



# Securities Class Actions

## Key Trends in Class Certification Decisions That Will Impact Proceedings in 2025

Class certification is a critical step in all class actions, where plaintiffs must prove their claims meet the legal standards for proceeding as a class. Arguments for these motions evolve over time because they are based on court precedents. A review of these decisions over the course of 2024 shows that price impact remains a critical argument for both plaintiffs' and defendants' counsel to focus on at the class certification stage in securities class actions that allege violations of Rule 10b-5 of the Exchange Act.

### Key Takeaways From 2024 Decisions

#### 1. Price Impact arguments dominate:

In 13 out of 15 Rule 10b-5 cases, defendants argued a lack of price impact. Courts agreed or partially agreed in six cases, either by shortening the class period or denying certification.

#### 2. Market Efficiency challenges in “meme stock” cases had a mixed outcome:

Two cases involved arguments that “meme stock” trading disrupted market efficiency. This succeeded in one case (**Bed, Bath & Beyond**) but not in another (**Rocket**).

### — CLASS CERTIFICATION BASICS

Under Rule 23(a) of the Federal Rules of Civil Procedure,<sup>1</sup> plaintiffs must demonstrate:

1. **Numerosity:** The class is large enough that joinder of all members is impractical.
2. **Commonality:** Common legal or factual questions exist.
3. **Typicality:** Claims or defenses of the representative parties are typical of the class.
4. **Adequacy:** Representative parties will fairly and adequately protect the class interests.<sup>2</sup>

Additionally, Rule 23(b)(3) requires showing that common issues predominate over individual ones and that a class action is superior to other methods.<sup>3</sup>

## Previous Developments in Class Certification

### Rule 10b-5: Related Developments

The “fraud-on-the-market theory” from *Basic Inc. v. Levinson* (1988)<sup>4</sup> helps plaintiffs in Rule 10b-5 cases by presuming reliance on misstatements if the security trades in an efficient market. Defendants can rebut this presumption by proving no price impact, as established in *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014)<sup>5</sup> (“Halliburton II”). In 2021, the U.S. Supreme Court in *Goldman Sachs Grp. v. Ark. Teacher Ret. Sys.*, 141 S. Ct. (2021)<sup>6</sup> (“Goldman Sachs”) offered some additional clarifications with respect to the “price impact” arguments that defendants can make to challenge class certification.

### Section 11: Related Developments

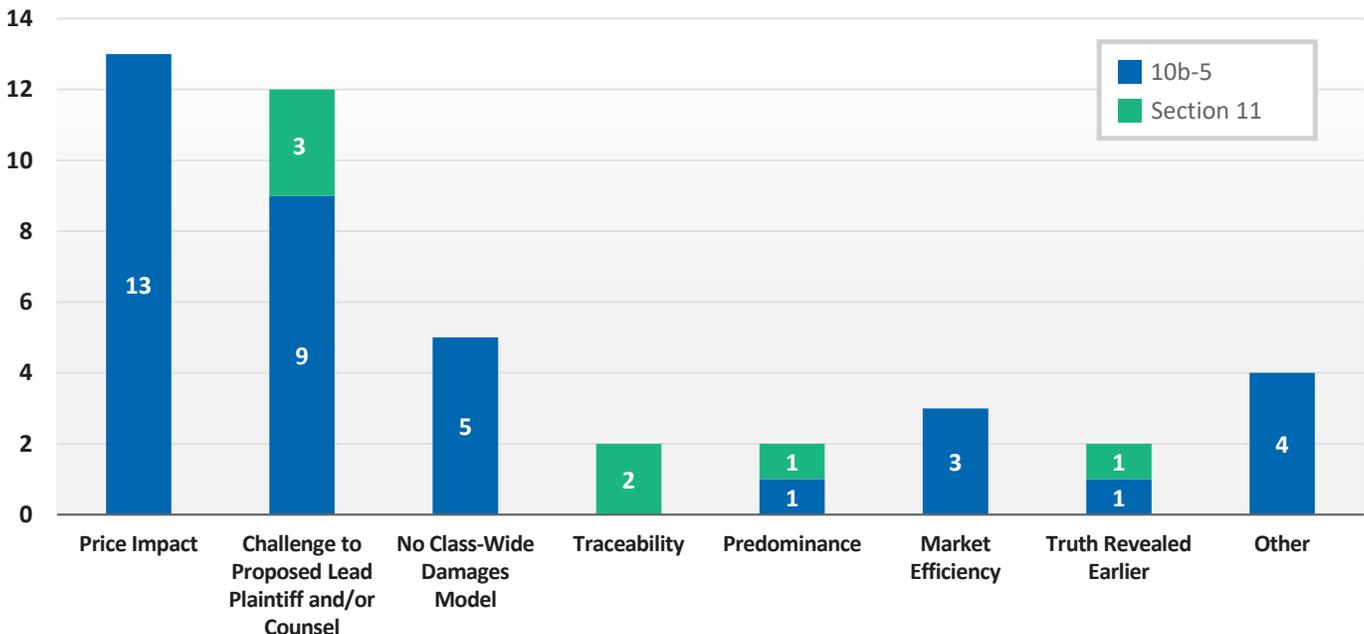
In Section 11 matters, challenging class certification is difficult as the reliance burden simply requires that class members purchased securities issued pursuant to a registration statement that includes the alleged misstatement or omission.<sup>7</sup> Therefore, the price impact arguments are not available in Section 11 matters. The two main arguments are: a) traceability, and b) predominance.

