IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ERIK DAVIDSON, JOHN RESTIVO, & NATIONAL CENTER FOR PUBLIC POLICY RESEARCH, Plaintiffs, v. PAUL ATKINS, *et al.,* Defendants.	Civil Action No. 6:24-cv-00197-ADA-DTG **ORAL ARGUMENT REQUESTED**

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2), Plaintiffs hereby move this Court to certify a class consisting of:

> All U.S. investors, including U.S. citizens, U.S. residents and persons domiciled in the U.S., for whom the CAT database contains any securities transaction information, or any personally identifiable information, that refers or relates to the investor or to a securities account associated with the individual. The class includes but is not limited to all investors who are or were legal or beneficial owner[s] of a security or who are or were authorized to give trading instructions relating to a security.

Plaintiffs further move for Erik Davidson and John Restivo to be appointed class representatives, and for their counsel, the New Civil Liberties Alliance to be appointed class counsel. In support of this motion, Plaintiffs submit the accompanying memorandum of law, and the Declarations of Erik Davidson, John Restivo, Stafan Padfield, Margaet A. Little and Caitlin M. Moyna, as well as a proposed order. Because Plaintiffs seek a class certified under Rule 23(b)(2), and are not seeking any monetary relief, no notice is required. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 362 (2011) (Rule 23(b)(2) "does not . . . oblige the District Court to afford [class members] notice of

the action"). Defendant SEC opposes the filing of this motion to certify the class on the basis that it believes Plaintiffs, whose action has been completely stalled for well over half a year, should not file anything before the Court has ruled on its motion to continue the abeyance for another six months. Both defendants oppose this motion to certify the class on the merits.

Rule 23(c)(1)(A) requires that: "At an early practicable time after a person sues or is sued as a class representative, the court ***must*** determine by order whether to certify the action as a class action" (emphasis added). Thus, regardless of whether the Court grants SEC's request for an additional abeyance, the Court should not delay consideration of this motion for class certification. Investors have been subject to SEC's unlawful scheme for years, as their First, Fourth and Fifth Amendment rights have been violated by SEC's intrusive CAT scheme. Absent class members have a right to know now whether this action will resolve their grievances, so that they can determine whether their rights will be vindicated here or whether they should seek separate action. Further, the proposed changes to CAT that SEC used to support its motion for an additional abeyance have no bearing on whether a class should be certified.

There are two separate but mutually reinforcing reasons that this Court should consider class certification at this time.

First, Plaintiffs' request to advance the certification of a plaintiff class is a ministerial task that is necessary in this case no matter its outcome. This measure is the logical first step to the prosecution of this case, which should be completed before summary judgment proceeds. *Wilson v. Centene Management Co., L.L.C.*, 144 F4th 780, 792 (5th Cir. 2025) (noting that appeal was occurring "at the class-certification stage—beyond the motion-to-dismiss stage but before a motion for summary judgment"); *Schwarzschild v. Tse*, 69 F.3d 293 (9th Cir. 1995) ("district courts generally do not grant summary judgment on the merits of a class action until the class has

been properly certified and notified"). Allowing class certification to proceed ensures that plaintiffs may litigate their claims "expeditiously" and that any summary judgment decision applies to the entire class, not just the named plaintiffs. *See U.S. ex. rel. Gonzalez v. Fresenius Medical Care North America,* 571 F. Supp. 2d 758, 762 (W.D. Tex., Aug. 14, 2008) (observing that plaintiffs have a vital interest in litigation "proceeding expeditiously."). This Court has "broad discretion" to manage its docket, *see Sims v. ANR Freight System, Inc.*, 77F.3d 846, 849 (5th Cir. 1996), and it may grant Plaintiffs' request for this reason alone.

Second, the changes being considered by SEC have no bearing on class certification. SEC's second abeyance motion pertains to proposed changes to the CAT scheme. None of these changes are relevant to whether Plaintiffs meet Rule 23's requirements, because they will affect all class members identically. Even if they were significant to the merits, the merits matter little for purposes of class certification. *See Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*, 568 U.S. 455, 466 (2013) ("Merits questions may be considered to the extent—*but only to the extent*—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.") (emphasis added).

