the POMERANTZ MONITOR

VOLUME 21, ISSUE 6, NOVEMBER/DECEMBER 2024

Pomerantz Vindicates Investors in Three SPAC Cases

A special purpose acquisition company, or SPAC, is a "shell" or "blank check" investment instrument with no operations. A SPAC is formed solely to raise capital to identify, target and merge with an existing private company, to take that company public while bypassing the traditional IPO process. Once the merger is complete, so too is the SPAC's purpose – hence the term "de-SPAC merger." The result is a newly public company born out of the private one.

SPACs became popular during the extreme market volatility caused by the COVID-19 pandemic, as they provide a quicker and less scrutinized path to market than traditional IPOs. In the last years, that lack of regulatory scrutiny has come home to roost, as investors seek recovery for the deceptions – and related investors' losses – that have come to light.

In this issue, we report on three SPAC cases in which Pomerantz vindicated investors' claims in 2024: Ginkgo Bioworks, PureCycle, *and* Faraday.

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Pomerantz Finalizes Settlement on Behalf of Ginkgo Bioworks Investors

On December 13, 2024, the United States District Court for the Northern District of California granted final approval to a $17.75 million settlement on behalf of investors in a securities class action against Ginkgo Bioworks Holdings, Inc. and several officers of Ginkgo and the predecessor SPAC. It was alleged that Ginkgo and its leadership distorted the company's finances to gain shareholder approval of a SPAC merger that would take the company public. Joshua B. Silverman and Brian P. O'Connell led the litigation, *Bernstein v. Ginkgo Bioworks Holdings Inc et al.*, No. 4:21-cv-08943 (N.D. Cal.).

In its SPAC merger filings, which valued Ginkgo at $15 billion, the company stated that it makes money "in much the same way that cloud computing companies charge usage fees for utilization of computing capacity or contract research organizations charge for services."

However, as Lead Plaintiff alleged in her complaint, Ginkgo's largest outside investors, whose collective stake in the company totaled nearly 43%, provided the overwhelming majority of funds that were then recirculated back to Ginkgo in "round-trip transactions," in some cases as purported prepayments for Ginkgo's services.

Shareholders overwhelmingly approved the merger between Ginkgo and the SPAC Soaring Eagle. On September 17, 2021, following the merger, shares of Ginkgo's common stock began trading on the NYSE under the ticker symbol "DNA."

On October 6, 2021, market researcher Scorpion Capital released a short-seller report in which it alleged that Ginkgo is a "colossal scam," describing the company as a "shell game" whose revenue was highly dependent on related party transactions. According to the report, Scorpion Capital based its findings on an "intensive investigation into Ginkgo's business model and practices, with a particular focus on the related-party entities that drive the bulk of its revenue." Another short-seller, Citron, came out with a brief report that same day that largely agreed with Scorpion Capital's findings. Lead Plaintiff's complaint alleges that on this news, Ginkgo's share price plunged approximately 12%, damaging investors.

A securities lawsuit was filed in November 2021, and Pomerantz was appointed lead counsel on behalf of the proposed class of investors. The case was initially brought as a Section 10(b) action but was expanded

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Joshua B. Silverman, Partner

Brian P. O'Connell, Of Counsel

in the amended complaint to include Section 11 and Section 14(a) claims.

A Section 10(b) claim applies to a material misstatement or omission made in connection with the purchase or sale of a security and requires proof of scienter (the intent to deceive). A Section 11 claim specifically targets false or misleading information within a registration statement for a public offering. A Section 14(a) claim focuses on misleading statements made in proxy materials related to shareholder votes.

In March 2023, the district court denied Defendants' motion to dismiss Lead Plaintiff's Section 10(b) and 14(a) claims. Importantly, it found that Lead Plaintiff had alleged that the short-seller reports were corrective disclosures. The Court opined that since the Scorpion Capital report involved 21 research interviews encompassing a broad sample of former employees and executives of Ginkgo, as well as individuals who were then employed at its related-party customers, it "provided new information that was not previously reflected in the stock price."

