the POMERANTZ MONITOR

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# News From the Chicago Office

By the Editors

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**$45 Million Settlement for Forescout Investors**

In July 2025, Pomerantz achieved a $45 million settlement in a securities fraud class action against Forescout Technologies Inc. ("Forescout") and its former Chief Executive Officer and Chief Financial Officer. The lawsuit was dismissed twice by the district court. The plaintiffs appealed to the United States Court of Appeals for the Ninth Circuit, which reversed the dismissal and revived the complaint's core claims concerning misrepresentations the defendants made about the state of Forescout's sales pipeline and the reasons for a shortfall in revenue between 2019 and 2020.

Backed by the accounts of twenty Confidential Witnesses ("CW"), the complaint alleged that the defendants orchestrated a pressure campaign to inflate Forescout's sales pipeline while concealing an internal situation that was at odds with their positive representations to investors. Had investors known about the company's internal state of affairs, including how Forescout's sales pipeline was built and managed, they would have doubted the truth of those representations.

Published in March 2023, the Ninth Circuit's opinion has been cited by federal courts throughout the country more than 110 times in the two years since it was decided. The reversal established important precedents favorable to the plaintiffs' bar for all future securities cases filed in the Ninth Circuit. The appellate court clarified that a plaintiff needs to plead only a reasonable inference of falsity, overturning previous decisions that collapsed the inquiries into falsity and scienter into one, incorrectly subjecting both to a heightened pleading standard. It rejected claims that CWs must interact with an individual defendant for their testimony to be considered for pleading purposes. Instead, it credited the accounts of numerous CWs identified in the complaint, who had no interaction with any senior executive of Forescout. Many courts around the country had previously rejected CW accounts on the grounds that the CWs did not communicate with upper-level management. The Ninth Circuit's decision also rejected the claim that a CW's criticism of the defendants merely amounted to a disagreement with management that could not raise an inference of fraud. Instead, the Court held that it is improper to assume the existence of a difference of opinion when the CW reported facts that undermined a defendant's positive representations, and nothing in the complaint suggested that any defendant voiced any disagreement.

*Omar Jafri, Partner*

Language in the opinion concerning the element of scienter is also favorable to the plaintiffs' bar. The Ninth Circuit observed that the Private Securities Litigation Reform Act ("PSLRA") was intended to prevent sham litigation, not actions of substance, and courts should refrain from imposing an impossible pleading burden on plaintiffs. The decision's application of the PSLRA's safe harbor is also favorable for plaintiffs. Unlike some courts that demand a plaintiff demonstrate defendants' actual knowledge of the falsity of the specific misrepresentation at issue, the Ninth Circuit held that facts alerting a defendant to the apparent falsity of a representation are sufficient to overcome the PSLRA's safe harbor for forward-looking or predictive statements.

On remand, following contested motion practice, the district court certified the Class as proposed by the plaintiffs. The defendants attempted to split the Class in two, to substantially reduce damages, arguing that an alleged false statement made towards the end of the Class Period concerning Forescout's take-private transaction with a private equity firm was unrelated to its sales pipeline and internal problems that predated the merger. The plaintiffs countered that this was a disguised attempt to

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improperly attack the element of loss causation, a merits issue that the Supreme Court has long held is off-limits at the class certification stage. The district court agreed, rejected the defendants' request to create two subclasses, and certified the Class as proposed by the plaintiffs in May 2024.

The case was litigated for more than five and a half years, including over two years of complex fact and expert discovery. The plaintiffs reviewed over 150,000 documents, took or defended 35 depositions, including international depositions, and won nearly every discovery dispute brought before the district court. Led by Partner Omar Jafri, the litigation team also included Of Counsel Brian P. O'Connell, Senior Counsel Patrick V. Dahlstrom, and Associates Genc Arifi, Diego Martinez-Krippner and Adam Jiang.

**$6.5 Million Settlement for Playstudios Investors**

On June 27, 2025, the United States District Court for the District of Nevada granted preliminary approval of a $6.5 million settlement in a securities class action against Playstudios, Inc. and its officers and directors. The case involved strict liability claims under Section 11 of the Securities Act of 1933, negligence claims under Section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act"), and securities fraud claims under Section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder. The claims arose from alleged misrepresentations and omissions made in a defective Proxy/Registration Statement that Playstudios used to effect its initial public offering by merging with Acies Acquisition Corp., a Special Purpose Acquisition Company. Additional affirmative misrepresentations made by the company and its CEO after Playstudios went public gave rise to securities fraud claims for investors in a separate Class.

