Abbott Labs Settles Investor Formula Recall Suit for $89 Million

Aug. 25, 2026, 7:48 AM PDT

Summary by Bloomberg AI

AI Generated

- Abbott Laboratories agreed to pay $88.5 million to resolve investor allegations that it misrepresented the gravity of a 2022 powdered infant formula recall and a production pause at its Sturgis, Mich. plant.
- The agreement came after Abbott said it would pay $670 million to settle different claims involving about 2,000 infants, alleging its formula for premature babies carried the risk of a deadly bowel disease.
- The proposed settlement class would include those who acquired Abbott stock from Feb. 19, 2021, to Oct. 19, 2022, according to court filings seeking the deal's preliminary approval.

Abbott Laboratories agreed to pay $88.5 million to resolve investor allegations that the healthcare giant misrepresented the gravity of a 2022 powdered infant formula recall and a production pause at its Sturgis, Mich. plant.

Investors asked the US District Court for the Northern District of Illinois for preliminary approval of the proposed agreement one day after Abbott said it would shell out $670 million to settle different claims, involving about 2,000 infants, alleging its formula for premature babies carried the risk of a deadly bowel disease.

And the accord came almost a month after Judge Steven C. Seeger tossed the investor lawsuit with the ability to refile, saying it failed to sufficiently allege an inference of intent or recklessness to defraud.

Abbott has faced a rash of complaints from consumers, investors, and purported whistleblowers along with regulatory scrutiny over the highly-scrutinized Michigan plant. Earlier this year, Abbott leaders agreed to invest $40 million over five years into "core operations, food safety, or quality assurance" at its Sturgis facility to settle shareholder derivative claims.

Abbott, one of the main suppliers of infant formula in the US, paused production at Sturgis in 2022 and issued a voluntary recall of several formula products while federal regulators investigated the presence of a bacteria that can be deadly for infants. Pandemic-related supply chain issues coupled with Abbott's recall and temporary Sturgis shutdown spurred a nationwide formula shortage. That year, Abbott entered into an agreement with US officials to improve sanitation and manufacturing practices at Sturgis.

The proposed settlement class would include those who acquired Abbott stock from Feb. 19, 2021, to Oct. 19, 2022, according to court filings seeking the deal's preliminary approval filed Aug. 21.

The investor agreement concerned allegations about the presence of Cronobacter bacteria and representations of safety protocols at the Michigan plant. The $670 million infant settlement is tied to claims about the risk of necrotizing enterocolitis, a serious intestinal condition, in preterm infants from specialty formulas. There's still pending litigation regarding NEC. Neither accord constituted an admission of liability.

Bernstein Litowitz Berger & Grossmann LLP and Motley Rice LLC are lead counsel for the investors. Kirkland & Ellis LLP represents Abbott. None of these law firms nor Abbott immediately responded to emails seeking comment.

The case is Pembroke Pines Firefighters & Police Officers Pension Fund v. Abbott Labs. , N.D. Ill., No. 1:22-cv-04661, settlement proposed 8/21/26 .

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Apollo Global Hit With Lawsuits Over Breach of Shareholder Data

Aug. 25, 2026, 10:00 AM PDT

Summary by Bloomberg AI AI Generated

- Shareholders sued Apollo Global Management Inc. in separate proposed class suits for failing to protect the personal information of thousands of people that was exposed in a July data breach.
- The complaints allege Apollo experienced a "social engineering incident" that allowed hackers to access cloud platforms containing unencrypted personal information of shareholders and customers.
- The plaintiffs are seeking actual, compensatory, statutory, and punitive damages; restitution and disgorgement; injunctive relief; lifetime credit-monitoring services; attorneys' fees and costs; and pre- and post-judgment interest.

Shareholders sued Apollo Global Management Inc. in separate proposed class suits for failing to protect the personal information of thousands of people that was exposed in a July data breach.

Lead plaintiffs Henggao Cai and Donna Paris alleged that the financial-asset manager breached its duties under common law, contract law, industry standards, and the Federal Trade Commission Act to implement reasonable and adequate data security measures, according to complaints filed Monday and Tuesday in the US District Court for the Southern District of New York.

Information exposed in the incident included names, dates of birth, contact information, home addresses, and Social Security numbers, the complaints said.

Apollo Global didn't respond immediately to a request for comment. Apollo Management Holdings LP is also named as a defendant.

The complaints allege Apollo experienced a "social engineering incident" that allowed hackers to access cloud platforms containing unencrypted personal information of shareholders and customers.

Apollo notified the California Attorney General's office about the incident Aug. 21, but failed to provide timely and accurate notice to the victims, they said.

Each plaintiff seeks to represent a nationwide class of people whose information was exposed in the breach.

The complaints bring claims of negligence and negligence per se, breach of implied contract, and unjust enrichment.

The plaintiffs are seeking actual, compensatory, statutory, and punitive damages; restitution and disgorgement; injunctive relief; lifetime credit-monitoring services; attorneys' fees and costs; and pre- and post-judgment interest.

Shamis & Gentile PA and Milberg PLLC represent Cai. KO Lawyers represents Paris.

The cases are Cai v. Apollo Glob. Mgmt. Inc. , S.D.N.Y., No. 1:26-cv-07223, complaint filed 8/24/26 and Paris v. Apollo Glob. Mgmt. Inc. , S.D.N.Y., No. 1:26-cv-07238, complaint filed 8/25/26 .

This story was produced by Bloomberg Law Automation.

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Google settles class action over data transfers for $135 million

courthousenews.com/google-settles-class-action-over-data-transfers-for-135-million

(CN) — For years, Google's Android smartphones have acted on their own, according to users who sued the company in 2020. They described Android devices transmitting data to Google servers without user knowledge, often while the devices were idle or inactive, and even using cellular data to do so without compensating phone owners.

On Friday, U.S. Magistrate Judge Virginia DeMarchi gave final approval to a settlement reached last year between Google and the plaintiffs, who represent a class of nationwide customers that accessed the internet on Android devices since Nov. 12, 2017. California users, who in July reached a separate $314 million settlement in a state lawsuit, are excluded.

This class includes over 129 million members, resulting in a slim individual payout of less than a dollar, per Angeion Group, the company selected to administer the settlement.

Much more significant, however, is the injunctive relief won by plaintiffs. As part of the settlement, Google must be more forthcoming with users when it comes to background data usage.

The company will have to add a new section, "Use of cellular data," to the set-up process for Android phones, disclosing that mobile cell data may be used for "background" communications between the devices and Google servers, some of which are mandatory and can't be disabled.

By tapping "Accept" at the bottom of this screen and continuing, you agree that software and apps on your device may automatically communicate with Google servers for a range of purposes, including using your cellular data when you are not connected to Wi-Fi—learn more. These purposes include, but are not limited to, safely rolling out new features, fixing problems on your device, maintaining and monitoring your device's health, developing new products, protecting the Android ecosystem, supporting advertising, and automatically downloading and configuring software, possibly using cellular data. Some of these communications may happen in the background, when you are not directly interacting with your device, including when the device's screen is locked. You can control some of the communications through user settings, including the settings on this screen, but some of the communications cannot be turned off. You are responsible for any fees incurred from third parties (such as your mobile carrier) in connection with these cellular communications.

Google Play, the company's app marketplace built into the Android operating system, will also see disclosure changes under the settlement. Its terms of service will now tell customers that cellular data may be used for some network communications, including data transfers that "may happen in the background, when you are not directly interacting with your device, including when the device's screen is locked."

Google will also need to deactivate a toggle option that existed within Google Play, which gave users the false impression that they could disable the store's mobile data usage for "background" data transfers.

The settlement doesn't prevent Google from continuing these data transfers, as the plaintiffs' case was concerned with the company's lack of disclosure.

"Several individuals object to the injunctive relief the settlement provides, arguing that it merely requires Google to make disclosures regarding the challenged transfers, but does not prohibit Google from continuing to engage in those transfers," DeMarchi wrote in her order finalizing the settlement. "The court finds no basis to conclude that the injunctive relief must or should require Google to discontinue the challenged transfers. Indeed, Google maintains that the challenged transfers are necessary to ensure the proper functioning and security of user's Android devices, and that prohibiting the transfers or disabling them entirely will harm (not benefit) users and the Android ecosystem."

DeMarchi awarded class attorneys just over $28.5 million in fees, or 21% of the total settlement fund. They had requested almost $40 million.

Named plaintiffs in the case received $5,000 each, as DeMarchi said their requested $10,000 incentive award "would overcompensate."

Neither attorneys for the class nor Google responded to requests for comment by press time.

Vail Resorts faces third class action over Epic Pass pricing

DENVER (CN) — In the wake of two consumer class actions by skiers claiming Vail Resorts' Epic Pass prices were illegally set in cahoots with competitors, a shareholder levied a third class action against the major ski resort operator claiming the scheme also violated securities laws.

“These wrongs resulted in significant damages to Vail's reputation, goodwill, and standing in the business community, as well as exposing the company to two federal antitrust class actions seeking treble damages and structural relief,” shareholder Gary Peterson says in a 55-page complaint.

Based in Broomfield, Colorado, Vail runs 42 ski resorts in four countries, topping $1 billion in gross profits annually. In addition to the original eponymous resort in Vail, Colorado, the company's operations span from Northstar and Kirkwood in California, Canyons to Stowe Mountain in Vermont.

Poking fun at the company's massive reach one April Fool's Day, Powder Magazine said Vail Resorts had “the rights to all North American snowfall for the 2018/19 season.”

Claiming the company's recent success was built on an illegal scheme, Peterson sued Vail Resorts and its board of directors in federal court Monday amid scrutiny over rising ticket costs and claims of price gouging.

The Epic Pass provides visitors with access to Vail mountains, generating 65% of the company's lift sales. Three-quarters of visitors to Vail resorts obtain an Epic Pass, or about 2.3 million people during the 2024-2025 season.

“No decision the company makes carries greater consequences for stockholders than how it prices that pass,” Peterson argues in the complaint, adding that failing to ensure the Epic Pass remains within the bounds of the law amounts to “a mission-critical risk."

Peterson claims in the lawsuit that in early 2020, Vail shared confidential information with competitors Alterra Mountain Company, Boyne Resorts, and Powdr Corp.

