caused said artificial inflation, plaintiff could not establish that it had relied on the alleged misrepresentations (which would have had no impact on Goldman's stock price) under the Basic presumption.

The Supreme Court agreed with this principle20 and explained that evidence of a "mismatch" between an alleged corrective disclosure and an alleged misrepresentation is relevant evidence to rebut the Basic presumption of reliance. The Court explained that:

[The] inference that the back-end price drop equals front-end inflation [] starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure. That may occur when the earlier misrepresentation is generic (e.g., "we have faith in our business model") and the later corrective disclosure is specific (e.g., "our fourth quarter earnings did not meet expectations"). Under those circumstances, it is less likely that the specific disclosure actually corrected the generic misrepresentation, which means that there is less reason to infer front-end price inflation-that is, price impact-from the back-end price drop.21

Directly at issue in Goldman was the "mismatch" between generic alleged misrepresentations and specific corrective disclosures. But the Court did not limit the "mismatch" principle to such statements. As a general matter, the "inference that the back-end price drop equals front-end inflation [] starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure."22 Accordingly, if the connection between the alleged misrepresentations and alleged corrective disclosures is too attenuated, there should be strong grounds for rebutting the presumption of reliance.

The Second Circuit Remands in Goldman

After the Supreme Court remanded the case to the Second Circuit, the Second Circuit remanded the case to the district court because it was "unclear whether the district court considered the generic nature of Goldman's alleged misrepresentations" as required under the Supreme Court's decision.23

On remand, the district court again certified the class after determining that the alleged misrepresentations were not sufficiently generic as to establish a sufficient mismatch to rebut the Basic presumption.24

On appeal, the Second Circuit reversed the district court's decision and remanded with instructions to decertify the class. The Second Circuit elaborated on the principle set forth in Goldman as follows:

[W]hat happens when the match between the contents of the price-propping misrepresentation and the truth-revealing corrective disclosure is tenuous? Consider two examples. In the first, an automobile manufacturer's earlier statement to the market that its best-selling vehicle passed all safety tests is followed by later news that, in fact, the car failed several crash tests. A price drop follows. There, the earlier statement is precisely negated, or rendered false, by the later news-a clean match. In the second example, however, the same back-end news (and the same price drop) is instead preceded by the manufacturer's statement to the market that it strives to ensure that all its vehicles are road-ready, that it has an elaborate testing protocol to that effect, but that [] task is tall, the goal difficult to achieve. There, it is less apparent the market would understand the later news of failed crash tests revealed that, in fact, there was no protocol, or that, in fact, the manufacturer did not seek to make its automobiles safe to drive. The match between the more specific "corrective disclosure" and the earlier, more generic statement is on shakier ground.25

Based on this analysis, in part, the Second Circuit held that Goldman's alleged misrepresentations as to its business principles (e.g., statements such as "integrity and honesty are at the heart of our business") were too generic to support an inference of price impact based on the stock price drop following the alleged corrective disclosures of specific government investigations into the allegedly conflicted transactions.26

With regard to Goldman's generic statements as to how it addressed conflicts of interest, the Second Circuit concluded that the alleged corrective disclosures were insufficiently linked to the alleged misrepresentations. The Second Circuit distinguished Goldman from its prior decision in *Waggoner v. Barclays PLC, 875 F.3d 79 (2d Cir. 2017)* where the alleged corrective disclosures "expressly identified" the alleged misrepresentations.27 The Second Circuit also distinguished Goldman from its prior decision in *In re Vivendi, S.A. Sec. Litig., 838 F.3d 223 (2d Cir. 2016)*, where the Second Circuit explained that a front-end price impact of a generic disclosure can established if there is sufficient evidence to infer that there would have been a negative stock price reaction had the company spoken truthfully at the time of the alleged misrepresentation but "at an equally generic level."28 The Second Circuit explained that, in line with Goldman, there cannot be a presumption that the market relied on the generic alleged misrepresentation unless it would have also reacted negatively to an equally generic negative disclosure had it been disclosed.29 Because the alleged corrective disclosures in Goldman described the "details and severity" of Goldman's alleged conduct, that presented a generic-specific "mismatch" sufficient to rebut the presumption of reliance.30

District Court Decisions Based on Goldman

Not many courts have opined on the Goldman mismatch principle, and the majority of those that have did not find the mismatch sufficient to rebut the Basic presumption. It is worth noting however, that these many of these decisions rely heavily on pre-Goldman precedent in assessing price impact. Arguably, some of these decisions reflect the same errors found in the district court decision in Goldman, which, as noted, has since been reversed.

However, several recent decisions demonstrate that courts may be starting to catch on to the logic underlying Goldman and denying (in full or in part) class certification on a sufficient showing of mismatch between the alleged misrepresentations and alleged corrective disclosures:

* In *Ferris v. Wynn Resorts Ltd., 2023 U.S. Dist. LEXIS 35374, 2023 WL 2337364, at *11 (D. Nev. Mar. 1, 2023)*, the court found that the issuer's (a resort casino company) announcement that it had dismissed the law firm it had retained to investigate sexual and other misconduct allegations was "not matched" to the alleged misrepresentations, which concerned the defendants' denials of said misconduct. The court concluded that "[t]he plaintiff class therefore may not proceed on this allegation as a corrective disclosure." Id.

* In In re Qualcomm Inc. Sec. Litig., 2023 U.S. Dist. LEXIS 47016, 2023 WL 2583306, at *12 (S.D. Cal. Mar. 20, 2023), the court found a mismatch between the issuer's (a technology company that owns patents for components inside cell phones and other devices) statements concerning its "broad," "fair," "reasonable," and "non-discriminatory" licensing practices, and the alleged corrective disclosures that allegedly revealed that the issuer did not license chips. The court refused to certify a class with respect to the licensing-related alleged misrepresentations.

* In *In re Apache Corp. Sec. Litig., 2024 U.S. Dist. LEXIS 23001, 2024 WL 532315, at *7 (S.D. Tex. Feb. 9, 2024)*, the court found a mismatch between the issuer's (an oil company) alleged misrepresentations concerning the attributes, performance, and prospects of a particular oil field and the alleged corrective disclosures that the head geologist at the oil field resigned, and that the company was temporarily deferring the oil field's production given continuing low oil prices. The court granted in part and denied in part the motion for class certification.

* In *In re Kirkland Lake Gold Ltd. Sec. Litig., 2024 U.S. Dist. LEXIS 59981, 2024 WL 1342800, at *8 (S.D.N.Y. Mar. 29, 2024)*, the court found a mismatch between the issuer's (a mining company) alleged misrepresentations concerning the company's focus and preference for internal growth "instead of going out and trying to buy [a] company," and the alleged corrective disclosure of the company's acquisition of a mine from another company. The court denied class certification.

* In *Sjunde AP-Fonden v. Goldman Sachs Grp., Inc., 2024 U.S. Dist. LEXIS 64060, 2024 WL 1497110, at *4, 16-17 (S.D.N.Y. Apr. 5, 2024)*, a case related to the 1MDB scandal, the magistrate judge found a mismatch between the issuer's (Goldman) alleged misrepresentations that Goldman did not receive "fees or commissions" from 1MDB, that Goldman "had no visibility" into 1MDB's diversion of funds, and that "Jho Low [the creator of the 1MDB fund]" was not a client of Goldman, and the alleged corrective disclosures that Goldman's CEO had met with Jho Low in 2013. The magistrate judge issued a report and recommendation denying class certification as to those alleged misrepresentations, and the district court adopted the report in full. See *Sjunde AP-Fonden v. Goldman Sachs Grp., Inc., 798 F. Supp. 3d 416, 468 (S.D.N.Y. 2025)*.

* In Shupe v. Rocket Companies, Inc., 2024 U.S. Dist. LEXIS 177472, 2024 WL 4349172, at *24-26 (E.D. Mich. Sept. 30, 2024), the court found a mismatch between the issuer's (a real estate financial services company) alleged misrepresentations that it saw "strong consumer demand" and an "opportunity" to invest as interest rates rose, that certain of its networks were "growing," and that it "takes" rising interest rates as an "opportunity to grow market share," and the alleged corrective disclosures of the issuer's low "closed loan volume," "net rate lock volume," and "gain on sale margins." The court determined that there was a mismatch between the generic alleged misrepresentations and the specific alleged corrective disclosures following Goldman's guidance. The court also noted that defendants' expert testimony demonstrating that "no analyst referenced" the alleged misrepresentations "in reports issued throughout the class period" was "fatal" to plaintiffs' claim that the alleged misrepresentations impacted the issuer's stock price. The court denied class certification.

* In *In re Concho Res., Inc., 2025 U.S. Dist. LEXIS 66272, 2025 WL 1040379, at *10-17 (S.D. Tex. Apr. 7, 2025)*, the court found a generic-specific mismatch between the issuer's (an oil company) specific alleged corrective disclosure reporting "substandard second quarter 2019 financial results" and lowering oil production guidance, and generic alleged misrepresentations, including that: (1) "Our operational and financial performance demonstrated our ability to consistently execute, control costs and capitalize on opportunities that strengthen our competitive position."; (2) "High quality acreage and scale within the Permian Basic enables Concho to efficiently allocate capital while continuing to advance manufacturing style development with leading-edge drilling and completion

techniques."; (3) "Concho is collecting valuable data that helps the Company optimize lateral placement, completion design and facilitates planning."; (4) "Our strategy allows us to adapt quickly."; (5) "We believe this type of [large-scale] development is important to maximize recoveries, drive economies of scale and deliver attractive economic returns predictably and consistently over the long term."; (6) "[T]he allocation of capital is probably the most important thing that our team does and the most important thing that we do that creates success for the company. That's what drives our production growth and free cash flow. Also, we run a very large and stable ship. This allows us to balance risk and kind of plow through the volatility of our business."; (7) "I think the drilling side of our business is one of the best parts of our business. And I think the way we have approached that in the past will continue." (8) "[B]y drilling longer laterals and the spacing we're using, the efficiency and all that, you can get a whole lot more done."; (9) "[T]hese large- scale projects, they really emphasize planning and planning ahead. And our team has done a good job of that."

The court also found a subject matter mismatch between the alleged corrective disclosure and other alleged misrepresentations because the alleged misrepresentations did not "pertain to the financial results for the second quarter of 2019." These categories of alleged misrepresentations included: (1) "[L]arge-scale projects . . . . [are] very dispersed amongst our asset base."; (2) "[W]e've been building up to this kind of larger-scale development mode, and we're very excited about what we're seeing."; (3) "The 2018 capital program is expected to be funded with cash flows from operations and generate 20% crude oil growth and 16% to 20% total production growth year-over-year."; (4) "Concho expects to grow total production at a compound annual growth rate of 20% from 2017 to 2020. The outlook reflects the Company's high-quality production base and strong operating momentum."; and (5) "In addition to our size, scale and execution strength provided us with the unique ability to capitalize on [] new complementary assets."

* In *Gambrill v. CS Disco, Inc., 2025 U.S. Dist. LEXIS 259789, 2025 WL 3771433, at *7-13 (W.D. Tex. Dec. 16, 2025)*, the magistrate judge recommended denial of class certification based on the "mismatch" between the alleged corrective disclosures related to issuer's (an e-discovery services provider) revised 2022 guidance, and the alleged misrepresentations that concerned: (1) "growth of usage [of the issuer's product] by one client"; (2) "the general adoption of [the issuer's] services by typical clients"; and (3) "the expectation that as [the issuer] grows, fluctuations in usage by any one client will become less impactful." The magistrate judge found both a subject matter and a generic-specific mismatch. Id. at *11 ("Defendants have demonstrated that the Alleged Corrective Disclosures do not sufficiently match [the]Alleged Misrepresentations. The court's comparison reveals too great a distance between the content of what the statements discussed. . . . The comparison also reveals too great a distinction in the specificity of the matters discussed.").

* In *In re NVIDIA Corp. Sec. Litig., 2026 U.S. Dist. LEXIS 63927, 2026 WL 821418, at *19-22 (N.D. Cal. Mar. 25, 2026)*, the court found a subject matter mismatch between certain of the issuer's (a multinational technology company) alleged misrepresentations-which stated that "sales of [the issuer's] products to cryptocurrency miners were insignificant" and that the issuer's "cryptocurrency-related revenues were contained primarily in the [issuer's Original Equipment Manufacturer & IP] segment" rather than its Gaming segment-and the alleged corrective disclosures where the issuer disclosed a "lack of cryptocurrency revenue in the future earnings forecast" and an "increase in balance sheet inventory."

* In *In re Enovix Corp. Sec. Litig., 2026 U.S. Dist. LEXIS 87945, 2026 WL 1078569, at *8-13 (N.D. Cal. Apr. 21, 2026)*, the court denied class certification after finding a mismatch between the issuer's (an early-stage technology company that makes a new type of lithium-ion battery) alleged misrepresentations that allegedly concealed that certain Chinese equipment used in the issuer's production factory failed to pass Factory Acceptance Tests, and the alleged corrective disclosures which revealed the failure of the production factory "broadly speaking."

Recent Developments in the Third Circuit - San Diego Cnty. Emps. Ret. Ass'n v. Johnson & Johnson, et al.