The Court found that Lead Plaintiff had alleged falsity, noting that "the fact that the company's primary customers … operated out of Ginkgo's headquarters, that many listed Ginkgo's phone number as their own, and that Ginkgo used intertwined employees, managers, and directors to control these 'customers' would surely satisfy the falsity requirement given that Defendants disclosed that it lacked control over these entities."

The Court also sustained Lead Plaintiff's 14(a) claims, agreeing with Pomerantz's position that only allegations of a false or misleading statement made with negligence, not scienter, were required.

For Section 11, the Court dismissed Lead Plaintiff's claims but granted Lead Plaintiff leave to amend the complaint to expressly include the detailed tracing arguments made in the motion to dismiss briefing. The Court noted that it "finds that the assertions made in the opposition would satisfy the registration requirement, so amendment is certainly not futile." Pomerantz refiled an amended complaint to address the limited portion of the complaint that the Court had dismissed. The Section 11 claims proceeded to discovery along with the Sections 10(b) and 14(a) claims.

The $17.75 million settlement represents a favorable recovery for the class and involved novel legal issues related to SPACs. Additionally, the Pomerantz litigation team secured important rulings in the evolving area of the law concerning short-seller reports.

$12 Million Settlement for PureCycle Investors

While efforts to protect and preserve the environment are certainly commendable, issuing false and misleading statements to unwary investors regarding the viability and efficacy of such efforts are not. Pomerantz LLP, as sole Lead Counsel, recently achieved a $12 million settlement in a securities class action against PureCycle Technologies, Inc. arising from false and misleading statements PureCycle and its top executives issued regarding their plastics recycling technology. The United States District Court for the Middle District of Florida granted final approval of the settlement on October 8, 2024. Partner Tamar A. Weinrib led the litigation, *Theodore v. PureCycle Technologies, Inc., et al.*, No. 6:21-cv-809 (M.D. Fla.).

PureCycle went public via a de-SPAC reverse merger with Roth CH Acquisition I Co., a SPAC formed by Byron Roth. PureCycle had the dubious honor of being merely one in a long line of questionable reverse mergers Byron Roth has brought public while misleading investors regarding the underlying business, only to slap a "buy" rating on the stock and collect millions in compensation, leaving unknowing investors to suffer the consequences. Prior to taking on SPAC mergers, defendant Roth was well known for his role in facilitating numerous suspect reverse mergers involving Chinese companies, raising approximately $3.1 billion for China-based clients from 2003 to 2012. Indeed, defendant Roth was prominently featured in the 2017 documentary "The China Hustle," detailing the nearly decades-long Chinese reverse merger scandal, which *Vanity Fair* called "the biggest financial scandal you've never heard of."

Since its inception, PureCycle has never earned any meaningful revenue, has incurred recurring losses and has sustained negative cash flows. Its *only* product is a process for recycling polypropylene ("PP"), a common plastic used in multiple applications including packaging, manufacturing and consumer goods. Despite their best efforts, the world's scientists and chemical companies have found it impossible to effectively or economically recycle PP since its invention in 1951.

However, as the complaint Pomerantz filed on behalf of aggrieved investors alleged, defendants issued false and misleading statements throughout the class period claiming to have achieved the impossible. Specifically, the complaint alleged that defendants represented in proxy statements, a registration statement and in press releases that their recycling process was "proven" to convert waste polypropylene (called feedstock) into virgin polypropylene resin more cost effectively than manufacturing virgin polypropylene traditionally and utilizing a broader range of feedstock than traditional recycling. In reality (as multiple industry experts attested), the technology underlying the process was unproven and presented serious issues even at lab scale, the economics of conducting the process at commercial scale are cost prohibitive and the process could not cost effectively utilize a broader range of feedstock than traditional recycling. Defendants further touted the PureCycle management team that claimed to have solved the previously unsolvable polypropylene recycling problem as having "broad experience across plastics," decades of experience scaling early-stage companies in public markets and having led transformational projects, though they in fact had no background in plastics recycling and previously brought six other early-stage companies public that subsequently imploded, causing substantial investor losses.