In the Proxy/Registration Statement, the defendants claimed that extensive due diligence showed that a new game called *Kingdom Boss* would support Playstudios' expansion into role-playing games and cause revenues to skyrocket. However, the plaintiffs' investigation revealed that hundreds of individuals in online gaming forums reported that *Kingdom Boss* was beset with bugs and glitches that rendered the game inoperable both before and during the Class Period. The complaint alleged that for these reasons, the defendants abandoned the game at the end of the Class Period. Key to the Court's denial of the defendants' motion to dismiss were the concealed bugs and glitches in *Kingdom Boss* that players reported in gaming forums, and which the plaintiffs discovered through investigation before the complaint was filed. With the exception of one alleged misrepresentation – the dismissal of which had no impact on the Class Period or the damages claimed by the Class – the Court allowed the case to proceed on all of the plaintiffs' claims.

Following the denial of the defendants' motion to dismiss, the case proceeded to discovery in March 2024. After mediation and additional negotiations, the parties agreed to settle in January 2025. The $6.5 million settlement represents nearly 15% of estimated damages for the Section 14 claims, 20% of aggregate statutory damages for the Section 11 claims, and over 50% of maximum estimated damages for the Section 10(b) claims brought on behalf of an independent Class. The litigation was led by Partner Omar Jafri with valuable assistance provided by Associate Diego Martinez-Krippner. ■

# Pomerantz Refuses to Let Credit Suisse AT1 Bondholders Be Left Behind

By Brian Calandra

On July 7, 2025, Pomerantz secured a victory on behalf of a proposed class of investors in additional tier 1 bonds, or "AT1 bonds," that had been issued by global financial services company Credit Suisse Group AG, when the United States District Court for the Southern District of New York denied in full the defendants' motion to dismiss *Core Capital v. Credit Suisse, et al*. The investors allege that they were duped into purchasing the bank's AT1 bonds by, among other things, false or misleading assurances from Credit Suisse and certain of its executives, including then-board chairman Axel P. Lehmann, then-CEO Ulrich Körner, and then-CFO Dixit Joshi, that customer and asset outflows had slowed or stopped. These statements allegedly concealed the risk that Credit Suisse would cease operations, which materialized when the Swiss Financial Market Supervisory Authority ("FINMA") abruptly forced Credit Suisse to merge with fellow Swiss global financial services company UBS Group AG and, in the process, ordered Credit Suisse to write down its AT1 bonds from approximately $372 million to zero.

**Background**

Credit Suisse was founded in 1856, and for much of its history was a global financial giant. By 2021, however, its fortunes had been in decline for a decade as a result of corruption scandals, poor risk management, and governance control failures. Then, in March 2021, two new scandals came to light: the failure of funds the bank had structured in collaboration with financier Lex Greensill, and the collapse of hedge fund Archegos Capital Management, to which Credit Suisse was substantially exposed. As a result, the bank's decline accelerated.

On October 27, 2022, Credit Suisse held a conference call with analysts and investors to discuss its third-quarter 2022 financial performance. During that call, the bank announced a massive increase in customer and/or asset outflows. As alleged in the plaintiffs' complaint in this action (the "*Core Capital* Action") and a parallel class action brought by investors in other Credit Suisse securities (the "*Diabat* Action"), rather than come clean, the defendants, including Lehmann, Körner, and Joshi, chose to downplay the outflows and conceal the true extent of risks to Credit Suisse. For example, during the October 27 call, Körner and Joshi attributed the outflows to "negative press," "rumors," and "social media coverage" and indicated they had "stabilized" and that Credit Suisse had plans to address the problem. Then, on December 1, 2022, Lehmann assured investors during a *Financial Times* interview that customer outflows had not only "completely flattened out," but had, in fact, "partially reversed." In addition, the following day, Lehmann said outflows "basically have stopped" and that "the situation has calmed."

Investors were thus stunned on March 14, 2023, when the defendants admitted in Credit Suisse's 2022 Annual Report that there were "material weaknesses" in its internal control over financial reporting. Although the defendants reassured investors they were "developing a remediation plan to address the material weaknesses," they were instead discussing the company's sale or liquidation with Swiss authorities. Five days later, on March 19, 2023, the other shoe dropped, and FINMA announced that it had approved a takeover of Credit Suisse by UBS via a merger, and that "[t]he extraordinary [Swiss] government support [for the Merger] will trigger a complete write-down of the nominal value of all AT1 debt of Credit Suisse in the amount of around CHF 16 billion." Thereafter, on April 4, 2023, at Credit Suisse's final Annual General Meeting, Lehmann admitted the company's business had been plagued by "unhealthy developments, errant behaviors, and wrong incentive systems," such that it engaged in "transactions that should not have been allowed to play out." The merger closed on June 12, 2023, and a storied 166-year-old global financial institution ceased to exist.