The class action defendants opposed class certification primarily on the theory that the alleged corrective disclosures did not constitute "new" information33 because the allegations and litigations regarding asbestos in Johnson & Johnson talc products were already well-known to the market, and thus the alleged corrective disclosures could not have caused the class action plaintiff's losses.34 The class action defendants also asserted that there was a mismatch between the alleged corrective disclosures and the alleged misrepresentations, including: (1) the 2017 Bernstein Liebhard press release did not match any alleged misstatement because "Plaintiff does not (and could not) claim that J&J concealed that ovarian cancer patients 'planned to include' asbestos related claims"; (2) the July 2018 verdict did not match the alleged misstatements because "Plaintiff does not allege that Defendants concealed the risk of large adverse verdicts in talc cases"; (3) "Plaintiff argued that the [2018] Reuters article disclosed for the first time that 'J&J has never adopted a concentration method for preparing talc samples before asbestos testing," but "J&J never said it used concentration testing and was not required to"; and (4) the 2018 Reuter's article's quoting of the "personal opinions" of a "former New York City environmental protection chief" who learned of the jury verdict and stated "[h]ow come it took so long?," and a plaintiffs' lawyer who stated that "the documents J&J [allegedly] withheld from [his client] would have made a 100% difference for his client," did "not match any alleged misstatement."35

In granting the motion for class certification, the district court did not address the class action defendants' Goldman "mismatch" arguments, concluding that "the Court need not determine whether the disclosures are corrective at this stage."36 The class action defendants appealed the district court decision to the Third Circuit Court of Appeals, arguing, in part, that the district court erred in "refusing even to decide whether the alleged corrective disclosures were even corrective," which "contradicts Goldman, which held that the issue must be addressed before a class is certified."37 The class action plaintiff opposed the appeal, arguing that: (1) any Goldman concern is "absent here, where Defendants' misstatements concerning asbestos in J&J talc products were pointed and specific-and definitively linked with the contrary disclosures"; and (2) "[t]he district court correctly noted it didn't have to consider loss causation at the class-certification stage [], and elsewhere reiterated that '[a]gain, . . . the Court need not determine whether the disclosures are corrective at this stage."38

In a 2-1 decision, the Third Circuit affirmed the district court's order certifying the class. In its decision, the majority only stated the following regarding the class action defendants' Goldman arguments:

[W]e observe that each disclosure contained information relating to J&J's alleged misrepresentations concerning the presence of asbestos in its talc product, its commitment to safety, or its potential asbestos-related liability. Thus, unlike in Goldman, . . . there is no mismatch between the subject of the alleged misrepresentation and the content of the disclosures. Therefore, market reaction to the disclosures is capable of shedding light on the price impact of the alleged misrepresentations.39

In the dissent, Judge Chung opined that he would vacate the district court order and remand for further proceedings, specifically because "the District Court did not assess evidence introduced by J&J showing that the disclosures did not contain newly public information and were not corrective," and "[a]bsent such findings, it is impossible to determine whether the District Court clearly erred in concluding that J&J failed to show that the disclosures had 'price impact,' and thus failed to rebut Basic's presumption of reliance."40

The class action defendants sought appeal of the Third Circuit decision to the Supreme Court, but the Supreme Court denied certiorari.

Recent Developments in the Ninth Circuit - Jaeger v. Zillow Group, et al.

In *Jaeger v. Zillow Group, Inc., et al., 746 F. Supp. 3d 1025 (W.D. Wash. Aug. 23, 2024)*, the class action defendants sought to rebut the Basic presumption and defeat class certification based on Goldman's mismatch guidance. Zillow operates several real estate websites and, in 2018, launched its "Zillow Offers" business in which Zillow purchased homes directly from sellers, performed renovations, and resold the homes for small profit margins.41 The class action plaintiff alleged two categories of alleged misrepresentations: (1) statements of optimism related to the strengthening of Zillow's pricing models in connection with its Zillow Offers business;42 and (2) statements regarding the durability of certain operational, unit economic, and/or renovation process improvements.43 Plaintiff alleged that the first category of alleged misrepresentations was false or misleading because Zillow allegedly concealed its use of "gross pricing overlays" in setting prices, that these overlays were what created demand, and thus Zillow was not in fact strengthening its pricing models. Plaintiff alleged that the second category of alleged misrepresentations were false or misleading because Zillow allegedly concealed its reduction in the scope and pricing of renovations.

Plaintiff alleged that the falsity of these disclosures was revealed through four alleged corrective disclosures: (1) an October 4, 2021 analyst report stating that Zillow appeared to have too much inventory that it bought "at too high a price"; (2) an October 17, 2021 news article reporting that Zillow Offers was pausing new home acquisitions, which Zillow later confirmed in an October 18, 2021 press release as being due to a "backlog in renovations and operational capacity constraints"; (3) an October 31, 2021 analyst report and a November 1, 2021 news article stating that 66% of Zillow's homes were for sale below their purchase price and that Zillow planned to divest approximately 7,000 homes; and (4) Zillow's November 2, 2021 earnings call announcing it was writing down over $500 million in home inventory and winding down Zillow Offers because the housing market was too volatile for Zillow's pricing projections.44

The Zillow defendants opposed class certification, arguing that there was a mismatch between the alleged misrepresentations and the alleged corrective disclosures because none of the alleged corrective disclosures actually revealed the allegedly concealed information, i.e., Zillow's use of pricing overlays and its reductions to the scope and pricing of renovations. The district court rejected this argument, concluding that: (1) the October 17-18, 2021 disclosures regarding the pause in new acquisitions due to inventory backlog "render[ed] some aspect of [Zillow's] prior statements false or misleading" because plaintiff had alleged that Zillow's inventory backlog was caused by the overlay pricing model and inability to renovate houses; (2) the October 31 and November 1, 2021 disclosures that Zillow was selling homes below their purchase price and divested 7,000 homes revealed the prior pricing statements to be false or misleading because plaintiff alleged that overpayments for houses were a result of Zillow's overlay pricing model; and (3) the November 2, 2021 earnings call's disclosure that Zillow's pricing model would not be able to accurately forecast future home prices rendered its prior statements regarding the strength of Zillow's pricing model false or misleading.45

In January 2025, the defendants appealed the class certification decision to the Ninth Circuit. On September 26, 2025, in a two-page unpublished order,46 the Ninth Circuit affirmed the district court's decision, concluding that: "The back-end disclosures [] revealed new information about how Zillow's home-pricing struggles threatened the business and suggested that its earlier statements may have obscured how Zillow's pricing model misfired. Zillow's front-end and back-end statements are matched enough under Goldman." *Jaeger v. Zillow Grp., Inc., 2025 U.S. App. LEXIS 24977, 2025 WL 2741642, at *2 (9th Cir. Sept. 26, 2025)*.

***

While Johnson & Johnson and Zillow represent that some courts will still find a sufficient match where the alleged corrective disclosures concern the same general subject matter as the alleged misrepresentations, courts are increasingly scrutinizing the substantive match (or mismatch) between alleged misrepresentations and alleged corrective disclosures following Goldman, including in the Ninth Circuit following the Zillow decision,47 as discussed above.

Goldman as a Tool for Defense Counsel

Too often, after the filing of a case, defense counsel devotes its exclusive attention to the motion to dismiss process. Once a court denies a motion to dismiss-sometimes years after the initial complaint is filed-defense counsel enter into settlement discussions, and/or enter discovery mode and negotiate a case schedule that puts off class certification for many months. During that time, defendants and their D&O insurers are burdened with the enormous burden and expense of discovery in securities class actions, and any settlement analyses or valuations are determined based on what the expected damages would be at trial.

That classic way of doing things overlooks the opportunity to virtually defeat such cases under Goldman, which provides added protection for cases involving broad statements of opinion under Omnicare as well as broad and/or generic statements of fact.48 Indeed, the example cited by the Supreme Court in Goldman itself demonstrates a mismatch between a broad alleged misrepresentation of opinion ("we have faith in our business model") and a specific corrective disclosure ("our fourth quarter earnings did not meet expectations").49 That alleged misrepresentations are often broader in scope than the alleged corrective disclosures should incentivize defense counsel to utilize Goldman to rebut the Basic presumption of reliance and defeat class certification early in the case.

Accordingly, should a complaint survive a motion to dismiss, defense counsel should be immediately prepared to reload and brief the issue of class certification if it has a viable Goldman mismatch argument. Indeed, *Federal Rule of Civil Procedure 23(c)* directs courts "at the earliest practicable time . . . to determine by order whether to certify the action as a class action."50 And defense counsel should move to stay discovery pending the outcome of class certification, or at least seek to limit discovery to class discovery, pending the outcome of class certification. This way, issuers have a second chance to virtually eliminate the case early on without the notorious burden and expense of discovery in securities class actions.

Additionally, depending on the strength of the Goldman arguments, attempting to defeat class certification early on may bring plaintiffs' counsel to the settlement table earlier with defendants having the upper hand.

Endnotes

1. *In re MINISO Grp. Holding Ltd. Sec. Litig., 2024 U.S. Dist. LEXIS 31227, 2024 WL 759246, at *17 (S.D.N.Y. Feb. 23, 2024)*; *Strezsak v. Ardelyx Inc., 2024 U.S. Dist. LEXIS 47461, 2024 WL 1160900, at *5 (N.D. Cal. Mar. 18, 2024)*.

2. *New England Carpenters Guaranteed Annuity & Pension Funds v. DeCarlo, 80 F.4th 158, 176 (2d Cir. 2023)*; *Se. Pennsylvania Transportation Auth. v. Orrstown Fin. Servs., Inc., 2016 U.S. Dist. LEXIS 169379, 2016 WL 7117455, at *13 (M.D. Pa. Dec. 7, 2016)*; In re Qiwi plc *Sec. Litig., 2023 U.S. Dist. LEXIS 197945, 2023 WL 7283619, at *13 (E.D.N.Y. Nov. 3, 2023)*; *In re Citigroup Sec. Litig., 2023 U.S. Dist. LEXIS 50726, 2023 WL 2632258, at *18 (S.D.N.Y. Mar. 24, 2023)*.

3. *Omnicare, 575 U.S. at 175*; *Villella v. Chem. & Mining Co. of Chile Inc., 2017 U.S. Dist. LEXIS 45501, 2017 WL 1169629, at *10 (S.D.N.Y. Mar. 28, 2017)*; *In re Plains All Am. Pipeline, L.P. Sec. Litig., 307 F. Supp. 3d 583, 622 (S.D. Tex. 2018)*.

4. See, e.g., *In re Home Point Cap. Inc. Sec. Litig., 2022 U.S. Dist. LEXIS 239647, 2022 WL 18932069, at *5 (E.D. Mich. Oct. 5, 2022)* (concluding that the company's statement that "we believe that [our scalable operating platform] provides us with significant operating leverage" was adequately pleaded as false); In re Intuitive Surgical Sec. Litig., 2017 U.S. Dist. LEXIS 161098, 2017 WL 4355072, at *2 (N.D. Cal. Sept. 29, 2017) (same regarding the company's opinion statements that "[w]e believe [that the company's surgery system] continues to be a safe and effective surgical method").

5. While this analysis may overlap with principles of loss causation and materiality-which courts have found to be inappropriate merits questions at the class certification stage-Goldman held that evidence of such a "mismatch" is appropriate evidence to defeat price impact and the presumption reliance at class certification. *Goldman, 594 U.S. at 114 (2021)* (courts must "consider all record evidence relevant to price impact, regardless whether that evidence overlaps with materiality or any other merits issue"); *Delaware Cnty. Emps. Ret. Sys. v. Cabot Oil & Gas Corp., 2023 U.S. Dist. LEXIS 172506, 2023 WL 6300569, at *6 (S.D. Tex. Sept. 27, 2023)* ("The class-certification question of whether the Basic presumption [of reliance] has been rebutted by evidence of no price impact overlaps with the merits questions of materiality, reliance, and loss causation. Nonetheless, district courts must consider all probative evidence" to determine whether the Basic presumption of reliance has been rebutted) (citing *Goldman, 594 U.S. at 122 n.2*).

6. Economic arguments against class certification are also available at summary judgment and trial. See, e.g., *Basic Inc. v. Levinson, 485 U.S. 224, 241, 259 n.29 (1988)*; *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds, 568*

U.S. 455, 482 (2013); Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 279 (2014). Sometimes, it is strategically smart to make such arguments at summary judgment along with arguments on other elements.

7. Arkansas Tchrs. Ret. Sys. v. Goldman Sachs Grp., Inc., 879 F.3d 474, 479-480 (2d Cir. 2018).

8. Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc., 955 F.3d 254, 259 (2d Cir. 2020).

9. Id.

10. Id.

11. Goldman, 879 F.3d at 478-79.

12. Goldman, 594 U.S. at 120; In re Goldman Sachs Grp., Inc. Sec. Litig., 579 F. Supp. 3d 520, 523 (S.D.N.Y. 2021), rev'd and remanded sub nom. Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc., 77 F.4th 74 (2d Cir. 2023).

13. Goldman, 594 U.S. at 118.

14. Id. at 119 (citing Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 279 (2014) ("Halliburton II").

15. Halliburton II, 573 U.S. at 269.

16. Goldman, 594 U.S. at 116.

17. The other, more traditional, theory of price impact is where a stock's price increases at the beginning of the class period because of an alleged false or misleading statement.

18. Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc., 77 F.4th 74, 80 (2d Cir. 2023).

19. It should be noted that the Supreme Court has not opined on whether the "price maintenance" theory is a valid means to establish price impact. Goldman, 594 U.S. at 120 n.1 ("Although some Courts of Appeals have approved the inflation-maintenance theory, this Court has expressed no view on its validity or its contours. We need not and do not do so in this case."). The Eighth Circuit has rejected it and there is some precedent in the Fifth Circuit that undermines its validity as well. See IBEW Local 98 Pension Fund v. Best Buy Co., Inc., 818 F.3d 775, 782-83 (8th Cir. 2016) (reversing certification because back-end drop alone was insufficient evidence of front-end price impact); Greenberg v. Crossroads Sys., Inc., 364 F.3d 657, 665 (5th Cir. 2004) (confirmatory misstatement that does not change stock price does not cause a price impact "[b]ecause the presumption of reliance is based upon actual movement of the stock price") (emphasis in original).

20. The Supreme Court did not de-certify the class, but instead remanded the case for further proceedings.

21. Goldman, 594 U.S. at 123.

22. Id.

23. Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc., 11 F.4th 138, 143 (2d Cir. 2021).