Traceability means that, to claim damages, plaintiffs must establish that the purchased shares of securities at issue were issued pursuant to a registration statement containing one or more allegedly false and/or misleading statements. That is, the shares must be traceable to the affected offering.<sup>8</sup> If additional shares are issued subsequent to the offering, or if there were pre-existing shares in the market prior to the offering, traceability can be difficult. In a 2023 decision *In re The Honest Company Securities Litigation*,<sup>9</sup> the court limited the class definition to only include investors who purchased their shares prior to the expiration of an IPO lockup period, explaining that once the previously

locked-up shares (which were unregistered and therefore not issued subject to the registration statement) entered the market, it was not possible for any investor to prove that the share they purchased was traceable to the registration statement. This precedent gives defendants a good basis for arguments limiting the class in Section 11 matters to purchasers before shares from lockups or other events enter the market.

In 2020, a class certification denial in *Vignola v FAT Brands, Inc.*<sup>10</sup> was based on plaintiffs’ failure to establish predominance. Due to evidence that the information allegedly omitted from the defendants’ offering documents was widely disseminated prior to the offering, the court denied class certification.<sup>11</sup> Based on this precedent, defendants may argue that individualized issues predominate over common ones if they can present evidence that some investors may have had access to information correcting alleged omissions or misstatements in the offering documents.

Figure 1: Frequency of Rebuttal Arguments



## 2024 Class Certification Court Decisions: Summary of Defense Arguments and Court Responses

### 10b-5 Matters

#### Price Impact: The Most Successful Defense Argument

Defendants frequently challenged price impact in 2024, often citing Goldman Sachs, which clarified that courts should consider both qualitative and quantitative evidence. Key cases include:

- **Apache:**<sup>12</sup> The court agreed with defendants that alleged misstatements and corrective disclosures lacked statistically significant price movements, resulting in a shortened class period.
- **Fibrogen:**<sup>13</sup> Defendants successfully argued that a specific corrective disclosure did not address alleged misstatements, leading to a shortened class period.
- **Rocket:**<sup>14</sup> The court denied class certification, finding no price impact due to the generic nature of alleged misstatements versus the specificity of corrective disclosures.
- **McDermott:**<sup>15</sup> The court found that mismatches between alleged misstatements and some corrective disclosures warranted shortening the class period.
- **Kirkland Lake Gold:**<sup>16</sup> A mismatch between alleged misstatements and corrective disclosures led to the denial of class certification.
- **Bed, Bath & Beyond:**<sup>17</sup> Although the court denied class certification due to inefficiency in the market, it also noted that defendants’ price impact arguments further weakened plaintiffs’ claims.
- **Zillow:**<sup>18</sup> Defendants made arguments related to the “mismatch” of the alleged misrepresentations and alleged corrective disclosure, but the court certified the class. However, Defendants have now appealed in the Ninth Circuit, arguing that the District Court did not appropriately apply the standards the Supreme Court established in Goldman Sachs.