The pooled data included revenue, operational costs and pricing which each company used “to fix, raise, maintain, and stabilize the prices of destination ski products,” Peterson claims in the lawsuit.

“The scheme worked as designed, producing parallel, substantial, and lockstep price increases across the competitors’ passes, lift tickets, rentals, and lessons,” Peterson says in the complaint.

Along with competitors Alterra Mountain Company and Boyne Resorts, Vail faces two class actions filed by consumers challenging the company’s coordinated increase in ski resort passes.

In addition to using information gathered from competitors to raise the cost of the Epic Pass, Peterson claims Vail raised the price of single day passes to the point of being “economically irrational” in effort to coerce customers into purchasing the Epic Pass. Vail CEO Robert Katz bragged about about the strategy to The New York Times.

As a result, during the 2023-2024 season, the average national cost to ski on a weekend hit $192 per day, double what it cost in the early 2010s. Last season, a day pass at Vail Mountain topped out at $356 and Park City cost $385 during the holidays.

Meanwhile, a seasonal Epic Pass rose 39% from $783 in 2021 to $1,089 last year.

This year’s all-access Epic Pass runs $1,119 and a localized Colorado pass $829. An all-access Ikon Pass currently costs $1,449 and a base pass $1,019.

In addition to spending two decades on Vail’s board of directors, Katz served as executive chair for four years, during which his salary rose from $809,372 to $1.1 million, and his total take home pay fluctuated between $2 million and $3.9 million annually.

According to Peterson, Vail’s ethics code prohibited the company from sharing future prices with competitors. Each time the company assured shareholders it was adhering to this code, Peterson argues, Vail was providing the class with misleading information.

This misleading information led shareholders like Peterson to approve the 2024 Omnibus Incentive Plan providing members of the board of directors with performance bonuses, that Peterson now says followed “artificially inflated” profits.

In the lawsuit, Peterson says each member of the board owed a fiduciary duty to the shareholders, as well as an obligation to ensure the company’s pricing scheme stayed within the bounds of the law.

Besides overcharging visitors, Peterson says the price-fixing scheme left Vail resorts understaffed and overcrowded generating “what guests dubbed the lift line apocalypse” at Vail Mountain in Colorado and Park City Mountain in Utah.

Securities Suit Against Alibaba Combines Two Key Litigation Trends

dandodiary.com/2026/08/articles/artificial-intelligence/securities-suit-against-alibaba-combines-two-key-litigation-trends

Two notable securities litigation trends over the past year have been the rise of AI-related lawsuits and claims stemming from geopolitical developments, particularly U.S.-China tensions. A securities class action complaint filed on August 4, 2026, in the Southern District of New York against Alibaba Group Holding Limited (Alibaba) and the company's CEO combines both themes in a single action (Alibaba SCA). The complaint alleges that Alibaba misled investors concerning both its AI-related activities and the risks associated with its alleged status as a "Chinese military company" under U.S. law.

As discussed below, the lawsuit provides an interesting case study of the convergence of AI-related and geopolitical securities litigation, as well as potential implications for D&O underwriting.

A copy of the complaint can be found here.

The Alibaba SCA

Alibaba is one of China's largest technology companies, with operations spanning e-commerce, cloud computing, digital media, logistics, and financial technology. Its American Depositary Shares (ADS) trade on the New York Stock Exchange under the ticker symbol "BABA."

A plaintiff shareholder filed the Alibaba SCA on behalf of investors who purchased the company's securities between June 26, 2025, and June 24, 2026, alleging the company violated Sections 10(b) and 20(a) of the Securities Exchange Act. The Alibaba securities class action rests on two separate theories of investor deception. The first concerns geopolitical and regulatory risk, specifically whether Alibaba adequately disclosed the possibility that its links to Chinese regulatory authorities could expose the company to designation as a "Chinese military company" under U.S. law.

The complaint alleges that Alibaba understated the risk that its business relationships with Chinese government regulators, particularly licensing arrangements involving China's Ministry of Industry and Information Technology (MIIT), could result in the company being designated a "Chinese military company" under the U.S. National Defense Authorization Act.

According to the plaintiff, investors were not adequately informed that Alibaba's operations allegedly placed it within the scope of an evolving U.S. national security framework targeting Chinese companies with government affiliations. The market allegedly learned the significance of that risk on June 8, 2026, when the U.S. Department of Defense added Alibaba to its list of Chinese military companies, prompting the company's share price to decline approximately 3.9% over the following two trading days.

The second set of allegations concerns Alibaba's disclosures regarding its AI development activities. The complaint contends that the company warned investors about potential risks associated with AI model training, intellectual property disputes, data usage issues, and accusations of improperly leveraging third-party AI systems. The plaintiff argues that these warnings were misleading because they described such risks as future possibilities when Alibaba allegedly was already engaged in efforts to distill knowledge from Anthropic's Claude model.

According to the complaint, those allegations became public through a June 24, 2026, *Bloomberg* report describing Anthropic's claims that Alibaba had used thousands of accounts to access Claude's capabilities and facilitate large-scale model distillation. Alibaba's ADS allegedly fell 2.7% on June 24 and an additional 4.7% the following trading day, representing a cumulative two-day decline of approximately 7.3%.

Discussion

The Alibaba SCA combines allegations involving two of the most important developments in securities litigation today: AI-related disclosure claims and geopolitically driven disclosure claims.

The D&O Diary has been following the evolution of AI-related securities litigation beyond traditional AI-washing allegations and toward claims involving governance, intellectual property, model training, data usage, and compliance issues. The Alibaba SCA appears to fit within this newer generation of cases and is the 19th AI-related securities class action lawsuit filed in 2026.

Like several recent AI-related securities suits, the core allegation is not that Alibaba overstated its AI capabilities. Rather, plaintiffs contend that the company described certain AI-related risks as hypothetical even though the underlying conduct allegedly was already occurring. The complaint thus reflects a familiar securities litigation theory that disclosures regarding potential future risks can be misleading if the challenged conduct had already materialized.

The Alibaba SCA also bears some resemblance to the recent securities suit against ZoomInfo Technologies. There, as here, the focus was not on exaggerated AI claims but on alleged failures to disclose AI-related risks and their impact on the business. Both cases illustrate the evolving theories plaintiffs are pursuing as AI-related securities litigation develops.

The complaint also reflects another trend that has attracted increasing attention in recent years: securities litigation arising from geopolitical and national-security developments. In recent years, plaintiffs have increasingly relied on allegations involving export controls, sanctions, tariffs, trade restrictions, military-affiliation designations, and broader geopolitical tensions as the basis for securities claims. The Alibaba complaint fits within this trend, but with a distinctive twist. The plaintiff alleges that Alibaba's licensing relationships with China's Ministry of Industry and Information Technology made it foreseeable that the company could be designated a "Chinese military company" under U.S. law and that the company failed adequately to disclose that risk. As with many geopolitically driven securities suits, the case is likely to turn on familiar questions of foreseeability, materiality, and loss causation.

In that respect, the allegations resemble those in the October 2024 securities action against Super Micro Computer. There, plaintiffs alleged that the company failed adequately to disclose risks associated with U.S. export-control restrictions involving Russia. Similarly, the Alibaba complaint alleges that the company failed adequately to disclose risks arising from evolving U.S.-China national-security policies, illustrating how geopolitical developments can give rise to disclosure-based securities litigation. From a D&O underwriting perspective, the lawsuit highlights how securities litigation risk can arise from alleged failures of corporate governance, inadequate disclosure, and geopolitical developments. The Alibaba allegations are also consistent with themes identified in the recent *D&O Diary* AI and D&O liability survey, in which respondents frequently highlighted governance, oversight, compliance, and disclosure challenges as emerging sources of AI-related liability exposure.

The complaint further underscores how AI-related securities litigation is increasingly focused on those issues rather than on claims that companies overstated their AI capabilities. At the same time, the lawsuit illustrates how geopolitical and national-security developments can become the basis for disclosure-based securities claims, making geopolitical risk assessment an increasingly important underwriting consideration.

Ultimately, the Alibaba action may be less significant as a standalone lawsuit than as an indication of where securities litigation is headed. By combining AI-related and geopolitical disclosure theories in a single complaint, the case highlights how technological innovation and national-security concerns increasingly are becoming sources of securities litigation risk. As companies confront both accelerating AI adoption and growing geopolitical uncertainty, similar claims may become an increasingly familiar feature of the D&O liability landscape.

GoDaddy Investor Sues Over Domain Promo's Bookings Impact (1)

Aug. 24, 2026, 8:21 AM PDT; Updated: Aug. 24, 2026, 10:40 AM PDT

Summary by Bloomberg AI

AI Generated

- GoDaddy Inc. failed to alert investors to a promotional discount for one-year dotcom domains that weighed on its fourth quarter of 2025 bookings, a proposed class action said.
- The company and its top executives were touting a strategy targeting high-intent customers, but left out the discount resulting in short-term contracts and a deceleration in total bookings for the fourth quarter.
- A GoDaddy spokesperson said the company doesn't comment on pending litigation, and Kaplan Fox & Kilsheimer LLP represents the suing investor, Raymond Johnson, who seeks damages for alleged securities fraud by GoDaddy.

GoDaddy Inc. failed to alert investors to a promotional discount for one-year dotcom domains that weighed on its fourth quarter of 2025 bookings, a proposed class action said.

The website maker and its top executives were touting a strategy targeting high-intent customers, but left out the discount resulting in short-term contracts and a deceleration in total bookings for the fourth quarter, according to an investor's complaint.

"Once the Company and Individual Defendants chose to speak on the topic of their go-to-market strategy that targeted high-intent customers, they had a duty to speak completely and accurately and failed to do so," the investor told the US District Court for the Southern District of New York on Aug. 21.

