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JUDGE KAVANAUGH AND THE IMPENDING *LORENZO* CASE BEFORE THE SUPREME COURT

By J. Alexander Hood II

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Several years ago, in *Stoneridge Partners*, Pomerantz persuaded the Supreme Court to rule that people who engage in schemes to defraud can be liable for securities fraud, even if they themselves made no misstatements to investors, under a theory known as "scheme liability."

On June 18, the Supreme Court granted certiorari in *SEC v. Lorenzo*, which presents the question of where the boundaries are between scheme liability (which is actionable) and aiding and abetting (which is not). The D.C. Circuit had affirmed the SEC's imposition of sanctions against Lorenzo under scheme liability. Dissenting in that case was Circuit Judge Brett Kavanaugh, President Trump's pending nominee for the Supreme Court.

Unlike Justice Gorsuch, whose hostility towards securities law enforcement has been well documented, Judge Kavanaugh has had relatively few opportunities to rule on securities fraud cases, which are typically litigated in the judicial district in which the defendant company is headquartered. Accordingly, his judicial paper trail is less than illuminating with respect to some of the legal questions most frequently at issue in those cases. However, a review of his 2017 dissent in *Lorenzo v. SEC* suggests that a Justice Kavanaugh would try to define scheme liability out of existence.

Lorenzo concerns communications by Francis Lorenzo, the director of investment banking at Charles Vista, LLC, a registered broker-dealer, to potential investors, concerning the company Waste2Energy Holdings, Inc. (W2E). In September 2009, W2E, in dire need of financing, commenced a $15 million convertible debenture offering, for which Charles Vista would serve as the exclusive placement agent. While W2E's most recent SEC filings at that time contained no indication of any possible devaluation of the company's assets, on October 1, 2009, following an audit, W2E filed an amended Form 8-K, in which it disclosed a significant impairment of its intangible assets. On that same day, W2E filed a quarterly report valuing its total assets for the second quarter of 2009 as only $660,408. Lorenzo was aware of W2E's filings of October 1, and in fact received an email from W2E's Chief Financial Officer several days later that explained the reasons for the significant devaluation of the company's intangible assets. Nevertheless, on October 14, Lorenzo sent emails to two potential investors conveying "several key points" about W2E's debenture offering. His emails failed to disclose the devaluation, and instead assured both investors that the offering came with "3 layers of protection."

In February 2013, the SEC commenced cease-and-desist proceedings against Lorenzo, charging him with violations of three securities law provisions: Section 17(1)(1) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder. An administrative law judge concluded that Lorenzo had "willfully violated the antifraud provisions" of the statutes at issue "by his material misrepresentations and omissions concerning W2E in the emails" to the two potential investors. She found that Lorenzo had sent the emails without thinking about their contents, but that doing so amounted to recklessness, satisfying the scienter requirement. Upon review, the SEC sustained the ALJ's decision, including her "imposition of an industry-wide bar, a cease-and-desist order, and a $15,000 civil penalty." Specifically, the SEC found that Lorenzo had violated Rule 10b-5(b), which prohibits the making of materially false and misleading statements in connection with the purchase or sale of securities, because he knew that each of the key statements in his emails "was false and/or misleading when he sent them." Lorenzo petitioned for review by the D.C. Circuit.

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Contrary to the SEC's conclusions, the D.C. Circuit ruled that Lorenzo did not "make" the statements at issue within the meaning of Rule 10b-5(b), finding that he had simply transmitted statements devised at the direction of his superiors. It nonetheless "conclude[d] that his status as a non-"maker" of the statements at issue does not vitiate the [SEC]'s conclusion that his actions violated the other subsections of Rule 10b-5 as well as Section 17(a)(1)." While Rule 10b-5(b) states that it is unlawful to "*make* any untrue statement of a material fact … in connection with the purchase or sale of any security," the other securities law provisions at issue do not contain such restrictive language, and instead are framed, variously, in more general terms of "employ[ing]," "us[ing]," or "engag[ing]" in deceptive conduct in connection with securities transactions. Accordingly, a majority of the court concluded that "Lorenzo, having taken stock of the emails' content and having formed the requisite intent to deceive, conveyed materially false information to prospective investors about a pending securities offering." As such, they found that Lorenzo had engaged in deceptive conduct and had acted with scienter. Accordingly the court upheld the previous findings with respect to his liability.

