Steve W. Berman (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
steve@hbsslaw.com

Reed R. Kathrein (139304)
Lucas E. Gilmore (250893)
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 300
Berkeley, CA 94710
Telephone: (510) 725-3000
reed@hbsslaw.com
lucasg@hbsslaw.com

Class Counsel

[Additional counsel on signature page]

William C. Fredericks (*pro hac vice*)
Jeffrey P. Jacobson (*pro hac vice*)
Mandeep S. Minhas (*pro hac vice*)
SCOTT+SCOTT ATTORNEYS AT LAW LLP
230 Park Avenue, 24th Floor
New York, NY 10169
Telephone: (212) 233-6444
wfredericks@scott-scott.com
jjacobson@scott-scott.com
mminhas@scott-scott.com

Jessica M. Casey (*pro hac vice*)
SCOTT+SCOTT ATTORNEYS AT LAW LLP
156 S. Main Street
Colchester, CT 06415
Telephone: (860) 537-5537
jcasey@scott-scott.com

Class Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re VAXART, INC. SECURITIES LITIGATION	Case No. 3:20-cv-05949-VC CLASS ACTION **PLAINTIFFS' BRIEF REGARDING CONTEMPORANEOUS TRADING PERIOD FOR INSIDER TRADING SUBCLASS** Date: February 3, 2026 Time: 10:00 a.m. Courtroom: 4, 17th Floor Judge: Hon. Vince Chhabria Trial Date: April 14, 2026
This Document Relates to: *ALL ACTIONS*	

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION[1]

The Court should approve an insider trading subclass with a contemporaneous trading period spanning, at minimum, the entire two days that Armistice dumped its Vaxart holdings—Friday, June 26, 2020, through Monday, June 29, 2020—and arguably June 30.

Though the contemporaneous trading rule acts as a "stand-in for privity," the Ninth Circuit has made clear that all that matters under Section 20A is whether "the seller and buyer engaged in transactions close in time."[2] This rule controls, even where a defendant can show that the plaintiff "could not have possibly traded with the insider" for any reason other than timing.[3] This is because to hold otherwise "would be to frustrate a major purpose of the antifraud provisions of the securities laws: to insure (sic) the integrity and efficiency of the securities markets."[4]

Here, Armistice's trading records confirm that any investor who bought Vaxart stock on June 26 or June 29, 2020 had to have done so ***within minutes*** of at least one of Armistice's many unlawful sales.[5] According to these records, on June 26, 2020, Armistice began selling off large blocks of stock at 8:02 am ET—more than an hour before markets opened at 9:30 am ET—and continued to execute frequent block sales throughout the day, including after markets closed at 4:00 pm ET. ¶ 25. Per these records, Armistice repeated this pattern again on June 29 by starting to sell stock at 8:21 am ET and executing frequent sales up until 4:25 pm. ¶ 28. Over the course of these two days, Armistice executed over 950 block-sale transactions at an average speed of one sale every minute during regular trading hours. ¶ 29. The largest gap between any of these sales was 12 minutes, ¶ 29—meaning, any investor who bought stock during market hours on either day did so within seconds and, ***at most***, within 12 minutes of an Armistice sale of Vaxart stock.

Documents and testimonial evidence confirm the full-day, block-sale strategy was

---

1 Herein, unless otherwise noted: (i) all internal citations are omitted, all emphasis is added, and (ii) "Ex." refers to exhibits to the Declaration of Steve W. Berman, filed herewith.

2 *In re Silver Lake Grp., LLC Sec. Litig.*, 108 F.4th 1178, 1190 (9th Cir. 2024).