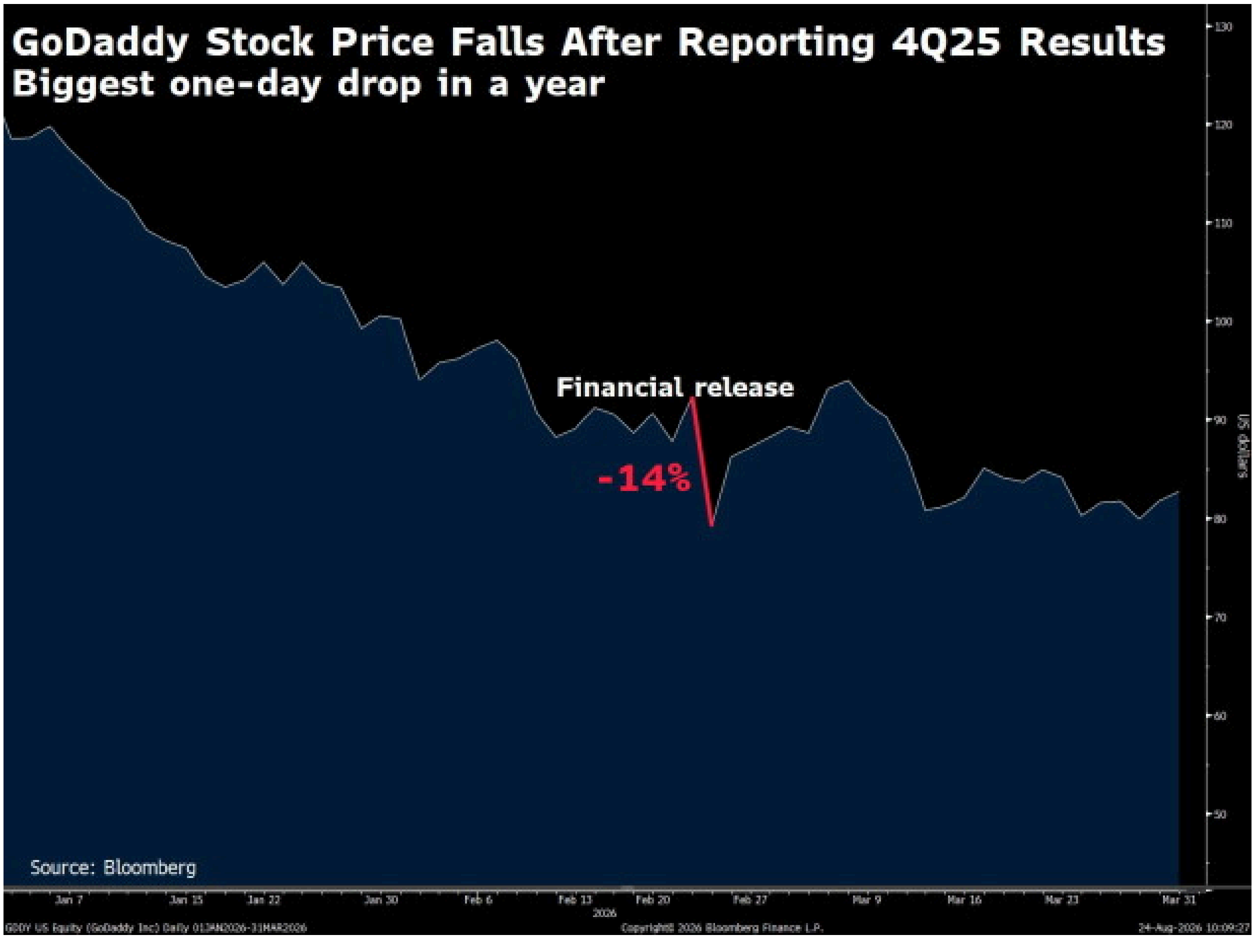
The proposed class would include investors who acquired GoDaddy stock from Sept. 3, 2025, to Feb. 24.

That day, the company shared that total bookings growth slowed to 5% in the last quarter of 2025, short of analyst expectations. CEO Aman Bhutani and chief financial officer Mark McCaffrey said in an associated earnings call that a popular promotional price for one-year domains impacted upfront bookings.

Analysts reported surprise, citing the shorter term and smaller size of the average order under the promotion, and its impact on the quarter's bookings, according to the investor lawsuit.

GoDaddy's stock price dropped more than 14% to close at $79.12 on Feb. 25 – then its steepest single-day selloff in a year, according to data compiled by Bloomberg.

A GoDaddy spokesperson said the company doesn't comment on pending litigation.



Kaplan Fox & Kilsheimer LLP represents the suing investor, Raymond Johnson. Johnson seeks damages for alleged securities fraud by GoDaddy, Bhutani, and McCaffrey.

Share prices of the domain registrar have taken other recent tumbles. Its stock price fell almost 17% on July 31, the day after it reported its 2026 second quarter results. That was its sharpest one-day plummet since March 2020, according to Bloomberg data.

GoDaddy this year has been pushing its artificial-intelligence fueled transformation, including an AI-powered platform to help users build web apps, sites, and other tools.

The case is Johnson v. GoDaddy Inc. , S.D.N.Y., No. 1:26-cv-07144, complaint filed 8/21/26 .

(Updates with GoDaddy declining to comment in eighth paragraph.)

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Investor Suit Targets Claims About Keeping Weight Off After GLP-1 Drugs

law.com/newyorklawjournal/2026/08/25/investor-suit-targets-claims-about-keeping-weight-off-after-glp-1-drugs

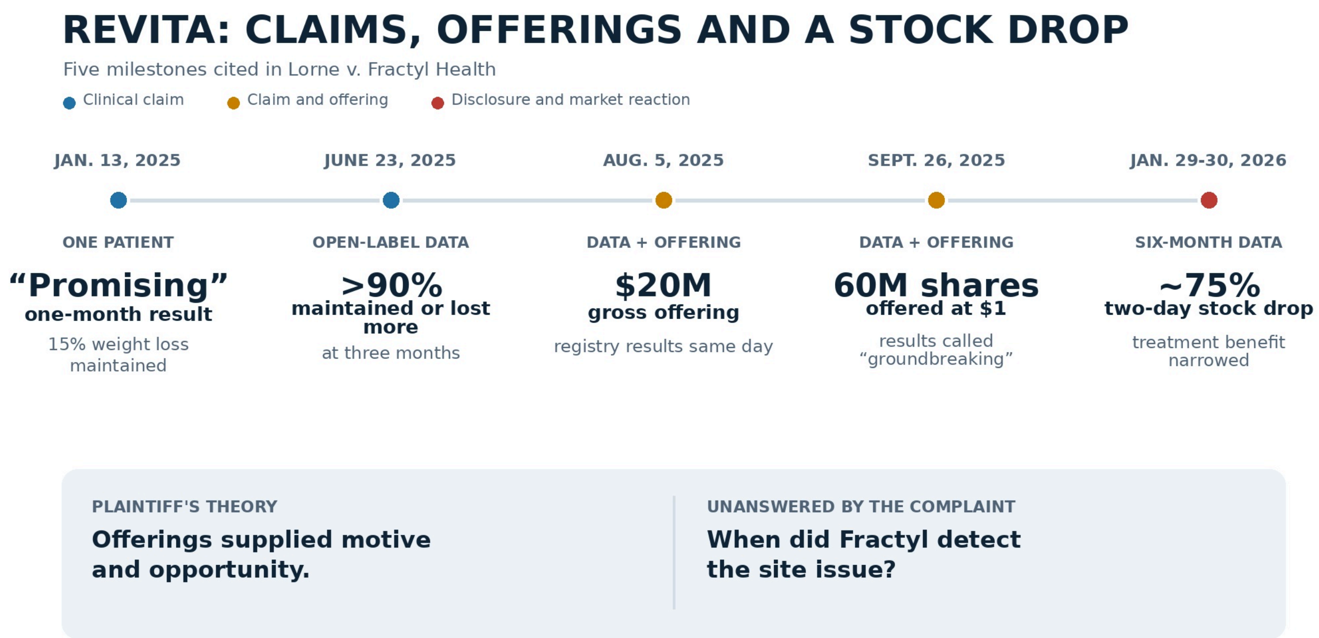
A Fractyl Health investor claims the company overstated the promise of an experimental procedure intended to maintain weight loss after patients stop taking GLP-1 drugs.

Fractyl, a metabolic-therapeutics company, allegedly capitalized on those misleading claims to raise tens of millions of dollars before disclosing weaker data and problems at one clinical site.

Stephen Lorne filed the proposed securities class action Friday in the Southern District of New York against Fractyl, CEO and co-founder Harith Rajagopalan and former Chief Financial Officer Lisa Davidson. The proposed class includes investors who acquired Fractyl securities between Jan. 13, 2025, and Jan. 29, 2026.

U.S. District Judge Paul Engelmayer is assigned to the case. Jeremy Lieberman, J. Alexander Hood II and James LoPiano of Pomerantz and David Schwartz of Schall Brown & Schwartz represent Lorne.

Fractyl develops treatments for type 2 diabetes and obesity. Its Revita system is a one-time outpatient endoscopic procedure intended to modify dysfunction in the duodenum, the first section of the small intestine, that Fractyl associates with diets high in fat and sugar.



Source: Class-action complaint and company statements quoted in the complaint.

Fractyl’s increasingly favorable Revita announcements coincided with two securities offerings before six-month results narrowed the apparent treatment benefit. The chronology reflects allegations and company statements cited in the complaint.

The company has positioned Revita as a potential solution to one of the central questions surrounding GLP-1 therapy: whether patients can preserve substantial weight loss without remaining on medication indefinitely. Although Fractyl describes the procedure as a durable, non-drug intervention, participants in its studies also receive structured diet-and-lifestyle support.

Fractyl began promoting Revita’s post-GLP-1 potential in January 2025 based on the experience of a single patient who maintained a 15% weight loss one month after discontinuing tirzepatide and undergoing the procedure, according to the complaint.

By May, the company reported that seven open-label participants had regained an average of 1.2% of their weight after one month, compared with approximately 3% in historical studies of GLP-1 withdrawal. In June, Fractyl said more than 90% of participants maintained or continued losing weight after three months and described the data as a “consistent and robust signal.” It also said the participants closely resembled those in its randomized midpoint and pivotal cohorts.

Fractyl cited two-year results from a German registry on Aug. 5 as evidence that Revita could provide durable weight and glucose control. The company announced an offering expected to generate $20 million in gross proceeds that day, along with warrants that could produce additional funds.

