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13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 CHARLES LARRY CREWS, JR.,
18 Individually and on Behalf of All Others
19 Similarly Situated,

20 Plaintiffs,

21 v.

22 RIVIAN AUTOMOTIVE, INC., et al.,

23 Defendants.

Case No. 2:22-cv-01524-JLS-E

CLASS ACTION

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN FURTHER
SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**

Date: May 17, 2024
Time: 10:30 a.m.
Ctrm.: 8A, 8th Floor
Judge: Hon. Josephine L. Staton

TABLE OF CONTENTS

1			
2			Page
3	TABLE OF AUTHORITIES		ii
4	INDEX OF ABBREVIATIONS.....		v
5	NOTE ON CITATION FORMATS		viii
6	I. INTRODUCTION		1
7	II. ARGUMENT.....		3
8	A. Class-Wide Issues Predominate		3
9	1. Defendants’ Predominance Challenges Are Irrelevant to		
10	Plaintiffs’ Securities Act Claims.....		3
11	2. The <i>Affiliated Ute</i> Presumption of Reliance Applies to		
12	Plaintiffs’ Exchange Act Claims.....		4
13	3. The Fraud-on-the-Market Presumption of Reliance Applies to		
14	Plaintiffs’ Exchange Act Claims.....		5
15	a. Defendants’ Market Efficiency Challenges Fail		5
16	b. Defendants Have Not Proved the Absence of Price Impact.....		7
17	i. Defendants Ignore Evidence of Front-End Impact		7
18	ii. Defendants Have Failed to Disprove Price Impact		
19	on March 1, 2022		9
20	(a) Defendants Have Not Proved That Rivian’s		
21	March 1 Disclosure Is Unrelated to		
22	Plaintiffs’ Claims		9
23	(b) Defendants’ Claim That the Market		
24	“Knew the Full Truth for Months” Is Meritless ...		12
25	iii. Defendants Have Failed to Disprove Price Impact		
26	on March 10, 2022		14
27	B. Defendants’ Adequacy Challenges Fall Flat.....		15
28	1. AP7 Is an Adequate Class Representative		15
	2. There Are No Conflicts of Interest Between AP7 and KTMC.....		17
	3. Defendants’ Attacks on Plaintiffs’ Investigation Have Been		
	Debunked		18
	4. Muhl Is an Adequate Class Representative		19

TABLE OF AUTHORITIES

Page(s)

Cases

Affiliated Ute Citizens of Utah v. United States,
406 U.S. 128 (1972)..... 1, 4, 5

Amgen Inc. v. Conn. Ret. Plans & Tr. Funds,
568 U.S. 455 (2013)..... 5, 12

In re Apple Sec. Litig.,
2022 WL 3547865 (N.D. Cal. Feb. 4, 2022) 9, 15

Berg v. Guthart,
2014 WL 3749780 (N.D. Cal. July 30, 2014) 17

Binder v. Gillespie,
184 F.3d 1059 (9th Cir. 1999) 4

Bodner v. Oreck Direct, LLC,
2007 WL 1223777 (N.D. Cal. Apr. 25, 2007)..... 17

Bos. Ret. Sys. v. Alexion,
2023 WL 2932485 (D. Conn. Apr. 13, 2023)..... 7

Bos. Ret. Sys. v. Uber Techs., Inc.,
2022 WL 2954937 (N.D. Cal. July 25, 2022) 3

Cabrera v. Google LLC,
2023 WL 5279463 (N.D. Cal. Aug. 15, 2023) 18

In re CenturyLink Sales Pracs. & Sec. Litig.,
337 F.R.D. 193 (D. Minn. 2020) 7

In re Chi. Bridge & Iron Co. N.V. Sec. Litig.,
2019 WL 5287980 (S.D.N.Y. Oct. 18, 2019)..... 7, 8

City of Mia. Gen. Emps. ’ & Sanitation Emps. ’ Ret. Tr. v. RH, Inc.,
2018 WL 4931543 (N.D. Cal. Oct. 11, 2018) 17

City of Cape Coral Mun. Firefighters’ Ret. Plan v. Emergent Biosolutions, Inc., HQ,
322 F. Supp. 3d 676 (D. Md. 2018)..... 7

City of Sterling Heights Gen. Emps. ’ Ret. Sys. v. Prudential Fin., Inc.,
2015 WL 5097883 (D.N.J. Aug. 31, 2015) 8

In re Convergent Tech. Sec. Litig.,
948 F.2d 507 (9th Cir. 1991) 6

Cummings v. Connell,
316 F.3d 886 (9th Cir. 2003) 17

1 *Erica P. John Fund, Inc. v. Halliburton Co.*,
 2 563 U.S. 804 (2011)..... 7
 3 *In re Facebook Biometric Info. Priv. Litig.*,
 4 326 F.R.D. 535 (N.D. Cal. 2018)..... 17
 5 *Ferris v. Wynn Resorts Ltd.*,
 6 2023 WL 2337364 (D. Nev. Mar. 1, 2023) 9
 7 *Goldman Sachs Grp., Inc. v. Ark. Teach. Ret. Sys.*,
 8 594 U.S. 113 (2021)..... 7, 10, 11
 9 *Gutierrez v. Kovacevich “5” Farms*,
 10 2004 WL 3745224 (E.D. Cal. Dec. 2, 2004) 17
 11 *Hatamian v. Adv. Micro Devices, Inc.*,
 12 2016 WL 1042502 (N.D. Cal. Mar. 16, 2016) 7
 13 *Homyk v. ChemoCentryx, Inc.*,
 14 2024 WL 1141699 (N.D. Cal. Mar. 6, 2024) 7, 10, 14
 15 *In re Infineon Techs. AG Sec. Litig.*,
 16 266 F.R.D. 386 (N.D. Cal. 2009)..... 2, 6
 17 *In re Kosmos Energy Ltd. Sec. Litig.*,
 18 299 F.R.D. 133 (N.D. Tex. 2014)..... 20
 19 *Levie v. Sears Roebuck & Co.*,
 20 496 F. Supp. 2d 944 (N.D. Ill. 2007)..... 18
 21 *Loritz v. Exide Techs.*,
 22 2015 WL 6790247 (C.D. Cal. July 21, 2015)..... 16
 23 *In re Lyft Inc. Sec. Litig.*,
 24 2021 WL 3711470 (N.D. Cal. Aug. 20, 2021) 3
 25 *In re Mattel, Inc. Sec. Litig.*,
 26 2021 WL 4704578 (C.D. Cal. Oct. 6, 2021) 9
 27 *Milbeck v. TrueCar, Inc.*,
 28 2019 WL 2353010 (C.D. Cal. May 24, 2019)..... 15, 18
In re Millennial Media, Inc. Sec. Litig.,
 2015 WL 3443918 (S.D.N.Y. May 29, 2015) 19
Mineworkers’ Pension Scheme v. First Solar, Inc.,
 881 F.3d 750 (9th Cir. 2018) 9, 11
Monroe Cnty. Emps.’ Ret. Sys. v. S. Co.,
 332 F.R.D. 370 (N.D. Ga. 2019) 14, 15
In re Montage Tech. Grp. Ltd. Sec. Litig.,
 2016 WL 1598666 (N.D. Cal. Apr. 21, 2016)..... 4

1 *Physicians Healthsource, Inc. v. Masimo,*
 2 2019 WL 8138043 (C.D. Cal. Nov. 21, 2019) 19

3 *In re Proxima Corp. Sec. Litig.,*
 4 1994 WL 374306 (S.D. Cal. May 3, 1994) 6

5 *In re Qualcomm Inc. Sec. Litig.,*
 6 2023 WL 2583306 (S.D. Cal. Mar. 20, 2023)15-16

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 8 2022 WL 9765563 (N.D. Cal. Oct. 13, 2022) 4

9 *In re Silver Wheaton Corp. Sec. Litig.,*
 10 2017 WL 2039171 (C.D. Cal. May 11, 2017)..... 7