24. In re Goldman Sachs Grp., Inc. Sec. Litig., 579 F. Supp. 3d 520 (S.D.N.Y. 2021).

25. Goldman, 77 F.4th at 80-81.

26. Id. at 94.

27. Id. at 97-98.

28. Id. at 98-101 (emphasis in original).

29. Id.

30. Goldman, 77 F.4th at 99, 100-101.

31. Johnson & Johnson, 2023 U.S. Dist. LEXIS 230755, 2023 WL 9017023, at *1.

32. Id. at *2-3.

33. See, e.g., Meyer v. Greene, 710 F.3d 1189, 1197-98 (11th Cir. 2013) ("[c]orrective disclosures must present facts to the market that are new, that is, publicly revealed for the first time"); Catogas v. Cyberonics, Inc., 292 F. App'x 311, 314 (5th Cir. 2008) ("[B]ecause publicly disseminated information is reflected in the price of a stock traded on an efficient market, confirmatory information-that information already known to the market-may not constitute such a corrective disclosure."); In re Omnicom Grp., Inc. Sec. Litig., 597 F.3d 501, 512 (2d Cir. 2010) ("negative characterization of previously known information cannot constitute a corrective disclosure"); Teacher's Ret. Sys. of La. v. Hunter, 477 F.3d 162, 187-88 (4th Cir.2007) (same); In re Merck & Co. Sec. Litig., 432 F.3d 261, 269-70 (3d Cir.2005) (same).

34. J&J Defendants Appeal Brief, San Diego Cnty. Emps. Ret. Ass'n v. Johnson & Johnson, et al., Case No 24-1409 (3d Cir.), Dkt. #20 ("J&J Appeal Brief").

35. J&J Appeal Brief, at 38-39, 52, 60-61.

36. Johnson & Johnson, 2023 U.S. Dist. LEXIS 230755, 2023 WL 9017023, at *14; id. ("Though the parties dispute whether the verdict constitutes a corrective disclosure, the Court declines to resolve that dispute on this motion for class certification.").

37. J&J Appeal Brief, at 18.

38. J&J Plaintiff Appeal Brief, Dkt. #25, at 2, 44.

39. San Diego Cnty. Emps. Ret. Ass'n v. Johnson & Johnson, No. 24-1409, 2025 U.S. App. LEXIS 18986, 2025 WL 2176586, at *4 (3d Cir. July 30, 2025), cert. denied sub nom. Johnson & Johnson v. San Diego Cty. Emps., No. 25-977, 2026 U.S. LEXIS 1714, 2026 WL 1052034 (U.S. Apr. 20, 2026).

40. Id. at *5, *10.

41. Zillow Defendants Appeal Brief, Jaeger v. Zillow Grp., Inc., et al., Case No. 24-6605 (9th Cir.), Dkt. #10.1 ("Zillow Appeal Brief"), at 4.

42. E.g., id. at 6-7 ("The record number of homes purchased was more than double that of Q1 2021 and is a direct reflection of the customer value proposition, the progress we have made in strengthening our pricing models and automation when providing offers to customers."; "We made progress this quarter in improving our pricing models, including launching the neural Zestimate, which sharpened our offer strength," and "[t]hese improvements drove rapid gains in conversion rates in Q2 when compared to Q1, resulting in record purchases, more than catching up to our pre-pandemic pace."; statements indicating "strong customer interest in [Zillow Offers]...at the beginning of Q2," which "continued to accelerate" throughout the quarter).

43. E.g., id. at 8 ("the 353 basis point improvement from a year ago in renovation, holding and selling costs, were largely durable operational improvements.").

44. Zillow Appeal Brief at 9.

45. *Jaeger, 746 F. Supp. 3d at 1036-38*.

46. The Ninth Circuit noted that its decision "is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3." *Jaeger v. Zillow Grp., Inc., 2025 U.S. App. LEXIS 24977, 2025 WL 2741642, at *1 (9th Cir. Sept. 26, 2025)*.

47. See *In re NVIDIA Corp. Sec. Litig., 2026 U.S. Dist. LEXIS 63927, 2026 WL 821418, at *19-22 (N.D. Cal. Mar. 25, 2026)*; *In re Enovix Corp. Sec. Litig., 2026 U.S. Dist. LEXIS 87945, 2026 WL 1078569, at *8 (N.D. Cal. Apr. 21, 2026)*.

48. The alleged misrepresentations in Goldman were deemed not to be statements of opinion. *Richman v. Goldman Sachs Grp., Inc., 868 F. Supp. 2d 261, 280 (S.D.N.Y. 2012)*.

49. *Goldman, 594 U.S. at 123*.

50. *Landeros v. Pinnacle Recovery, Inc., 692 F. App'x 608, 611 (11th Cir. 2017)* (citing Rule 23(c)) (cleaned up).

[Editor's Note: Douglas W. Greene is a partner with law firm BakerHostetler. He is based in New York and is leader of its Securities & Governance Litigation Team. Zachary R. Taylor is a partner with BakerHostetler. He is based in New York and a member of its Securities & Governance Litigation Team. Carla Caliendo is Vice President and Head of D&O Claims with Sompo International. She is based in New York. Any commentary or opinions do not reflect the opinions of BakerHostetler, Sompo International or LexisNexis(r), Mealey Publications(tm). Copyright (c) 2026 Douglas W. Greene, Carla Caliendo and Zachary R. Taylor. Responses are welcome.]

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Hedge Funds Strike Out in Bid to Lead Skechers Take-Private Suit

Aug. 17, 2026, 7:26 AM PDT

Summary by Bloomberg AI

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- A Fiduciary Management Inc.-managed mutual fund will lead a Delaware Chancery Court class action challenging Skechers USA Inc.'s acquisition by 3G Capital Partners LP.
- Vice Chancellor Lori W. Will named FMI Common Stock Fund as the leader of consolidated litigation claiming the footwear giant's take-private sale was conflicted and underpriced.
- The court selected FMI over other groups of investors, with Will saying "Only the FMI Group presents a pristine—and significant—pre-announcement stake to adequately anchor the class."

A Fiduciary Management Inc.-managed mutual fund will lead a Delaware Chancery Court class action challenging Skechers USA Inc.'s $9.4 billion acquisition by 3G Capital Partners LP.

Vice Chancellor Lori W. Will on Aug. 14 named FMI Common Stock Fund as the leaders of consolidated litigation claiming the footwear giant's take-private sale was conflicted and underpriced amid tariff-related volatility last year.

The court selected FMI over three other groups of investors, including a hedge fund and law firm that are also part of a group leading a separate appraisal action evaluating the sale price.

"Only the FMI Group presents a pristine—and significant—pre-announcement stake to adequately anchor the class," Will said.

FMI is represented by Labaton Keller Sucharow LLP and Saxena White P.A. as co-lead counsel, with Friedman Oster & Tejtel PLLC and Julie & Holleman LLP serving as additional counsel. The attorneys argued in a July 9 hearing that the fund held the largest stake in Skechers "by a wide margin" before the merger announcement.

Will rejected Empyrean Capital Overseas Master Fund Ltd. and Verition Multi-Strategy Master Fund Ltd. and their law firms, Johnson Van Kwawegen LLP and Equity Litigation Group LLP, for potentially presenting too much of a potential conflict as the leaders of a separate appraisal action evaluating the sale price.

'Forced to Choose'

"Should the interests of the appraisal petitioners and class members diverge, counsel would be forced to choose between their clients, making it impossible to discharge their ethical obligations to both groups," Will said.

In the appraisal case, hedge funds hoping to make money off the deal have asked Will to weigh in on whether the purchase price was fair when the transaction closed in September 2025. Delaware law allows shareholders of a company being sold for cash to object to the deal price in court, and a judge determines the fair price of their shares.

The class action pursues different legal issues and targets the footwear giant's founders, Robert and Michael Greenberg. The competition for lead plaintiff highlights the changed landscape in the state for shareholder firms and a resurgence of appraisal arbitrage in the wake of Delaware's 2025 corporate law overhaul.

Skechers makes a significant number of shoes in China and Vietnam, and its shares dropped 23% after the relevant tariffs were announced. The company's prospects improved as the US backed off its tariff plans, and its stock soared when the 3G deal was announced in May 2025.

The consolidated class action is In re Skechers Class Action Merger Litig. , Del. Ch., No. 2025-1281, decision 8/14/26 .

To contact Bloomberg Law Automation: automation@bloombergindustry.com

To contact the reporter on this story: Jennifer Kay in Philadelphia at jkay@bloombergindustry.com and Sabrina Willmer in Washington at swillmer2@bloomberg.net.

To contact the editors responsible for this story: Alicia Cohn at acohn@bloombergindustry.com; Andrew Harris at aharris@bloomberglaw.com

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In-House AI's Costs Come Under Scrutiny in Accounting Revamp

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Summary by Bloomberg AI

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- Companies are working to implement pending accounting rules for analytics tools and other in-house software they develop as part of their artificial intelligence buildout.
- Financial Accounting Standards Board guidance will require businesses to make judgment calls on how they report development costs for software tools used internally, including AI and other technology.
- The updated financial reporting rules take effect for annual reporting periods beginning after Dec. 15, 2027, and businesses should be assessing now what information and documentation they need to make accounting decisions.

Companies from Alphabet Inc. to Roblox Corp. are working to implement pending accounting rules for analytics tools and other in-house software they develop as part of their artificial intelligence buildout.

Financial Accounting Standards Board guidance will require businesses to make judgment calls on how they report development costs for software tools used internally, including AI and other technology. For some, the changes could mean certain outlays are recorded as an immediate expense, versus an asset with costs spread over time.

The updated financial reporting rules better reflect that such tools aren't always developed in a linear way, Coinbase Global Inc. told investors in its quarterly report filed July 30. Many companies have shifted away from a sequential method of developing software, opting instead for a more flexible approach that can involve regular revisions.

"It's not just the typical software vendors that have to think about this that are providing SaaS products," Chris Chiriatti, a managing director in Deloitte's national office, said, referring to software as a service. "Most organizations, if not all, are implementing technology in some form or fashion."

The rules take effect for annual reporting periods beginning after Dec. 15, 2027. Businesses should be assessing now what information and documentation they need to make accounting decisions, Chiriatti said.

AI investment came under heightened investor scrutiny during second quarter earnings as capital expenditures ballooned. Alphabet's shares plunged in late July after it raised its full-year 2026 capital spending forecast from as much as $190 billion to as much as $205 billion.

Companies are increasingly reliant on in-house AI tools: more than 90% of senior leaders whose organizations are investing in AI say internal-use software development is essential if they want to be less dependent on outside vendors, according to an EY survey released July 28.

"Understanding the cost of cloud computing and the implementation side of it is significantly more impactful to their business than it ever was before," Crowe office managing partner Bryan Lorello said of such investment.

Judgment Calls

The accounting revamp seeks to better align how companies report the tools' production costs with the software development process itself.

Companies are currently required to capitalize costs depending on the project stage in which they occur, such as application development.

The new guidance removes references to stages, as many businesses have shifted toward "agile" development that prioritizes iterative software updates.

Under the new rules, companies are required to start capitalizing costs when certain conditions are met. Management must have greenlighted the project and committed to funding it. Additionally, there must be an expectation the project will be completed and the software will perform as intended, called the "probable-to-complete recognition threshold."

In evaluating this threshold, companies have to consider such factors as the extent to which the software is novel to determine whether there is significant uncertainty related to development.

The resulting guidance "introduces a more judgment-based approach," Roblox said in a quarterly report filed July 30.

Companies also will need to determine what constitutes a software project in the first place, as the rulebook changes don't define the term.

While one business might view an application as a single software project, another might break it out into the 10 or 15 functionalities that make up the application, Deloitte's Chiriatti said.

To determine the "unit of account," companies should analyze their existing internal processes to figure out how decisions are made and budgets are determined, he said.

"There's opportunities to leverage some of those existing processes to then think about how they naturally think about units of account and making decisions around where are they going to allocate their resources," Chiriatti said.

Early Adopters

Accounting standard-setters have acknowledged that, for some, the guidance could lead to a decrease in capitalization as companies think through the new thresholds.

Capitalization involves recording a cost or expense on the balance sheet, delaying its full recognition. This can stabilize income over time.

Digital banking software firm Blend Labs Inc. said in a quarterly report filed Aug. 6 that complying with the rules "resulted in a decrease in the amount of software costs eligible for capitalization" because certain activities didn't meet the "probable-to-complete" threshold as early as they did under the legacy model.

eBay Inc., another early adopter, has told investors in its 2026 quarterly reports that it expects "substantially all product development costs" related to its marketplace platforms would be expensed.

Because of its agile software development, "we have determined that significant development uncertainty generally persists until the software is deployed," eBay said.

The e-commerce giant retroactively adjusted its product development expenses for the second quarter of 2025 from $421 million to $452 million, according to its Aug. 6 filing.

Meanwhile, Lyft Inc. and telecommunications company Lumen Technologies Inc., among others, have said the guidance didn't have a "material impact" on their financial statements.

Broadly, the effect of less capitalization will vary depending on such factors as whether the company is a traditional software developer or is undertaking a large project, said KPMG national office partner Scott Muir.

The more consistent companies are in their software development activities, the less noticeable the rules will be on earnings, Muir said. Less consistency, though, "may drive a bigger change."

Path to Compliance

Moving forward, businesses should check with peers to assess how they are approaching the rules, EY Director of Accounting and Chief Accountant Paul Beswick said. Internally, accountants should consult software system developers to ensure they know how tools are developed.

"Trying to get implementation right the first time is really important," Beswick said.

Overall, the guidance aims to make financial reporting more consistent across companies, benefiting investors, FASB has said.

Still, the guidance ultimately is "not a bright line test," said Taylor Brown, a CLA director and professor at the University of Texas at Austin.

"How much comparability investors actually get comes down to how rigorously companies apply it and how much scrutiny it gets in the audit," Brown said.

To contact the reporter on this story: Jorja Siemons in Washington at jsiemons@bloombergindustry.com

To contact the editors responsible for this story: Robbie DiMesio at rdimesio@bloombergindustry.com; Andrea Vittorio at avittorio@bloombergindustry.com

Judge: Damages Claims In StubHub Pandemic Cancellation Case Go To Arbitration

Mealey's(R) California Section 17200 Report

Online ISSN: 2159-1628 , Print ISSN: 1543-2106

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Section: Volume 24, Issue #12

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Dateline: OAKLAND, Calif.