The company reported its strongest randomized results on Sept. 26. Revita patients lost an additional 2.5% of their body weight three months after stopping tirzepatide, while patients receiving a sham procedure regained 10%, according to the complaint. Fractyl called the results “groundbreaking” and announced an offering of 60 million shares at $1 each the same day. The complaint says the offering produced approximately $56 million in net proceeds.

Lorne’s certification shows that he and his wife purchased a combined 46,000 Fractyl shares for approximately $55,500 that day. His wife, Vanessa Goggin, subsequently assigned her securities claims to Lorne, who continued purchasing shares through Jan. 27.

The apparent treatment advantage narrowed at six months. On Jan. 29, Fractyl reported that Revita patients had regained 4.5% of their weight, compared with 7.5% among patients receiving the sham procedure. The company also said the 45-person midpoint cohort was not sufficiently powered to evaluate efficacy.

Rajagopalan told analysts that one of the six study sites had produced unusually high weight regain in both groups and was materially affecting the results. He maintained that the remaining sites showed an expanding treatment benefit but acknowledged that weight regain among Revita patients was “slightly higher” than the company wanted to see.

An analyst report cited in the complaint said Fractyl attributed the variability partly to a less robust diet-and-lifestyle counseling program at the site, which had begun enrolling patients before establishing a dietary center.

Fractyl’s shares fell 68% to $0.585 on Jan. 29. Morgan Stanley then reduced its estimate of Revita’s probability of success from 50% to 35%, cut projected peak worldwide sales from $700 million to approximately $490 million and lowered its price target from $8 to $2. The shares declined another 21% the following day, closing at $0.46—a roughly 75% decline over two days.

Lorne alleges the offerings supplied Fractyl with a motive and opportunity to inflate Revita’s prospects. He also claims Rajagopalan and Davidson knew their statements were misleading or recklessly disregarded the truth because Revita was central to Fractyl and Rajagopalan later said central statistical monitoring had detected the site variability.

The complaint does not specify when monitoring detected the issue or when either executive learned about it. The suit asserts claims against all three defendants under Section 10(b) of the Securities Exchange Act and Rule 10b-5. It also alleges Rajagopalan and Davidson are liable as controlling persons under Section 20(a). Lorne seeks unspecified damages, interest and attorneys’ fees.

Motion to Dismiss Doesn't Waive Right to Arbitrate Class Action Claims, Third Circuit Rules

law.com/njlawjournal/2026/08/25/motion-to-dismiss-doesnt-waive-right-to-arbitrate-class-action-claims-third-circuit-rules

The U.S. Court of Appeals for the Third Circuit directed a New Jersey federal court to reconsider whether a class action insurance dispute between customers and rental car companies Avis and Budget should be arbitrated.

On Monday, the Third Circuit found that a lower court failed to properly analyze whether Avis and Budget had implicitly waived their right to arbitration, vacating the decision that barred the rental car companies from compelling arbitration and remanding for further consideration.

In writing for the bench, Third Circuit Judge Peter J. Phipps said any view of the defendants' litigation activity implying they waived their arbitration right was incorrect.

"In one sense, by filing a motion to dismiss, instead of filing an answer asserting the arbitrability defense, Budget and [Avis Budget Group] did demonstrate a preference for litigation over arbitration. But that choice was not pronounced enough to imply a waiver," Phipps said.

On separate trips to the United States between September 2016 and November 2019, United Kingdom citizens Jane Parkin and David Hughes used third-party websites to rent vehicles from Budget Rent A Car System, Inc., a subsidiary of Avis Budget Group, Inc. For each rental, they selected a rental package that included additional supplemental liability insurance for damages caused to third parties.

Upon arriving to rent the vehicles, Parkin and Hughes signed forms acknowledging they reviewed and agreed to the terms of the agreement, and were then provided rental jackets. The rental jackets' language contained a mandatory arbitration clause.

In September 2022, Parkin and Hughes filed the three-count putative class action in U.S. District Court for the District of New Jersey. They claimed they did not receive supplemental liability insurance as agreed to in the rental jacket, and brought counts for breach of contract, fraudulent misrepresentation, and violations of the Florida Deceptive and Unfair Trade Practices Act. They sought over $5 million in damages.

In response, the company defendants motioned to dismiss. U.S. District Judge Christine P. O'Hearn dismissed all but the breach of contract claim.

As part of discovery, the defendants asked the plaintiffs whether they believed that the information contained in the rental jackets was part of their rental agreements with Budget, and they replied affirmatively.

Two months later, in April 2024, the defendants motioned to compel arbitration, arguing the plaintiffs knew of the arbitration clause in the rental jackets when signing their rental agreements. Parkin and Hughes countered that the defendants' litigation posture for the previous 18 months—without seeking arbitration—constituted a waiver of their arbitration rights.

O'Hearn agreed, finding the defendants' conduct was "inconsistent with a genuine intent to arbitrate," and denied the motion to compel.

During the appeal, the Third Circuit separately decided in *Valli v. Avis Budget Group* that a movant can preserve a known but presently unenforceable arbitration right by providing "clear, reasonably prompt record notice of its intent to exercise its arbitration right," followed by a prompt motion to compel once the arbitration right becomes enforceable. In *Valli*, the Third Circuit also vacated a denial of a motion to compel arbitration.

In another prior Third Circuit case, *Bacon v. Avis Budget Group*, the court ruled the defendants needed factual development before they could determine whether arbitration was enforceable.

In analyzing those cases, the Third Circuit held that the defendants' conduct went towards developing a factual basis for arbitration—and not waiving the right to arbitrate.

"Under *Bacon*, the allegations in the complaint did not provide an adequate basis to move to compel arbitration. So, without a meaningful opportunity to move to compel arbitration, the immediate options before Budget and ABG were not whether to litigate or to seek arbitration, but rather how to litigate," Phipps said.

"From that perspective, their choice to move to dismiss instead of to answer the complaint and proceed to discovery is not a clear enough indication of a relinquishment or abandonment to constitute an implied waiver of the right to arbitration," Phipps continued.

James E. Cecchi of Carella Byrne Cecchi Brody Agnello in Roseland, New Jersey, representing the plaintiffs, did not immediately respond to a request for comment

William T. Marks of Paul, Weiss, Rifkind, Wharton & Garrison in Washington, D.C., representing the defendants, declined to comment on the ruling.

IP

Pegasystems to Settle Institutional Investors’ Suit Over IP Risk

Aug. 24, 2026, 1:02 PM PDT

Pegasystems Inc. has agreed to settle a lawsuit brought on behalf of 17 institutional investors who claimed the software company hid legal risks relating to alleged trade secrets misappropriation, according to a court filing.

The settlement amount wasn’t disclosed in the parties’ request for a litigation pause or in Judge William G. Young’s dismissal order, both filed Aug. 21 in the US District Court for the District of Massachusetts. The parties can reopen the case within 60 days if the deal isn’t completed, Young said.

The development marks the latest fallout from an eye-popping $2 billion-plus verdict against Pegasystems in the trade secrets case, which exceeded previous damages verdicts in Virginia and was seen as a high-water mark in a trend of juries punishing corporate espionage harshly. The verdict was later reversed, and a new trial ordered.

The investors opted out of a $35 million securities class action settlement that was finalized in 2024.

The suit mirrors the class action’s allegations that Pegasystems and two executives participated in a scheme to get access to competitor Appian Corp.‘s software and documentation while concealing the alleged misconduct — and later denying that Appian’s legal claims had merit. Several developments, including news of the Virginia state court trade secrets suit’s filing and later its verdict, allegedly caused Pegasystems’ stock to drop.

The 17 institutional investors collectively lost tens of millions of dollars on their Pegasystems stakes, according to the complaint in the opt-out case. They assigned their litigation rights to PS Lit Recovery LLC, which requested exclusion from the class settlement.

In January, Young allowed their claims to proceed past Pegasystems’ dismissal request despite an intermediate court’s reversal of the underlying intellectual property judgment.

The Virginia Supreme Court, in a ruling the same day as Young’s, affirmed the reversal and ordered a new trial.

Pegasystems and attorneys for the parties didn’t immediately respond to emails requesting comment and information about the settlement’s terms, which won’t need to be disclosed to the court and approved as they would in a class action.

Super Micro shareholder targets board over China server diversion | Secondary Sources | National

(August 25, 2026) - Super Micro Computer Inc.'s directors and officers concealed a scheme to divert artificial intelligence servers to China that inflated the company's sales and enabled more than $50 million in insider trading, according to a shareholder lawsuit.

Roy v. Liang et al., No. 26-cv-8757, *complaint filed* (N.D. Cal. Aug. 21, 2026).

Shareholder Pratchi Roy filed the derivative complaint Aug. 21 in the U.S. District Court for the Northern District of California on behalf of Supermicro, a San Jose, California-based designer and manufacturer of high-performance AI servers.

The defendants include Supermicro Chairman and CEO Charles Liang, co-founder and former board member Yih-Shyan Liaw and Chief Financial Officer David Weigand, along with eight other current and former directors.

Suit: insiders charged

The complaint alleges the defendants breached their fiduciary duties by causing the company to divert servers containing restricted Nvidia Corp. graphics processing units to customers in China in violation of U.S. export control laws. Supermicro routed the shipments through a Southeast Asian pass-through company to conceal its "diversion misconduct," the complaint says.

Roy alleges that the scheme emerged March 19, when the Justice Department unsealed an indictment charging Liaw and two other Supermicro affiliates with conspiring to sell approximately $2.5 billion worth of servers with advanced AI capabilities to customers in China.

According to the indictment, the conspirators directed the pass-through company to place purchase orders for the restricted servers. The company rerouted the servers to Chinese buyers using falsified documents and "dummy servers" staged to deceive Supermicro's compliance team, the derivative complaint says.

While the scheme artificially inflated Supermicro's sales and share price, seven of the individual defendants sold company stock on inside information, netting approximately $50.6 million in combined proceeds, the complaint says.

Liang alone accounted for approximately $34.5 million of those sales, the suit says.

According to the complaint, the defendants also caused the company to repurchase approximately 4.9 million shares of its own stock at artificially inflated prices between February 2024 and March 2026, resulting in an overpayment of approximately $99.6 million.