11 *Simon v. Ashworth, Inc.,*
 12 2007 WL 4811932 (C.D. Cal. Sept. 28, 2007) 20

13 *Sjunde AP-Fonden v. Goldman,*
 14 2024 WL 1497110 (S.D.N.Y. Apr. 5, 2024) 16, 18

15 *Stephens v. Nordstrom, Inc.,*
 16 2018 WL 7143623 (C.D. Cal. Dec. 26, 2018)..... 17

17 *In re VeriFone Sec. Litig.,*
 18 11 F.3d 865 (9th Cir. 1993) 6

19 *Ward v. Apple,*
 20 784 F. App’x 539 (9th Cir. 2019) 7

21 *Woods v. Google LLC,*
 22 2018 WL 4030570 (N.D. Cal. Aug. 23, 2018) 18

23 *Zacklit v. Nationstar Mortg. LLC,*
 24 2017 WL 3174901 (C.D. Cal. July 24, 2017)..... 17

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INDEX OF ABBREVIATIONS

ABBREVIATION	DEFINITION
¶ __	Citations to paragraphs in the AC (defined herein)
AC	Amended Consolidated Complaint for Violations of the Federal Securities Laws (Doc. 150)
AC-1	Lead Plaintiff's Certification (Doc. 150-1)
Action	Refers to the above-entitled securities class action
AP7	Lead Plaintiff Sjunde AP-Fonden
BOM	Bill of materials—all components, parts, and materials needed to build each R1 (defined herein) vehicle and includes the battery and motors
Brief	Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Class Certification (Doc. 218-1)
Class	All other persons and entities who purchased or otherwise acquired Rivian Class A common stock between November 10, 2021 and March 10, 2022, inclusive, and were damaged thereby. The Class includes those who purchased Rivian Common Stock pursuant and/or traceable to the Offering Documents, and excludes Defendants and their families, the officers, directors and affiliates of Defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest
Complaint	Consolidated Complaint for Violations of the Federal Securities Laws (Doc. 125)
Defendants	Rivian Defendants and Underwriter Defendants (both defined herein)
Defs.' Appendix A	Rivian Defendants' Appendix A submitted in connection with the Opp. (Doc. 251-1)
Director Defendants	Karen Boone, Jay Flatley, Peter Krawiec, Rose Marcario, Sanford Schwartz, and Pamela Thomas-Graham
EV	Electric Vehicle
Ex. __	Exhibits attached to the Nirmul Decl. and Reply Decl. (both defined herein)

ABBREVIATION	DEFINITION
Exchange Act Claims	Plaintiffs' claims brought under Section 10(b) and Section 20(a) of the Securities Exchange Act of 1934
Exchange Act Defendants	Rivian and the Executive Defendants (both defined herein)
Executive Defendants	Robert J. Scaringe, Claire McDonough, and Jeffrey R. Baker
FE	Former Rivian employees
IPO	Initial Public Offering
KTMC or Class Counsel	Kessler Topaz Meltzer & Check, LLP
LCNRV	Lower of Cost or Net Realizable Value
MTD Opinion	Order Denying: (1) Rivian Defendants' Motion to Dismiss (Doc. 152); and (2) Underwriter Defendants' Motion to Dismiss (Doc. 153)
Nirmul Decl.	Declaration of Sharan Nirmul in Support of Plaintiffs' Motion for Class Certification (Doc. 218-2)
Nye Rpt.	Expert Report of Zachary Nye, Ph.D., dated December 1, 2023, attached as Ex. 1 to the Nirmul Decl. (Doc. 218-3)
Nye Reply	Expert Report of Zachary Nye, Ph.D., dated April 19, 2024, attached as Ex. 10 to the Reply Decl.
Offering Documents	Rivian's Registration Statement and Prospectus (both defined herein)
Opp.	Rivian Defendants' Opposition to Plaintiffs' Motion for Class Certification (Doc. 251)
Plaintiffs or Class Representatives	Lead Plaintiff Sjunde AP-Fonden and Additional Plaintiff James Stephen Muhl
Prospectus	Prospectus filed on Form 424B4 dated November 9, 2021 and filed with the SEC (defined herein) on November 12, 2021
PSLRA	Private Securities Litigation Reform Act of 1995, 15 U.S. Code § 78u-4
Quiet Period	Post-IPO period through December 5, 2021
R1	R1 is comprised of the R1S and R1T (both defined herein)

ABBREVIATION	DEFINITION
R1S	Rivian's electric three-row seven-passenger sports utility vehicle
R1T	Rivian's electric two-row five-passenger pickup truck
R16 Mot.	Plaintiffs' Brief in Support of Motion to Amend the Scheduling Order Pursuant to Rule 16 (Doc. 241-1)
Registration Statement	Rivian's Registration Statement filed on Form S-1 with the SEC on October 1, 2021, and declared effective on November 9, 2021, together with its amendments filed with the SEC on October 22, 2021, November 1, 2021, and November 5, 2021
Reply Decl.	Reply Declaration of Sharan Nirmul in Further Support of Plaintiffs' Motion for Class Certification
Rivian	Rivian Automotive, Inc.
Rivian Defendants	Rivian, the Director Defendants and the Executive Defendants (defined herein)
Rivian's IPO or the IPO	Rivian's November 10, 2021 initial public offering (IPO)
Rule(s)	Federal Rule(s) of Civil Procedure
SEC	U.S. Securities and Exchange Commission
Securities Act Claims	Plaintiffs' claims brought under Section 11, Section 12(a)(2), and Section 15 of the Securities Act of 1933
Smith Rpt.	Corrected Expert Report of Lawrence Smith, dated April 5, 2024 (Doc. 293-1)
Tabak Rpt.	Expert Report of David I. Tabak, Ph.D., dated February 27, 2024 (Doc. 251-16)
Underwriter Defendants	Morgan Stanley & Co. LLC, Goldman Sachs & Co., LLC, J.P. Morgan Securities LLC, Barclays Capital Inc., Deutsche Bank Securities Inc., Allen & Company LLC, BofA Securities, Inc., Mizuho Securities USA LLC, Wells Fargo Securities, LLC, Nomura Securities International, Inc., Piper Sandler & Co., RBC Capital Markets, LLC, Robert W. Baird & Co. Inc., Wedbush Securities Inc., Academy Securities, Inc., Blaylock Van, LLC, Cabrera Capital Markets LLC, C.L. King & Associates, Inc., Loop Capital Markets LLC, Samuel A. Ramirez & Co., Inc., Siebert Williams Shank & Co., LLC, and Tigress Financial Partners LLC

NOTE ON CITATION FORMATS

Unless otherwise stated, all emphases and ellipses in citations used herein have been added and all quotations, internal quotation marks, citations, and all original emphases and alterations have been omitted.

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I. INTRODUCTION

Defendants’ challenges to class certification are a hodge-podge of misdirection, mischaracterizations, and, at worst, blatant misstatements. Defendants concede the majority of Rule 23’s requirements, including numerosity, commonality, typicality, and superiority. Their opposition consists of: (i) a flawed attack on class-wide reliance and thus predominance under Rule 23(b); and (ii) an even more specious challenge to the adequacy of the proposed Class Representatives and Class Counsel. These arguments should be rejected outright, and Plaintiffs’ motion should be granted in its entirety.

Defendants’ attempt to apply their reliance challenges to Plaintiffs’ Securities Act Claims defies black-letter law (as these claims do not require proof of reliance) and improperly seeks to resolve merits issues on an incomplete evidentiary record. Their arguments are irrelevant to class certification and must be rejected. Defendants’ arguments regarding Plaintiffs’ Exchange Act Claims fare no better. Because Defendants have conceded that Plaintiffs’ claims principally concern omissions, investors are entitled to a presumption of reliance under *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972). Defendants’ market efficiency and price impact arguments are irrelevant to—and thus do not rebut—the *Affiliated Ute* presumption.