Body

A federal judge in California on Aug. 11 sent to arbitration damages claims under the California Consumers Legal Remedies Act (CLRA) and false advertising law (FAL) that remained following a summary judgment ruling in a putative class action brought by consumers seeking injunctive relief or restitution related to StubHub Inc.'s refund policy changes implemented for events canceled or rescheduled due to the coronavirus pandemic (In re: StubHub Refund Litigation, No. 20-md-2951, *N.D. Calif., 2026 U.S. Dist. LEXIS 179579*).

(Order compelling claims to arbitration available 43-260814-074R)

In the order that followed supplemental briefing, U.S. Judge Haywood S. Gilliam Jr. of the Northern District of California first rejected the consumers' argument that the court was precluded from reconsidering arbitration after first denying it in 2022.

Citing *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper, 254 F.3d 882 (9th Cir. 2001)*, the judge opined, "The Court has authority to reconsider or modify its interlocutory orders if necessary." The judge continued that in this case, "on a more fulsome record, it is apparent that there are no public injunctive relief claims that would preclude enforcement of the arbitration provision in the UA [StubHub user agreement]."

Further, the judge rejected the plaintiffs' argument that the court's arbitration analysis could not depend on whether the plaintiffs had standing to seek public injunctive relief. "While Plaintiffs are correct that the invocation of McGill [v. *Citibank N.A., 2 Cal. 5th 945 (2017)]* does not require that Plaintiffs ultimately prevail on their request for public injunctive relief, the Ninth Circuit has found that it requires Plaintiffs to have standing to seek such relief," the judge wrote, adding that the record is clear "that this is relief that Plaintiffs are not (and have not been) entitled to seek.

Finally, Judge Gilliam rejected the plaintiffs' argument that the approximately six years of litigation counseled against considering arbitration. "The Court has to hold the parties to their contractual agreement. . . . And here, on a more fulsome record, it is apparent that there are no public injunctive relief claims that would preclude enforcement of the arbitration provision in the UA," the judge wrote.

StubHub MDL

In August 2020, the Judicial Panel on Multidistrict Litigation transferred to the District Court several cases against StubHub concerning its practices as events were canceled across the country starting in spring 2020 due to the pandemic.

Interim class counsel were appointed, and in January 2021, a consolidated amended complaint was filed by more than 50 individuals.

The putative class complaint alleges that before the pandemic, StubHub had its "FanProtect Guarantee," under which ticket buyers would receive full refunds for canceled events. However, in March 2020, StubHub announced that it would issue credits when an event was canceled, the plaintiffs claim.

They argue that StubHub continues to advertise its FanProtect Guarantee and has not explained why it no longer offers refunds.

The plaintiffs, who all purchased tickets for events that were canceled, brought claims under consumer protection laws in California, Arizona, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Virginia, Washington and Wisconsin. They also bring state law claims for breach of contract.

StubHub moved to compel arbitration, arguing that all of the transactions are governed by its user agreement, which contains an arbitration provision. StubHub alleged that all purchasers, even those who checked out as "guests," agreed to the user agreement.

Arbitration Partially Compelled

In November 2021, Judge Gilliam granted the motion as to those customers who purchased their tickets on the website but denied it as to those who purchased tickets via StubHub's mobile application. Further, the judge denied the arbitration motion as to the California causes of action.

However, the parties disagreed on the scope of the judge's decision, and additional briefing followed.

In April 2022, Judge Gilliam ruled that the claims for violation of California's unfair competition law (UCL), *Cal. Bus. & Prof. Code 17200* et seq.; California's Consumers Legal Remedies Act (CLRA), *Cal. Civ. Code 1750* et seq.; and the FAL, *Cal. Bus. & Prof. Code 17500* et seq., had to be severed in light of *Blair v. Rent-A-Ctr., Inc., 928 F.3d 819 (9th Cir. 2019)*.

In the meantime, StubHub filed a renewed motion in January 2022 to compel arbitration of claims by plaintiffs who purchased their tickets on the mobile app and to dismiss any remaining claims. StubHub filed an amended motion four days later.

In May 2022, Judge Gilliam denied the arbitration request, opining that StubHub failed to show that those eight plaintiffs agreed to arbitrate their claims. As for dismissal, Judge Gilliam stated that only the original motion filed on the last day of the deadline for such a motion was being considered. The judge wrote, "StubHub did not seek leave to file this second-and belated-motion" in which the nature of the motion was "considerably expanded" to include the claims by all plaintiffs in the lawsuit.

Turning to the dismissal arguments, Judge Gilliam ruled that the plaintiffs presented sufficient evidence of injury and reliance on misrepresentation to survive a motion to dismiss at this stage.

The judge also denied dismissal of the plaintiffs' negligent misrepresentation and non-California statutory claims.

StubHub Appeal

StubHub appealed, and on Aug. 9, 2023, the Ninth Circuit panel affirmed as to the California statutory claims and reversed regarding the five ticket purchasers who used the mobile app, finding that they all had signed into StubHub's website.

Back in the District Court, two plaintiffs dismissed their individual claims. Then, in June 2024, both sides stipulated to dismissing counts four to 31 of the consolidated class complaint, leaving in place claims under the CLRA, UCL and FAL.

The following month, StubHub moved for summary judgment or, alternatively, summary adjudication.

The consumers opposed.

Summary Judgment

Judge Gilliam partially granted summary judgment in February 2026 as to the CLRA and FAL claims to the extent that they seek injunctive relief or restitution, opining that the consumers lack standing to pursue public injunctive relief as they failed to show any actual or imminent injury. StubHub was fully granted summary judgment as to the UCL claim as "traditional monetary damages are not available under that statute."

However, the judge deferred ruling on claims seeking monetary damages to allow the parties to file briefs about why the claims should or shouldn't be compelled to arbitration

Counsel

The plaintiffs' interim co-lead counsel are Tina Wolfson and Theodore W. Maya in Burbank, Calif., and Bradley K. King in New York, all of Ahdoot & Wolfson PC, and Tiasha Palikovic and Jessica Hunter of Wittels McInturff Palikovic in Armonk, N.Y.

StubHub is represented by William P. Donovan Jr. of Dechert LLP in Los Angeles.

(Additional documents available: StubHub's supplemental brief 43-260814-075B

Plaintiffs' memorandum re: summary judgment order 43-260814-076B

Plaintiffs' reply re: summary judgment order 43-260814-077B

StubHub's reply in support of compelling arbitration 43-260814-078B

Feb5, 2026, summary judgment order 43-260220-034R

Consumers' consolidated complaint 43-211203-040C)

Do you have news to share? Are you interested in writing a commentary article? Email the Mealey's News Desk at *Mealeys@LexisNexis.com*

Load Date: August 14, 2026

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Litigation Trends to Watch: Claims Surge Over Tariff Refunds, Weight Loss Drugs and Texas Property Appraisals

law.com/2026/08/14/litigation-trends-to-watch-claims-surge-over-tariff-refunds-weight-loss-drugs-and-texas-property-appraisals

Welcome to the Trend Detection Weekly Scan from Law.com Radar. This weekly article highlights shifts and patterns in case filings that are surfaced by Law.com Radar's award-winning Trend Detection system.

Here's what caught our attention this week:

- Amazon customers demand tariff refunds.
- Tesla sues vehicle owners, suppliers and business partners.
- Eli Lilly launches filing spree over generic weight loss drugs.
- Appraisal challenges skyrocket in Texas.
- Class actions pile up in retail sector.

► Amazon | Class Actions | Consumer Protection

Law.com Radar detected a spike in consumer protection class actions against **Amazon** in July. The platform surfaced six cases, well above the typical monthly volume across federal courts and major state jurisdictions. Most of the actions alleged unjust enrichment over claims that Amazon unlawfully passed on costs from tariffs imposed by the Trump administration to customers through price increases and that after the U.S. Supreme Court invalidated those tariffs, Amazon stood to recover huge sums without compensating consumers.

Plaintiffs lawyers in some of the recent actions have moved for multidistrict litigation, and the company announced during its Aug. 5 earnings call that it would pass on portions of the refunds to customers. **Morgan Lewis** and **Davis Wright Tremaine** represent the company.

► Tesla | Contract Litigation

Tesla filed more contract lawsuits than usual last month, according to Law.com Radar. The platform spotted five cases, well above the typical monthly average across federal courts and major state jurisdictions. The disputes span a range of contractual, property and commercial matters. Among them, Tesla sued **Angstrom Automotive Group**, seeking emergency relief and the return of company-owned manufacturing tooling used to produce Cybertruck components after Angstrom allegedly blocked Tesla from retrieving the equipment.

In a separate case, Tesla is seeking to vacate an arbitration award involving **Bedeschi America**, alleging the arbitrator exceeded his authority in a dispute arising from a production and equipment services agreement. Tesla also sued three individuals for alleged failure to make car payments. The company is represented by **Norton Rose Fulbright**, **Jackson Walker** and the **IDEA Law Group**.

► Fortune 500 | Patent | U.S., District of Delaware

Patent lawsuits involving Fortune 500 companies surged Aug. 4-6 in Delaware District Court. At least 16 lawsuits were filed at the federal court, far exceeding the typical volume of about two per week. Pharmaceutical giant **Eli Lilly** brought the vast majority of the lawsuits, which allege that abbreviated new drug applications by generic drug makers seeking approval to market their versions of Eli Lilly's tirzepatide products Mounjaro and Zepbound infringe numerous patents covering the compound, pharmaceutical compositions and dosing methods. **Latham & Watkins** and **Morris, Nichols, Arsht & Tunnell** represent Eli Lilly.

► Real Property | TX-Bexar County

Real property litigation skyrocketed during the week of Aug. 3 in Texas District Court for Bexar County, which includes the City of San Antonio. At least 70 cases were launched, more than five times the typical weekly average. Driving the surge are dozens of lawsuits brought by businesses and property owners against the Bexar Central Appraisal District. Plaintiffs include **Reigl Culebra Market**, **Sauto Hotel** and **TX Grand Apartments**.

Radar spotted similar lawsuits in July challenging appraisals in Texas' Collin, Denton and Harris counties. Plaintiffs in those cases include **Dillard's**, **Kohl's**, **Lowe's** and **Target**.

► Class Actions | Retail & Consumer Goods

Class actions are rising in the retail and consumer goods sector, according to Law.com Radar. The platform spotted 87 class actions in July against entities on Radar's industry watchlist, part of an upward trend that dates back seven months. In the 12 months preceding the trend period, roughly 56 class actions were detected per month across federal courts and major state jurisdictions, a number that has shot up to 73 class actions during the trend period.

Several lawsuits accuse retailers of failing to reimburse customers for tariff-related price increases, while others claim that food companies' "no artificial flavors" labeling is false because their products contain citric acid or other synthetic ingredients. Plus, businesses are accused of using AI to transcribe and analyze customer conversations without permission.

Newmont Shakes Investor Lawsuit Over Acquired Gold Mining Woes

Aug. 17, 2026, 9:52 AM PDT

Summary by Bloomberg AI

AI Generated

- Newmont Corp. shed investor allegations that it concealed issues at a pair of mines while making financial projections, a US District Court for the District of Colorado judge said.
- The investors alleged that Newmont overestimated its financial prospects despite continued issues in 2024, and should've warned investors earlier about problems that impacted its margins.
- The judge dismissed the claims for now, saying the complaint lacked specifics about what changed to render Newmont's statements misleading, and the investors can file an amended complaint by Sept. 11.

Newmont Corp. shed investor allegations that the mining giant touted its gold production and financial forecast while concealing issues at a pair of mines it had acquired.

The investors alleged that vague issues of lowered production and heightened costs had already impacted Newmont's margins when the company made lofty financial projections, Judge Daniel D. Domenico said. But their complaint lacked specifics about what changed by the start of the proposed class period in July 2024 to render those statements misleading, the US District Court for the District of Colorado judge said Aug. 14, dismissing the claims for now.

The mines had operational and infrastructure issues from before the 2023 takeover, the investors said. Newmont overestimated its financial prospects despite continued issues in 2024, and should've warned investors earlier about problems that impacted its margins, they said.

But the closest the complaint comes to a specific fact about one of the mines, Lihir, was that a key aspect of it had been out of operation for a few years — and an executive disclosed it would be shut down for 120 days, Domenico said. The main problem at Brucejack, the other mine, was its inconsistent and "nuggety" ore, he said. The investors alleged reconciliation drilling had alerted Newmont to these issues by July, yet the complaint didn't have specific facts about what this revealed or when.

The investors' proposed class includes those who acquired Newmont stock from July 24, 2024, to Oct. 23, 2024. On that day and the following, Newmont revealed and discussed third-quarter results that missed estimates on adjusted earnings, costs, and sales.

Newmont's stock price fell almost 15% to close at $49.25 Oct. 24 — then its sharpest one-day nosedive since 1997, according to data compiled by Bloomberg.

"The October revelations confirm that Lihir and Brucejack were not as profitable as Newmont hoped. But taking that October fact and assuming Newmont knew it was also the case in July is impermissible 'fraud by hindsight,'" Domenico said.

The investors leading the case can file an amended complaint by Sept. 11.

Attorneys at Rosen Law Firm PA and Pomerantz LLP, co-lead counsel for the investors, didn't immediately respond to an email seeking comment. Wachtell, Lipton, Rosen & Katz and, locally, Shoemaker Ghiselli & Schwartz LLC represent Newmont. Wachtell Lipton attorneys and Newmont didn't immediately respond to emails seeking comment.