Regardless of any eventual changes to CAT, Plaintiffs must seek class certification. Even if SEC plans to abolish the CAT altogether (and it does not), class certification remains a necessary first step to *any* resolution of the case because glaring injuries would remain unaddressed. For example, what will SEC do with the PII already gathered given that it is widely understood that such data is virtually impossible to expunge, a matter that only gets exponentially more intractable with time? Further, reducing categories of data collected does not and cannot ever remedy the lack of any Congressional authorization or appropriation for the CAT. Indeed, on this question of continuing harm, the Fifth Circuit has cautioned district courts that where plaintiffs' "grievances

continue unrequited for a significant enough period of time, such may be the circumstances under which a petition for mandamus might be appropriately filed and granted." *Id.* This is especially true where the First, Fourth and Fifth Amendment violations at stake are ballooning as SEC gathers data on millions of transactions each day. Infringement of constitutional rights "for even minimal periods of time, unquestionably constitutes irreparable injury. *Elrod v. Burns*, 427 U.S, 347, 373 (1976). This Court should therefore proceed promptly under its duty to take care that justice is not further delayed in this action, *see Coastal (Bermuda) Ltd. v. E.W. Saybolt & Co., Inc.*, 761 F.2d 198, 204 (5th Cir. 1985) ("The granting of indefinite stays should not be a quotidian exercise."), and under Rule 23's mandate to decide class certification motions "at an early practicable time." Fed. R. Civ. P. 23(c)(1)(A).

This case was filed on April 16, 2024, and is fast approaching two years without resolution or even meaningful progress. Plaintiffs promptly sought preliminary relief and have adhered to the Court's scheduling orders throughout. Plaintiffs also opposed the over six-month stay, and oppose the current motion for abeyance, because there is nothing SEC can do that can possibly cure the core legal infirmities of the CAT, namely that its operations violate—and continue daily to violate—the core Fourth and Fifth Amendment civil liberties of millions of Americans. That continuing constitutional violation alone demands vigilant court correction, *See Brown v. Plata,* 563 U.S. 493, 511 (2011) (holding that courts had a "responsibility" to address a constitutional violation). Certifying a class will be a meaningful and important step towards cessation of infringement of investors' constitutional rights and freedoms.

WHEREFORE, Plaintiffs respectfully request that the Court grant the foregoing Motion for Class Certification in its entirety. A detailed proposed Order accompanies this motion.

Respectfully submitted,

/s/ Margaret A. Little

Margaret A. Little CT303494
*Caitlin M. Moyna NY4176897
*Christian Clase
*Andreia Trifoi DC90017660
NEW CIVIL LIBERTIES ALLIANCE
1225 19th St. NW, Suite 450
Washington, DC 20036
Tel: (202) 869-5210
Fax: (202) 869-5238
* *Pro Hac Vice* Admission Application Forthcoming
Peggy.Little@ncla.legal
Caitlin.Moyna@ncla.legal
Andreia.Trifoi@ncla.legal
Christian.Clase@ncla.legal
Counsel for Plaintiffs

Mark D. Siegmund
State Bar Number 24117055
CHERRY JOHNSON SIEGMUND JAMES PLLC
The Roosevelt Tower
400 Austin Avenue, 9th Floor
Waco, Texas 76701
Tel: (254) 732-2242
Fax: (866) 627-3509

CERTIFICATE OF CONFERENCE

I hereby certify that on January 21, 22 and 23, 2026, I conferred with counsel for Defendants Securities and Exchange Commission and on January 22, 2026, I conferred with counsel for defendants Consolidated Audit Trail, LLC. Defendants oppose this motion.

/s/ *Margaret A. Little*
Margaret A. Little (CT 303494)

CERTIFICATE OF SERVICE

I certify that on January 23, 2026, a true and correct copy of the foregoing motion for class certification, proposed order, and memorandum of law with accompanying declarations was transmitted using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record. Hand service is being made to the United States Attorney's Office for the Western District of Texas at:

Brenda Wright
U.S. Attorney's Office
800 Franklin Avenue
Suite 280
Waco, Texas 76701

/s/*Margaret A. Little*
Margaret A. Little