**The *Diabat* and *Core Capital* Actions**

Multiple securities class action complaints were filed in the wake of Credit Suisse's de facto collapse, and several investors moved to be appointed lead plaintiff in a consolidated action, including Ali Diabat and Pomerantz's client, Core Capital Group, Ltd. Recognizing the massive losses incurred by AT1 bondholders, Core Capital amended its motion and sought to be appointed lead plaintiff on behalf of a class of bond investors, which it defines as separate from a class of equity investors.

On September 7, 2023, District Judge Colleen McMahon held a hearing to appoint a lead plaintiff. During that hearing, the Court acknowledged that Core Capital had the largest interest in Credit Suisse securities, but appointed Diabat as lead plaintiff on the grounds that Core Capital was likely subject to unique defenses. Specifically, the Court held that Core Capital owned AT1 bonds, which had been zeroed out at FINMA's direction and thus were subject to the unique defense that any alleged misrepresentation by the defendants did not cause AT1 bond investors' losses (the "AT1 Bonds").

*Brian Calandra, Partner*

Diabat filed an amended complaint as the lead plaintiff in the consolidated action on October 5, 2023, on behalf of a class of "persons or entities who purchased or otherwise acquired Credit Suisse securities in domestic transactions." Diabat's complaint, however, did not contain any allegations concerning AT1 bonds, which strongly suggested that Diabat was not asserting claims on behalf of those investors. Accordingly, Pomerantz, on behalf of Core Capital, instituted the *Core Capital* action, which brought claims that substantially overlapped with claims in the *Diabat* action, but expressly on behalf of purchasers of AT1 bonds. Core Capital and the defendants agreed to stay their action until the Court ruled on the defendants' motion to dismiss the *Diabat* action.

On September 19, 2024, the Court denied in part and granted in part the defendants' motion to dismiss the *Diabat* action, holding that the defendants' statements regarding customer outflows were sufficiently alleged to be knowingly or recklessly false or misleading and the cause of the *Diabat* plaintiffs' losses, but dismissing all other claims. The following day, the Court issued an order in the *Core Capital* action stating that the Court would not permit any amendment of the *Core Capital* complaint, would rule "in this case [i.e., the *Core Capital* action] exactly in the same manner as I did in *Diabat*," and set a schedule for a motion to dismiss.

**Defendants' Motion to Dismiss**

Recognizing that the Court had already held that the defendants had made false or misleading statements regarding customer outflows, the defendants attacked the *Core Capital* complaint on the grounds that (i) it could not proceed as a separate action because the Court had already appointed Diabat to represent a putative class of all Credit Suisse securities holders, (ii) it did not include the allegations of a pending SEC investigation, which the Court had relied on to find that scienter adequately alleged in *Diabat*, and (iii) Core Capital's losses were caused by FINMA's order for the bank to write down the value of all AT1 bonds to zero, not the defendants' alleged fraud.

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In opposing the defendants' motion, Pomerantz emphasized that prior rulings refusing to allow putative class actions like *Core Capital* to proceed in parallel to the consolidated action were under materially different circumstances because the lead plaintiffs in the prior actions had not abandoned classes of investors to pursue other claims, and in those actions, the lead plaintiff itself sought to eliminate the parallel action. Here, conversely, the defendants were asserting that the *Core Capital* action should be dismissed because it ostensibly interfered with Diabat's ability to litigate the *Diabat* action, a highly questionable assertion given that Diabat had not complained of any prejudice from the *Core Capital* action and the defendants were clearly acting in their own self-interest, not in the interest of *Diabat* class members, in seeking to dismiss the *Core Capital* action. Pomerantz also asserted that the Court's order stating that it would rule exactly as it had in *Diabat* applied to its scienter ruling, and thus the defendants' scienter was sufficiently alleged, and that FINMA's order to write down the AT1 bonds was a materialization of a concealed risk.

As the motion to dismiss the *Core Capital* action was pending, the plaintiff in the *Diabat* action moved for class certification. That motion specifically identified the securities on behalf of which Diabat sought to litigate, which did not include AT1 bonds. Recognizing that this development substantially undercut the linchpin of the defendants' motion to dismiss, Pomerantz promptly alerted the Court to the import of the *Diabat* class certification motion.