Tamar A. Weinrib, Partner

In May 2021, Hindenburg Research published a report entitled "PureCycle: The Latest Zero-Revenue ESG SPAC Charade, sponsored by the Worst of Wall Street," which challenged defendants' claims regarding the efficacy and safety of PureCycle's recycling technology and the PureCycle management team's professional experience. The report quoted PureCycle as claiming, "Up to this point it's been impossible to recycle plastic into pure, virgin-like form. But here's the thing. At PureCycle Technologies, the word impossible is not in our vocabulary."

The Hindenburg Research report emphasized the persistent obstacles that historically stymied efforts to effectively and economically recycle polypropylene, setting the backdrop against which PureCycle claimed to have achieved a previously unattainable feat:

> While [Purecycle's claim] makes for a great sounding "green" story, plastics recycling has been a perpetual challenge from an economic standpoint. The industry has struggled with the economics of even the most basic plastic recycling for decades, as documented in a 2020 NPR exposé titled "How Big Oil Misled The Public Into Believing Plastic Would Be Recycled".
>
> Within plastics recycling, PP has been particularly uneconomical. PP represents 28% of the world's plastic, yet currently only ~0.8% of it is recycled today. This is because a sizable amount of PP requires expensive sorting and cleaning due to its use in food packaging. It is also commonly found in products that use mixed plastics that can be difficult to separate.

The allegations of the Hindenburg Research report caused PureCycle's stock price to plummet about 40% in a single day, damaging investors. Though PureCycle issued a press release in response to the Hindenburg Research report, defendants did not actually challenge, much less negate, any of the underlying allegations. Just a few months later, defendants revealed that the SEC had issued an investigative subpoena to defendant Otworth "requesting testimony in connection with a non-public, fact-finding investigation of the Company" pertaining to "among other things, statements made in connection with PCT's technology, financial projections, key supply agreements, and management."

> "Since its inception, PureCycle has never earned any meaningful revenue."

After nearly three years of hard-fought litigation during which the court denied defendants' motion to dismiss, with discovery well underway and plaintiffs' class certification motion pending, the parties agreed to settle the action for $12 million.

"Though we maintain confidence in the strength and merits of the claim, the settlement is an excellent result for the settlement class," states Tamar. "The all-cash settlement provides certain recovery now, whereas there are sizable risks of recovering any judgment at trial given the complexities of this type of litigation, the company's tenuous financial condition and the fact that PureCycle has yet to earn any meaningful revenue from its sole product."

$7.5 Million Settlement for Faraday Investors

Austin P. Van, Partner

On March 18, 2024, the United States District Court for the Central District of California granted final approval of a $7.5 million settlement in a shareholder action against Los Angeles-based luxury electric vehicle company Faraday Future Intelligent Electric, Inc. ("Faraday"). The suit alleged that Faraday misled investors regarding its reservations and financial outlook prior to going public via a de-SPAC merger. Partner Austin P. Van led the litigation, *Zhou v. Faraday Future Intelligent Electric Inc., et al.*, No. 2:21- cv-09914 (C.D. Cal.).

Faraday was formed in 2021 through the de-SPAC merger of the SPAC, Property Solutions Acquisition Corp. ("PSAC"), with FF Intelligent Mobility Global Holdings Ltd., ("Legacy FF"), a private startup electric vehicle company. Legacy FF was founded in 2014 by defendant Yueting Jia, known as "China's best-known securities fraudster." On July 21, 2021, with the merger completed, Faraday began publicly trading on the NASDAQ.

Legacy FF first showcased its FF91 – the company's first production car, at a "very big event in Las Vegas," in 2017, according to Matthew Lynley of Techcrunch.com, who live-blogged from the event. According to Lynley, "Faraday Future has thus far been very flashy, but has yet to get a product in the hands of consumers — and it needs to get there. But at least part of the way is finally showing a production car, which Faraday Future tried to do with bravado at the event."