The case is Karas v. Newmont Corp. , D. Colo., No. 1:25-cv-00341, 8/14/26 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Brian Flood at bflood@bloombergindustry.com

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California Brief

Manage Newsletters

Prediction Markets Face New Threat in Consumer Protection Suits

Aug. 17, 2026, 2:03 AM PDT

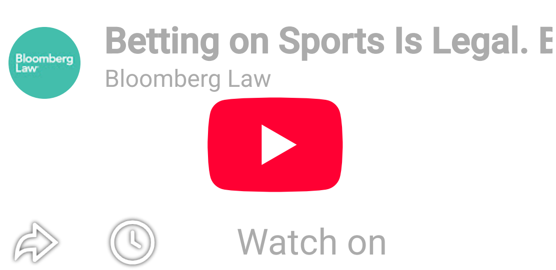
Summary by Bloomberg AI

AI Generated

- Consumers have filed class action lawsuits against Polymarket, Kalshi, Robinhood, and DraftKings, claiming they violate state consumer protection laws by offering a form of sports betting disguised to skirt safety regulations and licensing regimes.
- The lawsuits assert claims under various state laws that target unfair or deceptive acts or practices, and if successful, could force the platforms to create stricter guardrails around their offerings and marketing campaigns.
- Consumer protection lawsuits may lead to changes in the business practices of prediction market operators, including disclosures about certain bets, restrictions on the type of events users can trade on, and prominent warnings about the risks of the platform.

Prediction market operators including Polymarket and Kalshi are being targeted in consumer protection lawsuits, a developing legal front in the intensifying fight over who should regulate these platforms.

Consumers have filed more than a dozen class action lawsuits against Polymarket and Kalshi – the two biggest players in prediction markets – as well as Robinhood and DraftKings, claiming that they violate state consumer protection laws by offering a form of sports betting disguised to skirt safety regulations and licensing regimes. The lawsuits against Kalshi and Robinhood have been consolidated in the Southern District of New York and Northern District of California, respectively.



WATCH: Betting on Sports Is Legal. But Are Prediction Markets Like Kalshi and Polymarket Different?

“Prediction markets are growing so fast and people are flocking to them, so the notion that users and regulators are employing consumer protection litigation strategies to target prediction markets is not surprising,” said Ross Weingarten, a partner at Steptoe and co-chair of the firm’s sports integrity group.

The stakes are high: Combined trading volume on Kalshi and Polymarket reached $24 billion in April , according to a Pew Research Center analysis.

If successful, the lawsuits could force the platforms to create stricter guardrails around their offerings and the marketing campaigns used to entice users.

Although prediction markets offer contracts on everything from reality show winners to employment numbers, sports account for the bulk of total trading volume on Kalshi over the past year, based on data from Paradigm, an investor in Kalshi. A Roosevelt Institute study found that Kalshi users lost more than half a billion dollars between the platform’s launch in July 2021 and May 2026.

Prediction markets have resisted state regulation and the Trump administration has taken the position that they should be solely federally regulated.

“One nice thing about consumer protection principles is that as the economy changes over time, we see that bedrock principles end up really constraining and applying to new technologies and new frontiers in the economy,” said Kati Daffan, of Vaca Daffan, and one of the attorneys suing Polymarket over deceptive endorsements. “We can always go back to those principles of unfairness and deception and make sure that at the very least, these players are abiding by their responsibilities to consumers.”

Class Actions Multiply

Kalshi, Polymarket, Robinhood, and DraftKings have all been sued by users who say wagers on their platforms aren’t materially different from those available in casinos, sportsbooks, or other licensed and regulated gambling establishments.

Kalshi also faces claims that it misleads consumers into thinking they’re betting against other people even though Kalshi acts as a bookmaker and uses sophisticated data and software to generate odds. And Polymarket faces a suit over marketing aimed at college students featuring influencers accused of placing fake bets.

The suits assert claims under various state laws that target unfair or deceptive acts or practices — UDAP.

A Polymarket spokesperson said the company is “conducting a comprehensive audit of active promotional content to ensure it complies with our standards” and regulatory and legal disclosure requirements. A DraftKings spokesperson said its markets operate “in accordance with applicable law and the federal regulatory framework established under the Commodity Exchange Act.” A Robinhood spokesperson said it “emphasizes informed participation” and offers “clear disclosures, transparent pricing, and educational resources” to customers.

Kalshi didn't respond to a comment request.

UDAP Flexibility

UDAP laws are powerful tools for corralling emerging industries because they're flexible, "and you can use them proactively rather than waiting for industry or conduct-specific regulation or legislation to catch up," said Adam Teitelbaum, former director of consumer protection for the DC Attorney General's office.

Lawsuits bringing UDAP claims can address a wide scope of harm, including institutional and insider trading, he said.

"When we talk about consumer protection, what we're really talking about is what is the effect on everyday people?" said Monica Vaca, also of Vaca Daffan.

That issue was getting lost in the debates over who should regulate, she said. The Vaca Daffan lawsuit against Polymarket isn't a class action but seeks to enforce DC's Consumer Protection Procedures Act.

"Nobody was going after Polymarket for deceptive practices," Vaca said. "They were going after the prediction markets for violating state gambling laws, but not so much for advertising practices."

One of the points Vaca Daffan wants to make is that "products and services that are prone to causing addiction merit special attention, and that includes gambling, especially where you're enticing users to risk their money to obtain a possible reward," Daffan said.

It's "indicative of what I hope there's more of in this space, which is the creative use of UDAP laws to try to create some guardrails for the industry," Teitelbaum said.

Potential Platform Changes

Consumer plaintiffs aren't necessarily only looking for monetary recovery, said Ron Urbach, co-chair of Davis + Gilbert's advertising and marketing group.

"They're looking for change in the business practices," he said, including possibly forcing prediction markets to make disclosures about certain bets.

"Disclosures catch up, terms get modified, services get maybe restricted in some ways," and consumer litigation "is the early stages of that happening," Urbach said. "Consumer protection law is going to not only change how they market, but it's probably going to change how they operate, which happens with all industries."

An injunction or settlement could require a prominent warning about the risks of the platform, or force prediction markets to limit the type of events users can trade on, Teitelbaum said.

"When what you can trade on is limitless, it is impossible to have an adequate enforcement and surveillance mechanism," he said. A warning can "get to the heart of the problem in a way that potentially can be more effective than saying you've got to be regulated like any other entity," he said.

All of this litigation is likely just the tip of the iceberg, Weingarten said.

“I expect regulatory actions will also pop up from state regulators around the country, and more and more plaintiffs will bring actions alleging that they’ve been harmed by their use of prediction markets,” he said.

To contact the reporter on this story: Shweta Watwe in Washington at swatwe@bloombergindustry.com

To contact the editors responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com; Rob Tricchinelli at rtricchinelli@bloombergindustry.com

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Amazon reinstates binding arbitration, bars class-action lawsuits

reuters.com/legal/government/amazon-reinstates-binding-arbitration-bars-class-action-lawsuits-2026-08-14

Aug 14 (Reuters) - Amazon (AMZN.O), opens new tab on Friday reinstated binding arbitration for its U.S. customers while also barring them from seeking class-action lawsuits, making it more difficult for users to address grievances in court.

In emails on Friday, Amazon said the changes are effective immediately and customers agree to the terms by continuing to use the company's services. Often, companies alert customers to upcoming changes to their terms of service weeks in advance.

Previously, Amazon said customers should pursue legal claims in court in Washington state, where Amazon is based. Five years ago, Amazon revoked binding arbitration after facing tens of thousands of costly individual cases.

"We determined that reinstating the arbitration clause will offer customers a fast, cost-effective way to resolve disputes while still giving them the option of going to small claims court," a spokesperson said in a statement.

In 2021, Amazon was flooded with around 75,000 arbitration claims from customers claiming its Alexa service was recording them without their consent. It was part of a tactic some law firms use to overwhelm corporations with arbitration claims, forcing them to pay millions of dollars in fees to start the process and causing administrative headaches.

Amazon said in its new terms that 25 or more arbitration cases relating to the same matter in a six-month period would be considered a "mass arbitration" and would be settled in "batches of at least 25."

Courts have generally sided with corporations over language in their terms of service that dictate when and how customers can pursue legal recourse. Arbitration cases are settled privately before a third-party adjudicator, meaning disputes and any settlement typically are not made public.

Disputes with Amazon, including class-action suits, begun prior to Friday are not impacted by the new terms.

SEC Prepares to Ease Rule on Wall Street Political Donations

Aug. 14, 2026, 9:02 AM PDT

Summary by Bloomberg AI

AI Generated

- The US Securities and Exchange Commission is proposing to ease a rule that restricts investment advisers from working for public pension funds if they've made political donations to state and local elected officials.
- The proposed changes are meant to address "identified compliance burdens" and the SEC says the current rule creates unnecessary compliance burdens and overly restricts investment advisors.
- The rule was put in place in the wake of a series of pay-to-play scandals involving public pension funds and prohibits firms from offering investment services to state and local funds for two years if certain employees give certain amounts to public officials.

The US Securities and Exchange Commission is proposing to ease a rule that restricts investment advisers from working for public pension funds if they've made political donations to state and local elected officials.

The regulator sent proposed changes to the SEC's so-called "pay to play" rule to the White House for review on Wednesday, according to a post on the Office of Management and Budget's website. The SEC said the changes were meant to address "identified compliance burdens."

Though the SEC rule doesn't apply to federal elections and any change probably wouldn't take place until next year at the earliest, the proposal comes as the Trump administration has erased lines between business and politics. Democrats are likely to attack the proposal as a gift to Wall Street firms.

SEC Chairman **Paul Atkins** has previously criticized the rule as punishing people who are unaware they are violating it. The two-year prohibition can include political donations made before an employee even joined an investment adviser.

“The current ‘pay-to-play’ rule creates unnecessary compliance burdens and overly restricts investment advisors,” a spokesperson for the agency said in an emailed comment. “The commission is heeding years of complaints from across the political spectrum and will consider a proposal to address these issues and reform the rule.”

Series of Scandals

It’s unclear whether the proposal would modify the rule’s current strictures or do away with it altogether. The rule currently prohibits firms from offering investment services to state and local funds for two years if certain employees give between $150 to $350 to public officials, per election.

While it doesn’t apply to donations to federal officials, the rule does apply to state or local officials who are running for federal office. It also applies to campaigns for state or local office by current federal officials.

The rule was put in place in the wake of a series of pay-to-play scandals years ago involving public pension funds. Some pension fund trustees were investigated or charged by the SEC for engaging in alleged kickback schemes to manage funds for local governments.

In 2016, State Street Bank and Trust Co. agreed to pay $12 million to resolve SEC allegations that it used political donations to win business from Ohio pension funds. Four years earlier, Goldman Sachs Group Inc. paid a $12 million in a case involving alleged donations to a Massachusetts gubernatorial candidate. In 2022, Highland Capital Partners paid $95,000 to resolve an SEC case alleging an associate made a $1,000 political donation to an unsuccessful gubernatorial candidate.

Once the White House finishes its review, the commission, currently down to three Republican members and soon slated to have just two as Commissioner Hester Peirce prepares to depart for academia, would have to vote on the proposal before it will be made public.

The agency then takes public feedback and incorporates it into a final rule, which will also have to be voted on before it could take effect. The whole process typically takes between 18 to 24 months.

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To contact the reporter on this story:
Lydia Beyoud in Washington at lbeyoud2@bloomberg.net

To contact the editors responsible for this story:
Anthony Lin at alin364@bloomberg.net

Steve Stroth

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Settlement Approval Sought To Resolve Government Entities' 23andMe Claims

Mealey's(R) California Section 17200 Report

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Body

After 41 states and the District of Columbia (the governmental entities) filed proofs of claim seeking nearly $100 billion in damages arising from the 2023 23andMe Inc. data breach, the trust administering the company's bankruptcy plan asked a Missouri federal bankruptcy court to issue an order permitting entry into a stipulation that would provide the governmental entities with individual shares of an $18 million settlement (In re: Chrome Holding Co. [f/k/a 23andMe Holding Co.], No. 25-40976-357, E.D. Mo. Bkcy.).

(Motion for entry of an order authorizing and approving stipulation 97-260724-090M)

The trust filed the motion on July 14 in the U.S. Bankruptcy Court for the Eastern District of Missouri on behalf of Wind-Down Debtor Chrome Holding Co., f/k/a 23andMe Holding Co. If the Bankruptcy Court approves the stipulation, the governmental entities will resolve their claims upon receipt of their allotted shares of the settlement.

Pending approval, Alabama would receive $260,817; Alaska, $165,447; Arizona, $612,269; Arkansas, $431,937; Colorado, $394,324; Connecticut, $887,729; Delaware, $159,654; the District of Columbia, $161,919; Florida, $1,111,206; Georgia, $452,232; Idaho, $201,386; Illinois, $501,539; Indiana, $979,424; Iowa, $429,767; Kansas, $225,814; Kentucky, $259,375; Louisiana, $258,668; Maine, $181,046; Maryland, $518,491; Massachusetts, $387,218; Michigan, $436,605; and Minnesota, $514,871.

New Hampshire would receive $187,490; New Jersey, $409,588; New Mexico, $200,308; New York, $705,976; North Carolina, $666,242; North Dakota, $150,380; Ohio, $473,828; Oklahoma, $276,435; Oregon, $576,707; Pennsylvania, $491,902; South Carolina, $280,173; South Dakota, $149,339; Tennessee, $348,687; Texas, $1,266,860; Utah, $461,688; Vermont, $154,065; Virginia, $662,649; Washington, $547,350; West Virginia, $181,778; and Wisconsin, $276,817.

The $18 million settlement would resolve the governmental entities' bankruptcy proofs of claim seeking payment for alleged liabilities arising from the data breach. It is separate from previously approved consumer data breach settlements.

California is the lone state claimant to not join the settlement. In May, California filed a lawsuit against Chrome Holding in the San Francisco County Superior Court, People of the State of California v. Chrome Holding Co. (f/k/a 23andMe Holding Co.), No. CGC-26-636891, Calif. Super., San Francisco Co., in which the state's attorney general alleges violations of the California Genetic Information Privacy Act (GIPA), *Cal. Civ. Code 56.18* et seq., the California Consumer Privacy Act (CCPA), *Cal. Civ. Code 1798.100* et seq., the unfair competition law (UCL), *Cal. Bus. & Prof. Code 17200* et seq., and the California false advertising law (FAL), *Cal. Bus. & Prof. Code 17500* et seq.