In a strongly worded dissent, Judge Kavanaugh vehemently disagreed, blasting the actions of the SEC. First, he concluded that the SEC, similarly to his colleagues in the majority, had failed to "heed the administrative law judge's factual conclusions" concerning Lorenzo's "not thinking about" the accuracy of the information his boss had sent him and which he forwarded to the investors. He bitterly criticized the SEC for having "simply manufactured a new assessment of Lorenzo's credibility and rewrote the [administrative law] judge's factual findings." Yet, despite the ALJ's conclusion that Lorenzo had "not thought about" the accuracy of the emails, she did specifically find that Lorenzo had acted with scienter – presumably because it is, in fact, extremely reckless to send information to investors without thinking about whether it was true or not. Judge Kavanaugh's dissent makes no mention of that fact.

Of wider import, however, is the dissent's savaging of the SEC, while sympathizing with a broker's actions in conveying to investors information that he knew was false and misleading. In his view, this case was just another example of the SEC's efforts, over a period of decades, to evade the Supreme Court's prohibition of liability under the securities laws for "aiders and abettors." In his view, this case involves "nothing more" than the making of false statements, and since Lorenzo did not himself "make" the false statements he should not be held accountable for them under any theory of liability.

> The majority opinion creates a circuit split by holding that mere misstatements, standing alone, may constitute the basis for … willful participation in a scheme to defraud--even if the defendant did not make the misstatements. …Other courts have instead concluded that scheme liability must be based on conduct that goes beyond a defendant's role in preparing mere misstatements or omissions made by others.

Judge Kavanaugh thinks that it was incongruous to conclude both that: (i) Lorenzo had not "made" any statements, but merely transmitted the emails at issue; and (ii) "Lorenzo nonetheless willfully engaged in a scheme to defraud solely because of the statements made by his boss."

The granting of certiorari in this case indicates that the Supreme Court is interested in this issue, and that this is going to be an important case for establishing the contours of scheme liability.

In our view, Judge Kavanaugh got it wrong. He seems to have concluded that whenever a false or misleading statement is made, no one can be liable except the person who made it, and that any other rule would eviscerate the prohibition of aiding and abetting liability. In support of this conclusion he relied on several previous Circuit Court decisions which, he argues, held that a defendant cannot be held liable under a theory of scheme liability where the case involved "nothing more" than false statements. In one of those cases, *KV Pharmaceuticals*, the complaint alleged, in conclusory fashion, that a corporate securities filing was false and misleading and that two of the company officers knew about it. The court held that, to be liable in such a case, a complaint had to allege that the defendants did something more than merely know that their company had made a false filing. It concluded that "the investors do not allege with specificity (or otherwise) what conduct Van Vliet and Bleser engaged in beyond having knowledge of the misrepresentations and omissions." The court did not mention aiding and abetting; it merely held that scheme liability must entail actions beyond mere awareness that someone else had made a misstatement.

In another case, *Luxembourg Gamma Three*, the scheme liability claim was simply another label plaintiffs had applied to a classic non-disclosure case against the same people who had themselves made the false and misleading statements. As the court said, "the fraudulent scheme allegedly involved the Defendant-Appellees planning together to not disclose the Founders' sale of securities in the secondary offering, and then not disclosing those sales; fundamentally, this is an omission claim."

In *Lorenzo* the claims against the defendant went beyond "making" a false or misleading statement. Lorenzo sent the false information, under his own name, to investors, and implicitly vouched for its accuracy. If that is not enough to establish scheme liability, what is?