These rulings underscore the critical role of robust expert testimony in disputes over price impact. Attorneys must anticipate challenges to potential mismatch between alleged misrepresentations and alleged corrective disclosures, and statistical significance of price impacts and ensure that evidence aligns with legal standards set forth in key precedents.

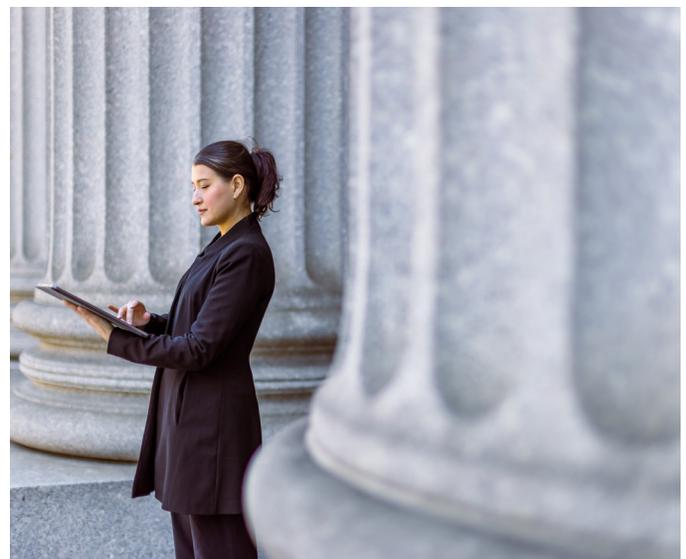
### Market Efficiency Challenges

In two cases, defendants argued that “meme stock” trading characteristics undermined market efficiency:

- **Rocket:**<sup>19</sup> The court rejected the claim that two days of “trading frenzy” negated overall market efficiency during the class period.
- **Bed, Bath & Beyond:**<sup>20</sup> The court found that short-sale constraints during meme stock trading indicated inefficiency and denied class certification.

### Other Challenges Raised by Defendants in Rule 10b-5 Matters

1. **Challenging lead plaintiffs:** Defendants often argued that proposed lead plaintiffs were atypical or inadequate. This succeeded in **McDermott**,<sup>21</sup> where the court denied certification and suggested refiling for certification of two subclasses, and in **Musk**,<sup>22</sup> where one lead plaintiff was removed.
2. **Challenging class-wide damages models:** In four matters, defendants challenged plaintiffs’ proposed class-wide damages model on the ground that the plaintiffs’ damages models were not tied to their theory of liability, as required by *Comcast Corp. v. Behrend* (2013).<sup>23</sup> The argument was partly successful in **Fibrogen**,<sup>24</sup> and the court excluded a post-April 6, 2021, period due to insufficient damages modeling.
3. **Challenging length of class period:** Courts shortened class periods in several cases, including **Kandi**,<sup>25</sup> where the court limited the period to begin only after the first alleged misstatement.