3 *Id.*

4 *See id.*

5 *See* Ex. A, Jan. 5, 2026 Decl. of Matthew Cain, Ph.D., ¶ 6 ("Cain 20A Decl."); Ex. B, Modified Armistice Trade Blotter. Herein, "¶" refers to paragraphs in the Cain 20A Decl.

purposeful. Boyd told his head trader by text to patiently use the full trading days.[6] And this trader, in turn, testified that Armistice's sales of Vaxart stock were parsed and timed with current market conditions in mind to minimize the price impact of Vaxart's largest shareholder dumping, 27.6 million shares into a volatile market environment (caused by the Defendants' alleged scheme).[7]

Nevertheless, Defendants have suggested that a more granular contemporaneous period may be appropriate given the volume of Vaxart stock traded on June 26 and June 29. Given this volume, they assert it would be "implausible that an investor who purchased even an hour after Armistice sold could have possibly traded with" the insider.[8] To date, Defendants have provided no support for this claim or a concrete proposal for slicing the class further. Regardless, even if case law permitted cutting the contemporaneous trading period beyond a full day (it does not), Armistice's trade data refutes the idea that an investor could have purchased Vaxart shares far in time from Defendants. If anything, Armistice's rush of after-market sales on June 29 (selling in total nearly 2 million shares at a deep discount) ¶ 35, combined with the warehousing nature of market makers (described by Dr. Cain), make it plausible that investors continued to pick up the remnants of Armistice's dumped stocks in the following day(s). ¶¶ 12, 14, 30-35.

Given this fact-specific record, the Court should reject Defendants' speculative calls for a contemporaneous trading period shorter than the full days Armistice liquidated its Vaxart position, and instead consider June 30, 2020, as a justifiable outside limit. On June 30, investors were still possibly purchasing shares from market maker inventories that were originally sold by Armistice. On June 30, Armistice disclosed (after markets had closed) that it had dumped its stock—marking a substantial change in information available to investors.[9] And a June 30 limit is consistent with one of the core premises of Section 20A recognized by this Court: protecting those who "suffer the disadvantage of trading with someone who has superior access to information."[10]

---

[6] Ex. E, June 28, 2020 text between Steve Boyd and Armistice Head Trader Sergio Smiriglio.

[7] Ex. F, Smiriglio Tr. 130:2-132:13.

[8] Defs.' Section 20A Br. at 7 (ECF No. 583).

[9] Exs. C & D, Armistice Form 4 and Schedule 13D filed with the SEC on June 30, 2020.

[10] Section 20A Briefing Order at 3 (ECF No. 608).

BACKGROUND

I. Most Modern Securities Transactions Involve Multiple Steps and Intermediaries Which Allow Investors to Buy or Sell Stocks Quickly, Albeit at Different Times and Prices than the Ultimate Investor on the Other Side of the Transaction.

It would be reasonable to assume that investors have direct access to securities markets through the sophisticated brokerage applications on their computers and smartphones. But even with today's technology, a securities transaction still involves several intermediary parties and steps. Instead of transacting directly with specific, identifiable counterparties, investors typically use brokerage firms to place their respective investing orders. ¶ 8. These brokerage firms, in turn, often rely on firms known as market makers, to route and execute the intended investment. ¶ 7. This process repeats itself for the investor on the other side of the transaction. As discussed below, because of these processes and intermediaries, the sales of shares from one individual to eventual purchasing investors can often occur at different transaction prices and execution timestamps.

A. The three basic steps involved in most modern securities transactions.

Step One: Taking a Position.[11] First, before any transaction takes place, an investor must first decide to invest in or divest from a particular security. This is referred to as taking a position. Positions may be short or long. To go "long" means to buy and hold the security with the expectation that its price will increase over time. A "short" position, by comparison, involves borrowing and selling a security the investor does not own, typically because the investor believes the price of the security will decrease. If the price drops before the investor has to give back the security, the investor can buy the security at the lower price and pocket the difference between what he sold and bought at. If the price of the security rises, the investor will incur a loss.

Step Two: Placing an Order with a Broker.[12] After an investor takes a position, they then initiate their intended transaction by placing an order with their selected broker. The most common

[11] *See* "Understanding Short and Long Positions in Financial Markets," Investopedia, https://www.investopedia.com/terms/p/position.asp (last accessed Jan. 5, 2026).

[12] *See* "What is an Order? Definition, How it Works, Types, and Examples," Investopedia, https://www.investopedia.com/terms/o/order.asp (last accessed Jan. 5, 2026).

types of orders are market orders, limit orders, and stop orders. A market order is an order to buy or sell a security immediately. This guarantees that the order will be executed at or near the current bidding price. A limit order buys or sells a security at a specific price or better. And a stop order buys or sells a stock once the price of the stock reaches the specified price, known as the stop price.