Judge Kavanaugh's dissent reflects his hostility towards the SEC itself, confirming the Trump administration's statement nominating him to SCOTUS. There it specifically touted the fact that he has "overruled federal agency action 75 times." He is, in fact, widely regarded by commentators on both the left and the right as hostile to the "administrative state." His dissent in *Lorenzo* is a prime example of this. First he mocked the agency's determination that Lorenzo acted with scienter, which he claimed contradicted the findings of the ALJ even though the ALJ held that Lorenzo *had* acted with scienter. Then he lashed out at the agency for what, in his view, amounted to trying to make an end run around Supreme Court case law that sharply distinguishes between primary and secondary liability. It is hard to avoid the conclusion that, in his view, the SEC is a rogue agency that simply has to be reined in.

If he is confirmed, it will be another sad day for investors.

TOSHIBA: NINTH CIRCUIT APPLIES *MORRISON* TWO PRONG TEST

By Jessica N. Dell

In July the Ninth Circuit issued an important decision that reversed the dismissal of U.S. investors' securities fraud claims against Toshiba, in *Stoyas v. Toshiba Corp.*

The case arose from revelations that Toshiba had overstated profits by $2.6 billion. Toshiba was fined a record $60 million by Japanese securities regulators, and Toshiba's CEO resigned amidst the scandal. When the market discovered the fraud, the value of both Toshiba's own stock, and the ADRs, plummeted. The U.S. investors' dilemma was that while it was Toshiba that had committed the fraud, it was the banks, and not Toshiba, that had sold the Toshiba ADRs in the U.S.

Toshiba is a Japanese corporation whose common shares are listed and traded on the Tokyo Stock Exchange; they are not registered with the SEC or listed on any U.S. exchange. In this case, U.S. investors purchased "unsponsored" American Depositary Receipts ("ADRs") for Toshiba shares over-the-counter in the U.S.

ADRs are a way for U.S. investors to purchase stock in foreign companies. ADRs are securities, denominated in U.S. dollars; the underlying security is bought on the foreign exchange by a bank and is held by that bank overseas. ADRs are said to be "sponsored" if the issuer takes a formal role with the bank creating the ADRs; unsponsored ADRs are created without much, if any, involvement by the issuer. Toshiba did not even have to register its securities with the SEC to allow the creation of the ADRs. The banks then arranged for these ADRs to trade over-the-counter in the U.S.

The principles to be applied here were established in 2010 by the Supreme Court in *Morrison v. National Australia Bank*. There the Court held that, while there is a presumption that the U.S. securities laws do not apply to overseas conduct of foreign companies, U.S. securities laws could be applied to transactions in a foreign company's securities if that company's shares are listed on U.S. domestic exchanges, or are "otherwise traded" in the U.S.

In dismissing the *Toshiba* case in 2016, the district court had held that 1) the over-the-counter market, where Toshiba ADRs are traded, is not a "domestic exchange"; and 2) that the ADRs are not "otherwise traded in the U.S.," under *Morrison*, because even if the shares were actually bought in the U.S. Toshiba had no direct connection to those transactions. The district court concluded that "nowhere in *Morrison* did the Court state that U.S. securities laws could be applied to a foreign company that only listed its shares on foreign securities exchanges but whose stocks are purchased by an American depositary bank on a foreign exchange and then resold as a different kind of security (an ADR) in the United States."

The Ninth Circuit held that plaintiffs could well be able to plead a viable claim under U.S. securities laws, and granted them leave to amend their complaint in the action in order to do so. Applying *Morrison*'s two prong test, it agreed with the District Court that the over-the-counter market was not an "exchange," and that therefore the first prong of *Morrison* was not satisfied. But it disagreed with the lower court on whether the Toshiba ADRs were "traded in the U.S." It held that, for U.S. securities laws to apply under *Morrison*'s second prong, plaintiffs needed to establish only that they purchased the Toshiba ADRs in U.S. domestic transactions. It held that it was the location of the sales, and not the identity of the participants in those sales, that was important. It recognized that, to prevail in the case, plaintiffs would ultimately have to plead, and prove, facts showing that Toshiba had committed fraud "in connection with" the U.S. sales of the ADRs. But it determined that the fact that Toshiba was not a participant in the U.S. sales is not controlling on whether the securities laws applied in the first place:

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> Specifically, Toshiba argues that because the [investors] did not allege any connection between Toshiba and the Toshiba ADR transactions, *Morrison* precludes the Funds' Exchange Act claims. But this turns *Morrison* and Section 10(b) on their heads: because we are to examine the location of the transaction, it does not matter that a foreign entity was not engaged in the transaction. For the Exchange Act to *apply*, there must be a domestic transaction; that Toshiba may ultimately be found not liable for causing the loss in value to the ADRs does not mean that the Act is inapplicable to the transactions.