The lawsuit against Faraday stems from the company's assertions regarding its innovative technologies, production capabilities, and market potential, which generated significant investor interest and financial backing. Over time, it became clear that Faraday's promises were not being met. The company experienced numerous production delays, missed financial targets, and repeatedly postponed the launch of its much-anticipated vehicles. It was later revealed that Faraday had allegedly overstated its production capabilities and the operational readiness of its facilities. Reports revealed that the flagship factory was far from being operational, allegedly contradicting the positive outlook presented by company executives.

Plaintiffs alleged that Faraday wildly misrepresented the level of committed reservations it had for its flagship car by repeatedly telling investors that "its first flagship model, the FF 91, ha[d] received over 14,000 reservations." In fact, Faraday had obtained only several hundred paid reservations for the FF 91 at the time of these misstatements.

This gross exaggeration was highly material to investors. Under reasonable assumptions using the company's claimed selling price for the FF 91 of approximately $200,000, Faraday repeatedly claimed in effect that it would achieve revenue of $2.52 billion soon after producing its first vehicle, which overstates by orders of magnitude the approximately $54 million in revenue the company would have achieved from the few hundred paid reservations it actually held. In February 2022, following an internal investigation using outside auditors, Faraday admitted in a report on Form 8-K that:

> The Company's statements leading up to the Business Combination that it had received more than 14,000 reservations for the FF 91 vehicle were potentially misleading because only several hundred of those reservations were paid, while the others (totaling 14,000) were unpaid indications of interest.

> "Over time, it became clear that Faraday's promises were not being met."

That is, Faraday effectively admitted to the core of the securities law violations under Section 14(a) of the Exchange Act and Sections 11 and 15 of the Securities Act pleaded in the complaint.

As stated in plaintiffs' amended complaint, Faraday also repeatedly misled investors about its ability to bring the FF 91 to market within twelve months of the business combination, i.e., the de-SPAC merger. For example, in soliciting votes in support of the business combination, defendants boasted, "FF . . . is positioned to launch a production try-out in 9 months and commercial production of FF 91 series within 12 months after the Business Combination."

While the federal securities laws permit a company to be optimistic about its future, they do not permit a company to mislead investors about goals known to be impossible to achieve. During Pomerantz's litigation, multiple confidential witnesses confirmed that at no point during the class period was Faraday even close to being in a position in its design and manufacturing of the FF 91 to claim that it could bring that model to market within one year of the SPAC merger. That achievement was impossible, and Faraday knew as much. Accordingly, Faraday's statements that it could bring the FF 91 to market within one year of the de-SPAC merger violated Section 10(b) and 14(a) of the Exchange Act, and Section 11 of the Securities Act.

The truth began to emerge on October 7, 2021, when J Capital Research published a report explaining that Faraday's claimed 14,000 deposits were likely fabricated, because 78% of those reservations were made by a single undisclosed company that was likely an affiliate. The report further explained that contrary to representations of progress toward manufacturing made by Faraday, former engineering executives did not believe that the car was close to being ready for production.

On November 15, 2021, Faraday disclosed that its board of directors "formed a special committee of independent directors to review allegations of inaccurate disclosures," including the claims in the J Capital Report. Among other things, the special committee identified "certain inconsistencies in statements to investors and certain weaknesses in its corporate controls and culture, as detailed in the Form 8-K."

On April 14, 2022, Faraday announced that "additional investigative and remedial work in connection with the independent investigation has now been completed and on April 12, 2022, the Board approved certain additional remedial actions, effective immediately." In particular, Faraday announced that Jia would be removed as an executive officer, along with other disciplinary actions and terminations of employment with respect to other Faraday employees.