Step Three: Executing the Order. If the broker accepts the order, it will then try to execute the order either against displayed liquidity on exchanges or by forwarding the order to market makers. ¶ 8. Displayed liquidity refers to attempts to match with passive orders that are visible on an exchange's public order book, which shows all current orders for a specific asset, organized by prices and quantities. *Id.* Put simply, if the broker finds a listed order that matches their criteria, they can execute the trade. *Id.* Orders through market makers add another level of complexity.

B. The critical role market maker firms play in pricing and parceling securities.

"Market makers" are firms that enable transactions by passively standing ready to buy or sell a security listed on an exchange at publicly quoted prices. ¶¶ 8-11. Their primary function is to provide liquidity and stability to financial markets by continuously quoting prices for securities to investors, ensuring that investors can always trade. *Id*. Unlike regular traders who may only participate when opportunities arise, market makers maintain a constant presence in their assigned securities. *Id*. They provide continuous liquidity regardless of market conditions.

To enable transactions, market makers will publicly quote two prices: (i) a bid price, at which they will buy securities and (ii) an ask price, at which they will sell. ¶¶ 9, 11. The difference between a market maker's bid and ask prices is called its "spread." Several factors can influence the width of a bid-ask spread, including volume of shares, the riskiness of the security measured by the volatility of past returns, price, and market capitalization. ¶ 11. These spreads tend to be wider for riskier securities. Market makers will also actively adjust their price levels (and not just spreads) in relation to inventory, so as to avoid accumulating significant positions on one side of the market. *See* ¶¶ 10-11, 14. Market makers who are exceeding their inventory benchmarks, for example, may resist taking on additional inventory without dramatic price concessions.

As part of this process, market makers routinely warehouse securities as inventory to improve liquidity. ¶ 11-12. Under this system, an investor looking to sell can simply sell their security to a market maker dealer at a designated price instead of waiting for a buyer to come along. The market maker then adds the security to an inventory from which other investors can then buy from. The consequence of this practice is that a security sale may not be instantly offset by a corresponding trade execution by purchasers. ¶¶ 12, 14. Instead, it might take seconds, minutes, or several hours for the market maker to unwind its newly gained inventory. ¶ 14.

Market makers also facilitate trading by using algorithms to strategically break down large orders to buy or sell securities—a parent order—into smaller packages before routing them across various venues—children orders. ¶¶ 12-14. These algorithms seek optimal price-and-time execution opportunities based on both real-time data and the parameters provided by the initiating investor. ¶ 14. By splitting up the order, the market maker can minimize the significant price shifts expected to accompany transactions of large stock blocks. ¶ 13.

Market makers do not offer these services for free; rather, they aim to make a profit—typically through a percentage of the bid-ask spread. Under this common model, a market maker's profits increase as they process more orders from brokers, and some market makers may even pay a broker for routing orders to them—perhaps a penny or more per share.[13] This will further impact the price differences observed on any side of an individual securities transaction.

II. Armistice's Trade Records Confirm It Dumped Its Vaxart Shares Throughout Two Entire Trading Days, Starting Before the Market Opened on June 26 and Continuing to Sell in Low Volume Periods After the Market Had Closed on Both Trading Days.

During fact discovery, Armistice produced a spreadsheet ("Trade Blotter") documenting all of its purchases and sales of Vaxart securities,[14] which includes fields for: trade time, transaction

[13] "Understanding Market Makers: Roles, Profits, and Their Impact on Liquidity," Investopoedia, https://www.investopedia.com/terms/m/marketmaker.asp (last accessed Jan. 5, 2026).