The court held that under the standard "irrevocable liability" test, the transaction occurs wherever the parties incur irrevocable liability" to buy or sell the shares. Noting that the plaintiffs' transactions in the Toshiba ADRs have many connections to the United States, the court determined that "an amended complaint could almost certainly allege sufficient facts to establish that [the plaintiffs] purchased [their] Toshiba ADRs in a domestic transaction" in light of the "irrevocable liability" standard. Among the numerous connections to the United States they identified: the plaintiffs are U.S. entities located in the U.S., the ADRs were purchased in the U.S. and traded over-the-counter on a platform located in the States, and the depository banks that host ADR trading are located in the U.S.

In reaching this conclusion, the Ninth Circuit rejected Toshiba's (and the district court's) reliance on the Second Circuit's *Parkcentral Global Hub* ruling, in which that court said that domestic transactions are not sufficient to establish the applicability of the U.S. securities laws under *Morrison*, and that some participation or involvement

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by the issuer in those transactions is required. The appellate court said *Parkcentral* is distinguishable and that *Parkcentral*'s test for whether a claim is "so predominately foreign as to be impermissibly extraterritorial" is an "open ended, under-defined, multi-factor test, akin to the vague and unpredictable tests that *Morrison* criticized and endeavored to replace." The court likewise rejected the argument that allowing the securities laws to apply to ADRs would undermine principles of comity, holding that "it may very well be that the *Morrison* test in some cases will result in the Exchange Act's application to claims of manipulation of share value from afar."

By rejecting the holding of *Parkcentral*, the Ninth Circuit in *Toshiba* created a circuit split that could lead to a Supreme Court cert petition.

While there is no guarantee that the purchasers of the Toshiba ADRs will prevail in their next round of pleadings, the new decision showed that even a foreign company without any obvious participation in U.S. Securities transactions may still be subject to U.S. law if the pleadings show the misconduct was "in connection" with the purchase or sale in the U.S. It has, at least for now, defanged the arguments that any and all attempts at recovery by holder of unsponsored ADRs would per se be blocked by *Morrison*.

SUPREME COURT RULES ON SEC ADMINISTRATIVE LAW JUDGES

By Tamar A. Weinrib

Like many federal agencies, the SEC uses administrative law judges ("ALJs") to hear and render initial decisions on administrative cases brought by the agency. Up until now the SEC has considered these ALJs to be "employees" who could be hired and fired by agency staff.

On June 21, 2018, in *Lucia v. SEC*, the United States Supreme Court upended that practice, holding that the SEC's ALJs are not mere employees but are actually "inferior officers" of the United States, subject to the Appointments Clause of the United States Constitution. The Supreme Court's ruling means that going forward, ALJs must be appointed by the President, "Courts of Law," or "Heads of Departments."

The case reached the Supreme Court after an SEC ALJ rendered an unfavorable decision against Raymond Lucia, a financial radio host and investment adviser known for his "buckets of money" investment strategy. The unfavorable decision, under the Investment Advisers Act, banned Lucia from the industry and charged him a $300,000 fine. Lucia appealed within the SEC (and later to the D.C. Circuit) arguing that the administrative proceeding was invalid because the presiding ALJ had not been constitutionally appointed and thus lacked the constitutional authority to do his job. The Trump Administration sided with Lucia, reversing the position previously taken by the Obama administration that ALJs are not inferior officers.