Yet even if the Court concludes that Plaintiffs’ claims principally concern misstatements, Defendants’ fraud-on-the-market arguments fail. Plaintiffs have offered unrebutted expert evidence that Rivian’s stock traded in an efficient market during the entire Class Period. The Rivian Defendants inexplicably claim in their opposition that their hired economist, David Tabak, opined that the market for Rivian’s stock was inefficient during the so-called “Quiet Period.” But Tabak’s report explicitly states he takes no position on market efficiency during the Quiet Period. During his deposition, Tabak again disavowed any such opinion and testified that he learned about Defendants’ misstatement of his opinions shortly after their opposition was filed. Yet Defendants still have not withdrawn this knowingly-spurious argument. Bereft of actual expert support, Defendants are left with a naked claim that, as a legal matter, IPO and “Quiet Period” markets are inefficient. But

1 this defies their own expert’s views and Ninth Circuit law. *See In re Infineon Techs. AG*
2 *Sec. Litig.*, 266 F.R.D. 386, 396 (N.D. Cal. 2009) (“The Ninth Circuit applies the fraud-on-
3 the-market presumption to stock purchased during an IPO.”).

4 Defendants’ price impact arguments—which purport to prove that their alleged
5 misleading statements did not impact Rivian’s stock price—are similarly smoke-and-
6 mirrors. Defendants ignore that Rivian’s stock price experienced large increases
7 immediately after the IPO, and thus have not proved that these increases were entirely
8 unrelated to the Offering Documents’ misleading statements. Equally meritless is their
9 contention that: (i) the information disclosed in the corrective disclosures did not “match”
10 the information Defendants allegedly concealed; and (ii) the full truth had previously been
11 disclosed to the market. These arguments wither under even the slightest scrutiny. For one,
12 the March 1, 2022 corrective disclosure concerned the *precise* information allegedly
13 concealed in this case—the need to raise R1 prices due to material costs—and caused a
14 statistically significant stock price decline. Defendants’ argument that the truth was
15 revealed before March 1 is based entirely on a technical accounting disclosure, which
16 Rivian’s own experts concede *did not* convey that R1 BOM costs exceeded retail prices.
17 Further, Defendants’ experts: (i) ignore the plethora of news sources and analysts reports
18 demonstrating that the market reacted to new, unexpected information about R1 pricing and
19 costs following the March 1 disclosure; and (ii) misconstrue other analyst reports in
20 claiming that the market fully anticipated Rivian’s price increases.

21 Finally, having no substantive challenge to certification, Defendants resort to
22 shamelessly attacking the proposed Class Representatives and Class Counsel. Plaintiffs
23 have demonstrated that they are eager and responsible fiduciaries who understand their
24 obligations to the Class. Moreover, Plaintiffs’ investigation has been corroborated by the
25 FE depositions and Defendants’ newfound concession that Rivian was losing money on
26 every R1 because of BOM costs. The dishonest nature of Defendants’ attacks is exposed by
27 the very deposition transcripts upon which they purport to rely, which in no way resemble
28 Defendants’ characterizations.

1 **2. The *Affiliated Ute* Presumption of Reliance Applies to Plaintiffs’**
 2 **Exchange Act Claims**

3 Defendants and their experts contend that Plaintiffs’ Exchange Act Claims are
 4 primarily based on alleged omissions. *See* Opp. at 9-10 (“Plaintiffs claim the alleged
 5 misrepresentations hid information that (once revealed) negatively impacted Rivian’s stock
 6 price.”); Tabak Rpt., ¶19 (because “Plaintiffs allege that Rivian failed to disclose” material
 7 information, “the only time that one would expect to observe a price impact is when this
 8 information was allegedly disclosed to the market”); Smith Rpt., ¶23 (“Plaintiffs allege that
 9 Rivian failed to include sufficient information in its public disclosures[.]”); Ex. 16 at 5:8
 10 (“MR. GAVRIL: It’s primarily an omissions case.”).²

11 When a securities fraud case is “primarily about what [Defendants] did not say,” the
 12 *Affiliated Ute* presumption of reliance applies. *In re Robinhood Ord. Flow Litig.*, 2022 WL
 13 9765563, at *13 (N.D. Cal. Oct. 13, 2022); *see also In re Montage Tech. Grp. Ltd. Sec.*
 14 *Litig.*, 2016 WL 1598666, at *6 (N.D. Cal. Apr. 21, 2016) (“*Affiliated Ute* affords a
 15 presumption of reliance to a plaintiff who advances a securities fraud claim based on a
 16 defendant’s failure to disclose material information.”); *Binder v. Gillespie*, 184 F.3d 1059,
 17 1064 (9th Cir. 1999) (similar). This is true even in “mixed” cases where both omissions and
 18 misrepresentations are alleged, so long as the “case can be characterized as one that
 19 primarily alleges omissions.” *Binder*, 184 F.3d at 1064. In such cases, individualized proof
 20 of reliance is not required and, thus, individualized issues do not predominate. *Affiliated*
 21 *Ute*, 406 U.S. at 153 (“Under the circumstances of this case, involving primarily a failure
 22 to disclose, positive proof of reliance is not a prerequisite to recovery.”).

23 Unlike the fraud-on-the-market presumption, the *Affiliated Ute* presumption does not
 24 require an efficient market, nor is it subject to price impact attacks. Rather, “[a]ll that is
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26 ² Defendants’ view of Plaintiffs’ claims is consistent with the Court’s view. *See* Ex. 16
 27 at 5:7 (“THE COURT: It’s an omissions case.”); MTD Opinion at 26 (finding statements
 28 misleading because they “*omitt[ed]* the most important factor that prompted Rivian to raise
 R1 EV prices”); *id.* at 22 (finding statement “technically accurate” but nonetheless
 misleading because it “*ignor[ed]* the proverbial elephant in the room”).

1 necessary is that the facts withheld be material in the sense that a reasonable investor might
 2 have considered them important in the making of this decision.” *Affiliated Ute*, 406 U.S.
 3 at 153-54. Moreover, “plaintiffs are *not* required to prove materiality at the class-
 4 certification stage.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 468 (2013).

5 Here, the AC alleges that “to the extent that the Exchange Act Defendants concealed
 6 or improperly failed to disclose material facts . . . Plaintiffs and other Class members are
 7 entitled to a presumption of reliance in accordance with *Affiliated Ute*.” ¶208. Given
 8 Defendants’ view that this is primarily an omissions case, *Affiliated Ute* applies,
 9 predominance is satisfied, and the Court need not address whether the fraud-on-the-market
 10 presumption also applies.

11 **3. The Fraud-on-the-Market Presumption of Reliance Applies to Plaintiffs’** 12 **Exchange Act Claims**

13 Even if the Court declines to apply *Affiliated Ute*, predominance is satisfied under
 14 the fraud-on-the-market presumption. *See* Brief at 10-18. Defendants attempt to rebut the
 15 presumption by arguing that: (i) the market for Rivian stock was inefficient until December
 16 5, 2021; and (ii) Defendants’ misrepresentations did not impact Rivian’s stock price. *Opp.*
 17 at 6-18. These arguments are meritless.

18 **a. Defendants’ Market Efficiency Challenges Fail**

19 Defendants concede that Rivian stock traded in an efficient market after December 5,
 20 2021. *Id.* at 8-9. Thus, the only issues for this Court to resolve are: (i) whether the market
 21 was efficient before December 5—during the so-called Quiet Period; and (ii) whether the
 22 fraud-on-the-market presumption applies to shares purchased in the IPO.