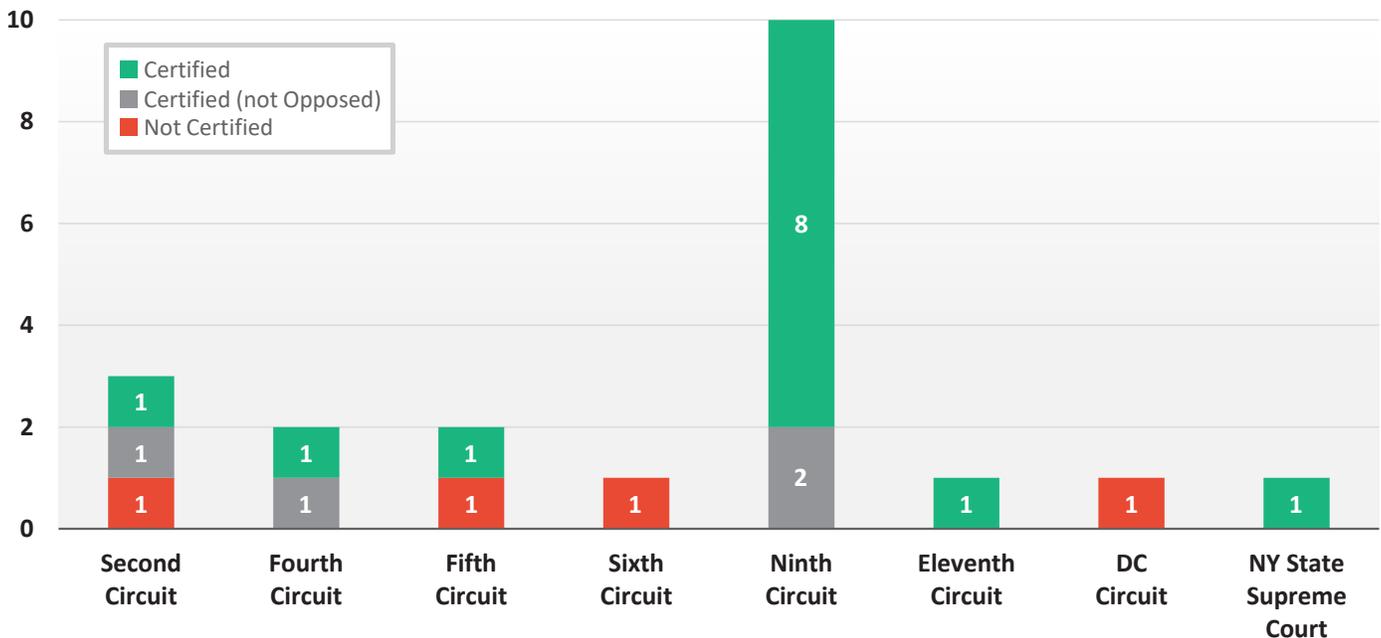


### Section 11 Matters

In two of the three matters alleging violations of Section 11, defendants challenged the traceability of shares purchased in the aftermarket. In the case of **Morgan Stanley**,<sup>26</sup> the Court found that such issues should be left to be argued at the merits stage. In the case of **Talis Biomedical**,<sup>27</sup> the Court allowed the class to be limited to the end of the share lock-up period, the point at which tracing becomes an issue. The Court allowed plaintiffs to resubmit a motion to certify to include shares purchased beyond that point.<sup>28</sup>

In the **Morgan Stanley**<sup>29</sup> matter, defendants also argued that the “truth” was revealed prior to the statutory date used to calculate Section 11 damages, and therefore purchases after that date should be excluded. The Court ruled that this is a fact-based matter best left for the merits stage of litigation.

Figure 2: Class Certification Results by Circuit



## — CONCLUSION

Class certification decisions in 2024 highlight: 1) the growing importance of price impact, and; 2) the need to establish a connection between the factors the court has relied upon as a matter of precedent when considering market efficiency arguments (such as *Cammer*<sup>30</sup> and *Krogman*<sup>31</sup> factors) and any novel market efficiency arguments offered. Defendants' success often hinged on presenting clear, quantitative evidence and leveraging legal precedents to effectively challenge plaintiffs' claims. As these trends evolve, both sides will need to adapt their strategies to align with recent court rulings.

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## Appendix

The table below summarizes some key characteristics of each case, including the court involved in the class certification decisions.