Justice Kagan, writing for the majority and relying on three Supreme Court cases, explained that the ALJ's are "inferior officers" because they hold a "continuing office established by law," and "exercise significant authority pursuant to the laws of the United States" in carrying out "important functions," which include adjudicating administrative decisions. The Court found its previous decision in *Freytag v. Commissioner* particularly compelling. There, the Supreme Court held that Special Trial Judges ("STJ") in the United States Tax Court were "officers" for purposes of the Appointments Clause. The Supreme Court found that the SEC's ALJs are nearly carbon copies of the STJs, except that the STJs must have their decisions adopted by a regular judge. An ALJ's decision, on the other hand, only becomes final when the SEC declines review. "That last-word capacity makes this an a fortiori case: If the Tax Court's STJs are officers, as *Freytag* held, then the Commission's ALJs must be too."

Notably, the SEC *had already abandoned its position* that ALJs were *"employees"* back in November 2017 (though after Lucia's enforcement action) and ratified the prior hiring of its ALJs in a manner it deemed consistent with the Appointments Clause. The Supreme Court ruled on the issue anyway, concluding not only that Lucia is entitled to a new hearing before a properly appointed official, but also that this official cannot be the ALJ who previously heard the enforcement action, even if that particular ALJ "has by now received a constitutional appointment." The Court did not rule on whether the SEC's ratification of the prior hires was sufficient to satisfy the Appointments Clause.

On August 22, 2018, the SEC issued an order (the "Order") lifting a stay it had imposed on June 21, 2018, in reaction to the ruling in Lucia on "any pending administrative proceeding initiated by an order instituting proceedings that commenced the proceeding and set it for hearing before an [ALJ], including any such

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proceeding currently pending before the Commission." The Order also reaffirms the SEC's November 30, 2017 order ratifying the constitutional appointment of certain ALJs; grants all respondents in the newly un-stayed proceedings the "opportunity for a new hearing before an ALJ who did not previously participate in the matter"; and remands all cases pending before the SEC to the Office of the ALJs "for this purpose." Moreover, the Order vacates "any prior opinion" the SEC has issued in nearly 130 pending matters. The day after issuing the Order, Chief ALJ Brenda P. Murray confirmed that another nearly 70 cases pending before ALJs prior to the Order would be reheard, pursuant to the Order. As a result, parties who received a negative initial decision from an ALJ prior to the SEC's ratification order but have not yet exhausted their appeal, now have the chance for a completely new hearing before a different ALJ. Parties who do not wish to have a new hearing in front of a fresh ALJ were required to notify the Chief ALJ by September 7.

This decision leaves open several questions, including the constitutionality of the SEC's ratification order; the extent to which this ruling will apply to other agencies like the CFPB and the FDIC; and the degree to which political influence can and will be exerted in the ALJ appointment process.

NINTH CIRCUIT SLAMS OVERUSE OF "JUDICIAL NOTICE" AND "INCORPORATION BY REFERENCE" ON MOTIONS TO DISMISS

By Jennifer Banner Sobers

A recent decision by the Ninth Circuit, *Khoja v. Orexigen Therapeutics*, a securities case, put the spotlight on a tactic defendants have long overused in support of their motions to dismiss. On such motions, district courts, in deciding whether the complaint states a legal claim for relief, are required to accept plaintiffs' well-pled allegations as true. Increasingly, defendants have sought an end-run around that requirement, routinely requesting that the court accept, as true, documents outside of the complaint which, they claim, disprove plaintiffs' allegations. They invoke the doctrines of judicial notice and incorporation by reference to place this extrinsic evidence before the court for the purpose of disputing plaintiffs' allegations and providing the court with their own version of the facts.

This practice may change, thanks to the detailed 59-page ruling by the Ninth Circuit in *Orexigen*, which condemned the "unscrupulous use of extrinsic documents to resolve competing theories against the complaint." Such tactics "can undermine lawsuits and result in premature dismissals of plausible claims that may turn out to be valid after discovery." The Ninth Circuit observed that this risk is especially significant in securities fraud cases, where there is a heightened pleading standard and the defendants possess materials to which the plaintiffs do not yet have access.

