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[Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—N.D. Cal.: Court certified class in securities fraud action, (May 10, 2022)](#)

Securities Regulation Daily Wrap Up

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By [Joanne Cursinella, J.D.](#)

The plaintiff's damages model was sufficient to meet the Rule 23(b)(3) predominance requirement under *Comcast*.

A California district court granted class certification in a securities fraud action alleging violations of Exchange Act Section 10(b) and Section 20(a) in connection with a technology company and its management misrepresenting the company's business. The plaintiff successfully alleged that the defendant company materially misrepresented its cloud business and its sales tactics. The defendant's only challenge to class certification had been that the plaintiff did not meet one of the requirements of Rule 23(b)(3)—the predominance requirement—based on the provided method of calculating damages (*[City Of Sunrise Firefighters' Pension Fund v. Oracle Corp](#)*., May 9, 2022, Freeman, B.).

Misrepresentation alleged. The plaintiff sought class certification claiming that the defendant company and its management misrepresented the company's cloud business in violation of the federal securities laws, publicly touting its cloud products and cloud-related revenue growth even though its products were deficient, and sales of its cloud products were driven by aggressive sales tactics like product bundles and threats to audit existing clients that brought only short-term revenue.

A motion to dismiss the plaintiff's second amended complaint had already been [granted in part](#): as a result the plaintiff was allowed to proceed on those challenged statements that were based on a "narrow omission theory of securities fraud" involving the defendant's affirmative representations about cloud growth deceleration and the drivers of cloud growth.

Challenge to class certification. The defendant argued that the plaintiff failed to meet the predominance requirement under *Comcast*, which requires a plaintiff to show a class-wide damages model consistent with its liability theory. The defendant argued that the plaintiff and its expert failed to provide any damages model. The plaintiff claimed that the defendant reads *Comcast* too broadly and seeks details regarding the inputs or loss causation aspect of the plaintiff's damages model that courts do not require at the class certification stage.

Rule 23(a). As a threshold matter, a class must first meet the four requirements of Rule 23(a): (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. The court analyzed each requirement in turn and found that the plaintiff did, in fact, meet all of them.

Rule 23(b3). The plaintiff sought class certification under Rule 23(b)(3), which requires that (1) the class is ascertainable; (2) questions of law or fact common to class members predominate over any questions affecting only individual members; and (3) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Ascertainability. The court found that that the putative class is ascertainable here based on the plaintiff's class definition of "all persons who purchased or acquired [defendant's] common stock from May 10, 2017 until June 20, 2018, inclusive[.]"

Superior method of adjudication. The court also found that the Rule 23(b)(3) factors support that a class action was a superior method of adjudicating the plaintiff's claims here. The plaintiff argued that the class consists of a large number of geographically dispersed individuals with small damages, making individual litigation prohibitively expensive. The plaintiff also indicated that it is unaware of any other litigation asserting these claims on behalf of individual class members, and argued that it is undisputed that this venue is desirable and

convenient, since it is "home" to the defendant. And finally, the plaintiff successfully argued that managing this case as a class action would present no unusual difficulties.

Damages. The parties disagreed about the adequacy of the complaint under the second criterion of Rule 23 (b)3)--on whether the plaintiff disclosed a damages model sufficient to meet the Rule 23(b)(3) predominance requirement. The plaintiff pointed to the "out of pocket" damages model proposed by its expert in support of Rule 23(b)(3) predominance. Among other things, the expert said that it is possible to formulate a common damages model based on the artificial inflation in the defendant's stock price resulting from the alleged fraud. The expert also said that the level of artificial inflation based on the alleged fraud is the same for all investors, since all investors face the same market price at any given point in time.

The defendant argued that the expert's damages-related disclosures are inadequate under *Comcast*, claiming that *Comcast* held that a plaintiff must provide a damages model common to the class that measures only those damages attributable to a plaintiff's liability theory. The plaintiff argued that courts have consistently found the "out of pocket" damages methodology put forth here to satisfy *Comcast's* "minimal burden" in securities fraud cases. The plaintiff argued that the defendant's objections pertain to loss causation, which courts decline to analyze at the class certification stage. The defendant was seeking disclosure of the inputs to the "out of pocket" damages model, the court noted, but the plaintiff argued this is for a later stage of the case and makes no difference to the class-wide nature of the damages model.

Since *Comcast*, the court pointed out, several courts in the district granted class certification in cases involving expert disclosures similar to the plaintiff's expert here, including disclosures that provide less detail.

According to the court, the plaintiff's expert showed that a class-wide "out of pocket" damages model based on omission-based price inflation is feasible in this case to show damages attributable to the "narrow omission theory" of liability on which the court allowed the plaintiff to proceed. Accordingly, the court found that the plaintiff adequately disclosed a class-wide damages model sufficient to meet the Rule 23(b)(3) predominance requirement under *Comcast*.

Since all requirements were met, the court certified the class.

The case is No. 18-cv-04844-BLF.

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Companies: Union Asset Management Holding AG; Oracle Corp.

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