**The Court Sustains the Core Capital Complaint**

On July 7, 2025, the Court rewarded Pomerantz's efforts on behalf of AT1 bond investors by denying the defendants' motion to dismiss in full and explicitly allowing the *Core Capital* action to proceed in parallel with *Diabat*. First, the Court found that the *Diabat* complaint's allegations were incorporated by reference into the *Core Capital* complaint and held that scienter was thus adequately alleged. Second, the Court observed that, as Pomerantz argued, the defendants' statements concealed the degree of risk that Credit Suisse would cease operating and AT1 bonds would be written down to zero, thus preventing investors from adequately assessing that risk. Accordingly, the *Core Capital* complaint adequately alleged that FINMA's actions represented the materialization of a concealed risk. Third, the Court found that *Diabat* had abandoned claims by AT1 bondholders and allowed the *Core Capital* action to proceed in parallel because "the potential prejudice that the AT1 bondholders could face from being saddled with a lead plaintiff who has already abandoned them outweighs any yet-to-be-seen interest by Diabat in preventing Core Capital from picking up the claims he has dropped," and "I refuse to disenfranchise claimants whose claims have already been abandoned by a lead plaintiff in the original action."

**Conclusion**

No one would fault an attendee of the September 2023 lead plaintiff hearing for concluding that the Court had expressed grave doubts about the viability of claims on behalf of AT1 bondholders. Rather than leave those investors to fend for themselves, however, Pomerantz recognized the viability of their claims and fought for the opportunity to vindicate them. The Court agreed, and Pomerantz is excited to pursue those claims on behalf of investors blindsided by the defendants' alleged misrepresentations. ■

# Ninth Circuit Expands Test for ERISA Claim Releases to Include Fiduciary Misconduct

By Gustavo F. Bruckner and Basya Bates

On June 5, 2025, the United States Court of Appeals for the Ninth Circuit issued a significant ruling in *Schuman v. Microchip Tech. Inc.*, No. 24-2624, 2025 WL 1584981 (9th Cir.). The Court held that, when considering the enforceability of ERISA claim releases or waivers signed by employees, the Court must consider whether the fiduciary acted improperly in obtaining the release from the employee. This decision reversed a lower court ruling holding that claims releases signed by former employees bar them from leading a class action against their former employer.

**What is ERISA?**

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal statute that governs certain employer-sponsored employee retirement and benefit plans. ERISA protects workers' retirement funds by ensuring that plan fiduciaries do not breach their duties or misuse plan assets. As defined by ERISA, plan fiduciaries refer to individuals or entities with discretionary authority over a plan's management and funds. Fiduciaries can include employers, trustees and plan administrators.

A fiduciary's principal responsibility is to manage the plan in the sole interest of the plan participants and beneficiaries for the purpose of furnishing benefits and paying plan expenses. ERISA requires that fiduciaries manage the plan and control plan assets with prudence and minimize risk by diversifying plan investments. They

*Gustavo F. Bruckner, Partner*

must also comply with the plan terms and guidelines outlined in the plan documents insofar as the plan terms are consistent with ERISA. Additionally, fiduciaries are obligated to disclose details regarding plan fees and benefits to participants. Importantly, ERISA provides plan participants the right to sue fiduciaries for benefits and for breaches of fiduciary duty.

Pomerantz represents plan beneficiaries in several ERISA cases. Most recently, Pomerantz defeated defendants' motion to dismiss in *Jacobsen et al. v. Long Island Community Hospital*, where plaintiffs alleged that the plan fiduciary breached its fiduciary duties under ERISA by improperly investing plan funds and failing to perform proper due diligence before offering certain stable value funds to plan participants. This case is proceeding to trial in spring 2026.

**Case Study: *Schuman v. Microchip Tech. Inc.***

**Background**

In 2015, prior to its merger with Microchip Technology Inc., Atmel Corporation implemented a benefits plan to ensure that employees would receive severance benefits if the acquiring company did not retain staff post-merger. Shortly after completing the merger in 2016, Microchip fired named plaintiffs Peter Schuman and William Coplin without cause, providing significantly fewer benefits than those outlined in the benefits plan in exchange for plaintiffs' release of potential claims against Microchip. Microchip had informed Atmel employees that the Atmel benefits plan had expired and that the benefits were no longer available. Microchip offered the reduced benefits in exchange for signing the claims releases to "resolve any current disagreement or misunderstanding regarding severance benefits previously offered by [Atmel]." Schuman and Coplin signed the releases.