[14] Ex. B. Defendants did not produce individual confirmations or receipts for these many transactions during fact discovery. Plaintiffs reserve the right to request these documents to the extent they are relevant to any point raised in Defendants' anticipated opposition to this brief.

time,[15] quantity, trade price, custodian, counterparty, gross commission, and fees. As further explained by Dr. Cain, the Blotter and Armistice's SEC filings, confirm that Armistice sold Vaxart stock throughout the full trading days on both June 26 and 29. In particular, they show that:

- On June 26, Armistice began selling its Vaxart shares at approximately 8:02 am ET—about one hour and 28 minutes before markets opened at 9:30 am and only two minutes after the OWS Press Release hit the news wires. ¶ 25.
- By the time Armistice placed/executed its last block sale on June 26 (4:16 pm ET), it had sold a total of 18,226,667 shares (including shares from exercised warrants), split among 481 individual sale and short-sale transactions. ¶¶ 25-26.
- Between 8:02 am and 9:59 am ET on June 26, Armistice sold its 7 million pre-existing shares in blocks ranging between 18,000 and 1.5 million shares per block. It then started to sell share blocks gained from exercised warrants through short sales. Ex. B at 23-24.
- Over the course of the trading day, the size of Armistice's sales averaged 37,893 shares per trade, with a minimum trade size of 6,000 shares, a median of 20,000 shares, and a maximum of 1,452,486 shares. ¶ 27.
- The next trading day (June 29), Armistice sold blocks of Vaxart stock from 8:21am ET through approximately 4:25pm ET. In total, it sold an additional 9,385,386 shares split among 470 individual block short sale transactions. ¶ 28. The size of these sales blocks averaged 19,969 shares per trade, with a minimum trade size of 1,490 shares, a median of 13,553 shares, and a maximum of 943,510 shares. ¶¶ 29-30.
- Armistice likely sold the bulk of its holdings using the algorithmic execution systems offered by market maker counterparties, UBS and Jeffries. ¶ 31.
- On average, Armistice executed trades every 1.03 minutes on both days, with the largest gap in consecutive transactions (during open market hours) spanning 12 minutes

[15] The Trade Blotter does not list time zones for transaction times. Dr. Cain thus compared the transaction times and trade prices to market prices. From this comparison, he concluded that the times appeared to be one hour before Eastern Time. (E.g., 7:02 → 8:02 am ET.). ¶ 25 n.55.

on June 26 and 7.73 minutes on June 29. ¶¶ 26, 29.

According to Armistice's head trader—the individual who entered the Vaxart orders—Armistice broke up its sales in the above-described fashion so it could "sell the stock without impacting the price of the stock – or impacting the price of the stock as little as possible."[16]

III. Armistice's Sales Comprised a Significant Portion of the Outstanding Stock Available for the High Volume of Vaxart Stock Transactions on Both Trading Days.

As reported by Dr. Cain in his prior reports and his contemporaneously filed declaration:

- Before June 26, 2020, Vaxart had about 74.1 million shares of stock outstanding. ¶ 24.
- On June 26, 2020, investors traded 230.6 million shares of Vaxart common stock. ¶ 32.
- Trading in Vaxart was paused at 9:34 am and 10:11 am ET due to volatility. ¶ 26.
- On June 29, 2020, trading volume decreased to 75.4 million shares. ¶ 32.
- Armistice exercised about 20.6 million Vaxart warrants across both days. ¶ 24.
- As of June 30, 2020, Vaxart had 96.1 million outstanding shares. ¶ 24.

ARGUMENT

I. The Court Should Adopt a Contemporaneous Trading Period that, At Minimum, Spans the Full Days Armistice Dumped its Vaxart Stock—June 26 and June 29, 2020.

A. Section 20A's "contemporaneous" trading requirement requires only that the seller and buyer transact "close in time," not directly in contractual privity.

Section 20A requires that an investor must have traded "contemporaneously" with the defendants' allegedly unlawful insider sales. This "contemporaneous trading rule acts as a stand-in for privity."[17] But even so, the Ninth Circuit has held that the rule does not require an investor-plaintiff to prove that it actually traded with an insider in order to bring a Section 20A claim. The rule "merely requires that the seller and buyer engaged in transactions close in time," and it allows investors to recover, even if there in no way could have purchased shares directly from the insider, so long as they were trading during the same period as an insider's allegedly unlawful trades.[18]

On these points, the Ninth Circuit's recent statutory standing decision in *Silver Lake*

[16] Ex. F, Smiriglio Tr. 130:2-132:13.