The court reversed the district court's order dismissing the complaint, holding that the lower court had abused its discretion by judicially noticing two of the documents and incorporating by reference seven documents, and by considering statements in those documents as being true. The main takeaway for investors is the Ninth Circuit's recognition of the improper use of judicial notice and incorporation by reference, which the panel admonished.

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Courts may take judicial notice of *undisputed* matters of public record to the extent permitted by Rule 201 of the Federal Rules of Evidence. Judicial Notice is appropriate for the limited purpose of noting that the statements were actually made at the time and in the manner described in the complaint. But judicial notice is not appropriate for the purpose of determining the truth of any of those statements.

Here, the Ninth Circuit found that the district court abused its discretion by judicially noticing two exhibits attached to Orexigen's motion to dismiss and, more importantly, by accepting as true various assertions in those documents. Those documents were an investor conference call transcript submitted with one of Orexigen's Security and Exchange Commission (SEC) filings, and a report issued by the European Medicines Agency (EMA). Generally, documents filed with the SEC and documents issued by a governmental agency may be judicially noticed because they are from sources whose accuracy cannot reasonably be questioned. But, the Ninth Circuit importantly noted that accuracy is only one part of the inquiry under Rule 201(b) – a court must also consider and identify which facts it is accepting as true from such a transcript. Just because the document itself is susceptible to judicial notice does not mean that every assertion of fact within that document must be accepted, as is true on a motion to dismiss. The Ninth Circuit held that reasonable people could debate what the conference call and EMA report disclosed or established. Therefore, the Ninth Circuit found that to the extent the district court judicially noticed the identified facts on the basis of the investor call transcript and report, it had abused its discretion.

The doctrine of incorporation by reference permits a district court to consider, as part of the complaint itself, documents whose contents are alleged in the complaint and whose authenticity no party questions. The doctrine prevents plaintiffs from, for example, selectively quoting parts of documents in their complaint, or deliberately omitting references to documents upon which their claims are based. Defendants are allowed to correct such

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allegations by demonstrating what the operative documents actually say.

However, there are limits to the application of the incorporation by reference doctrine. First, the complaint must refer "extensively" to the document in question; a passing reference will not justify bringing the whole document into the record on the motion. Second, as an alternative, defendants may establish that a particular document, whether referenced in the complaint or not, may be incorporated if it actually forms the basis of the plaintiff's claim.

But, what this doctrine clearly cannot permit, according to the Ninth Circuit, is defendants introducing a document that is not mentioned in the complaint or that does not necessarily form the basis of the complaint to merely create a defense to the well-pled allegations in the complaint. If this is permitted, then defendants would, in effect, be disputing the factual allegations in the complaint and thereby circumventing the rule requiring alleged facts in complaints to be accepted as true at the pleading stage. And, if the district court does not convert the motion to dismiss into a motion for summary judgment, which would provide both sides an opportunity to introduce evidence regarding the factual allegations, then plaintiffs would be left without an opportunity to respond to the new version of the facts, making dismissal of otherwise cognizable claims very likely.

Perhaps the most important limitation on the incorporation by reference doctrine is that while this doctrine, unlike judicial notice, permits courts to assume an incorporated document's contents are true for purposes of a motion to dismiss under Rule 12(b)(6), it is improper to assume the truth of an incorporated document if such assumptions only serve to dispute facts stated in a well-pled complaint. This is consistent with the prohibition against resolving factual disputes at the pleading stage.

As the Ninth Circuit correctly noted, judicial notice and incorporation by reference do have roles to play at the pleading stage. It is the overuse and improper application of the doctrines that can lead to unintended and harmful results. During oral argument in the *Orexigen* appeal, Judge Berzon asked defense counsel, "[T]here are all of these judicially noticed and incorporated documents, do any of them matter…we are turning these things into summary judgment proceedings – why don't we just stick to the complaint?" These are apt and fundamental questions. Hopefully, this decision will help tip the scale back in the direction of identifying the documents outside the complaint that actually matter and ensuring that they are applied correctly so that potentially meritorious claims have a fighting chance of surviving motions to dismiss.