CASE	ALLEGATION TYPE	TYPES OF REBUTTAL ARGUMENTS	RESULT	TYPES OF SECURITIES	DATE
<b>Second Circuit</b>					
Co-Diagnostics <sup>32</sup>	10b-5 Allegations	N/A	Class certified (not opposed)	Common stock and options	11/12/2024
Kandi <sup>33</sup>	10b-5 Allegations	Challenged class period start date	Shortened class period certified	Common stock	9/30/2024
Kirkland Lake Gold <sup>34</sup>	10b-5 Allegations	— Price impact	Class not certified	Common stock	3/29/2024
<b>Fourth Circuit</b>					
Deloitte <sup>35</sup>	10b-5 Allegations	— Challenged proposed lead plaintiff — Price impact — Truth revealed earlier	Class certified	Common stock	11/12/2024
Emergent <sup>36</sup>	10b-5 Allegations	N/A	Class certified (not opposed)	Common stock	6/18/2024
<b>Fifth Circuit</b>					
Apache <sup>37</sup>	10b-5 Allegations	— Price impact	Class certified with the shortened class period	Common stock	2/9/2024
McDermott <sup>38</sup>	10b-5 Allegations	— Challenged proposed lead plaintiff — Price impact — No class-wide damages model — Predominance — Market efficiency	Class not certified, plaintiffs have leave to re-file	Common stock	3/23/2024
<b>Sixth Circuit</b>					
Rocket <sup>39</sup>	10b-5 Allegations	— Challenged market efficiency — Challenged proposed lead plaintiff — Price Impact	Class not certified	Common stock	9/30/2024
<b>Ninth Circuit</b>					
Acadia <sup>40</sup>	10b-5 Allegations	— Price impact — No class-wide damages model	Class certified	Common stock	3/11/2024
Chemocentryx <sup>41</sup>	10b-5 Allegations	— Price impact	Class certified	Common stock	3/6/2024
Fibrogen <sup>42</sup>	10b-5 Allegations	— Challenged proposed lead plaintiff — Price impact — No class-wide damages model	Class certified with the shortened class period	Common stock <sup>43</sup>	10/3/23 <sup>44</sup>

CASE	ALLEGATION TYPE	TYPES OF REBUTTAL ARGUMENTS	RESULT	TYPES OF SECURITIES	DATE
Musk <sup>45</sup>	10b-5 Allegations	<ul style="list-style-type: none"> <li>– Challenged proposed lead plaintiffs</li> <li>– Price impact</li> <li>– Challenged class definition</li> <li>– Challenged class-wide damage method</li> <li>– Challenged plaintiffs' theories as inconsistent with efficient market</li> </ul>	Class certified with one lead plaintiff removed	Common stock and options	9/27/2024
Okta <sup>46</sup>	10b-5 Allegations	N/A	Class certified (not opposed)	Common stock	2/5/2024
Rivian <sup>47</sup>	Both 10b-5 and Section 11 Allegations	<ul style="list-style-type: none"> <li>– Challenged proposed lead plaintiff and counsel</li> <li>– Price impact</li> <li>– Market efficiency for portion of class period</li> </ul>	Class certified; IPO date excluded from 10b-5 class due to questions of market efficiency in IPO price	Common stock	7/17/2024
Talis Biomedical <sup>48</sup>	Section 11 Allegations	<ul style="list-style-type: none"> <li>– Challenged proposed lead plaintiff</li> <li>– Traceability</li> <li>– Predominance</li> </ul>	Class certified with shortened class period	Common stock	2/9/2024
Vaxart <sup>49</sup>	10b-5 Allegations	<ul style="list-style-type: none"> <li>– Price impact</li> <li>– No class-wide damages model</li> </ul>	Class certified	Common stock and options	12/17/2024
VMware <sup>50</sup>	10b-5 Allegations	N/A	Class Certified (not opposed)	Common stock	7/2/2024
Zillow <sup>51</sup>	10b-5 Allegations	<ul style="list-style-type: none"> <li>– Challenged proposed lead plaintiff</li> <li>– Price impact</li> </ul>	Class certified	Common stock and Class C capital stock	8/23/2024