Supermicro is also facing a proposed class action asserting securities fraud claims related to the scheme, the suit says.

The derivative claims include breach of fiduciary duties, waste of corporate assets, unjust enrichment, gross mismanagement and violation of the anti-fraud provision of the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b).

DaVita Defeats Nurse Overtime Collective Bid

law360.com/articles/2517162/davita-defeats-nurse-overtime-collective-bid

(August 24, 2026, 6:24 PM EDT) -- A Colorado federal judge refused to conditionally certify a 41-state collective of DaVita nurses and technicians who say the company denied them overtime by failing to pay for short rest breaks, finding too little evidence of a companywide practice.

U.S. District Judge Nina Y. Wang on Friday **denied** Anduin Lightner's amended certification motion, saying one 19-minute time record and one South Carolina worker's testimony about five- to 10-minute breaks did not show a common 41-state policy.

"The minimal evidence submitted by plaintiff does not establish the DaVita practice contemplated in plaintiff's complaint in any one state, let alone a common informal policy implemented across 41 states," Judge Wang wrote.

Lightner sued DaVita Inc. in November 2023 under the Fair Labor Standards Act, alleging nurses and technicians remained responsible for patient care during unpaid 30-minute meal periods and had to clock out for breaks shorter than 20 minutes, depriving them of overtime in weeks when they worked more than 40 hours.

In March 2025, Lightner **moved** to conditionally certify hourly nurses and technicians providing direct patient care at DaVita locations outside nine states, arguing they were subject to uniform meal- and rest-break policies the company did not follow.

DaVita **opposed** the motion later that month, saying the proposed groups encompassed roughly 68,000 workers and testimony showed practices varied by supervisor, clinic, staffing and state law.

Lightner withdrew her bid to certify a meal-break collective on Aug. 5, leaving the rest-break group.

Judge Wang first found the collective described in Lightner's motion was not materially different from the one in her complaint and used the complaint's more specific definition covering workers allegedly denied overtime because DaVita did not pay for breaks of 20 minutes or less.

Turning to whether the proposed collective members were similarly situated, Judge Wang considered meal-break evidence because Lightner's rest-break theory partly rested on meal periods that were interrupted and cut short.

Being hourly, overtime-eligible and subject to the same policies did not establish a common policy or plan, the judge said. Lightner's allegations also did not explain how the alleged practice was implemented, how often it occurred or which facilities were involved.

Judge Wang said Lightner's motion did little to fill those gaps, citing only one worker's 19-minute break record to support the rest-break theory despite attaching hundreds of pages of evidence.

She nevertheless reviewed testimony about interrupted meal breaks, but said most did not show that workers returned to work within 20 minutes or went unpaid.

At best, one South Carolina worker testified she clocked back in after five to 10 minutes, Judge Wang said. Together, that testimony and the 19-minute time record were inadequate to establish the alleged practice even within one state, much less across the proposed collective, the court found.

Although the certification-stage burden is modest, Judge Wang said granting certification would require assuming evidence absent from the record. That distinguished the case from Bowling v. DaVita, where she conditionally certified a meal-break collective covering nine states.

Judge Wang made no merits ruling and ordered a status report by Sept. 4.

Representatives for the parties did not immediately respond to requests for comment Monday.

Lightner is represented by Allison Rattet, Andrew R. Frisch, Angeli Murthy and Corey Logan Seldin of Morgan & Morgan PA, by Galvin Bernard Kennedy of Kennedy Law Firm LLP and by Melinda Arbuckle and Ricardo J. Prieto of Wage and Hour Firm LLP.

DaVita is represented by Allison Rachel McLaughlin, Andrew H. Myers, Jessica Elyse Eller, Jessica Goneau Scott and Meghan Frei Berglind of Wheeler Trigg O'Donnell LLP.

The case is Lightner v. DaVita Inc., case number 1:23-cv-03104, in the U.S. District Court for the District of Colorado.

--Editing by Nick Petruncio.

GoDaddy's Hidden Discount Strategy Hurt Investors, Suit Says

law360.com/articles/2516635/godaddy-s-hidden-discount-strategy-hurt-investors-suit-says

(August 24, 2026, 5:49 PM EDT) -- GoDaddy and its top executives have been hit with a proposed shareholder class action alleging they failed to tell investors that the company introduced a discounted promotional price for its one-year dotcom domain contracts to attract new customers, and that the program was slowing total bookings and revenue growth.

Plaintiff Raymond Johnson filed a **complaint** on Friday in New York federal courtagainst GoDaddy, its CEO Aman Bhutani, and its Chief Financial Officer Mark McCaffrey. The suit is on behalf of a proposed class of all purchasers of GoDaddy common stock between Sept. 3, 2025, and Feb. 24, 2026.

Johnson alleges that during the class period, GoDaddy introduced a "heavily discounted" promotional price of $4.99 for one-year domain contracts compared to the company's typical price for multi-year contracts ranging from $10 to $20 annually.

According to the complaint, the introduction of the promotional price was part of a deliberate strategy to attract new customers, "even at the expense of large upfront payments for multi-year contracts."

However, at the same time, the defendants represented to investors that the company was focused on "high-intent" customers — those that buy more than one domain registration or a suite of business solutions such as website building, email, payment processing and other services, according to the complaint.

"This undisclosed promotion contradicted the company's repeated representations that its strategy to attract high-intent customers that spend $500 or more was working and that its [artificial intelligence] platform was 'hitting its stride,' helping to attract those high-intent customers that were adopting more products and spending more money," the complaint states.

Johnson claims that during the class period, the defendants misrepresented to the public that GoDaddy wasn't offering discounted prices and touted that the company expected total bookings growth to be in line with total revenue growth of 8% while knowing that GoDaddy was facing a deceleration in total bookings growth due to the implementation of the promotional program.

For example, the complaint states that in response to an analyst question about GoDaddy's strategy at a 2025 conference, defendant McCaffrey responded that "[t]here was a conscious decision by us to also turn off discounting at the front of our funnel because that attracted customers who are just going to come in for the price."

As the class period progressed, McCaffrey continued to mislead investors by claiming that GoDaddy's strategy was focused on high-intent customers, the complaint states, and he expressed "confidence" that the strategy was working.

"Again, unknown to investors, defendants were not merely focusing on high-intent customers, but were also offering significant discounts on one-year contracts which were likely to, and did, have a material, negative impact on total bookings growth," the complaint states.

Johnson says defendant Bhutani further misled investors during the class period by stating during an earnings call that GoDaddy's strategy was focused on high-intent customers and that this strategy would lead to increased total bookings growth.

"What defendant Bhutani failed to tell investors, however, was that the company had implemented a promotional discount for dotcom domains that were likely to and did result in shorter-term contracts with smaller valuations," the complaint states.

The defendants knew or recklessly disregarded that GoDaddy's total bookings growth was decelerating and would continue to do so due to the promotional discount, and their contrary public statements caused the company's share price to trade at artificially inflated prices, the complaint states.

Johnson says the truth finally came to light on Feb. 24, 2026, when GoDaddy disclosed that total bookings growth had "sharply decelerated" from 9% to 5% over a quarter and Bhutani mentioned, for the first time, during an earnings call that the company had "'introduced a promotional price for dotcom domains with a one-year term' which resulted in reduced upfront bookings."

"On that same call, defendant McCaffrey admitted that the annual terms of the heavily adopted one-year promotional contracts impacted the company's bookings," the complaint states. "Specifically, defendant McCaffrey admitted that there was 'a reduction in our average order size of initiation related to the discount,' noting that the company believed the heavy adoption of the lower-cost, one-year promotional contracts would have a 'major impact' at the end of 2025 going into the first quarter of 2026."

On this news, the complaint states that GoDaddy's common stock price declined by more than 14% from $92.30 per share on Feb. 24, 2026, to $79.12 per share on Feb. 25, 2026.

The suit seeks damages, attorney fees and a jury trial.

GoDaddy declined to comment on Monday, and Johnson's counsel did not immediately respond to requests for comment.

Johnson is represented by Frederic S. Fox, Donald R. Hall, Pamela Mayer and Brandon Fox of Kaplan Fox & Kilsheimer LLP.

Counsel information for the defendants was not immediately available.

The case is Johnson v. GoDaddy Inc. et al., case number 1:26-cv-07144, in the U.S. District Court for the Southern District of New York.

--Editing by Emily Kokoll.

3rd Circ. Revives Exxon Unit's Bid To Arbitrate Royalties Claims

law360.com/articles/2517116/3rd-circ-revives-exxon-unit-s-bid-to-arbitrate-royalties-claims

(August 24, 2026, 6:52 PM EDT) -- ExxonMobil subsidiary XTO Energy Inc. will get another chance to pursue arbitration in a case over allegedly underpaid natural gas royalties, with the Third Circuit ruling Monday that litigating class claims for more than four years did not preclude its bid for an out-of-court resolution.

A three-judge panel **reversed** the lower court's denial of XTO's motion to compel arbitration on claims belonging to 15 to 16 unnamed Western Pennsylvania natural gas leaseholders who did not become plaintiffs until after class certification, which was based on a judge's ruling that XTO's litigation of the claims implied a waiver of arbitration rights.

Several landowners with natural gas leases not subject to arbitration provisions filed the royalties lawsuit against XTO in 2019. In 2023, the district court certified a class of 500 homeowners, including a small group with arbitration clauses in their leases, according to the panel.

XTO objected to certification and moved to compel arbitration, but the plaintiffs argued that XTO's continued litigation of the case, including answering three versions of the complaint without mentioning arbitration, meant the company had waived its right to that form of resolution.

But the panel disagreed Monday.

"XTO's failure to plead arbitration as an affirmative defense in each of its three answers does not constitute an intentional relinquishment or abandonment of the right to compel arbitration with putative class members whose leases have arbitration clauses," the opinion said.

In addition, the opinion said XTO could not have sought arbitration of the unnamed class members' claims ahead of class certification because they were not yet involved in the case.

"Thus, when XTO answered the three amended complaints before class certification, it was not litigating against any putative class members, much less putative class members with arbitration clauses in their leases — they were not parties to the case at those times," the opinion said. "Consequently, the filing of those answers without the inclusion of the arbitration affirmative defense cannot be viewed as exhibiting a preference for litigation over arbitration with respect to any putative class members."