23 *First*, with respect to the Quiet Period, Defendants claim that “Tabak shows that the
 24 market for Rivian securities was not efficient until December 2021.” *Id.* at 1. But Tabak has
 25 expressed *no* such opinion. Ex. 11 at 62:4-12 (“I have not provided any such opinion.”).
 26 Defendants did not ask Tabak to opine on the Quiet Period, Tabak Rpt., ¶2, his report
 27 contains no analysis of the Quiet Period, and he explicitly “*take[s] no position* on when
 28 Rivian’s stock price became efficient after the IPO,” *id.* at 21 n.54; *see also* Ex. 11

1 at 57:5-10 (agreeing that he is “offering no opinion whatsoever as to whether the market for
2 Rivian shares was efficient during the [Q]uiet [P]eriod”); *id.* at 61:25-62:2. Defendants’
3 argument is therefore based on a misstatement of Tabak’s opinion.

4 By contrast, Plaintiffs’ expert, Nye, opines that the market for Rivian stock was
5 efficient throughout the entire Class Period, including the Quiet Period. *See, e.g.*, Ex. 13
6 at 97:16-19; Nye Rpt., ¶6; *see also* Nye Reply, ¶¶60-76. Nye’s unrebutted opinion is
7 supported by his analysis of the *Cammer* factors and three additional factors commonly
8 applied by courts. *See* Brief at 11-17; Nye Rpt., ¶¶17-18; *see also* Nye Reply, ¶¶60-76. Nye
9 has further shown that Rivian’s stock price reacted to Rivian-specific news **during the**
10 ***Quiet Period***. *See* Nye Reply, ¶75.

11 Defendants’ reliance on *In re IPO* and *SCOR* is misplaced because: (i) courts in this
12 Circuit have not followed these authorities, *see Infineon*, 266 F.R.D. at 396 (“Defendants
13 rely on . . . [*In re IPO*] for the proposition that a market is presumptively inefficient during
14 the 25-day quiet period,” but “[t]he Ninth Circuit has not addressed this issue.”); and
15 (ii) Nye has demonstrated market efficiency, *id.* at 396-97 (holding that, even if *In re IPO*
16 applied, expert’s analysis of *Cammer* factors demonstrated market efficiency during entire
17 Class Period, including quiet period).

18 *Second*, whether the IPO price itself was set in an efficient market is a factual
19 question that could be impacted by ongoing discovery, as Tabak acknowledged. Ex. 11
20 at 43:20-44:8; 45:1-18. Further, “[t]he Ninth Circuit applies the fraud-on-the-market
21 presumption to stock purchased during an IPO.” *Infineon*, 266 F.R.D. at 396 (citing *In re*
22 *VeriFone Sec. Litig.*, 11 F.3d 865, 868 n.3 (9th Cir. 1993); *In re Convergent Tech. Sec.*
23 *Litig.*, 948 F.2d 507, 512 n.2 (9th Cir. 1991); *In re Proxima Corp. Sec. Litig.*, 1994 WL
24 374306, at *19 (S.D. Cal. May 3, 1994)). Yet even if Defendants’ argument is credited, it
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1 will not impact the Class definition because all IPO purchasers have Securities Act Claims.³

2 **b. Defendants Have Not Proved the Absence of Price Impact**

3 Defendants “bear the burden of persuasion to prove a lack of price impact by a
4 preponderance of the evidence.” *Goldman Sachs Grp., Inc. v. Ark. Teach. Ret. Sys.*,
5 594 U.S. 113, 114 (2021). “The relevant inquiry is whether Defendants have proven a
6 **complete lack of price impact** during the Class Period, **not** whether the stock price decline
7 following individual corrective disclosures was caused by the alleged misrepresentations,
8 which is a loss causation analysis not appropriate at this stage.” *Homyk v. ChemoCentryx,*
9 *Inc.*, 2024 WL 1141699, at *4 (N.D. Cal. Mar. 6, 2024);⁴ *see also City of Cape Coral Mun.*
10 *Firefighters’ Ret. Plan v. Emergent Biosolutions, Inc., HQ*, 322 F. Supp. 3d 676, 687
11 (D. Md. 2018) (defendants must prove misstatements had “**no price impact whatsoever**”).

12 To meet this burden, Defendants must “disprove **both**” front-end and back-end price
13 impact. *In re CenturyLink Sales Pracs. & Sec. Litig.*, 337 F.R.D. 193, 209 (D. Minn. 2020);
14 *see also In re Chi. Bridge & Iron Co. N.V. Sec. Litig.*, 2019 WL 5287980, at *24 (S.D.N.Y.
15 Oct. 18, 2019) (similar). Accordingly, Defendants must prove that: (i) their misstatements
16 did not cause Rivian’s stock price to increase (front-end); **and** (ii) Rivian’s stock price
17 declines in March 2022 were unrelated to Plaintiffs’ claims (back-end). This is a “daunting
18 task” (*Bos. Ret. Sys. v. Alexion*, 2023 WL 2932485, at *11 (D. Conn. Apr. 13, 2023)), and
19 a heavy burden that Defendants fail to meet.

20 **i. Defendants Ignore Evidence of Front-End Impact**

21 “Where plaintiffs allege affirmative misrepresentations, it is necessary to evaluate
22

23 ³ Defendants mistakenly rely on *Ward v. Apple*, 784 F. App’x 539 (9th Cir. 2019), an
24 inapposite antitrust case, to argue that Plaintiffs’ damages methodology does not satisfy
25 *Comcast*. *See Opp.* at 6 n.3. In securities cases like this one, legions of courts have held that
26 Plaintiffs’ out-of-pocket damages model and event study methodology satisfy *Comcast*.
27 *See, e.g., In re Silver Wheaton Corp. Sec. Litig.*, 2017 WL 2039171, at *14-15 (C.D. Cal.
28 May 11, 2017); *Hatamian v. Adv. Micro Devices, Inc.*, 2016 WL 1042502, at *8-9 (N.D.
Cal. Mar. 16, 2016).

⁴ *See Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 807 (2011) (plaintiffs
“need not” prove loss causation at class certification).

1 whether those misrepresentations caused a statistically significant stock price increase,”
 2 which is evidence of front-end price impact. *Chi. Bridge*, 2019 WL 5287980, at *19. “[A]t
 3 the class certification stage, once the price impact has been shown at the front end by virtue
 4 of a positive rise in the stock price following the alleged misrepresentation, ***there is no need***
 5 ***to analyze an alleged corrective disclosure***”—i.e., back-end price impact. *Id.* at *20. This
 6 is because “an absence of back-end price impact ***does not rebut*** a statistically significant
 7 front-end response to the alleged misrepresentation.” *Id.* at *24; *see also City of Sterling*
 8 *Heights Gen. Emps.’ Ret. Sys. v. Prudential Fin., Inc.*, 2015 WL 5097883, at *12 (D.N.J.
 9 Aug. 31, 2015) (presumption not rebutted where plaintiffs “establishe[d] positive,
 10 statistically significant price movements”).

11 Here, Rivian’s stock price increased during its first days of exchange trading
 12 following the issuance of the allegedly-misleading Offering Documents. *See* Nye Reply,
 13 Ex. 11B. Tabak admittedly did not analyze these price increases. Ex. 11 at 50:9-18
 14 (admitting that he “did not look at the movements in the share price of Rivian immediately
 15 after the false statements”); *id.* at 51:14-24, 55:7-11. Without this analysis, Defendants
 16 know “absolutely nothing about what caused the price to be higher,” *id.* at 54:13-22, and
 17 thus have not disproved front-end price impact.⁵

18 Accordingly, if this Court concludes that Plaintiffs’ case primarily concerns
 19 misstatements (such that *Affiliated Ute* does not apply), Defendants’ failure to analyze these
 20 price increases is fatal to their price impact challenge, and the Court need not analyze the
 21 corrective disclosures to determine whether back-end price impact also exists. Yet, as
 22 discussed below, Defendants’ back-end price impact arguments also fail.

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 27 ⁵ Defendants attempt to excuse their omission by claiming that Plaintiffs have only
 28 asserted “an inflation-maintenance theory,” *Opp.* at 9-10, but the AC paragraphs they cite
 do not limit Plaintiffs’ claims in this regard, *id.* (citing ¶¶174-75, 178).