In 2016, Schuman and Coplin filed a class-action complaint against Microchip, Atmel Corp., and Atmel Corp. U.S. Severance Guarantee Benefit Program (collectively, "Microchip"), on behalf of nearly 200 former Atmel employees who had also signed releases, challenging the enforceability of the releases. Plaintiffs alleged that by misinterpreting the severance plan as having expired and by encouraging plaintiffs to sign releases in exchange for reduced severance benefits, Microchip breached its fiduciary duties.

**District Court Decision**

Microchip filed a motion for summary judgment, arguing that plaintiffs knowingly and voluntarily waived their right to pursue claims under the Atmel Plan. Schuman and Coplin countered that the claims releases were unenforceable because of Microchip's violations of its fiduciary duties in obtaining claims releases in exchange for significantly reduced severance benefits.

The district court granted summary judgment against Schuman and Coplin, applying a non-exhaustive six-factor test from the First and Second Circuits, determining that the releases were signed knowingly and voluntarily and therefore enforceable. The court refused to address allegations that Microchip violated its fiduciary duties in obtaining the releases.

**Ninth Circuit Analysis**

Schuman and Coplin appealed the decision in the Ninth Circuit. The Ninth Circuit wanted to know which legal test should be used to determine the enforceability of ERISA releases. The Court specifically questioned whether waivers or releases of ERISA claims should be treated with heightened scrutiny when there are allegations of fiduciary abuse. Because ERISA's purpose is to protect employees and plan beneficiaries from potential employer or fiduciary abuse, the Court held that alleged improper misconduct by the fiduciary must be considered. In doing so, the Court rejected the First and Second Circuit's limited test as applied by the district court and adopted language similar to that used by the Seventh and Eighth Circuits.

The Ninth Circuit broadened the test for ERISA claim releases to include consideration of any improper conduct by the fiduciary in its non-exhaustive nine-factor test. Specifically, a court must consider: (1) the employee's education and business experience; (2) the employee's input in negotiating the terms of the settlement; (3) the clarity of the release language; (4) the amount of time the employee had for deliberation before signing the release; (5) whether the employee actually read the release and considered its terms before signing it; (6) whether

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the employee knew of their rights under the plan and the relevant facts when they signed the release; (7) whether the employee had an opportunity to consult with an attorney before signing the release; (8) whether the consideration given in exchange for the release exceeded the benefits to which the employee was already entitled by contract or law; and (9) whether the employee's release was induced by improper conduct on the fiduciary's part.

*Justin D. D'Aloia, Partner*

In embracing the Seventh and Eighth Circuits' tests, the Ninth Circuit found that their approach struck "the right balance between a strictly traditional voluntariness examination and an ERISA-based analysis."

This case sends a powerful message to employers acting as fiduciaries over severance plans. The Ninth Circuit cautioned fiduciaries that providing fewer benefits than guaranteed under the plans in exchange for a release of ERISA claims can amount to a breach of fiduciary duties, resulting in the unenforceability of the releases. The Ninth Circuit's broad test ensures that waivers and releases of claims under ERISA are met with "special scrutiny," potentially providing greater protection for plaintiffs whose releases may have been "knowing" or "voluntary." As the Ninth Circuit noted, the final factor considering fiduciary misconduct "warrants serious consideration and may weigh particularly heavily against finding that the release was 'knowing' or 'voluntary' or both."

Pomerantz continues to track ERISA developments while vigorously representing plan beneficiaries in ERISA cases nationwide.

## Pomerantz Secures $10.5 Million Settlement for ImmunityBio Investors

By the Editors

On June 16, 2025, the United States District Court for the Southern District of California granted final approval of a $10.5 million settlement secured by Pomerantz in a class action against San Diego-based biotechnology startup ImmunityBio, Inc. ("ImmunityBio"). The suit alleged that ImmunityBio's senior executives concealed a series of pervasive manufacturing issues at the site used to manufacture its leading drug candidate, Anktiva, that began at the formation of the company in March 2021 and continued through May 2023, when the FDA denied approval of the drug. Partner Justin D. D'Aloia led the litigation, captioned *In re ImmunityBio, Inc. Securities Litigation*, No. 23-cv-01216 (S.D. Cal.).