In moving for approval of the settlement, lead plaintiffs told the court, "The settlement provides a substantial recovery to the settlement class despite several obstacles that plaintiffs faced, including the amount of potentially recoverable damages, defendants' potential defenses, defendants' ability to pay a larger amount and the risks of prosecuting this litigation through trial and appeals."

Pomerantz: A Dedication to Education

By Katarina Marcial

Pomerantz takes pride in being a thought leader in the ever-evolving fields of securities litigation and corporate governance. The firm's philosophy is that education is a keystone of community, problem-solving and innovation. Through its educational initiatives, Pomerantz actively engages with institutional investors and corporate governance experts, bringing them together through various platforms, including panels, conferences and the firm's signature Corporate Roundtable events. Pomerantz personnel also regularly participate in events organized by others, frequently as featured speakers. The final quarter of 2024 was no exception, as Jeremy A. Lieberman, Jennifer Pafiti and Dr. Daniel Summerfield participated in educational events worldwide.

Jeremy, Pomerantz's Managing Partner, has been crisscrossing the globe for decades to meet institutional investors where they are based, educate them on their rights within and beyond the U.S. and listen to their needs. A font of legal knowledge and gifted speaker, Jeremy is frequently invited to share his insights at investor events. On November 13, 2024, he participated in a dynamic fireside chat with Leonor Martins Machado, Managing Associate at Morais Leitão, at the Global Class Actions Symposium hosted by Global Legal Group in Lisbon, Portugal. During their one-on-one conversation, Jeremy offered his perspective on the U.S. class action system, addressing topics such as securities fraud cases, the impact of the *Morrison* ruling – which barred recovery for losses in foreign-traded securities under the U.S. federal securities laws – and the appeal of class actions in the U.S. for investors worldwide.

Jennifer Pafiti, Partner and Head of Client Services, is dually qualified to practice law in the U.S. and the U.K. She spearheads the firm's educational initiatives, including its Corporate Governance Roundtables, which gather some of the most influential institutional investors and corporate governance experts worldwide to discuss real-time matters that affect the value of the funds they represent.

In June 2024, Jennifer organized a Roundtable in London with special guest Sir Tony Blair, who provided an insightful assessment of the state of global affairs. Another guest speaker was Dame Laura Kenny, the U.K.'s most decorated Olympian.

Jennifer is based in Pomerantz's Los Angeles office and

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co-manages its London office with Dr. Daniel Summerfield, Director of ESG and UK Client Services. Daniel joined Pomerantz in October 2022 after 20 years at the Universities Superannuation Scheme ("USS"), the United Kingdom's largest private pension fund. Most recently, Daniel was Head of Corporate Affairs of USS, following a period of 16 years as head of Responsible Investment.

Pomerantz was a sponsor of the 2024 International Corporate Governance Network Conference held on November 12-14, 2024 in Melbourne, Australia, where Jennifer and Daniel participated in a panel on governance challenges facing investors. Their dialogue offered valuable strategies for long-term investor engagement with policymakers. They had the honor of speaking

Jennifer Pafiti and Dr. Daniel Summerfield attend the International Corporate Governance Network Conference in Melbourne, Australia

Jeremy Lieberman participates in a fireside chat with Leonor Martins Machado at the Global Class Action Symposium in Lisbon, Portugal

alongside Kate Griffiths from ACSI, Massimo Menchini from Assogestioni, and Luz Rodriguez from the Colorado Public Employees' Retirement Association. This panel of experts weighed in on the appropriate timing, issues to address and channels and tools that institutional investors may utilize for effective engagement, giving conference attendees actionable takeaways to implement. Additionally, Pomerantz hosted a dinner at The Society Restaurant in Melbourne, where Jennifer engaged in a spirited debate with Amy D'Eugenio, Sustainability Director at Federated Hermes Ltd., on the role of securities litigation for institutional investors.

The end of the year proved to be busy for Daniel. On November 20, 2024, he participated in a panel discussion at Assogestioni's Board-Shareholder Dialogue Conference in Rome, where he explored the evolution of board-shareholder dialogues and examined case studies highlighting the successes and challenges of facilitating effective engagements.