The panel also rejected the plaintiffs' argument that XTO's involvement in discovery constituted an intention to relinquish its right to seek arbitration because the unnamed plaintiffs were not yet part of the litigation.

XTO also expressed its unwillingness to relinquish its arbitration rights when it opposed class certification, the opinion said.

Attorney for the plaintiffs did not respond to a request for comment.

"We agree the ruling of the court and considering next legal steps," an ExxonMobil spokesperson said in an email to Law360.

U.S. Circuit Judges Peter J. Phipps, Cheryl Ann Krause and D. Michael Fisher sat on the panel for the Third Circuit.

The plaintiffs are represented by David A. Borkovic of Jones Gregg Creehan & Gerace.

XTO is represented by Nicolle R. Bagnell, Justin H. Werner and Colin E. Wrabley of Reed Smith LLP, David R. Fine of K&L Gates LLP and Elizabeth Tiblets of Porter Hedges LLP.

The case is Roger Salvatora et al. v. XTO Energy Inc., case number 25-1327, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Drashti Mehta.

Tribal Opioid Suits Against Sacklers Slated For $175M Exit

law360.com/articles/2516848/tribal-opioid-suits-against-sacklers-slated-for-175m-exit

(August 24, 2026, 7:18 PM EDT) -- Dozens of Native American tribes have asked an Ohio federal court to dismiss their lawsuits against members of the Sackler family, which owns bankrupt opioid maker Purdue Pharma, based on a settlement agreement that will pay $175 million to the tribes over 16 years.

The Sackler estate and the tribal plaintiffs submitted a stipulation and proposed order Friday in the Ohio multidistrict litigation, which would dismiss with prejudice the suits that were stayed when Purdue went into bankruptcy. Under the terms of the $175 million settlement, the tribes will receive 16 payment installments from the Sackler family and Purdue.

Approximately $119 million will come from a tribal direct-action settlement with the family, and the remaining amount will come from the Purdue estate.

The tribes' dismissal deal with the Sacklers comes after a New York bankruptcy judge **formally approved on Nov. 18** Purdue's $7.4 billion Chapter 11 plan, which transforms the pharmaceutical giant into a public benefit company. U.S. Bankruptcy Judge Sean H. Lane's ruling said liability releases fully comply with new restrictions imposed by the U.S. Supreme Court last year.

The bankruptcy deal is among the largest in a series of opioid settlements totaling about $55 billion brought by tribal, state and local governments against drug manufacturers, wholesale distributors and pharmacies. U.S. District Judge Dan Polster in Cleveland has overseen the massive federal multidistrict litigation.

Steven J. Skikos of the MDL's Tribal Leadership Committee told Law360 Monday that there was extensive collaboration between the states and the tribal nations in this litigation.

"That collaboration, along with proof that the tribal nations can successfully litigate their claims, led to well over $1 billion in abatement funds going to address the opioid crisis in

Indian Country," Skikos said. "This bankruptcy case is just part of that collaboration."

Counsel for the Sacklers did not immediately respond Monday to a request for comment.

The tribes' settlement plan with the Sacklers is premised on a $6.5 billion contribution from the family and a $900 million cash contribution from Purdue itself into disbursement trusts that will provide recoveries to individual personal injury claimants and state and local governments and agencies with claims tied to the national opioid epidemic.

According to a summary of the settlement plan provided by tribal settlements administrator BrownGreer PLC, the funds will be allocated among federally recognized tribes pursuant to an intertribal allocation matrix developed by the lawyers for the tribes, and reviewed and approved by former U.S. District Judge Layn Phillips of Oklahoma.

Previously in the opioid MDL in Ohio, pharma firms Indivior, Sun Pharmaceuticals and Zydus Pharmaceuticals **inked deals to compensate four tribes** for their role in the opioid crisis, according to stipulated dismissals entered Oct. 29.

The three pharmaceutical companies said they would collectively pay more than $4 million to the Big Sandy Rancheria of Western Mono Indians of California, the Consolidated Tribal Health Project in California, the Keweenaw Bay Indian Community in Michigan, and the Mentasta Traditional Council of Alaska, according to settlement documents.

The tribes agreed to dismiss their claims against the companies with prejudice in the multidistrict litigation, according to the orders signed by Judge Polster.

The Tribal Leadership Committee is represented by Steven J. Skikos of Skikos Crawford Skikos & Joseph LLP. Stipulating defendant David Sackler, in both his individual capacity and as co-executor of the estate of Beverly Sackler, and other Sackler family members is represented by Stuart G. Parsell of Zeiger Tigges & Little LLP. The MDL is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

Microsoft Says Consumer Must Arbitrate Tariff Refund Claims

law360.com/articles/2517120/microsoft-says-consumer-must-arbitrate-tariff-refund-claims

(August 24, 2026, 8:03 PM EDT) -- Microsoft urged a Washington federal judge Friday to force arbitration of an Xbox buyer's proposed class action alleging the company seeks to pocket tariff refunds meant for customers — or toss the case entirely — contending console prices change over time "for a variety of reasons having nothing to do with tariffs."

In a Friday **motion**, Microsoft argued that plaintiff Trevor Hastings must arbitrate his claims because he agreed to two broad arbitration clauses: one under a Warranty & Agreement referenced on the Xbox packaging and another under the Microsoft Services Agreement terms he accepted when creating his Xbox Live account.

"Plaintiff does not allege that he received any less than what he was promised for the agreed price; nor does his complaint dispute that Xbox prices have changed over time for a variety of reasons having nothing to do with tariffs," Microsoft said, adding that the consumer "seeks to litigate in court a dispute he agreed to arbitrate."

Microsoft argued in an accompanying **dismissal bid** that the court should throw out the case if it does not compel arbitration, arguing Hastings' claims are meritless. The company said it permissibly sets its prices based on fluctuating factors, including component costs, overhead, competition and taxes.

"Companies have no obligation to adjust those prices up or down day by day based on forecasts that do or do not materialize," Microsoft said. "And plaintiff cites no source for any such duty — no provision of his contracts with Microsoft, no statute."

Hastings **first sued** the Washington-based Microsoft in King County Superior Court in June, alleging the company stands to make an "unjustified windfall profit" from tariff refunds from the federal government after the U.S. Supreme Court struck down President Donald Trump's global tariff regime early this year.

In a **6-3 ruling** issued Feb. 20, the Supreme Court deemed the president's tariffs under the International Emergency Economic Powers Act illegal. Writing for the majority, Chief Justice John Roberts reasoned the Constitution bestows Congress with the power to impose taxes and duties, and the executive branch has no such authority — especially during peacetime.

In March, the U.S. Court of International Trade **ordered the refund** of IEEPA tariffs. U.S. Customs and Border Protection subsequently established a system for importers to request duty refunds.

Hastings contends those refunds should go to Microsoft customers, who paid heightened prices when the company passed on the costs of the duties to consumers.

The California resident seeks to represent a nationwide class of customers who purchased goods from Microsoft "during the period in which Microsoft's prices were inflated at least in part due to the tariffs." ;He asserts that Microsoft was unjustly enriched and improperly kept money that should be returned to customers, and requests a declaratory judgment recognizing the consumers are entitled to refunds.

Corporate giants including **furniture chain Ikea**, **bulk retailer Costco** and **entertainment conglomerate Sony** are among those facing similar putative class actions from consumers seeking to recoup tariff refunds they claim are rightfully theirs.

Nintendo **called on** a Washington federal judge last month to dismiss one such putative class action or force arbitration of the claims, arguing the plaintiffs haven't alleged that the video game company's price changes were illegal or misleading to consumers.

Microsoft, which removed Hastings' suit to Washington federal court in July, said in its Friday dismissal bid that Hastings has not claimed that the Xbox does not function as represented or alleged anything else unjust about the transaction.

"Plaintiff cannot state a claim for unjust enrichment where he purchased a good and was provided that good," Microsoft said. "Similarly, plaintiff cannot state a claim for money had and received because there was no inequitable conduct. Finally, plaintiff cannot state a claim for declaratory relief, because neither of the underlying substantive claims survives."

A Microsoft spokesperson told Law360 Monday that the company "has no comment beyond the language in the filing."

Counsel for the plaintiff did not immediately respond to a request for comment.

Hastings is represented by Samuel J. Strauss of Strauss Borrelli PLLC and J. Gerard Stranch IV, Grayson Wells and Michael Tackeff of Stranch Jennings & Garvey PLLC.

Microsoft is represented by Emily Parsons and James Moon of Davis Wright Tremaine LLP and Valerie L. Hletko, Laura Flahive Wu, Nathan Lange and Maeve McBride of Covington & Burling LLP.

The case is Trevor Hastings v. Microsoft Corp., case number 2:26-cv-02537, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Lauren Berg, Dylan Moroses and Jack McLoone. Editing by Jay Jackson Jr.

DaVita, Patients Get Early Nod In $15M Data Breach Deal

(August 24, 2026, 9:38 PM EDT) -- A Colorado federal judge has given the initial green light to DaVita Inc.'s proposed $15 million settlement with millions of past and present patients who claim the healthcare company didn't adequately protect their personal information, which was exposed in an April 2025 breach, according to an order issued Friday.

U.S. District Judge Regina M. Rodriguez granted preliminary approval to the deal, finding it fair and reasonable. Under the agreement, roughly 2.4 million individuals' whose information was potentially compromised will be eligible for a $50 cash payment, up to $2,500 in documented out-of-pocket loss reimbursements and credit-monitoring services.

"In negotiating the settlement, plaintiffs' counsel relied on published reports documenting data breach and identity theft costs, actual costs incurred by class members (as relayed in conversations with plaintiffs' counsel), their own experience in data breach litigation, and reported settlements in other data breach class actions," Judge Rodriguez said. "The monetary benefits offered to settlement class members are more than fair and reasonable in light of reported out-of-pocket expenses due to a data breach and compare favorably to what class members could recover if successful at trial."

Judge Rodriguez preliminarily appointed Godwin Iloka, Julian Jenkins, Gregory Leafe, Brenda Pearson and Lydia Perryman as class representatives and lawyers with Bailey Glasser LLP, Stranch Jennings & Garvey PLLC and Milberg PLLC as class counsel.