1 **ii. Defendants Have Failed to Disprove Price Impact on**
 2 **March 1, 2022**

3 Defendants cannot dispute that Rivian’s stock price experienced a statistically
 4 significant decline following the March 1 disclosure. Instead, they argue: (i) the disclosure
 5 “ha[d] nothing to do with” Plaintiffs’ claims, Opp. at 15-17; and (ii) the market had already
 6 known the full truth for “months,” *id.* at 10-14. These arguments fail.

7 **(a) Defendants Have Not Proved That Rivian’s March 1**
 8 **Disclosure Is Unrelated to Plaintiffs’ Claims**

9 Defendants’ claim that Rivian’s March 1 disclosure “ha[d] nothing to do with the
 10 alleged misrepresentations,” Opp. at 15, is absurd. Plaintiffs contend that, among other
 11 things, Defendants concealed their pre-IPO decision to increase R1 prices due to rising
 12 BOM costs, which exceeded retail prices. MTD Opinion at 16-26. On March 1, Rivian
 13 announced that, due to increases in “the cost of supplier components and raw materials”
 14 since “prices [] were originally set *in 2018*,” it was increasing base R1 prices and reducing
 15 base R1 features for future sales and existing preorders. ¶¶13, 142, 177. This disclosure thus
 16 concerns the *exact* same facts and circumstances that were allegedly concealed. Nye Reply,
 17 ¶¶12, 31; *In re Apple Sec. Litig.*, 2022 WL 3547865, at *9 (N.D. Cal. Feb. 4, 2022) (rejecting
 18 price impact argument where corrective disclosure was “directly related to the subject
 19 matter of” alleged fraud).⁶

20 Market participants viewed this disclosure as new, surprising information that caused
 21 Rivian’s statistically significant stock price decline. *See* Nye Reply, ¶34 (“Rivian . . .
 22 announced *unexpected* price hikes earlier this week.”); *id.* (“Rivian Automotive’s decision
 23 to raise prices has *caused* its stock to tumble.”); *id.* (stock decline was “*driven* by Rivian’s

24 ⁶ The Ninth Circuit does not require a corrective disclosure be the “mirror image” of
 25 an alleged misrepresentation. *In re Mattel, Inc. Sec. Litig.*, 2021 WL 4704578, at *5 (C.D.
 26 Cal. Oct. 6, 2021); *see also Ferris v. Wynn Resorts Ltd.*, 2023 WL 2337364, at *10 (D. Nev.
 27 Mar. 1, 2023) (“[A] corrective disclosure need not precisely mirror the earlier
 28 misrepresentation.”). *Goldman* did not change this settled law. *Mattel*, 2021 WL 4704578,
 at *5. Indeed, the Ninth Circuit has held that a disclosure can be corrective “even if the
 market was unaware at the time” that it resulted from fraud. *Mineworkers’ Pension Scheme*
v. First Solar, Inc., 881 F.3d 750 (9th Cir. 2018).

1 late-Tuesday decision to raise prices”); *id.* ¶33 (“While the delayed availability of the SR
 2 battery and dual-motor configuration is not new, *the higher pricing details of the LR*
 3 *battery and quad-motor setup is*, carrying a \$12k premium over the base price.”). At least
 4 one market participant linked Rivian’s “surpris[ing]” disclosure directly to its deficient IPO
 5 disclosures. *Id.* ¶34 (“The change in pricing *is a big surprise, especially given what the*
 6 *company said during its IPO in November[.]*”). This is powerful evidence of price impact.
 7 *See, e.g., Homyk*, 2024 WL 1141699, at *5 (“A statistically significant price adjustment
 8 following a corrective disclosure is evidence that the original misrepresentation did, in fact,
 9 affect the stock price.”).

10 Unable to dispute these facts, Defendants erect a series of straw-man arguments.
 11 *First*, they contend that Plaintiffs’ claims fail on the merits because “Rivian never promised
 12 profitability” and “Plaintiffs offer no evidence that profitability required price increases.”
 13 *Opp.* at 15, 17. This is recycled misdirection from Defendants’ motion to dismiss, as
 14 Plaintiffs’ claims are not premised on any promise of profitability.⁷ They also argue that
 15 Plaintiffs have not *proven* “that the March 2022 price increases had been decided at the time
 16 of the IPO.” *Id.* at 17. But Plaintiffs need not prove their claims at class certification; rather,
 17 Defendants must *disprove* price impact. *Goldman*, 594 U.S. at 117.⁸

18 *Second*, Defendants’ claim that a “mismatch” exists because the alleged misleading
 19 statements were “generic” risk warnings, *Opp.* at 16, likewise hinges on a
 20 mischaracterization of Plaintiffs’ claims. Indeed, Defendants point to Rivian’s purported
 21 representations that it “may never achieve profitability and had always operated at a loss,”
 22 *id.*, but those are *not* the alleged misleading statements in this case. Rather, those are the
 23 generic statements *Defendants* cited—and the Court rejected—at the pleading stage. *See*
 24 *Doc. 152* at 8-13; *MTD Opinion* at 20-22. The actual misleading statements were specific

25 _____
 26 ⁷ Inexplicably, Defendants rely on the Court’s *February 2023* motion to dismiss order
 27 (not its July 2023 *MTD Opinion*) to argue they had no duty to disclose prospective price
 28 increases. *See Opp.* at 17.

⁸ Defendants’ continued resistance to producing evidence makes their merits
 arguments particularly misplaced. *See R16 Mot.*

1 representations concerning, among other things, the “driver of negative gross profits” and
2 the “*possibility*” of material cost and price increases, which “misidentif[ied] and obscur[ed]
3 **key facts.**” See MTD Opinion at 18, 21; Defs.’ Appendix A. These statements are far more
4 specific than the “generic” platitudes at issue in *Goldman*. See, e.g., *Goldman*, 594 U.S.
5 at 120 (“Our clients’ interests always come first.”).

6 *Third*, Defendants have not proved that Rivian’s stock price decline was caused
7 entirely by the “backlash” and “eroded trust” resulting from its application of the “price
8 increases to existing pre-orders.” Opp. at 16-17; Tabak Rpt., ¶¶77-79. As demonstrated
9 above, market participants attributed the decline to Rivian’s overall price increase. Yet even
10 if Defendants could convince a factfinder that the price increase on existing preorders and
11 resulting backlash was the only new information disclosed, it too relates directly to
12 Plaintiffs’ claims. Defendants acknowledged in the Offering Documents that customer
13 backlash was a foreseeable consequence of the R1 price increases they concealed. See ¶157
14 (“Any attempts to increase the announced or expected prices of our vehicles in response to
15 increased costs **could be viewed negatively by our potential customers and could adversely**
16 **affect our business**, prospects, financial condition, results of operations, and cash flows.”);
17 Ex. 11 at 79:10-15 (Tabak testifying that Defendants “definitely understood that they could
18 experience negative reactions” from a price increase); *First Solar*, 881 F.3d at 753 (“[T]he
19 ultimate issue is whether the defendant’s misstatement, as opposed to some other fact,
20 **foreseeably caused the plaintiff’s loss.**”).

21 Moreover, Rivian’s decision to increase prices on existing pre-orders revealed that it
22 was not capitalizing on strong demand or defending against post-IPO inflation (as
23 Defendants had represented to investors), but instead was addressing a deep financial hole
24 that it could not dig out of with ramped production or prospective price increases. See Nye
25 Reply, ¶31; MTD Opinion at 13 (price increases revealed “that Rivian’s original pricing
26 was unsustainable and price increases were needed to address increasing supplier
27 components and raw materials costs”). The market recognized this. See Ex. 17 at 1 (price
28 increases were not “opportunistic” but rather “driven by necessity”). That is precisely why

1 Rivian’s stock price *did not rebound* when it reversed course on March 3. *See* Nye Reply,
2 ¶¶42-48.

3 *Finally*, Defendants have failed to disprove price impact because Tabak
4 acknowledged that discovery—which is in its nascent stages—could impact his opinion
5 about whether the March 1 disclosure was corrective. Ex. 11 at 67:2-11.