California seeks civil penalties of $1,000 per violation of the GIPA, $2,500 per violation of the CCPA or $7,500 per violation of the CCPA that was intentional or involved a minor, $2,500 per violation of the UCL, plus $2,500 per UCL violation against a senior citizen, and $2,500 per violation of the FAL.

Lawsuits And Sale

In October 2023, lawsuits began to be filed against 23andMe Inc., 23andMe Pharmacy Holdings Inc. and 23andMe Holding Co. (collectively, 23andMe) for a data breach believed to have occurred in August 2023. In April 2024, the suits were consolidated in the U.S. District Court for the Northern District of California as a multidistrict litigation, In Re: 23andMe, Inc., Customer Data Security Breach Litigation, No. 24-md-3098, N.D. Calif. In a June 2024 consolidated class complaint, the plaintiffs alleged claims for negligence, invasion of privacy, breach of express and implied contract, unjust enrichment and violation of various states' consumer protection laws.

On Dec. 4, 2024, Judge Edward M. Chen preliminarily approved a settlement between the parties that provided for a $30 million nonreversionary settlement fund.

On March 26, 2025, 23andMe filed three voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code, *11 U.S.C. 101 et seq.*, in the Bankruptcy Court. After an auction, the winning bidder of 23andMe's assets was TTAM Research Institute, a nonprofit organization headed by 23andMe's founder and former CEO Ann Wojcicki, which bid $305 million.

On June 9, 2025, an adversary proceeding was filed by 27 states, the District of Columbia and the National Association of Attorneys General (NAAG) in Bankruptcy Court opposing the sale of 23andMe's assets, data and PII.

On June 27, Bankruptcy Judge Brian Walsh approved both the sale of 23andMe to TTAM and the transfer of customers' genetic data to the purchaser. He found that the sale would fund the settlement of the data breach lawsuit and voiced his confidence in privacy enhancements the purchaser pledged to enact.

The sale to TTAM closed July 14.

The states and NAAG voluntarily dismissed the adversary proceeding on July 30, citing an agreement with TTAM that it would implement "additional consumer protections and privacy protections" (In re: 23andMe Holding Co., et al. [NAAG Client States, et al. v. 23andMe Holding Co., et al.], No. 25-40976, Adv. No. 25-4035, E.D. Mo. Bkcy.).

MDL Dismissed

The MDL plaintiffs had filed a joint status report on Feb. 2, 2026, informing the court that they would seek to dismiss the MDL after final approval of the settlement in favor of a class of U.S. data breach plaintiffs worth up to $50 million and not less than $30 million.

The final approval was granted Jan. 30 by Bankruptcy Judge Walsh. In the same order the bankruptcy judge granted a motion by the plaintiffs' attorneys for attorney fees amounting to 25% of the final amount of the settlement fund. The attorneys sought a fee based on percentage, not a fixed-amount fee.

The settlement class comprises nearly 6.4 million members, with more than 99.99% of them not objecting to the settlement. The settlement fund will provide benefits including up to $10,000 in monetary reimbursement for "Extraordinary Claims" involving unreimbursed losses such as identity fraud, installation of security systems and professional mental health treatment; cash payments for the statutory subclass comprising residents of states with genetic privacy laws that provide for statutory damages; cash payments for members whose health information was compromised; and five years of privacy and data monitoring services for all class members who enroll in the services.

The order of dismissal of the MDL was entered Feb. 18, 2026, by Judge Chen pursuant to a stipulation by the parties.

"[T]his action is hereby dismissed with prejudice, with all parties to bear their own fees and costs, including but not limited to attorneys' fees," Judge Chen said in the order.

Counsel

Chrome Holding Co. is represented in the bankruptcy case by Thomas H. Riske, Nathan R. Wallace and Samuel S. Brand of Carmody MacDonald PC in St. Louis and Paul M. Basta, Christopher Hopkins, Jessica I. Choi and Grace C. Hotz of Paul, Weiss, Rifkind, Wharton & Garrison LLP in New York.

The governmental entities are represented by their respective attorneys general.

23andMe was represented by in the MDL by Rebekah S. Guyon in Los Angeles, Stephen L. Saxl in New York, Ian C. Ballon in East Palo Alto, Calif., and Kristin O'Carroll in San Francisco, all of Greenberg Traurig LLP.

(Additional documents available: California's complaint against Chrome Holding 58-260616-030C

Order of dismissal in MDL 58-260317-001R

Bankruptcy Court's Oct2, 2025, order of preliminary approval with settlement agreement attached 58-260218-028R

Bankruptcy Court's June 27 opinion approving sale 97-250725-020Z)

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Load Date: August 14, 2026

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Securities

Virgin Galactic Leaders Approved to End Suit for Cash, Reforms

Aug. 14, 2026, 3:36 PM PDT

Summary by Bloomberg AI **AI Generated**

- Virgin Galactic Holdings Inc. founder Richard Branson and other company leaders received a federal court's final approval of a settlement over alleged safety misrepresentations.
- The leaders' insurers will pay the space tourism company $2.75 million and Virgin Galactic will implement corporate governance changes under the terms of the settlement.
- The company will benefit from the monetary payment and the reforms, which target the wrongdoing alleged in the lawsuit, according to Judge Orelia E. Merchant.

Virgin Galactic Holdings Inc. founder Richard Branson and other company leaders received a federal court's final approval Friday of a settlement on behalf of the company over alleged safety misrepresentations.

The leaders' insurers will pay the space tourism company $2.75 million and Virgin Galactic will implement corporate governance changes under the terms of the settlement, Judge Orelia E. Merchant said for the US District Court for the Eastern District of New York.

Merchant also approved attorneys' fees that are high relative to the cash payout but only about one-third of the billables in the four-year-old derivative litigation.

Thomas Spiteri and four other investors alleged undisclosed spacecraft safety issues, overpayments to acquire Virgin Galactic's legacy business, and insider trading.

The company will benefit from the monetary payment and the reforms, which target the wrongdoing alleged in the lawsuit, Merchant said in finding the settlement fair.

The investors’ attorneys asked for a fee award short of $1.4 million after reasonably spending about 4,500 hours on the complex case, she said in approving the request.

Virgin Galactic and some of its leaders agreed to an $8.5 million settlement of a related proposed class action, pending before a different judge in the same district. That deal hasn’t received final approval yet.

Counsel for the investors includes Gainey McKenna & Egleston and Brown Law Firm PC. Latham & Watkins LLP represented the directors and officers as well as Virgin Galactic, which is a nominal defendant.

The case is In re Virgin Galactic Holdings Inc. Deriv. Litig., E.D.N.Y., No. 1:22-cv-00933, 8/14/26.

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Walgreens, Walmart Can’t Shake Acne Product Benzene Lawsuits

Aug. 14, 2026, 2:21 PM PDT

Summary by Bloomberg AI

AI Generated

- Magistrate Judge Stanley A. Boone said the plaintiffs' misbranding claims weren't federally preempted.
- Boone rejected the retailers' arguments that the consumers' claims would effectively require them reformulate their products, saying it would require the companies to act in compliance with the law.
- Boone recommended trimming a few claims from the lawsuits, including a negligent misrepresentation claim and an unjust enrichment claim.

Walgreens Boots Alliance Inc. and Walmart Inc. failed to convince a magistrate judge to recommend dismissing lawsuits alleging the retailers sold acne products that were contaminated with the carcinogen benzene.

The plaintiffs’ misbranding claims weren’t federally preempted, Magistrate Judge Stanley A. Boone of the US District Court for the Eastern District of California said In a trio of reports issued Thursday..

The consumers sued shortly after independent laboratory Valisure LLC filed a citizen petition with the US Food and Drug Administration urging a recall of benzoyl peroxide products. Benzoyl peroxide is a common ingredient in acne treatments and can degrade into benzene.

Boone previously rejected the consumers’ claims because they didn’t allege a binding benzene safety threshold. But their amended pleadings, “identified a pathway” to incorporate a limit from an accepted compendium. The compendium creates a two-parts-per-million limitation on BPO degradation, and a drug is considered adulterated if its strength, quality, or purity falls below the standard set by an official compendium, Boone said.

“The Court cannot ignore that the term ’purity’ is also used,” he said. If an applicable drug falls below the compendium’s purity requirements, then it’s adulterated under the federal Food, Drug, and Cosmetic Act, he said.

Boone rejected the retailers' arguments that the consumers' claims would effectively require them reformulate their products.

That the retailers might need to "reformulate its BPO products to be in compliance with the Acne Monograph itself does not appear to" add a requirement on top of federal law, but rather would require the companies to act in compliance with the law, Boone said in two of the rulings.

Boone recommended trimming a few claims from the lawsuits.

He said that the label "Walgreens Pharmacist Recommended" wasn't actionable because it's an opinion and should be considered puffery.

Boone also said the Walgreens plaintiffs could only bring claims for the products they purchased rather than the entire Walgreens BPO product line.

He also recommended dismissing a negligent misrepresentation claim in the Walmart case because such claims are barred by the economic loss doctrine, and an unjust enrichment claim as duplicative.

The Walgreens consumers are represented by Wisner Baum LLP and Bryson Harris Suciu & Demay PLLC. The Walmart consumers are represented by Wisner Baum LLP.

Walgreens is represented by Greenberg Traurig. Walmart is represented by King & Spalding.

The cases are Bodunde v. Walgreens Boots Alliance Inc. , E.D. Cal., No. 1:24-cv-00985, 8/13/26 , Navarro v. Walgreens Boots Alliance Inc. , E.D. Cal., No. 1:24-cv-00290, 8/13/26 , and Navarro v. Walmart Inc. , E.D. Cal., No. 1:24-cv-00288, 8/13/26 .

To contact the reporter on this story: Shweta Watwe in Washington at swatwe@bloombergindustry.com

To contact the editor responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com

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Many Companies Would Announce Earnings Quarterly, Ditch Filings Under SEC Proposal

WSJ wsj.com/cfo-journal/many-companies-would-announce-earnings-quarterly-ditch-filings-under-sec-proposal-0d7872e4

Many companies would continue to release earnings statements quarterly—but not the more involved regulatory filings—even if U.S. authorities approve an option to file only semiannually.

A new survey from KPMG provided a glimpse of the varied landscape of financial reporting that could emerge under a proposal from the SEC that would provide the option to file earnings reports twice year instead of the usual four times.

Most companies in the survey said they would provide quarterly updates in some form. Thirty-nine percent said they would continue to publish earnings press releases quarterly, but would submit regulatory filings twice a year—a reviewed semiannual report and an audited annual one. An additional 39% said they would make no changes to their current practices, meaning they would file 10-Qs—the regulatory form for quarterly earnings—and publish quarterly releases.

Three percent of companies said they would file semiannual earnings and bypass any quarterly updates. An additional 7% percent said they would take advantage of the semiannual reporting option, but also publish select financial data, such as sales figures, on an interim basis outside the twice-per-year reporting periods. The remaining 12% said they were undecided.

The survey included 156 CFOs, chief accounting officers and controllers at publicly traded companies, ranging in size and across industries.

The SEC is expected to move forward with its proposal to drop quarterly reporting requirements despite strong public opposition. Supporters say the laxer regime could encourage more companies to go public; investors, hungry for data on corporate performance, oppose less-frequent reporting. The benefits to companies could include lower auditor fees and less time spent preparing the reports, currently an every-three-month grind for finance teams.

Some companies including Eli Lilly said in public comment letters they plan to file a semiannual and annual report, but would also publish earnings quarterly.

Preparing an earnings release without an accompanying regulatory filing, however, might not result in significant savings, said Brian DelGhiaccio, CFO at Republic Services, a waste management company. “The internal effort to provide that information is not substantially different than if you went the extra effort to file a 10-Q,” he said.

Other companies plan to stick with quarterly reporting to ensure their stock remains attractive to investors.

“Particularly as a small-cap company, where our is strategy to attract more long-only investors, sharing less frequently is not advantageous to us,” said Curtiss Bruce, chief financial and operating officer at Honest Company, which makes baby wipes and other skincare products. The company, which went public five years ago, is in the midst of a turnaround.

In the KPMG survey, more than half of companies said their financing agreements required quarterly information. Most said they have processes in place to disclose material information outside of semiannual reporting periods. Nearly all respondents—94%—said they plan to maintain quarterly governance and oversight practices internally, despite fewer required SEC filings.

“We learn a lot, and we become better, and we hold each other internally accountable by going through that process,” said Serge Tanjga, finance chief at Appian, a business process automation company, describing the benefits of reporting on a quarterly cadence.

In a separate survey, companies questioned whether moving to semiannual reporting would lighten the organizational burden of financial reporting, with over a third saying it would be minimal or have no impact, according to a survey conducted by the Society for Corporate Governance, a professional association. Half of respondents in the organization’s survey, which included 100 companies, said the proposal would result in a moderate reduction in the burden.

Only eight percent of the Society’s members said they were very likely to adopt semiannual reporting within three years. Still, the group supports the proposal for companies to have as an option, said Paul Washington, its president and chief executive.

“We think it can be left to each company to make the determination as to whether the benefits of shifting to semiannual reporting outweigh the costs,” he said.

Other CFOs weighed in on the SEC proposal through comment letters. David Wells, who served as finance chief of Netflix from 2010 until 2019, said in a letter that while the four-times-per-year cycle can be a slog and lead to short-term focus, it also underpins trust, drives rigor and creates a level playing field for individual investors and large institutions, which can request check-ins with management.

While some companies may be well suited to semiannual reporting, others may adopt it because they lack financial discipline, Wells noted in his letter. Fraud, a greater value placed on insider knowledge, and a longer shelf life for bad corporate strategy would be “bogies of the slower reporting cycle,” he said.