[17] *Silver Lake*, 108 F.4th at 1190.

[18] *Id.*

illustrates Congress's and the courts' refusal to limit insider liability to transactions with direct privity. There, the defendants—two insiders who dumped nearly 10 million shares—argued that an institutional investor did not trade contemporaneously with them because the defendants sold shares in a way that "could not have possibly" been bought by the investor-plaintiff.[19] Specifically, the insider-defendants had dumped their shares in the evening, hours after markets had closed, through a privately negotiated block trade.[20] The plaintiff-investor, on the other hand, had acquired its shares during regular trading hours in the open market on the days before and after the defendants' private sale. The defendants argued that "because the block sale occurred after-hours on a private-market basis," the plaintiff-investor's "public-market trade was not 'contemporaneous'" for purposes of Section 20A.[21] But the Ninth Circuit disagreed. In its words: "Although the contemporaneous trading rule acts as a stand-in for privity," at base, the rule "merely requires that the seller and buyer engaged in transactions ***close in time***, not with each other."[22] As such, the Ninth Circuit found that even though the plaintiff-investor traded hours apart from the insiders, did so in a public versus private market, and thus could not have possibly traded with the defendants, the plaintiff-investor still had "statutory standing" under Section 20A's contemporaneous trading requirement to be able to bring suit.[23]

Notably, the Court's December 18, 2025 Order potentially stands in tension with *Silver Lake*'s statutory-standing ruling. In the Order, the Court posits that "the contemporaneous trading requirement is about identifying people who might have traded with the insiders" or who "possibly

---

[19] 108 F.4th at 1189–90.

[20] Private block trades are trades of large amounts of stock that are negotiated and sold privately, often at a slight discount to the market price. In *Silver Lake*, the insiders began sending solicitation emails for buyers after markets had closed at a discount allegedly crafted to encourage a quick sale. Second Am. Compl, *Silver Lake*, 4:20-cv-02341-JSW (ECF No. 154).

[21] 108 F.4th at 1190.

[22] *Id.*

[23] *Id.*; *see also Turocy v. El Pollo Loco Holdings Inc.*, 2018 WL 3343493 (C.D. Cal. July 3, 2018) (holding for purposes of class certification that Section 20A claim could proceed even when the defendants' sales were to private parties who were not members of the plaintiff class).

have been in privity with" Defendants.[24] On the one hand, this language can be read as expressing an intent to define the contemporaneous period in a way that (i) captures any investors whose shares might have come from Defendants but-for the fortuities of marketplace matching and (ii) excludes investors who in no way traded "close in time" with Defendants. If so, Plaintiffs agree that this is consistent with certain case authorities. But this language could also signal an interest in excluding investors who traded "close in time" with Defendants but, for whatever other reasons, were not likely in privity with Defendants. If so, such an approach stands in conflict with *Silver Lake*, other Circuit authorities, and fundamental purposes of the federal insider trading laws.

As the Second Circuit has noted, insiders like Defendants "owe[] a duty … not only to the purchasers of the actual shares sold by [D]efendants (in the unlikely event they can be identified) but to all persons who during the same period purchased [corporate] stock in the open market."[25] In an anonymous market, the investors who were actually in privity with Armistice were no more harmed or injured by Defendants' failure to disclose or abstain than any other investor who traded on the same day.[26] It is for this reason that Congress codified a private cause of action for ***contemporaneous*** trading.[27] And in crafting Section 20A, "Congress … did not intend to limit [this] liability to transactions with direct privity," but rather, intended to grant a private right of action to any investor who traded close in time with the defendants.[28]

B. At minimum, any investor who purchased Vaxart common stock at any time during open market hours on June 26 or June 29, 2020, traded contemporaneously with the Defendants' allegedly unlawful sales.

Section 20A does not define the length of the "contemporaneous" trading period, and the courts who have encountered the question have varied on how the term should be applied, with

---

[24] Section 20A Briefing Order at 3 and 4.

[25] *Shapiro v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 495 F.2d 228, 237 (2d Cir. 1974).