The settlement class includes "all U.S. persons whose personal information was potentially accessed without authorization in the ransomware attack," according to the order.

DaVita and counsel for the patients **initially announced** the deal late last November, although details weren't shared with the court until the patients moved for preliminary approval in December.

DaVita, which serves more than 200,000 patients, announced the data breach in a U.S. Securities and Exchange Commission filing in April 2025. The Denver-based kidney care business reported in the 8-K filing that it became aware of a "ransomware incident" on April 12 that "encrypted certain elements of our network."

Jenkins sued **shortly after the incident**, accusing DaVita of acting negligently in safeguarding patients' personal information, including their health information. The action is one of a number of cases filed against the kidney care provider; a Colorado federal judge consolidated four of the cases in June 2025 and another six cases in September.

According to one of the suits, patients of the healthcare company suffered from lowered credit scores and misuse of their personal information. In another complaint, one patient said he received suspicious messages, including text messages about a nonexistent medical appointment, which encouraged him to click on a website link.

DaVita and counsel for the plaintiffs didn't immediately respond to requests for comment late Monday.

The plaintiffs are represented by Gary Klinger of Milberg PLLC, Bart D. Cohen of Bailey Glasser LLP, and J. Gerard Stranch IV and Grayson Wells of Stranch Jennings & Garvey PLLC.

DaVita is represented by David L. Balser, Robert D. Griest, Cliff Stricklin and Jared Lax of King & Spalding LLP.

The case is Julian Jenkins et al. v. DaVita Inc., case number 1:25-cv-01358, in the U.S. District Court for the District of Colorado.

--Additional reporting by Rachel Konieczny. Editing by Jay Jackson Jr.

'So What?': Albertsons Judge Skeptical Of Wash. Opioid Suit

law360.com/articles/2517246

(August 24, 2026, 11:33 PM EDT) -- A Washington state judge considering Albertsons' mid-trial motion to dismiss allegations it fueled the state's opioid epidemic told lawyers for the state Monday that while they might have shown the pharmacy chain failed to implement an adequate monitoring system, she's still skeptical the company's conduct actually caused the overdose crisis.

"As I put it all together, it just seems like there was no SOMS system," King County Judge Janet Helson, who's presiding over a bench trial in the case, said of Albertsons Cos. Inc.'s suspicious order monitoring system. The system was put in place at Albertsons' distribution center in order to **detect unusual opioid orders** from individual pharmacies.

"I think you prevail on that piece," she told counsel for the state, "but kind of, 'So what?' when it comes to causation."

Washington has spent the **past five weeks at trial** attempting to show that Albertsons and its Safeway subsidiary created a public nuisance and violated Washington's Consumer Protection Act by failing to stem the flow of opioids into the state.

Albertsons, however, has tried to beat the accusations by demonstrating that how it filled opioid prescriptions reflected a common practice in the medical industry of using drugs like oxycodone to treat chronic and acute pain.

"The question before the court is not whether any harm occurred," Enu A. Mainigi of Williams & Connolly LLP, who represents Albertsons and Safeway, told Judge Helson during oral argument on the company's motion to dismiss. "The question is whether the state met its burden to prove that Albertsons caused it by acting wrongfully and unreasonably."

"After weeks of trial, the answer is no," she said.

Counsel for Washington, meanwhile, told the court the state had met its burden of showing that Albertsons and Safeway's handling of opioids was a "substantial factor" in Washington's opioid epidemic.

"It's not that you have to be the sole cause, not that you have to be the but-for cause," said Anthony J. Majestro of Powell & Majestro PLLC. "It's that you made it worse."

"You don't have to find that our distribution case alone is a substantial factor," he told the court, "but we think that it contributes."

In addition to Albertsons allegedly greenlighting excessive opioid orders to its individual pharmacy locations, the company's pharmacists also failed to adequately **investigate and report suspicious opioid prescriptions** being filled by customers, the state said.

Washington also argued that the company failed to identify or restrict **problem prescribers**, including those who were later disciplined by state regulators.

Majestro said the sharp dip in a pharmacy's opioid dispensing after Albertsons finally cut off one "bad prescriber" showed the company indeed contributed to the epidemic.

"You get causation because when you get rid of this one bad prescriber, the volume drops precipitously," he argued.

Mainigi, however, said the fact "that we cut off a high prescriber and dispensing volume ultimately went down" isn't evidence that Albertsons did anything wrong.

"That's evidence," she insisted, "of the program working the way it should."

Judge Helson nevertheless took issue with Albertsons' arguments that it shouldn't be held accountable for filling prescriptions at a time when doctors and pharmaceutical companies were broadly in support of treating pain with prescription opioids.

"Taken to its logical extension, I think the argument that you're making is that pharmacists are rubber stamps," she told Mainigi. But she noted that witnesses in the trial "have consistently said" pharmacists need to exercise their best judgment to fulfill their "corresponding responsibility" — a pharmacist's duty under federal law to ensure that they fill prescriptions only for legitimate medical purposes.

Judge Helson declined to rule from the bench Monday, saying she expected to issue a decision on Albertsons' dismissal motion on either Tuesday or Wednesday.

Separately Monday, a witness for Albertsons testified that the company complied with its duty to handle opioids responsibly.

"Albertsons either met or exceeded the standard of care throughout their approaches to opioid medications," said Katherine Wolf Khachatourian, a pharmacist and scientific director at Novo Nordisk.

Khachatourian, who was a member of Washington's Pharmacy Quality Assurance Commission, which licenses and regulates pharmacists in the state, said she reviewed records in the case and determined that Albertsons kept pace with the medical community's changing stance on the uses and dangers of opioid drugs.

"As the standard of care changes, there's quite an evolution in how medicine is practiced as well as how pharmacy is practiced," she told the court.

At the beginning of the 2000s, "concern for the undertreatment of pain was the standard of care," which led to state and federal regulators alike calling for less stigma toward opioid use and prescribing, Khachatourian said.

"In the 2010s," she continued, "there was a recognition that, 'Oh wait, maybe we're not doing this quite right, and there needs to be an adjustment.'"

Now, she added, the general trend is "a minimum necessary approach" — using the least amount of controlled substances possible to treat pain while avoiding potential side effects.

Albertsons' internal policies around vetting and reporting potentially suspicious prescriptions were also tighter than what was required by law, Khachatourian said.

In response to questions from Albertsons' counsel, she noted that even the PQAC declined to require pharmacies at the time to require continuing education about opioid prescribing, ensure minimum staffing levels or document the resolution of "red flags" on prescriptions.

While Albertsons sometimes fell short of its "aspirational" goals, she said, the company still met or exceeded the standard of care around opioids.

Washington sued Albertsons, Safeway and a handful of other pharmacies — including Rite Aid Corp. and The Kroger Co. — **in 2022** in an effort to recover **funds to abate harms** caused by opioid use disorder. All other defendants in the case have been dismissed through settlement or bankruptcy.

Judge Helson **ruled in June** that Albertsons had a duty as an opioid dispenser and distributor to prevent opioid diversion, including by verifying prescriptions' legitimacy and reporting potentially invalid orders. She additionally ruled that Washington must satisfy only a lower, "substantial factor" burden of proof regarding causation rather than a higher, "but-for" standard.

Washington is represented by Kelsey E. Endres, Jonathan J. Guss, Alison E. Cordova and Jonathan Tebbs of the Washington Attorney General's Office, Russell W. Budd, Christine C. Mansour, Michael Thakur, Daniel Alberstone, Mark Pifko, Peter Klausner, Evan Zucker, Jay Lichter, Elizabeth Smiley, Sterling Cluff, Catherine H. Dorsey and Marco A. Palmieri of Baron & Budd PC, Peter J. Mougey and Jeffrey R. Gaddy of Levin Papantonio Proctor Buchanan O'Brien Barr Mougey PA, Kathleen Clark, Amy Quezon and Allan J. Elkins Jr. of McHugh Fuller Law Group PLLC, and Anthony J. Majestro, Christina L. Smith and Graham B. Platz of Powell & Majestro PLLC.

Albertsons and Safeway are represented by Mary Re Knack and Alexandrea M. Smith of Ogden Murphy Wallace PLLC, George A. Borden, Olivia L. Campbell, Richard S. Cleary Jr., Jack H. Danon, Sarah S. Gallant, William Hawkins, Loryn Helfmann, Enu A. Mainigi, Carl Metz, Steven M. Pyser and Jennifer Wicht of Williams & Connolly LLP, and Francis A. Citera, Gretchen Miller, Emily Mankowski, Brett Doran, Meredith Mandell, Linda Ricci, Bryan Harrison, Akiesha Gilcrist Sainvil and Christopher Torres of Greenberg Traurig LLP.

--Additional reporting by Lauren Berg. Editing by Kristen Becker.

AGs Want Meta's Privilege Claims Reviewed In Bellwether Trial

law360.com/articles/2517033

(August 24, 2026, 10:36 PM EDT) -- During a break in a jury trial Monday over states' claims Meta hid social media's harm, states' counsel urged a California federal judge to require Meta to re-review all of its attorney-client privilege designations, arguing that "it seems actually logically impossible" that Meta described the wrong standard in only a single document.

The states' counsel, Jason Slothouber, made the argument before U.S. District Judge Yvonne Gonzalez Rogers at the start of the third day of the high-stakes advisory jury trial in Oakland, California.

The trial **kicked off last week,** with 29 state attorneys general accusing Meta of prioritizing profits over safety in a yearslong effort to hook kids on its platforms, while Meta defended its safety practices as best-in-class.

On Monday, before jurors were called into the courtroom, Slothouber argued that Meta has categorically refused to reevaluate its privilege designations despite the judge's **comments last week** that Meta's in-house attorney had described the wrong attorney-client privilege legal standard within a document, although the document itself was properly protected as privileged.

Slothouber argued that it makes sense for Meta to review its privilege designations.

"It seems actually logically impossible that they got the standard wrong just in the [one document]," Slothouber said.

Judge Gonzalez Rogers replied that the states' concerns are fair, but she noted that the fundamental question is whether Meta applied the correct legal standard to the documents that have already been designated as privileged, and there's currently no evidence of any errors.