#### Eleventh Circuit

Tupperware <sup>52</sup>	10b-5 Allegations	<ul style="list-style-type: none"> <li>– Challenged proposed lead plaintiff</li> </ul>	Class certified	Common stock	9/20/2024
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#### District of Columbia Circuit

Bed, Bath & Beyond <sup>53</sup>	10b-5 Allegations	<ul style="list-style-type: none"> <li>– Challenged proposed lead plaintiff</li> <li>– Challenged market efficiency</li> <li>– Price impact</li> </ul>	Class not certified	Common stock and options	9/27/2024
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#### NY State Supreme Court

Morgan Stanley <sup>54</sup>	Section 11 Allegations	<ul style="list-style-type: none"> <li>– Challenged proposed lead plaintiff</li> <li>– Traceability</li> <li>– Truth revealed earlier</li> </ul>	Class certified	Common and preferred stock	1/4/2024
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- 1 Fed. R. Civ. P. 23, <https://uscode.house.gov/view.xhtml?req=granuleid:USC-1999-title28a-node79-node104-rule23&num=0&edition=1999>.
- 2 Fed. R. Civ. P. 23(a), <https://uscode.house.gov/view.xhtml?req=granuleid:USC-1999-title28a-node79-node104-rule23&num=0&edition=1999>.
- 3 Fed. R. Civ. P. 23(b)(3), <https://uscode.house.gov/view.xhtml?req=granuleid:USC-1999-title28a-node79-node104-rule23&num=0&edition=1999>.
- 4 *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988), <https://tile.loc.gov/storage-services/service/ll/usrep/usrep485/usrep485224/usrep485224.pdf>.
- 5 United States Reports, Volume 573, October Term 2013, <https://www.supremecourt.gov/opinions/boundvolumes/573BV.pdf> at 258.
- 6 *Goldman Sachs Grp. v. Ark. Teacher Ret. Sys.*, 141 S. Ct. (2021), [https://www.supremecourt.gov/opinions/20pdf/20-222\\_2c83.pdf](https://www.supremecourt.gov/opinions/20pdf/20-222_2c83.pdf)
- 7 Section 11 of the Securities Act of 1933, 15 U.S.C. § 77k, <https://www.govinfo.gov/content/pkg/COMPS-1884/pdf/COMPS-1884.pdf>.
- 8 See, for example, Ken Cunningham, Bruce R. Braun, and Neil H. Conrad, “Litigating Section 11’s Tracing Requirement: A Practitioner’s View of a Powerful Defense,” *Bloomberg Law*, (June 2019), <https://www.bloomberglaw.com/external/document/X4M4BSU8000000/litigation-professional-perspective-litigating-section-11-s-trac>.
- 9 *In re The Honest Company Securities Litigation* (case no. 21-cv-7405 (C.D. Cal.)).
- 10 *Vignola v. FAT Brands, Inc.* (case no. 2:18-cv-07469).
- 11 *Id.*
- 12 *In re Apache Corp. Securities Litigation* (case no. 4:21-cv-00575).
- 13 *In re Fibrogen Securities Litigation* (case no. 21-cv-02623-EMC).
- 14 *Shupe v. Rocket Companies, Inc. et al* (case no. 1:21-cv-11528).
- 15 *Miriam Edwards v. McDermott International, Inc. et al* (case no. 4:18-cv-04330).
- 16 *In re Kirkland Lake Gold Ltd. Securities Litigation* (case no. 1:20-cv-4953).
- 17 *Si v. Bed Bath & Beyond Corporation et al* (case no. 1:22-cv-2541).
- 18 *Jaeger v. Zillow Group Inc. et al* (case no. 2:21-cv-1551).
- 19 *Shupe v. Rocket Companies, Inc. et al* (case no. 1:21-cv-11528).