Corteva To Pay $3.1M In Ark. AG's Pesticides Antitrust Suit

law360.com/articles/2513596

(August 14, 2026, 8:48 PM EDT) -- Corteva has agreed to pay $3.1 million to settle the Arkansas attorney general's antitrust suit accusing the pesticide maker of using anticompetitive rebates that amount to exclusive agreements to suppress generics competition, according to a preliminary approval motion filed in federal court on Thursday.

In a 23-page brief, the state of Arkansas asked U.S. District Judge Brian S. Miller to preliminarily greenlight the deal reached with Corteva, after prosecuting the case with the help of Robbins Geller Rudman & Dowd LLP, Reddick Law PLLC and The Lanier Law Firm PC. The Arkansas attorney general initiated the suit in late December 2022, asserting claims against Corteva and Syngenta for antitrust and consumer protection violations.

"This settlement reached with Corteva is an excellent one that serves the public interest [and] greatly benefits the state of Arkansas, its citizens and Arkansas' vitally important grower community," the motion said.

The state had alleged Corteva and Syngenta — the latter of which still remains a defendant in the case — ran "loyalty programs" under which they paid distributors and retailers by allegedly keeping generic versions of some of their brand-name crop pesticides off the market and limiting Arkansas farmers' access to more affordable products.

Corteva and Syngenta are two of the largest makers of "basic" crop protection pesticides, which are subject to 10-year exclusivity protections, as opposed to generic pesticides.

Under the loyalty programs, the companies offer payments to pesticide distributors and retailers if they limit their purchase of generic crop protection pesticides with specific active ingredients whose 10-year exclusivity periods have lapsed, according to court papers.

The companies also required the distributors and retailers to sell a certain percentage of their products to be eligible for the incentive, according to court filings.

In the spring of 2024, the defendants moved to nix the suit, contending the Arkansas federal court lacked jurisdiction to hear the dispute and attacking the viability of the claims. Syngenta argued, among other things, that the named defendant entities aren't corporations and don't transact with businesses in Arkansas. Therefore, the suit cannot proceed in Arkansas federal court, the dismissal bid argued.

But the judge rejected all jurisdictional challenges in a February 2025 order denying the motion to dismiss, finding that venue is proper in light of Arkansas' long-arm statute and the fact that the defendants sold products within the state's borders.

Judge Miller also found the suit alleged that all defendants are active members of the Arkansas Crop Protection Association, which is headquartered in Little Rock, and that they each have employees in the district who are members of the Arkansas Crop Management Conference Program Committee, while Corteva additionally has a research station in West Memphis, Arkansas.

Judge Miller additionally rejected the companies' challenges to the pleadings, along with their arguments that the state lacks standing to sue on behalf of consumers.

The Arkansas attorney general's suit is similar to an antitrust case **that's being pursued** by the Federal Trade Commission in North Carolina. That suit had **also survived** a motion to dismiss.

Last month, Corteva told the North Carolina district court that it had reached a settlement with the FTC. **In June**, Corteva also cut an $85 million deal in private litigation filed by farmers.

In the preliminary approval motion on Thursday, the Arkansas attorney general noted that, along with the monetary settlement, Corteva has agreed not to exclude the state or its citizens from any injunctive relief that ends up being issued in the related FTC case.

The Arkansas attorney general noted approval of the settlement is warranted, considering it had to prove all elements of its claims, while Corteva only had to prevail on a single defense to possibly beat the entire case.

"Corteva continues to deny all of the OAG's allegations," the motion said. "Therefore, the OAG risks the possibility that some of its claims may be dismissed at summary judgment, or that it may struggle to prove its claims at trial."

Even if the state were to ultimately succeed in proving its claims, it has to establish damages and the right to civil penalties under Arkansas' consumer protection statute, the motion added. This would call for a battle of the experts against Corteva, as well as the "ability to effectively convey complex econometric principles" to a jury, the state added.

"Corteva will certainly vigorously challenge the damages models presented by the OAG," the state said.

And even if the plaintiffs were to succeed at trial, Arkansas potentially stands to recover less than the settlement, considering the evidence that showed Corteva had a limited presence in Arkansas, the motion concluded.

"We believe the terms of this settlement are in the best interest of Arkansas farmers, and we are continuing our litigation against Syngenta as a separate defendant," said Jeff LeMaster, communications director for the Office of Attorney General Tim Griffin.

Representatives for the Corteva parties did not immediately respond to inquiries seeking comment on Friday.

The state of Arkansas is represented by Tim Griffin, Amanda Wentz and Brittany Edwards of the Office of the Attorney General, Brian Reddick and Heather Zachary of Reddick Law PLLC, Dorothy P. Antullis, Alexander C. Cohen, Anny M. Martin and Arthur L. Schingler III of Robbins Geller Rudman & Dowd LLP, W. Mark Lanier, K. Rachel Lanier, Alex J. Brown, Zeke DeRose III and Sara E. Abston of The Lanier Law Firm PC.

Corteva is represented by Steven W. Quattlebaum, John E. Tull III and Laura L. O'Hara of Quattlebaum Grooms & Tull PLLC, Wes Earnhardt, Jesse M. Weiss and Margaret T. Segall of Cravath Swaine & Moore LLP, and Emilia McKee Vassallo, Elizabeth Weissert, Jason Leckerman and Thomas Hazlett of Ballard Spahr LLP.

The case is State of Arkansas ex rel. Tim Griffin, Attorney General v. Syngenta Crop Protection AG et al., case number 4:22-cv-01287, in the U.S. District Court for the Eastern District of Arkansas.

--Additional reporting by Dorothy Atkins, Craig Clough and Matthew Perlman. Editing by Philip Shea.

7th Circ. Won't Revive Elanco Investors' Securities Fraud Suit

law360.com/articles/2513691/7th-circ-won-t-revive-elanco-investors-securities-fraud-suit

(August 14, 2026, 8:03 PM EDT) -- The Seventh Circuit Friday affirmed the dismissal of a lawsuit claiming Elanco Animal Health misled the market by forcing distributors to buy excess inventory to artificially inflate its sales figures, saying it could not draw a strong inference of fraudulent intent by Elanco executives.

Plaintiffs Sandra Hunter and Marla Strappe, on behalf of a proposed class of shareholders, had accused the pet and animal food company of hiding that it was channel-stuffing, the practice of selling more inventory to distributors than end users like veterinary clinics or cattle and dairy farms can absorb as a way to inflate sales.

Having appealed **the dismissal** of that complaint, a three-judge panel of the Seventh Circuit did agree with Hunter and Strappe that the district court erred when it concluded it didn't have to consider whether they'd sufficiently pled that the defendants made misstatements or omissions about channel-stuffing, because they'd not alleged that practice itself was fraudulent.

"Whether a defendant makes a material misrepresentation under [federal securities law] does not depend on whether the underlying conduct or practice is fraudulent," the panel said, adding later that "an untrue statement or misleading omission relating to a legitimate business strategy is still prohibited."

That mistaken determination led the lower court to mostly forgo analyzing whether Elanco's statements or omissions were material and misleading, the court said, and some of the statements made by Elanco CEO Jeffrey Simmons and Chief Financial Officer Todd Young "are at least close calls on this point."

"The proposed second amended complaint alleges that the executives gave specific assurances of strong underlying demand in response to specific analyst questions about Elanco's 'stocking dynamics' and distributors' stocking practices," the court said.

Even so, the Seventh Circuit said it didn't need to reach the dispute over whether such statements misled investors, because the district court correctly found the plaintiffs failed to allege strong inference of fraudulent intent. The investors had relied on five confidential witnesses to establish it, but only one of them seems to have had any access to firsthand information about the executives' mental states, according to the appellate court.

And while some of the plaintiffs' allegations raised a plausible inference that Simmons and Young "realized distributor inventory levels did not match end-user demand and they intended to deceive the market by omitting information about that difference," under the Private Securities Litigation Reform Act, they must raise a "strong inference," and not just a plausible one, the panel said.

"As Elanco points out, there are no allegations that demand was not strong enough to sustain the channel-stuffing practice — the sales were real and, though distributors had substantial inventory, they were not returning it more frequently than before. More importantly for scienter, there is no allegation that Simmons or Young knew that demand was not strong or that the strategy was unsustainable over the long haul," the court said.

Distributors kept buying Elanco's products at a high rate and successfully selling them during the relevant class period, and the suit made no accusations that the company's revenues were being inaccurately reported, the court noted.

"Relatedly, we know that Simmons was confronted by others about potential channel stuffing, but we have no information about Simmons's response to that charge. Moreover, there is no allegation that the sales were illusory, let alone that the defendants knew as much," the panel said. "Simmons and Young pursued a lawful sales strategy that worked for nearly two years. In the absence of allegations establishing that Simmons or Young knew that their channel-stuffing practice was going to implode but kept saying demand was strong anyway, we cannot draw a strong inference of fraudulent intent."

While Hunter and Strappe argue Simmons and Young were motivated to keep stock prices high, that's true of all executives, and "does not move the scienter needle," the panel said.

Hunter first filed suit in May 2020 on behalf of Elanco investors. The former unit of Eli Lilly & Co., which spun off into a stand-alone entity after its Sept. 20, 2018, initial public offering, was accused of hiding inventory backlogs caused by a decision to consolidate its eight major distributors to four.

Hunter said confidential witnesses who worked at Elanco were repeatedly ordered to push inventory to its distributors, even though some were bursting at the seams.

The first amended complaint filed in November 2020 sought to cover a class period dating back to Sept. 20, 2018, when Elanco had its IPO. Hunter filed her suit two weeks after Elanco reported May 7, 2020, that its revenue dropped 9% in the first quarter of 2020, falling short of prepandemic expectations. Elanco's share prices dropped 13% when the announcement was made.

Elanco blamed the dip on a reduction of approximately $60 million in channel inventory driven by factors resulting from the COVID-19 pandemic.

Hunter took issue with Elanco's statements discussing its financial results from 2015 to 2018 and net income losses, and its plans to expand existing products, continue growing its business through preventive medicine and vaccines, and drive growth in its California Therapeutics category.

Nowhere in those statements did Elanco disclose that, during the six months ending June 30, 2018, it utilized channel-stuffing practices that boosted the company's revenue, growth and net income, Hunter argued.

In January 2021, Elanco moved to dismiss Hunter's suit, denying that it engaged in channel-stuffing and arguing that she failed to state a claim. Elanco argued the sales incentives it gave to distributors, urging them to buy more products, is standard practice and something it disclosed publicly. An Indiana federal judge threw out the case in 2022.

U.S. Circuit Judges Doris Pryor, Candace Jackson-Akiwumi and John Z. Lee sat on the panel for the Seventh Circuit.

The investors are represented by Kara M. Wolke and Jason Krajcer of Glancy Prongay & Murray LLP and Robert K. Kry of MoloLamken LLP.

Elanco and its executives are represented by Stacy Nettleton of White & Case LLP and Gregoy Silbert of Weil Gotshal & Manges LLP.

The case is Hunter et al. v. Elanco Animal Health Inc. et al., case number 23-3061, in the U.S. Court of Appeals for the Seventh Circuit.

--Editing by Jay Jackson Jr.

Trump-Backed Crypto Co. Gets Initial OK For Bank Charter

law360.com/articles/2513889

(August 14, 2026, 7:40 PM EDT) -- The Office of the Comptroller of the Currency on Friday preliminarily approved a closely watched charter application from World Liberty Financial, moving the Trump family-tied cryptocurrency venture closer to launching a federally regulated trust bank.

The Office of the Comptroller of the Currency has determined that World Liberty Financial "meets certain regulatory and policy requirements" to receive preliminary conditional approval as a national trust bank. (AP Photo/Cliff Owen)

In a **decision letter**, the OCC said it determined that World Liberty's bid to establish World Liberty Trust Company NA as a stablecoin-issuing national trust bank "meets certain regulatory and policy requirements" to receive preliminary conditional approval.

The OCC said it reached that determination based on a "thorough evaluation of all information available" to the agency. Final approval is still required before World Liberty Trust can commence business, according to Friday's letter.

Once up and running, World Liberty Trust plans to take over issuance of USD1, the multibillion-dollar stablecoin created by World Liberty Financial. The bank is also expected to handle reserves for the token and provide related services, like digital asset custody and conversion.

Its application, which had lingered longer at the OCC than other recently approved charter bids, has attracted intense public scrutiny over World Liberty's foreign-investor backing and ties with members of the Trump administration, including President Donald Trump himself.

Among its founders are the president's sons Eric Trump, Donald Trump Jr. and Barron Trump, along with Zach and Alex Witkoff, sons of investor and U.S. Special Envoy to the Middle East Steve Witkoff.

Zach Witkoff, who serves as World Liberty's CEO and will be president of World Liberty Trust, said in a Friday statement that he and the bank's other organizers "welcome continuous scrutiny from federal regulators for many years to come."

"What makes a stablecoin trustworthy is the strength of the reserve behind it, and who stands accountable for it," he said. "A national trust bank brings USD1 issuance, custody, and reserve management together under OCC supervision, examined on the same standards that have governed banks for generations."

Following the arrival of the second Trump administration and its more crypto-friendly policies, the OCC has faced an influx of bank charter interest from companies in the digital assets sector. World Liberty's application, filed in January, was part of this wave.

Although mainstream banking industry groups have repeatedly urged the OCC to deny these proposed crypto-focused trust banks on grounds that they exceed what federal law allows, they conspicuously did not oppose World Liberty's application after it was filed in January.

Democrats, public-interest groups and ethics watchdogs, meanwhile, have been raising alarms about the application for months, arguing that giving federal banking status to a Trump-linked firm could open the door to new opportunities for enriching the president and his family.

They have also questioned the OCC's ability to impartially approve and supervise World Liberty's proposed bank. The agency's top official, Comptroller Jonathan Gould, was appointed by Trump and lacks the removal protections recently upheld at its peer regulator, the Federal Reserve.