"My views on this are pretty well known in this district," the judge said, referring to her rulings last year in the high-profile Epic v. Apple case. "So I don't have any reason to believe that they're engaging in professional misconduct, which it would be."

In the Epic v. Apple case, the parties hired three special masters who worked 40 hours a week for months to review Apple's assertion of attorney-client privilege over thousands of documents. Judge Gonzalez Rogers rejected most of Apple's privilege assertions, and they **resulted in sanctions** against Apple, which the company has since **appealed** to the U.S. Supreme Court.

On Monday, Judge Gonzalez Rogers told Slothouber that if the states have a reason to believe that Meta's counsel are engaging in professional misconduct by wrongly asserting privilege over documents based on an erroneous legal standard, "you need to let me know." Such misconduct would result in severe consequences for the attorneys, the judge said.

"That might impact their ability to practice in this district, and it has significant consequences," she explained. "So I agree with you with respect to the standard … but you haven't given me anything to suggest that [Meta's counsel] or anyone on that side is lying to me."

Meta's counsel, Ashley M. Simonsen of Covington & Burling LLP, defended Meta's privilege designations, and she said she understood the judge's warning last week about the proper legal standard at issue for privilege designations. However, Simonsen argued that so far, the states haven't pointed to any type of document that would be problematic, and so there's nothing that would warrant a midtrial review of Meta privilege designations.

The judge replied that if any former Meta employee received advice from in-house counsel on inappropriate topics, she suspects that the former employee would have told the state attorneys general.

"If that's the case, we would have more to talk about, but at this point we don't, so we're going to keep moving on," the judge said.

After the exchange, the judge welcomed the jury to their third day in the courtroom, and the parties spent the morning finishing the examination of San Diego State University psychology professor Jean Twenge, who was admitted as the states' expert in adolescent mental health.

During Twenge's direct examination, the professor testified that her analysis found that social media use causes mental health issues and low psychological well-being among adolescents. Twenge said her opinion was informed by dozens of longitudinal and correlational studies, experimental studies and internal documents.

In order to reach her conclusion, Twenge performed what's known as the Bradford Hill analysis, which tests nine factors used by epidemiologists to study whether there's a causal relationship between two things, she said.

"Based on totality of evidence, there is a clear causal path from social media use to low psychological well-being in adolescents, as all the Bradford Hill criteria for causality are met," she said.

Those Bradford Hill factors include temporality, plausibility and dose response. It also includes a factor to assess whether there are analogous trends, and she said the mental health impact of heavy social media use is akin to trends showing how heavy drinking impacts mental health.

"That curve looks pretty similar with heavy use and mental health," she said.

During her examination, Twenge pointed to dozens of studies and data showing that the rise of social media platforms in 2008 and 2009 coincided with an increase in teen and adolescent depression rates, self-harm and suicides, particularly among young girls.

After trending downwards in prior years, the teen suicide rates more than doubled during those years, and Twenge explained that she had considered alternative causes for those trends, like the opioid crisis, school shootings and the Great Recession.

However, Twenge testified that the dates and locations of those various other events don't neatly coincide with the jump in depression, self-harm and suicide rates. For instance, the impact of the recession ended around 2012, when teen depression rates were increasing, she said. She added that the opioid crisis was regional and primarily effected middle age individuals, while the rise in teen depression, self-harm and suicides rose nationally.

Twenge also noted that data shows that the more hours a day a teen uses social media, the more likely the teen is depressed and the more likely she will engage in self-harm. The data also shows that the number of teens who lost sleep because they were on social media at night jumped in 2012, she said. In addition to being sleep-deprived, studies indicate that fewer teens spent time with each other in person, she said. The combination is terrible for mental health, she said.

Twenge added that data shows that individuals who reduced or cut back their social media use were less lonely and less depressed. But she observed that those studies may be understating the benefits of reducing social media use because the test subjects weren't necessarily heavy users of social media.

But during her cross-examination, Meta's counsel, Paul William Schmidt of Covington & Burling LLP, tried to poke holes in Twenge's testimony, getting the professor to acknowledge that the data shows that light use of social media for less than two hours a day for teen girls and less than five hours a day for teen boys shows an increase in happiness.

She also acknowledged that the data doesn't account for differences in social media platforms, or which platforms the test subjects used. Schmidt also pointed to various statements in Twenge's own academic publications that couched her paper's findings in conditional statements, and she acknowledged that one of her open-source papers states that she and her co-authors were "not unbiased."

However, Twenge repeatedly emphasized that the papers at issue were co-authored with other professors, and she testified that she doesn't always agree with the words her co-authors write. She also noted that her open-source paper also explains that "like all people, we suffer from confirmation bias," because, she said, people have a tendency to look for information that supports their view, rather than considering data objectively. Her paper sought feedback from the public to shed light on any confirmation biases.

"That's why it was open sourced," she said.

After Twenge's examination, the states called to the stand George Volichenko, who is a statistician who worked for Facebook from 2016 to 2018 and then on Instagram's mental well-being team from April 2022 until he quit in February 2023.

Volichenko testified that he returned to the company in order to work on a team that combated problematic social media use. His team worked on features, like the "take a break" and "mute" tools, that tried to limit the amount of time teen users spent on the platforms, he said. He noted that at the time, 43.3% of teenagers between the ages of 13 and 17 had at least one session per week between midnight and 4 a.m.

However, only .25% adopted the take a break tool, which was an optional feature, and only .165% of teen accounts actually took a break, he said. Those statistics were "very low and disappointing," he recalled.

When his team tried to get the company to adopt the features without requiring users to opt into them, they were deterred due to concerns about how it would impact other company metrics, and he eventually quit after his supervisor told him the purpose of his team was to protect the company from the coming lawsuits, Volichenko said.

"I came to Meta the second time to make a difference," Volichenko said. "I saw how much excessive use of social media affects people around me, and I wanted to do something about it. After nine months on the team, I realized that wasn't going to happen. I didn't feel like the company at large was aligned with my values. I was contributing to something that I didn't think was positive for society."

Trial and Volichenko's examination will continue on Tuesday morning.

The states are represented by their respective attorneys general and Megan O'Neill, David Patrick Beglin, Katherine Read and Nayha Arora of the California Department of Justice, Jason Slothouber and Shannon Wells Stevenson of the Colorado Department of Law, John

Christian Lewis of the Kentucky Office of the Attorney General, Office of Consumer Protection, and Mandy K. Wang of the New Jersey Office of the Attorney General.

Meta is represented by Ashley M. Simonsen, Paul William Schmidt and David Sneed of Covington & Burling LLP and Brian L. Stekloff and Moira Penza of Wilkinson Stekloff LLP.

The MDL is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California. The instant case is People of the State of California et al. v. Meta Platforms Inc., case number 4:23-cv-05448, in the U.S. District Court for the Northern District of California.

--Editing by Michael Watanabe.

Facebook Investors Move For Class Cert. After High Court Test

(August 24, 2026, 6:42 PM EDT) -- Robbins Geller Rudman & Dowd LLP and Bernstein Litowitz Berger & Grossmann LLP are pushing to lead a class of Facebook Inc. investors who claim to have lost billions of dollars in the wake of the Cambridge Analytica scandal, saying they are well-positioned to spearhead the case after defeating a U.S. Supreme Court challenge.

Lead plaintiffs in the case asked a California federal judge Friday to grant them class status, saying the case met all the requirements for certification.

"Common issues predominate because the action concerns classwide claims that are capable of classwide proof, based on defendants' classwide misconduct," the plaintiffs said.

In addition to appointing Amalgamated Bank and Public Employees' Retirement System of Mississippi as leaders of a certified class, the motion also asks a judge to appoint Robbins Geller and Bernstein Litowitz as co-lead counsel.

The firms have already spent a significant amount of resources prosecuting the case, including by defending it against arguments for dismissal brought before the Supreme Court, according to Friday's motion.

"Both BLB&G and Robbins Geller have substantial experience in litigating securities class actions to resolution — including in this district — and the resources to zealously pursue this action on behalf of the entire class," according to the motion.

Facebook's attorneys didn't immediately respond to a request for comment Monday.

The push to certify the class with Robbins Geller and Bernstein Litowitz at the helm comes nearly two years after the Supreme Court agreed to hear the case before **quietly dropping**

it.

Investors sued Facebook in 2018, alleging that revelations from the Cambridge Analytica scandal caused the company's stock price to drop by $100 billion. Suing investors claim it was the largest single drop in U.S. stock market history.

They allege that Facebook, which has since been renamed Meta, and its executives knew that the British consulting firm was scraping the data of millions of Facebook users without those users' knowledge.

Facebook **argued** that the Cambridge Analytica scandal first broke in 2015 and that it faced no securities class action based on its disclosures of data misuse risk back then. It was only after further allegations were reported in 2018 that the lawsuit was filed, in a move that the company has called "fraud-by-hindsight litigation."

It asked the Supreme Court to hear the case after the Ninth Circuit revived it. The justices agreed, saying they would consider whether risk disclosures are false or misleading when they don't disclose that a risk has materialized in the past, "even if that past event presents no known risk of ongoing or future business harm."

After holding oral argument, however, the court dismissed the case as improvidently granted, though it didn't say why it was doing so.

Then in March, Facebook was unsuccessful in another attempt to have the case dismissed by a lower court.

U.S. District Judge Edward Davila did **trim the lawsuit**, but left intact allegations that the company falsely assured platform users that their data was protected from third parties ahead of the 2015 reporting that broke the scandal.

He did, however, dismiss claims that the company continued to defraud its investors between the time of the initial reporting and 2018 follow-up reporting on the political consulting firm's continued use of the data.

The proposed class is represented by Jason Davis and Kenneth Black of Robbins Geller Rudman & Dowd LLP and Salvatore Graziano, Jeremy Robinson and Preethi Krishnamurthy of Bernstein Litowitz Berger & Grossmann LLP.

Facebook is represented by Brian Lutz, Martie Kutscher, Michael Kahn and Joshua Lipshutz of Gibson Dunn & Crutcher LLP.

The case is In re Facebook Inc. Securities Litigation, case number 5:18-cv-01725, in the U.S. District Court for the Northern District of California.

--Editing by Kelly Duncan.