

## Central District of California: Claim That an Electric Vehicle Company Made a Material Misrepresentation About Customer Demand Survives Dismissal (Securities Law Alert)

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On October 20, 2022, the Central District of California granted in part and denied in part dismissal of a putative securities fraud class action against an electric vehicle manufacturer, certain of its executives, and certain executives of the SPAC with which it merged, alleging that defendants made materially false and misleading statements regarding the number of vehicle reservations the manufacturer received for one vehicle model (the “FF 91”) and the FF 91’s expected launch date. *Zhou v. Faraday Future Intelligent Electric*, 2022 WL 13800633 (C.D. Cal. 2022) (Snyder, J.). The court held that plaintiffs adequately alleged that the reservation statement was a material misrepresentation because it gave investors a false impression that the company had received significantly more paid reservations than it had.

### Background and Procedural History

The company and the defendant SPAC announced their merger plans in a January 2021 press release stating that the company “had received over 14,000 reservations” for the FF 91. Subsequently, a short seller claimed in a report that the number of reservations was “fabricated because 78% of the reservations were made by a single, undisclosed affiliate” and that former executives did not believe the model was ready for production. In response, the company formed a special committee of independent directors to investigate the short seller’s claims. The special committee subsequently publicly released its findings that the statements that the company had received more than 14,000 FF 91 reservations were “potentially misleading because only several hundred of those reservations were paid, while the others (totaling 14,000) were unpaid indications of interest.” The stock price subsequently dropped. Plaintiffs principally claimed that the defendants’ statements about the reservations violated Section 10(b). Defendants moved to dismiss for failure to state a claim.

### Plaintiffs Adequately Alleged That the Reservations Statement Was a Material Misrepresentation

In considering whether the statement about the number of reservations was a material misrepresentation, the court explained that plaintiffs must show that defendants made a statement that was “misleading as to a material fact” such that there is a “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information

made available.” *Matrixx Initiatives v. Siracusano*, 563 U.S. 27 (2011). While defendants argued that plaintiffs failed to plead facts controverting the literal veracity of the reservations statement, the court reasoned that plaintiffs need only “demonstrate that a particular statement, when taken in context, conveyed a false or misleading impression.” The court found that plaintiffs specified each allegedly misleading statement and provided the reasons each statement was misleading with particularity. Specifically, plaintiffs alleged that: the reservations statement was misleading because the level of consumer interest and potential revenue from 14,000 paid reservations differed “dramatically” from having only several hundred paid reservations; the special committee concluded that the reservations statement was “potentially misleading” because only a few hundred reservations were paid; the short seller report claimed that 78% of the paid reservations came from an undisclosed affiliate; and the stock drop occurred after investors learned that the company had not received 14,000 paid reservations. The court determined that these allegations were “sufficient to demonstrate that the reservations statement was misleading because it gave investors a false impression that [the company] had received significantly more than several hundred paid reservations from independent potential customers.”

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