In Friday's decision letter, the OCC brushed off those concerns. Ethics-trained career staff not only reviewed World Liberty's application but are also "generally" responsible for supervision and enforcement at OCC-regulated banks, the agency said.

"The comptroller and staff acted consistently with their statutory duties and ethical obligations with respect to the application," the letter said.

The OCC also dismissed ethical and national security concerns that critics had flagged about foreign investments in World Liberty Financial Inc., which a United Arab Emirates-backed company bought a 49% stake in last year.

For one, neither World Liberty Financial itself nor any foreign investors is "party to this application," the letter said, so such concerns are "outside the scope of the OCC's review." The agency also noted it had received "passivity commitments from certain U.S. and non-U.S. investors," including Trump family vehicle DT Marks SC LLC.

"The OCC regulates and supervises all entities in its jurisdiction in accordance and consistent with applicable law," the agency said, adding that "other policy concerns" raised in public feedback on World Liberty's application "are not grounds for denial."

The conditional approval comes closely on the heels of the OCC's rejections of bank charter applications from U.K. payments fintech Wise and Dutch digital bank Bunq, which were hit in recent weeks with the first outright denials that the agency has issued in more than 15 years.

The OCC cited anti-money laundering compliance and management concerns in **denying Wise**, while the agency said Bunq's proposal **came up short** for, among other reasons, shaky financial plans and a lack of relevant U.S. banking law familiarity at the top.

In Friday statements, Democratic lawmakers blasted the decision to greenlight World Liberty Trust as enabling "self-dealing" for Trump and called for banning U.S. presidents, vice presidents and members of their families from owning or controlling a bank.

"For the first time in our history, a President is now chartering and overseeing his own bank — injecting risk into our financial system and fueling the Trump family's business endeavors," U.S. Sen. Angela Alsobrooks, D-Md., said.

"It is Congress' responsibility and duty now to rein in this corruption and ensure that bank charters, deposit insurance, and other banking licenses cannot be handed out to entities influenced or controlled by any President's family," she added.

To that end, Alsobrooks joined U.S. Sen. Elizabeth Warren, D-Mass., U.S. Sen. Chris Murphy, D-Conn., U.S. Sen. Bernie Sanders, I-Vt., and six other Democratic senators on Friday in rolling out what they have named the Ending Presidential Corruption in Banking Act.

The bill would prohibit the OCC, Federal Reserve and Federal Deposit Insurance Corp. from approving banking applications from entities that are owned, organized or controlled by a "covered person," which would include the president, the vice president and their spouses and children. Members of Congress and senior government officials would also be included.

In addition, the bill would provide for revoking previously granted applications and prohibit the president, vice president or their close family members from owning a more than 10% stake in, serving as a senior executive for, or exercising a "controlling influence" over any existing bank.

"We can't restore trust in our democracy until we stop these abuses of power," U.S. Sen. Andy Kim, D-N.J., said. "This bill is an important step to building the kind of accountability the American people demand and deserve."

The White House did not return a request for comment on the OCC's decision late Friday.

'You're Not Ready': Judge Warns Tesla, Agency Of Sanctions

law360.com/articles/2513692

(August 14, 2026, 7:04 PM EDT) -- A California state judge presiding over the California Civil Rights Department's lawsuit alleging Tesla fostered racism at its Fremont factory admonished both parties Friday for violating orders and being unprepared for an upcoming bench trial, telling counsel, "Frankly I'm ready to start lobbing sanctions against every person in this room."

The California Civil Rights Department sued Tesla in state court in February 2022, while the EEOC filed a parallel action in federal court in September 2023. The litigation generally accuses Tesla of not doing enough to prevent racism from running rampant at its Fremont factory since at least 2015. (Justin Sullivan/Getty Images)

Alameda County Superior Court Judge Peter Borkon's admonishment came during the third pretrial hearing in litigation that the Civil Rights Department, or CRD, filed in 2022 after Tesla was first hit with a proposed race bias class action in **2017** by contract worker Marcus Vaughn.

The CRD is set to face off with the electric carmaker in a bench trial that's scheduled to start Sept. 21, but before the hearing, the judge issued an order to show cause for why the parties shouldn't be sanctioned for missing pretrial deadlines. During the hearing Friday, Judge Borkon, who typically has a soft-spoken demeanor, appeared visibly frustrated, and he repeatedly expressed concerns that the parties were not prepared to go to trial.

The judge noted that he has spent hours combing through the parties' exhibit lists, which are more than 6,000 pages long, as well as their witness lists, which include more than 1,100 potential witnesses, including hundreds of current and former Tesla workers and Tesla's billionaire CEO Elon Musk.

Judge Borkon not only took issue with the length of the lists, but also their formatting, and he complained that he had to use a magnifying glass to even read the titles and descriptions on the exhibit list. After spending days reviewing the lists for admissibility, the judge said he had enough.

"I've come to the following realization: I don't need to resolve it," Judge Borkon said. "We're going to have this bench trial and after the trial you're going to present to me with charts that include the dates, the exhibit and if it was or was not produced."

The judge explained that he won't spend time reviewing exhibits that will never be introduced during trial, and currently, by his estimation, the proposed witness lists are so long that the trial would take longer than 66 weeks, holding trial four to five days a week. Making matters worse, the exhibit and witness lists don't comply with his previous pretrial orders and court deadlines, Judge Borkon said. Again, the judge explained he has had enough.

"I have moved past the point of engaging in the back and forth," the judge told the parties. "At this point, you are five weeks from trial. … You all don't know who you are going to call. … We stand in direct violation of pretrial orders. Frankly, I'm ready to start lobbing sanctions against every person in this room, starting at $750 per person."

The judge told the parties that currently he won't allow the trial to be longer than four weeks, with each side getting the same amount of time to present their case, and he ordered the parties to file revised witness lists limited to roughly 30 people by Sept. 8 and narrowed exhibit lists.

CRD's counsel Alexis McKenna argued the case is unprecedented and they need more time.

Tesla's counsel, Tyree P. Jones Jr. of Polsinelli PC, also noted that the CRD is asserting harassment claims, which can't be proven statistically and must be based on anecdotal evidence.

But the judge appeared unconvinced that the parties need more than a month to prove their case.

"I mean no disrespect to you all, but we have a trial in five weeks and I will say that you're not ready," the judge said. "It is apparent to me that there is a lot of work [to do] still. I don't disagree that this case is a large case. I do disagree that it is somehow unique in its nature. It is not. Like every other case, you have obligations and deadlines to satisfy. My expectations are high of you because they are high of myself as well."

Judge Borkon added that it's frustrating for him to spend time reviewing thousands of pages multiple times, only to come to the conclusion that those exhibit and witness lists need to be narrowed further.

"I have a thousand other cases, and [hold] six to eight jury trials every other Monday," the judge said. "You cannot imagine the level of frustration you create for me and my staff, when I get communications that you are not meeting your deadlines, and you are not meeting deadline orders, and then I get evidence that you have not [complied with my orders] on both sides. I would well be within my right to sanction all of you and I think you have earned it."

The CRD initially launched an investigation into Tesla's workplace practices in June 2019 following contract worker Vaughn's suit, and the CRD sued Tesla in state court in February 2022, while the U.S. Equal Employment Opportunity Commission filed a parallel action in federal court in **September 2023**.

Meanwhile, in 2021, former Tesla worker Owen Diaz scored a nearly **$137 million judgment** against Tesla, which was later reduced to a **$3.2 million verdict**.Shortly after, Tesla settled Diaz's case, while other litigation proceeded.

The lawsuits generally accuse Tesla of not doing enough to prevent racism from running rampant at its Fremont factory since at least 2015. In particular, the plaintiffs allege Tesla managers regularly used racial slurs, epithets and stereotypes at the workplace for years, and allegedly ignored racially offensive graffiti, while internal complaints over the alleged misconduct have been largely ignored.

Tesla **unsuccessfully argued** that the EEOC and CRD cases can't proceed separately, and the EEOC's action has since **proceeded** into discovery. Meanwhile, in **November**, Judge Borkon decertified a **class** of thousands of Tesla workers alleging discrimination, after he rejected a revised approach that would have allowed the plaintiffs to collect testimony from a smaller sample size of workers.

In May, Judge Borkon also mostly rejected Tesla's bid for a summary judgment win, initially sending the high-stakes civil rights dispute to **a July 20 trial**,which has since been pushed back to September. In his May ruling, Judge Borkon granted Tesla summary adjudication in part, finding that the state agency can't pursue claims prior to June 18, 2018, which is one year before it filed its administrative complaint, due to a statute of limitations.

Judge Borkon refused, however, to grant Tesla's renewed request for summary adjudication or summary judgment on any of the 13 claims asserted by the CRD, finding that there is a triable dispute on each claim, including whether Tesla fostered a hostile work environment and had a "pattern or practice" of discrimination, harassment or retaliation based on race.

The judge noted in his order that the CRD submitted evidence that almost all Tesla workers heard some variant of racial slurs at work by Tesla leads, supervisors and managers with some regularity. Those allegations, therefore, create a triable dispute of fact whether there was a pattern or practice of racial harassment at work, the judge said.

Aside from discussing pretrial issues, Judge Borkon on Friday also heard short arguments on multiple motions by Tesla seeking sanctions against the CRD on allegations the agency violated court orders by communicating with Tesla workers who are represented by counsel and that it misrepresented the CRD's access to witness statements.

Before the hearing, Judge Borkon issued a tentative ruling that mostly denied Tesla's sanctions requests. The judge found that the CRD's counsel had violated a court order by communicating with Tesla workers represented by counsel. However, the judge also found that the violations were inadvertent and due to the "convoluted web of counsel, clients, absent class members in Vaughn and aggrieved workers in CRD," but not in bad faith, so further sanctions are unwarranted.

During the hearing Friday, Tesla's counsel Jones urged the judge to sanction the CRD for allegedly prolonging a discovery dispute by asserting privilege over witness statements that the CRD now claims don't exist. Jones argued that the legal wrangling over the apparently nonexistent documents cost Tesla over $157,000 in legal fees.

To further address Tesla's concerns, the judge should order the CRD to produce all documents detailing any communications between the CRD and Tesla's current employees, Jones argued.

However, the CRD's counsel defended its discovery conduct, noting that the discovery referee found that Tesla's initial document demands were overbroad, so it wasn't initially clear that the CRD did not have the witness statements Tesla sought.

The CRD's counsel also denied communicating with Tesla workers in violation of court orders and said Tesla's demands would pose an undue burden on the CRD so close to trial despite being past discovery deadlines.

Although the judge heard arguments on the sanctions disputes, he took the arguments under submission and didn't indicate whether he'd change his tentative rulings.

The California Civil Rights Department was represented during the hearing in-house by Alexis McKenna, Sirithon Thanasombat and Brett D. Watson.

Tesla was represented during the hearing by Tyree P. Jones Jr. and Tiffany S. Hansen of Polsinelli PC and Raymond A. Cardozo of Reed Smith LLP.

The state enforcement action is the California Department of Fair Employment and Housing v. Tesla Inc. et al., case number 22CV006830, and the decertified class action is Marcus Vaughn v. Tesla Inc. et al., case number RG17882082, both in the Superior Court of the State of California, County of Alameda.

The federal case is Equal Employment Opportunity Commission v. Tesla Inc., case number 3:23-cv-04984, in the U.S. District Court for the Northern District of California. The settled case is Owen Diaz et al. v. Tesla Inc. et al., case number 3:17-cv-06748, in the U.S. District Court for the Northern District of California.

--Additional reporting by Grace Elletson. Editing by Michael Watanabe.

Amazon Revives Arbitration Clause, Bars Class Actions

law360.com/articles/2513904

(August 14, 2026, 11:48 PM EDT) -- Amazon customers must now take most legal claims against the retail giant to binding arbitration, the company announced Friday, unveiling new conditions of use that also include a prohibition on users bringing proposed class actions.

The changes, which took effect immediately, also established a mandatory pre-arbitration dispute resolution process, under which users must first contact customer service, file a claim form and negotiate in good faith for 60 days.

If Amazon fails to reach an agreement with a customer during the 60-day period, the dispute then proceeds to binding arbitration with JAMS, according to the updated terms.

The new conditions of use also specify that customers waive the right to file class action lawsuits against the company.

"You and we may only seek or obtain individualized relief in arbitration," the updated agreement said, "and claims or requests for public injunctive relief or relief where you or we act in a representative capacity are not allowed."

Amazon said the new terms apply to all disputes involving the company going forward regardless of when the conduct allegedly occurred.

There are only three exceptions to the new arbitration clause, according to the company. Those include disputes that qualify for small claims court, matters involving intellectual property rights "or to restrain future violations of the law for the benefit of the public as a whole" and disagreements over compliance with Amazon's new pre-arbitration dispute process.

In addition to barring class actions, the new conditions lay out a process for what the agreement calls "mass arbitration," which is triggered when 25 or more arbitration demands are filed over the same issue within six months, "and counsel for the parties are the same or coordinated in any fashion."

In mass arbitrations, the disputes would be split into batches and then resolved in arbitration on a batch-by-batch basis. Batches would consist of at least 25 disputes though larger mass arbitrations could have batches of at least 100 or 500 disputes.

The moves undo Amazon's policy change in 2021 that nixed the company's arbitration clause in favor of resolving cases in state or federal courts in Washington, where Amazon is headquartered.

"We continually update our Conditions of Use to better serve our customers," Amazon said in a statement to Law360 when asked about the impetus for the change. "We determined that reinstating the arbitration clause will offer customers a fast, cost-effective way to resolve disputes while still giving them the option of going to small claims court."

Notably, Amazon's new terms also state that "the arbitrator shall have the exclusive authority to resolve all disputes relating in any way to the interpretation, applicability, enforceability, or formation of this arbitration agreement." That includes disagreements "about whether a particular claim or demand for relief is subject to arbitration and whether this arbitration agreement is unconscionable, illusory, or otherwise unenforceable."

--Editing by Kristen Becker.