Co-Managing Partner, Jeremy A. Lieberman, Jennifer Pafiti, Partner and Head of Investor Relations

POMERANTZ'S ANNUAL CONFERENCE

Pomerantz will host its annual Corporate Governance and Securities Litigation Roundtable Event at the Four Seasons in New York City on October 23. Institutional investors from around the globe will partake in discussions regarding important industry updates and other current issues affecting the value of the funds they represent.

This year, Pomerantz is proud to announce that the theme of its Roundtable Event will focus on women and minorities who have risen through the ranks and have pioneered the path for change and unity in our current community. We are particularly excited to hear our guests' thoughts and contributions on this subject and how we can advance opportunities for all.

The response has been overwhelming, but a few places remain, and there is still time to REGISTER YOUR ATTENDANCE BY EMAILING 2018Roundtable@pomlaw.com

POMTRACK© CLASS ACTIONS UPDATE

Pomerantz, through its proprietary PomTrack© system, monitors client portfolios to identify potential claims for securities fraud, and to identify and evaluate clients' potential participation in class action settlements.

NEW CASES:

Recently filed securities class action cases filed by various law firms are listed below. If you believe your fund is affected by any of these cases, contact Pomerantz for a consultation

CASE NAME	TICKER	CLASS PERIOD	LEAD PLAINTIFF DEADLINE
Impinj, Inc.	PI	May 4, 2017 to August 2, 2018	October 9, 2018
Nielsen Holdings plc	NLSN	February 8, 2018 to July 25, 2018	October 9, 2018
Oracle Corporation	ORCL	May 10, 2017 to March 19, 2018	October 9, 2018
Sinclair Broadcast Group, Inc.	SBGI	February 22, 2017 to July 19, 2018	October 9, 2018
Tesla, Inc.	TSLA	August 7, 2017 to August 17, 2018	October 9, 2018
Zion Oil & Gas, Inc.	ZN	March 12, 2018 to July 10, 2018	October 9, 2018
LogMeIn, Inc.	LOGM	March 1, 2017 to July 26, 2018	October 19, 2018
Nevro Corp.	NVRO	January 8, 2018 to July 12, 2018	October 22, 2018
Pinduoduo Inc.	PDD	July 26, 2018 to July 31, 2018	October 22, 2018
CV Sciences, Inc.	CVSI	June 19, 2017 to August 20, 2018	October 23, 2018
FAT Brands, Inc.	FAT	October 23, 2017 to October 24, 2018	October 23, 2018
Ampio Pharmaceuticals, Inc.	AMPE	December 14, 2017 to August 7, 2018	October 24, 2018
Ampio Pharmaceuticals, Inc.	AMPE	December 14, 2017 to August 7, 2018	October 24, 2018
CBS Corporation	CBS	February 14, 2014 to July 27, 2018	October 26, 2018
Lannett Company, Inc.	LCI	February 7, 2018 to August 17, 2018	October 26, 2018
Papa John's International, Inc.	PZZA	February 25, 2014 to July 19, 2018	October 29, 2018
Cronos Group, Inc.	CRON	August 21, 2018 to August 30, 2018	November 5, 2018
Philip Morris International Inc.	PM	February 8, 2018 to April 18, 2018	November 5, 2018
Qurate Retail, Inc.	QRTEA	August 5, 2015 to September 7, 2016	November 5, 2018
Skechers USA, Inc.	SKX	October 20, 2017 to July 19, 2018	November 5, 2018
Fanhua, Inc.	FANH	April 20, 2018 to August 27, 2018	November 6, 2018
Pretium Resources, Inc.	PVG	July 21, 2016 to September 6, 2018	November 6, 2018
OPKO Health, Inc.	OPK	September 26, 2013 to September 7, 2018	November 13, 2018
OPKO Health, Inc.	OPK	September 26, 2013 to September 7, 2018	November 13, 2018
Tribune Media Company	TRCO	November 29, 2017 to July 16, 2018	November 13, 2018
USA Technologies, Inc.	USAT	November 9, 201 to September 11, 2018	November 13, 2018
Microchip Technology Inc.	MCHP	March 2, 2018 to August 9, 2018	November 16, 2018
Cocrystal Pharma (f/k/a/ BioZone Pharma.)	BNZE, COCP	September 23, 2013 to September 7, 2018	November 19, 2018
AbbVie, Inc.	ABBV	October 25, 2013 to September 18, 2018	November 20, 2018

SETTLEMENTS:

The following class action settlements were recently announced. If you purchased securities during the listed class period, you may be eligible to participate in the recovery.