Back in London, on December 5, Daniel co-hosted a breakfast event for UK pension fund trustees with QuietRoom, a pension fund communication consultancy business. During the event, insights from both pension lawyers' and trustees' perspectives were shared, including best practices and common pitfalls to avoid in order to ensure meaningful reporting and beneficial outcomes for pension fund beneficiaries.

Later that day, Daniel gave an in-house training session to a group of professional trustees in London. He discussed the increase in ESG and climate litigation cases in many markets, including the UK, and outlined some of the reasons behind this development, pointing to some important case studies. Daniel also looked towards the future, highlighting some issues of which trustees should be aware, including greenwashing and the importance of evidence-based reporting, and of having a securities litigation monitoring program in place.

Pomerantz kicked off December by hosting a private lunch for institutional investors in London, featuring Lord Peter Mandelson as Guest of Honor. During the gathering, Lord Mandelson, a key architect of the UK Labour Party's transformation and a trusted advisor to Prime Minister Keir Starmer, discussed the new UK government agenda, the challenges facing British politics and the UK's changing role on the global stage. Jeremy, Jennifer and Daniel presided over the event.

Pomerantz reaffirmed its dedication to education in Q4 2024 and is already scheduling events for 2025. For information on where you can engage with the Pomerantz team, be sure to check out "*Notable Dates on the Pomerantz Horizon*" in each issue of the *Monitor*. ■

Katarina Marcial is Pomerantz's Senior Marketing Manager.

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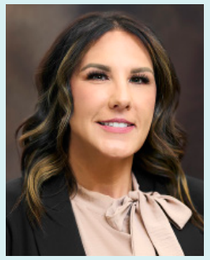
Jennifer Pafiti

Dr. Daniel Summerfield



Janalee Spencer

NOTABLE DATES ON THE POMERANTZ HORIZON

IF YOU WILL BE ATTENDING ANY OF THESE EVENTS AND WOULD LIKE TO MEET WITH US, SEND US A MESSAGE AT: EVENTS@POMLAW.COM

JANALEE SPENCER will attend the **Opal Public Fund Summit** in Scottsdale, Arizona on January 9-10.

Pomerantz will host a roundtable lunch in partnership with **Federated Hermes Ltd.** in Copenhagen, Denmark on January 14. There, **JEREMY A. LIEBERMAN** will speak alongside senior representatives of **Danish pension funds** on the relative efficacy of engagement approach options in different jurisdictions. **JENNIFER PAFITI** and **DR. DANIEL SUMMERFIELD** will also participate.

JANALEE will attend the **KORIED Plan Sponsor Educational Institute** in Key West, Florida, from January 21 -24.

JENNIFER and **JANALEE** will attend **NAPO's Annual Police, Fire, EMS & Municipal Employee Pension & Benefits Seminar** in Las Vegas, Nevada on February 2-4.

JANALEE will attend **Opal** in conjunction with the **Louisiana Trustee Education Council (LATEC): Investment Education Symposium** in New Orleans, Louisiana, on February 26-28.

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Pomerantz is acknowledged as a global leader in securities and corporate governance litigation. Pomerantz monitors the portfolios of some of the most influential institutional investors and financial institutions worldwide, monitoring assets in excess of $9 trillion. Founded by Abraham L. Pomerantz, who was known as the "dean of the class action bar," the Firm pioneered the field of securities class actions. For 85 years and counting, Pomerantz has continued the tradition that Abe Pomerantz established, fighting for the rights of victims of securities fraud, breaches of fiduciary duty, and corporate misconduct. Prior results, however, do not guarantee a similar outcome in future cases.

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THE POMERANTZ MONITOR
A BI-MONTHLY PUBLICATION OF POMERANTZ LLP
600 Third Avenue, New York, NY 10016

Warmest wishes for a joyful holiday season from all of us at

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May you enjoy peace, health and prosperity throughout the coming year.