[26] *See Silver Lake*, 108 F.4th at 1190 (affirming that the duty to "disclose or abstain" does not apply "'only in face-to-face transactions or to the actual purchasers or sellers on an anonymous public stock exchange'" (quoting *Shapiro*, 495 F.2d at 237)).

[27] *See* H.R. Rep. No. 100-910, at 27.

[28] *Silver Lake*, 108 F.4th at 1190.

varying degrees of rigor. Nevertheless, there can be no reasonable dispute that if an investor bought Vaxart stock on June 26 or June 29, 2020, he or she did so close in time with one of Armistice's frequent block sales throughout those trading days.

As Armistice's trade records confirm, over the course of June 26 and June 29, Defendants executed over 950 block sale transactions with an average of over 25,000 shares per block. ¶¶ 27, 30.[29] Armistice executed sales so frequently that, on average, it executed a new, block transaction every 1.03 minutes. ¶¶ 26, 29. These transactions were not just frequent; they were pervasive. To finish by the end of June 29, Armistice began executing large block trades before markets opened on June 26 and continued to do so throughout the trading day, including after regular trading hours had closed. *Id.* Armistice then repeated this pattern again on June 29. ¶ 28. By the time Armistice completed its sales on June 29, it had sold, in total, nearly 27.6 million Vaxart shares. This amount was more than a quarter of all Vaxart shares in existence at the time. *See* ¶ 32. Put differently, if an investor bought a share of Vaxart on either June 26 or June 29, and continued to hold it until after June 29, there was more than a 1 in 4 chance that the share was part of Armistice's allegedly unlawful sales spree. Given the frequency of Armistice's sales, no investor could have bought Vaxart stock during regular trading hours on June 26 or 29 more than 12 minutes apart from one of Armistice's many block sales. ¶ 38.

Defendants were also acutely aware that sales of the magnitude they were executing could impact Vaxart's stock price[30]—in an efficient market, the price paid by all investors, not just those transacting on the other side of Armsitice. Defendants owed a duty to disclose or abstain to all investors trading on those days, not just those who fortuitously purchased Armistice shares directly or from market maker intermediaries (at different times and price points); to hold otherwise would ignore the nature of the underlying fraud and "frustrate a major purpose of the antifraud provisions of the securities laws: to insure the integrity and efficiency of the securities markets."[31]

---

[29] *See* Ex. B, Modified Trade Blotter; Background on Armistice Sales, *infra*.

[30] *See* Ex. F, Smiriglio Tr. 130:2-132:13.

[31] *See Shapiro*, 495 F.2d at 237.

C. No authority embraces Defendants' undeveloped contention that the Section 20A period should be cut shorter than the full trading day.

In their briefing, Defendants have suggested that limiting the contemporaneous trading period to just June 26 and June 29 might not be enough because of the high trading volumes on those days. They assert that, given the trading volume, "any sales by Armistice on June 26 or June 29 would have been rapidly absorbed by investor demand, making it … implausible that an investor who purchased even an hour after Armistice sold could have possibly traded with [Armistice]."[32] Defendants cite nothing—no case law, no expert research, no documents—for this novel proposition. To date, Defendants have not provided Plaintiffs with any specific proposal for how to cut the contemporaneous period further, leaving Plaintiffs only the ability to speculate as to whether Defendants are posturing or have a specific idea. In either case, this undeveloped suggestion should be rejected as incongruent with both past precedent and the facts of this case.

As the Court and parties are acutely aware, district courts "have found that contemporaneous means the insider and the plaintiff must have traded anywhere from on the same day, to less than a week, to within a month, to the entire period while relevant and nonpublic information remained undisclosed."[33] Yet despite a diligent search, Plaintiffs have been unable to find ***any*** decision in which a federal court has adopted a definition of contemporaneous trading that excludes investors who traded the same day as, but not within hours or minutes of, an insider's allegedly unlawful transactions. Yet that is what the Defendants suggest that this Court do here.

Moreover, the trade records produced by Defendants to date irrefutably show that at no point on June 26 or June 29 could an investor have purchased Vaxart stock outside of the window arbitrarily suggested by Defendants—"an hour after Armistice sold" shares. [34] As discussed above, these records show that on both June 26 and June 29, Armistice started dumping its shares before markets opened and continued to do so after markets had closed. Armistice achieved this feat by

---

[32] Defs.' Section 20A Br. at 7.