ImmunityBio was formed through a merger between several clinical-stage biopharmaceutical companies in March 2021. At the time, ImmunityBio had no approved drugs, and its only product candidate close to gaining FDA approval, and beginning to generate income, was its cell fusion therapy, Anktiva, which was designed to treat bladder cancer. Accordingly, ImmunityBio's near-term viability depended entirely on the success of Anktiva and, unsurprisingly, it received substantial attention from both ImmunityBio's executives and the investment community.

At the time ImmunityBio was formed in March 2021, interim data from the pivotal Phase 3 trial showed that Anktiva had already achieved its primary endpoint before the study even concluded. Over the next year, ImmunityBio announced that complete data from the Phase 3 study confirmed those results and, on the basis of those results, it decided to apply for FDA approval to sell Anktiva commercially in the United States. By all accounts, Anktiva appeared to present a rare opportunity for significant growth for the company.

Notably, the FDA is prohibited from approving any new drug unless the facility where it is manufactured complies with its minimum standards for well-controlled drug manufacturing, codified in voluminous FDA regulations that are known as current good manufacturing practices ("CGMP"). Unlike for other compounds in its pipeline, however, ImmunityBio contracted with an external manufacturing firm—referred to as a contract manufacturing organization ("CMO")—to produce Anktiva. Between its formation in March 2021 and March 2023, ImmunityBio and its senior executives assured in SEC filings and other public disclosures that the manufacturing facilities it used to make its products adhered to CGMP and that the CMO it used to manufacture Anktiva operated CGMP-compliant facilities with robust quality control. Thus, while there is never any guarantee that the FDA will agree with a pharmaceutical company's interpretation of clinical trial data, ImmunityBio investors had no reason to believe that manufacturing issues posed a potential approval risk for Anktiva.

However, as alleged in the complaint filed by Pomerantz on behalf of aggrieved investors, the site where Anktiva was manufactured suffered from rampant and myriad CGMP violations. As alleged, ImmunityBio's senior leaders were notified about each of these ongoing problems and repeatedly attempted to address the issues, but they remained unresolved by the time ImmunityBio submitted its application for FDA approval of Anktiva. This was noteworthy because the FDA application, by regulation, is required to include all data generated in connection with any prior manufacturing runs. Pomerantz's investigation into the matter uncovered that this led the FDA to hold an unusually intensive mid-review pre-approval inspection, which resulted in a scathing 15-page report

documenting the past and present substandard conditions at the site. ImmunityBio's executives were fully aware of this new inspection, as they either flew overnight to attend it in person or demanded "real-time" updates and daily debriefs from relevant personnel. Nevertheless, they continued to inform investors that the CMO used to manufacture Anktiva operated CGMP-compliant facilities after the inspection concluded and made no mention of the FDA's report, as companies typically do.

Investors did not learn about the manufacturing problems until it was too late. On May 11, 2023, ImmunityBio announced that the FDA rejected its application for Anktiva, not because of its risk-benefit profile or concerns with the clinical studies used to support the application but rather, because of deficiencies revealed at the FDA's pre-approval inspection at the company's CMO. On this news, the stock crashed, shedding over 55% of its market value in a single day.

In June 2024, the district court largely denied the defendants' motion to dismiss, rejecting their challenge to 51 of the 62 alleged misstatements. In doing so, the Court swiftly dispensed with the defendants' arguments that investors demand that every company involved in the pursuit of highly technical biopharmaceutical innovation must achieve manufacturing perfection at all times, stating "Defendants were entitled to their optimism; but they were not entitled to peddle that optimism to investors in a manner that materially misrepresented the facts."

Following the decision, the parties proceeded to engage in discovery, during which Pomerantz continued to discuss the possibility of an early resolution. After several months of hard-fought discovery proceedings, but before incurring the significant costs of continued merits litigation, the parties agreed to settle the action for an all-cash settlement of $10.5 million. This represents a highly favorable recovery for the class and avoids the costs and uncertainty of continued litigation.

*Jeremy A. Lieberman*

*Dr. Daniel Summerfield*

## 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**

**DR. DANIEL SUMMERFIELD** will attend the **Council of Institutional Investor's Fall Conference** in San Francisco, California on September 8-10.

**DANIEL** will attend the **Professional Pensions' Defined Contribution Conference** in Manchester, England on September 17.

**JEREMY A. LIEBERMAN** will attend the **International Corporate Governance Network's 30th Anniversary Conference – Europe** in Milan, Italy on October 21-23.

**JEREMY** will attend the **Global Legal Group's Global Class Actions Symposium** in London, United Kingdom on November 18-19.

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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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