- 20 *Si v. Bed Bath & Beyond Corporation et al* (case no. 1:22-cv-2541).
- 21 *Miriam Edwards v. McDermott International, Inc. et al* (case no. 4:18-cv-04330).
- 22 *Giuseppe Pampena v. Elon R. Musk* (case no. 3:22-cv-5937).
- 23 *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013), <https://tile.loc.gov/storage-services/service/ll/usrep/usrep569/usrep569027/usrep569027.pdf>.
- 24 *In re Fibrogen Securities Litigation* (case no. 21-cv-02623-EMC).
- 25 *Srinivasan Venkataraman v. Kandi Technologies Group, Inc. et al* (case no. 1:20-cv-8082).
- 26 *Camelot Event v. Morgan Stanley* (case no. 2023-03270).
- 27 *In re Talis Biomedical Corporation Securities Litigation* (case no. 22-cv-00105-SI).
- 28 *Id.*
- 29 *Camelot Event v. Morgan Stanley* (case no. 2023-03270).
- 30 The 1989 decision in *Cammer v. Bloom*, 711 F. Supp. (D.N.J. 1989) specified five specific factors the Court considered to determine market efficiency.
- 31 The 2001 decision in *Krogman v. Sterritt*, 202 F.R.D. 467, 474 (N.D. Tex. 2001) included three additional factors considered by the court.
- 32 *Stadium Capital LLC v. Co-Diagnostics, Inc. et al* (case no. 1:22-cv-6978).
- 33 *Srinivasan Venkataraman v. Kandi Technologies Group, Inc. et al* (case no. 1:20-cv-8082).
- 34 *In Re: Kirkland Lake Gold Ltd. Securities Litigation* (case no. 1:20-cv-4953).
- 35 *International Brotherhood Of Electrical Workers Local 98 Pension Fund v. Deloitte & Touche LLP et al* (case no. 3:19-cv-3304).
- 36 *In Re Emergent Biosolutions Inc. Securities Litigation* (case no. 8:21-cv-955).
- 37 *In re Apache Corp. Securities Litigation* (case no. 4:21-cv-00575).
- 38 *Miriam Edwards v. McDermott International, Inc. et al* (case no. 4:18-cv-04330).
- 39 *Shupe v. Rocket Companies, Inc. et al* (case no. 1:21-cv-11528).
- 40 *City of Birmingham Relief and Retirement System et al v. Acadia Pharmaceuticals et al* (case no. 3:21-cv-00762-WQH-MSB).
- 41 *Homyk v. Chemocentryx, Inc. et al* (case no. 4:21-cv-03343-JST).
- 42 *In re Fibrogen Securities Litigation* (case no. 21-cv-02623-EMC).
- 43 Plaintiffs also sought certification for option holders, but the court delayed that decision, requiring additional briefs from the parties on the calculation of class-wide damages for option holders.
- 44 The decision was filed under seal on 10/3/23 and was unsealed on 3/11/24.
- 45 *Giuseppe Pampena v. Elon R. Musk* (case no. 3:22-cv-5937).
- 46 *In re Okta, Inc. Securities Litigation* (case no. 22-cv-02990-SI).
- 47 *Charles Larry Crews, Jr. v. Rivian Automotive, Inc. et al* (case no. 2:22-cv-1524).
- 48 *In re Talis Biomedical Corporation Securities Litigation* (case no. 22-cv-00105-SI).
- 49 *In Re Vaxart, Inc. Securities Litigation* (case no. 3:20-cv-5949).
- 50 *ILamartina v. VMware, Inc. et al* (case no. 5:20-cv-2182).
- 51 *Jaeger v. Zillow Group Inc. et al* (case no. 2:21-cv-1551).
- 52 *Edge v. Tupperware Brands Corporation et al* (case no. 6:22-cv-1518).
- 53 *Si v. Bed Bath & Beyond Corporation et al* (case no. 1:22-cv-2541).
- 54 *Camelot Event v. Morgan Stanley* (case no. 2023-03270).