6 **(b) Defendants’ Claim That the Market “Knew the Full
7 Truth for Months” Is Meritless**

8 Defendants’ claim that the March 1 disclosure was not corrective because the truth
9 had been “known to the market for months,” *Opp.* at 10, fails for multiple reasons. *First*, as
10 discussed above, Defendants concede that new information *was* disclosed—at a minimum,
11 the application of the R1 price increases to existing preorders and resulting backlash—and
12 it relates to Plaintiffs’ claims. *See supra* II.A.3.c.i.

13 *Second*, Defendants’ claim that they disclosed the full truth in Rivian’s Offering
14 Documents and December earnings disclosures, *see Opp.* at 10-11, is not a price impact
15 challenge, but rather a disguised argument that they did not mislead investors. Indeed, in
16 arguing that they disclosed the truth *alongside the alleged misleading statements*,
17 Defendants are effectively asking this Court to resolve, in the middle of discovery, a key
18 merits question: Were their statements materially misleading? The answer is yes, but
19 because this question concerns “an essential element” of Plaintiffs’ claims that is common
20 to all Class members, it cannot possibly cause individualized issues of reliance to
21 predominate. *Amgen*, 568 U.S. 468 (evidence concerning “an essential element of a
22 Rule 10b-5 claim” need not be considered at class certification because failure of proof
23 “would end the case once and for all; no claim would remain in which individual reliance
24 issues could potentially predominate”).

25 *Third*, Defendants’ argument that investors knew Rivian “produced every R1 at a
26 loss” and “would do so for the foreseeable future,” *Opp.* at 10, relies on another
27 mischaracterization of Plaintiffs’ claims. Plaintiffs do not contend that Defendants
28 concealed that Rivian was generating negative gross profits or that it would do so for the

1 foreseeable future. Rather, Defendants concealed “a major obstacle to profitability” and
 2 Rivian’s pre-IPO decision to increase prices, and misleadingly “implic[ed] that Rivian could
 3 get on a path to profitability by scaling up production and spreading out fixed costs across
 4 a larger product base.” MTD Opinion at 22.

5 *Fourth*, Defendants’ own experts have eviscerated their claim that a highly-technical
 6 accounting disclosure called LCNRV revealed that R1 BOM costs exceeded retail prices.
 7 Opp. at 10-12. Tabak admitted that, “on its face,” LCNRV does *not* “provide any
 8 information to the market regarding the level of BOM costs,” Ex. 11 at 191:5-16, and Smith
 9 acknowledged that “a mom and pop reader of financial statements” would not have
 10 concluded from Rivian’s LCNRV disclosure that BOM costs exceeded retail prices, Ex. 12
 11 at 87:5-88:2.

12 The reason for this is simple: LCNRV does *not* compare BOM costs to retail prices.
 13 Instead, it compares *all* costs necessary to convert Rivian’s inventory⁹ into completed
 14 products—BOM, labor, production overhead, etc.—to the “net realizable value” of that
 15 inventory, *not* the retail price. Nye Reply, ¶¶13-18; Tabak Rpt., ¶65 (admitting that
 16 Plaintiffs’ allegations are “different[]” from LCNRV because Plaintiffs “refer[] to the bill
 17 of materials or BOM rather than all variable costs and to R1 market prices rather than net
 18 realizable value”). For this reason, Smith was forced to concede that: (i) “[a]n investor does
 19 not have the details” necessary to determine whether Rivian’s LCNRV charge was due to
 20 BOM or other production-related costs, Ex. 12 at 111:9-20, 101:24-102:8; and (ii) LCNRV
 21 charges can be required even if BOM costs *do not* exceed retail prices, *id.* at 126:6-20.
 22 Thus, it is clear that Rivian’s LCNRV charge *did not* disclose that R1 BOM costs exceeded
 23 retail prices.¹⁰

24 _____
 25 ⁹ As Smith conceded, this includes *all* of Rivian’s inventory—not just inventory
 needed to produce R1 vehicles. *See* Ex. 12 at 66:13-21.

26 ¹⁰ That Smith—a paid expert with 30 years of accounting experience, including with
 27 FASB—has speculated that Rivian’s charge might have had something to do with BOM
 28 falls far short of demonstrating that a reasonable investor would have concluded that it, in
 fact, related to BOM. Indeed, Tabak, Defendants’ other paid expert and a Harvard-trained
 economist, *refused* to reach this conclusion. Ex. 11 at 172:10-16 (“I’m not saying that

1 *Finally*, Defendants’ claim that analysts fully expected Rivian’s price hike is refuted
 2 by the analyst reports they cite and others they omit. Nye Reply, ¶¶33-41 (explaining that
 3 analysts projected no price increases or increases in *average R1 sales prices* as customers
 4 purchased costlier vehicle upgrades—*not* increases in base R1 prices). Defendants’
 5 argument is further undermined by the fact that market participants were *surprised* by the
 6 price increase and identified it as the cause of Rivian’s stock price decline. *See supra*,
 7 §II.A.3.c.i; Nye Reply, ¶¶33-34. Similarly, that some analysts “suspected” the price
 8 increase was due to industry-wide inflation, Opp. at 14, does not prove that it is unrelated
 9 to Plaintiffs’ claims. Pre-IPO material cost inflation is part and parcel of what Defendants
 10 concealed. *See* MTD Opinion at 18 (“Rivian misled investors when it represented material
 11 cost increases as a *possibility* rather than a known problem with which Rivian had been
 12 contending for years already.”); Nye Reply ¶32.

13 iii. **Defendants Have Failed to Disprove Price Impact on** 14 **March 10, 2022**

15 Because Defendants have not disproved price impact for March 1, the Court need not
 16 address the March 10 disclosure. *Homyk*, 2024 WL 1141699, at *4 (relevant question is
 17 “whether Defendants have proven a *complete* lack of price impact during the Class Period,
 18 *not whether [Rivian’s] stock price decline following individual corrective disclosures was*
 19 *caused by the alleged misrepresentations*, which is a loss causation analysis not appropriate
 20 at this stage”).¹¹ In any event, their arguments fail.

21 *First*, Defendants’ argument that Rivian’s stock price decline was not statistically
 22 significant, Opp. at 17, “rel[ies] on a statistical fallacy,” as it is a “basic truism of statistics”
 23 that “the existence of non-statistically-significant stock price declines *does not* prove the
 24 absence of price impact,” *Monroe Cnty. Emps.’ Ret. Sys. v. S. Co.*, 332 F.R.D. 370, 393
 25 (N.D. Ga. 2019); *see also* Nye Reply, ¶¶19-26 (explaining fallacy). For this reason, “courts
 26 *because that’s something you would look at with additional accounting expertise.*”).

27 ¹¹ Defendants have not argued that Rivian’s stock price declines between March 3-10
 28 are not evidence of price impact. Nye has demonstrated that Defendants have ignored
 additional evidence of price impact during this period. *See* Nye Reply, ¶¶42-49.

1 routinely reject the argument that a non-statistically significant stock price decline proves
 2 an absence of price impact.” *S. Co.*, 332 F.R.D. at 394 (collecting cases).¹² Further, Rivian’s
 3 stock price *did* experience a statistically significant decline in aftermarket trading
 4 immediately following this disclosure. Nye Reply, ¶¶52-55.