CASE NAME	AMOUNT	CLASS PERIOD	CLAIM FILING DEADLINE
Ability Inc.	$3,000,000	November 25, 2015 to May 1, 2016	October 16, 2018
Opus Bank	$17,000,000	January 26, 2015 to January 30, 2017	October 22, 2018
Orthofix International N.V. (SEC)	$8,370,023	March 2, 2010 to August 7, 2013	October 22, 2018
NuVasive, Inc.	$7,900,000	October 22, 2008 to July 30, 2013	October 23, 2018
21Vianet Group, Inc.	$9,000,000	August 20, 201 to August 16, 2016	October 31, 2018
Avinger, Inc.	$5,000,000	January 29, 2015 to April 10, 2017	October 31, 2018
Liquidity Services, Inc.	$17,000,000	February 1, 2012 to May 7, 2014	November 3, 2018
Juno Therapeutics, Inc.	$24,000,000	June 4, 2016 to November 22, 2016	November 6, 2018
Conn's, Inc.	$22,500,000	April 3, 2013 to December 9, 2014	November 10, 2018
Amaya Inc.	$5,750,000	June 8, 2015 to March 22, 2016	November 13, 2018
CytRx Corporation	$5,750,000	September 12, 2014 to July 11, 2016	November 16, 2018
Rentrak Corp.	$4,750,000	holders on January 29, 2016	November 22, 2018
LRR Energy, L.P.	$8,000,000	holders on October 5, 2015	November 26, 2018
Saba Software, Inc.	$19,500,000	holders on March 30, 2015	November 26, 2018
Vista Outdoor Inc.	$6,250,000	August 11, 2016 to November 9, 2017	November 26, 2018
Wilmington Trust Corporation	$210,000,000	January 18, 2008 to November 1, 2010	November 26, 2018
Symbol Technologies, Inc.	$15,000,000	March 12, 2004 to August 1, 2005	November 29, 2018
Keurig Green Mountain, Inc.	$36,500,000	February 2, 2011 to November 9, 2011	December 1, 2018
Inventure Foods, Inc.	$4,200,000	September 12, 2014 to April 23, 2015	December 6, 2018
Yingli Green Energy Holding Company Ltd.	$1,200,000	December 2, 2010 to May 15, 2015	December 8, 2018
Quality Systems, Inc.	$19,000,000	May 26, 2011 to July 25, 2012	December 12, 2018
UTi Worldwide Inc.	$13,000,000	March 28, 2013 to February 25, 2014	December 18, 2018
U.S. Dollar LIBOR-Based (Antitrust) (OTC Deutsche)	$240,000,000	August 1, 2007 to May 31, 2012	December 20, 2018
Walter Investment Management Corp.	$2,950,000	August 9, 2016 to August 1, 2017	December 20, 2018
ISDAfix (Antitrust) (4 Banks and ICAP)	$96,000,000	January 1, 2006 to January 31, 2014	December 23, 2018
Baxano Surgical, Inc. (f/k/a TranS1, Inc.)	$3,250,000	February 23, 2009 to October 17, 2011	January 2, 2019
Medtronic, Inc.	$43,000,000	September 8, 2010 to June 28, 2011	January 2, 2019
Centrais Eletricas Brasileiras S.A. - Eletrobras	$14,750,000	August 17, 2010 to June 24, 2015	January 4, 2019
JPMorgan Chase Bank, N.A. ADR FX	$9,500,000	November 21, 2010 to July 18, 2018	January 12, 2019

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We welcome input from our readers. If you have comments or suggestions about *The Pomerantz Monitor*, or would like more information about our firm, please visit our website at: wwww.pomerantzlaw.com or contact:

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