

## Cooley Secures Dismissal of Securities Class Action for Overstock

October 5, 2021

Cooley litigators locked in a win on behalf Overstock, a company that provides online retail, securing a dismissal on behalf of the company and two of its executives in a securities class action in the US District Court for the District of Utah. Cooley lawyers Christopher Vail, Heather Speers, Jeff Lombard, Jessica Valenzuela Santamaria, and John Dwyer led the winning effort and earned a shout out on Am Law Litigation Daily's [latest Litigator of the Week Runners-Up and Shout Outs list](#).

The class action had accused Overstock and its executives of making false statements about Overstock's financial projections for 2019 and engineering a scheme to issue a digital dividend that could only be traded on the company's novel blockchain trading platform that purportedly caused an artificial "squeeze" on short sellers, like the lead plaintiff, The Mangrove Partners Master Fund.

On September 20, US District Judge Dale Kimball dismissed the case – accepting all of the arguments made by Cooley and rejecting every one of the plaintiff's allegations. In his order, Judge Kimball adopted nearly verbatim Cooley's arguments in the team's motion to dismiss papers, finding that the plaintiff's amended complaint did not adequately plead any false or misleading statements; any deceptive or manipulative conduct to support a scheme claim; scienter; or reliance.

The decision is a significant victory for the defense bar in securities class actions pending in the Tenth Circuit. Specifically, it adds to the growing number of district court decisions holding that the Private Securities Litigation Reform Act's safe harbor for forward-looking statements is "disjunctive" – meaning that it insulates forward-looking statements from liability if they are either accompanied by meaningful cautionary language or made without actual knowledge of falsity – and creates a significant hurdle for short-seller plaintiffs who want to serve as lead plaintiffs in securities class actions given Judge Kimball's holding that Mangrove Partners did not adequately plead reliance under either the *Basic v. Levinson* or *Affiliated Ute* presumptions of reliance.

### Contributors



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[Bio](#)

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