5 *Second*, the disclosure was corrective. Rivian’s disclosure of reductions to its long-
 6 term financial projections, which it attributed in part to its need to “minimize [future] price
 7 increases,” revealed the extent to which its pre-IPO decision to increase prices had, in fact,
 8 “adversely affect[ed its] business, prospects, financial condition, results of operations, and
 9 cash flows.” ¶¶125, 157, 170, 294; *see also* ¶185; Nye Reply, ¶¶50-59. Defendants’
 10 acknowledgement that this disclosure concerned “the ‘backlash’ against Rivian’s price
 11 increases,” Opp. at 18, further demonstrates price impact.¹³

12 **B. Defendants’ Adequacy Challenges Fall Flat**

13 **1. AP7 Is an Adequate Class Representative**

14 Defendants do not dispute that AP7 is precisely the type of large, sophisticated
 15 institutional investor that Congress envisioned when it passed the PSLRA, or that
 16 numerous federal courts have found AP7 to be an adequate class representative. *See* Reply
 17 Decl., ¶11. Nor can they dispute that AP7’s interests are fully aligned with those of the
 18 Class given its significant financial interest in the outcome of this Action and its
 19 commitment to “not to just represent AP7’s interest,” but to achieve “the best outcome for
 20 the class.” Ex. 14 at 236:19-23; *see also Milbeck v. TrueCar, Inc.*, 2019 WL 2353010, at *4
 21 (C.D. Cal. May 24, 2019) (“Lead Plaintiff has a clear incentive to supervise counsel in
 22 order to maximize the putative class’ recovery and its own recovery.”); *In re Qualcomm*
 23

24 ¹² Defendants’ claim that “Plaintiffs showed no price impact evidence” and “cannot
 25 prove price impact” for March 10, Opp. at 17, ignores that it is *their* burden to disprove
 price impact, *see supra* §II.A.3.b.

26 ¹³ Defendants’ contention that “analysts focused on Rivian’s reduced production
 27 guidance,” Opp. 18, does not disprove price impact because “[m]erely suggesting that
 28 another factor *also* contributed to an impact on a security’s price does not establish that the
 fraudulent conduct complained of did not also impact the price of the security, *Apple*,
 2022 WL 3547865, at *10; *see also* Nye Reply, ¶¶58-59.

1 *Inc. Sec. Litig.*, 2023 WL 2583306, at *9 (S.D. Cal. Mar. 20, 2023) (AP7’s “interests appear
 2 to be aligned with the class because their losses and those of the class members were caused
 3 by the same allegedly unlawful conduct.”); *Sjunde AP-Fonden v. Goldman*, 2024 WL
 4 1497110, at *8 (S.D.N.Y. Apr. 5, 2024) (similar).

5 Defendants’ claim that AP7 has failed to oversee this Action, Opp. at 20, is wrong.
 6 Since being appointed, AP7 has: (i) received regular updates from counsel; (ii) reviewed
 7 drafts of filings, including the Complaint and AC;¹⁴ (iii) responded to discovery requests;
 8 (iv) searched for and produced documents; and (v) traveled to the U.S. for a deposition.
 9 *See, e.g.*, Ex. 8; Ex. 14 at 296:15-21; *Sjunde AP-Fonden*, 2024 WL 1497110, at *8 (finding
 10 AP7 adequate where it “demonstrated its commitment to participate in and supervise the
 11 prosecution of this action” by, *inter alia*, “filing amended pleadings, opposing a motion to
 12 dismiss, searching for and producing discovery, [and] sitting for a Rule 30(b)(6)
 13 deposition”).¹⁵

14 Further, AP7 has “demonstrated [a] willingness to assist counsel in the prosecution
 15 of the litigation” and established its “general familiarity with the theory of the case, who is
 16 being sued, and their role as class representative.” *Loritz v. Exide Techs.*, 2015 WL
 17 6790247, at *6-7 (C.D. Cal. July 21, 2015); *see, e.g.*, Ex. 14 at 214:21-216:6, 232:23-233:5,
 18 236:16-23. AP7 testified that it “will continue to monitor the development and [that] our
 19

20
 21 ¹⁴ While Defendants try to manufacture an issue as to whether AP7’s corporate
 22 representative, Per Olofsson, personally reviewed the AC, Opp. at 20, there is no dispute
 23 that Olofsson’s predecessor reviewed the AC and authorized its filing on AP7’s behalf, AC-
 1; Ex. 14 at 213:20-21; 223:8-21; 224:10-12. Moreover, Olofsson testified: “I reviewed a
 number of different documents that [are] relevant in the case . . . the Complaint[], the
 Amended Complaint[], the class certification.” Ex. 14 at 17:10-15.

24 ¹⁵ Defendants’ claim that “AP-7 had no idea that Mr. Muhl or the FEs were deposed
 25 until early 2024,” Opp. at 20, has no bearing on AP7’s adequacy. In any event, Muhl was
 26 deposed *in early 2024* and the FE depositions occurred *at the end of 2023*. Similarly,
 27 Defendants have failed to explain how Olofsson’s purported lack of recollection regarding
 28 whether “FE-1 was dropped from the AC,” or whether “KTMC allowed the FEs to review
 the complaints before they were filed,” is relevant to AP7’s adequacy. Opp. at 21; *cf.* Ex. 14
 at 223:13-14 (“Our counsel amended the Complaint and kept us informed about the
 amendments.”).

1 goal here is to act in the best interest of the whole class.” Ex. 14 at 225:2-9.¹⁶ And far from
 2 expressing a “blind faith” in KTMC, Opp. at 21, AP7 testified that it would work “*together*
 3 with [its] counsel” to prosecute this Action, Ex. 14 at 232:23-233:5. Regardless, AP7’s
 4 reliance on its counsel is appropriate and “hardly a badge of inadequacy.” *In re Facebook*
 5 *Biometric Info. Priv. Litig.*, 326 F.R.D. 535, 543 (N.D. Cal. 2018).¹⁷

6 Finally, how and when AP7 became aware of its Rivian holdings or this Action,
 7 Opp. at 20, is irrelevant. *See Zacklit v. Nationstar Mortg. LLC*, 2017 WL 3174901, at *14
 8 (C.D. Cal. July 24, 2017) (“Even assuming that Plaintiffs were solicited by counsel, that
 9 does not undermine a finding of adequacy.”); *City of Mia. Gen. Emps.’ & Sanitation Emps.’*
 10 *Ret. Tr. v. RH, Inc.*, 2018 WL 4931543, at *4 (N.D. Cal. Oct. 11, 2018) (similar); *Berg v.*
 11 *Guthart*, 2014 WL 3749780, at *4 (N.D. Cal. July 30, 2014) (“[C]ourts in this district have
 12 rejected the notion that the existence of a portfolio monitoring agreement with counsel
 13 renders a plaintiff unsuitable to represent the interests of a class.”).

14 **2. There Are No Conflicts of Interest Between AP7 and KTMC**

15 Defendants’ claim that there is a “problematic” relationship and “ongoing conflict
 16 between KTMC and AP-7,” Opp. at 19-20, is wholly unsubstantiated, *see Gutierrez v.*
 17 *Kovacevich “5” Farms*, 2004 WL 3745224, at *8 (E.D. Cal. Dec. 2, 2004) (Ninth Circuit
 18 “place[s] upon defendant the burden of proving a conflict of interest” at class certification);
 19 *see also Cummings v. Connell*, 316 F.3d 886, 896 (9th Cir. 2003) (“[T]his circuit does not
 20 favor denial of class certification on the basis of speculative conflicts.”).

21 Contrary to Defendants’ assertion, Opp. at 19, KTMC has *not* “represented AP-7 in
 22 all of its securities class actions,” *see* Ex. 14 at 34:15-24. Even a cursory review of publicly-

23 _____
 24 ¹⁶ Defendants’ authorities are distinguishable. *See Stephens v. Nordstrom, Inc.*,
 25 2018 WL 7143623, at *5 (C.D. Cal. Dec. 26, 2018) (plaintiff did not review the complaint
 26 and contradicted its allegations during deposition); *Bodner v. Oreck Direct, LLC*, 2007 WL
 1223777, *2 (N.D. Cal. Apr. 25, 2007) (plaintiff did not read the complaint before it was
 filed and had an “undeniable and overwhelming ignorance” regarding case theory).

27 ¹⁷ Likewise, it is unsurprising that AP7 credited its attorneys’ views regarding the
 28 merits of this Action over those of FE-2, a non-lawyer and former Rivian employee. *See*
 Opp. at 21.

1 available information would have alerted Defendants to this fact. Reply Decl., ¶14. AP7
 2 selects counsel on a case-by-case basis based on who “[they] believe is best suited to work
 3 with [them] in a class action,” Ex. 14 at 112:6-113:4, and Defendants have cited no
 4 authority holding that a plaintiff is inadequate because it worked with counsel in prior
 5 cases, *cf. Levie v. Sears Roebuck & Co.*, 496 F. Supp. 2d 944, 950-51 (N.D. Ill. 2007)
 6 (retaining same counsel “in no way suggests” inadequacy but rather supports adequacy).
 7 Nor is AP7 inadequate because it participated in two investor conferences “on KTMC’s
 8 invitation.” *See* Opp. at 20. AP7 was not compensated to attend the conferences and paid
 9 its own expenses. Ex. 14 at 52:22-54:16.

10 At bottom, Defendants have not demonstrated that AP7’s relationship with KTMC
 11 is “problematic” or renders AP7 inadequate.¹⁸ Rather, AP7’s and KTMC’s successful
 12 prosecution of securities class actions is a benefit to the Class. Ex. 14 at 112:8-12 (“[I]t’s
 13 been a very good working relationship over many years[.]”); *Sjunde AP-Fonden*, 2024 WL
 14 1497110, at *10 (KTMC is “highly experienced,” demonstrated “excellent advocacy,” and
 15 “zealously represented the interests of [AP7] and the proposed class.”); *Milbeck*, 2019 WL
 16 2353010, at *4 (“[C]ourts have recognized that multiple securities suits by an institutional
 17 investor evince a laudatory zeal to fulfill its fiduciary duties.”).

18 **3. Defendants’ Attacks on Plaintiffs’ Investigation Have Been Debunked**

19 Defendants’ dishonest claim that Plaintiffs are pursuing a “flawed theory” of liability
 20 based on “disavowed allegations,” Opp. at 18, has now been laid bare. Their criticism of
 21 Plaintiffs’ theory is irreconcilable with their newfound admission that one of Plaintiffs’
 22 core allegations is, in fact, true: at the time of the IPO, Rivian expected to “lose money on
 23 every R1 made . . . *due to BOM costs.*” Opp. at 11. Further, their gambit to have the FEs
 24

25 ¹⁸ *Woods v. Google LLC*, 2018 WL 4030570 (N.D. Cal. Aug. 23, 2018) is nothing like
 26 this case. There, the plaintiff was an attorney who changed jobs during the pendency of the
 27 litigation. Because his new firm had preexisting business relationships with several law
 28 firms involved in *Woods*, the court appointed a different class member as class
 representative. In any event, the class was certified and KTMC was appointed class
 counsel. *See Cabrera v. Google LLC*, 2023 WL 5279463, at *22 (N.D. Cal. Aug. 15, 2023).

1 disavow their allegations has failed. *See* R16 Mot. at 5 (collecting testimony).

2 Ignoring these truths, Defendants cobble together incomplete FE quotes in a failed
3 attempt to manufacture an adequacy challenge. Defendants claim that FE-4 felt “coerced,”
4 *Opp.* 19, but FE-4 testified that FE-4’s discussions with KTMC were “voluntary” and the
5 statements attributed to FE-4 in the AC were “accurate,” *Ex. 5* at 88:2-12, 143:11-21.¹⁹
6 Likewise, Defendants claim that FE-1 (who is not even cited in the AC) felt
7 “mischaracterized,” *Opp.* 19, but they omit that FE-1: (i) formed this view after reviewing
8 allegations attributed to *a different FE*; and (ii) confirmed the allegations actually
9 attributed to FE-1, *Doc. 241-2*, ¶¶54, 56.²⁰

10 At bottom, Defendants’ FE depositions corroborate the AC’s allegations and reveal
11 that the only “confirmed examples of dishonesty” in this case were *Defendants’* false
12 statements to this Court about their communications with the FEs. *See* R16 Mot. at 1-5;
13 *Doc. 241-2*, ¶¶3-67.²¹ The Court should reject Defendants’ irresponsible attacks once and
14 for all.

15 4. Muhl Is an Adequate Class Representative

16 Defendants’ footnote argument that Muhl has “taken absolutely no interest in
17 monitoring the progress of this case,” *Opp.* at 21 n.5, is meritless. Muhl has: (i) reviewed
18 drafts of filings; (ii) regularly communicated with counsel; (iii) responded to discovery
19 requests; (iv) searched for and produced documents; (v) sat for a deposition where he

20 _____
21 ¹⁹ The portion of FE-4’s testimony cited by Defendants confirms that FE-4 was
22 referring solely to the *length* of his communications with counsel. *Ex. 5* at 143:19-20 (“I
always told them to keep it short, like ten minutes.”).

23 ²⁰ Defendants cite no authority for their contention that counsel’s adequacy is impacted
24 by the fact that KTMC led the investigation or that the FEs reviewed the complaint
allegations after they were filed. *See Opp.* at 19.

25 ²¹ The adequacy ruling in *Physicians Healthsource, Inc. v. Masimo*, 2019 WL 8138043
26 (C.D. Cal. Nov. 21, 2019) was based on facts not present here, including the plaintiff’s
27 admission that it “provided several untrue discovery responses” and destroyed evidence.
28 *Id.* at *12, *16. Further, unlike here, counsel in *In re Millennial Media, Inc. Sec. Litig.*,
2015 WL 3443918, at *1 (S.D.N.Y. May 29, 2015), failed to have an attorney confirm
information obtained by the investigator and filed a complaint containing “material
inaccuracies.”

1 displayed his understanding of the facts and his duties as class representative; and
2 (vi) expressed his willingness to attend trial. *See* Ex. 15 at 83:20-84:16, 111:11-15, 114:16-
3 24, 131:22-132:17, 135:11-21, 145:2-9, 147:2-11, 148:3-5; Reply Decl., ¶13.²² For these
4 reasons, Muhl is adequate.²³

5
6 Dated: April 19, 2024

Respectfully submitted,

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22 ²² That Muhl did not independently investigate Plaintiffs’ claims, Opp. at 21 n.5,
23 reflects his appropriate reliance on counsel, *see* Ex. 15. at 105:8-18. Further, Muhl did not
24 testify that he was “unaware FE-1 was removed from the AC,” Opp. at 21 n.5, he simply
could not recall during his deposition whether FE-1 was removed, Ex. 15 at 165:21-166:4.

25 ²³ Defendants’ cases are inapposite. *See Simon v. Ashworth, Inc.*, 2007 WL 4811932,
26 at *2 (C.D. Cal. Sept. 28, 2007) (plaintiff testified that he never saw the complaint, did not
27 know when it was filed, did not review any documents related to the case, and “does not
28 consider himself to be supervising th[e] case”); *In re Kosmos Energy Ltd. Sec. Litig.*,
299 F.R.D. 133, 146, 149 (N.D. Tex. 2014) (plaintiff “displayed a dismaying lack of
knowledge and understanding regarding crucial matters in th[e] case during her
deposition”).

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CERTIFICATE OF COMPLIANCE

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2
3 The undersigned, counsel of record for Lead Plaintiff Sjunde AP-Fonden and
4 Additional Plaintiff James Stephen Muhl, certifies that this brief contains 6,996 words,
5 which [choose one]:

6 complies with the word limit of L.R. 11-6.1.

7 complies with the word limit set by court order (Doc. 275).

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/s/ Sharan Nirmul
Sharan Nirmul

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