[33] *In Envision Healthcare Corp. Sec. Litig.*, 2019 WL 6168254, at *26 (M.D. Tenn. Nov. 19, 2019).

[34] Defs.' Section 20A Br. at 7.

selling the bulk of its holdings through 950 individual block sales, which were so frequent that they occurred, on average, every 1.03 minutes. ¶¶ 26, 29. At most, the maximum time Armistice waited before executing another block trade was 12.00 minutes on June 26 and 7.73 minutes on June 29 during open market hours. *Id.*

Evidence further suggests that the gaps in Armistice's trades, if any, also had a purpose. At deposition, Armistice's head trader testified that he structured Armistice's trades with volume as a considered factor so as to minimize the price impact of Armistice dumping more than a quarter of Vaxart's outstanding shares of common stock over a tight timespan.[35] Put differently, Armistice deliberately metered its sales so as not to flood the market with excess inventory or sell-side pressure all at once. Additionally, on June 28, 2020, Boyd instructed his head trader that he could sell the firm's Vaxart's holdings "all day so can be patient."[36] This possibly suggests that a factor in whether Armistice waited seconds or minutes to execute a new order was whether Armistice had felt the market had recovered from Armistice's previous injection of volume and could take on new orders without a drastic impact on price. Because of this patient strategy, when markets closed on June 29, Armistice still held shares that it wanted to sell. Armistice thus continued to execute short sale orders after hours, in total, 12 block orders, to sell 1.9 million holdover shares.

Given (i) these significant after-close-of-market sales on June 29, (ii) the trending decrease in volume in Vaxart stock after the OWS press release, and (iii) and the sharp drop off in trading volume after markets close, it is plausible, if not likely, that investors picked up Armistice's sold shares over the next trading day(s), ¶¶ 35, 40, just like the investors in *Silver Lake*.[37] The Court should not discount investors who bought Vaxart shares on June 30, especially as it imposes no undue prejudice on Defendants. Under Section 20A, Defendants' liability is capped at the profits gained from their allegedly unlawful sales. This statutory-damages cap sufficiently serves to

[35] *See* Ex. F, Smiriglio Tr. 130:2-132:13.

[36] Ex. E, June 28, 2020 Text Chain between Steve Boyd and Sergio Smiriglio.

[37] 108 F.4th at 1190 (finding plaintiff traded contemporaneously with the defendants where the defendants sold shares in the evening and the plaintiff bought shares the following trading day).

insulate Defendants' exposure from a contemporaneous trading period that could arguably skew towards over-inclusiveness, while at the same time ensuring investors who were harmed by an unlawful information asymmetry can recover losses stemming from that injury. Because Defendants' damages are capped at the amount of their illicit gain, broadening the class definition does not increase Defendants' exposure beyond the illicit transactions at issue.

II. The Court Need Not Issue a Supplemental Class Notice for the Contemporaneous Trading Period as the Prior Notice Complied with Rule 23, and Any Arguable Informational Deficiency Did Not Prejudice Investors or Defendants.

After further consideration, Plaintiffs also respectfully contend that this Court may not need to order the issuance of a supplemental notice once it makes a legal ruling on the length of the contemporaneous trading period. If so, the Court could take additional time to study the Section 20A period. Plaintiffs believe a supplemental notice may not be necessary for at least three reasons.

Frist, courts in this district and others "generally have found it unnecessary to create a sub class for Section 20A claims" to proceed on a classwide basis where the proposed Section 10(b) class already includes in its definitions those with insider-trading claims,[38] as the Class does here.

Second, though the Prior Notice did not define "contemporaneous trading," the notice did satisfy the requirements of Rule 23's requirements and constitutional due process. To comply with constitutional due process, a class notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[39] And to comply with Rule 23(c)(2)(B), class members must receive "the best notice ***that is practicable under the circumstances***."

The May 27, 2025 class notice satisfied these standards, particularly for the putative class members who bought Vaxart common stock on the days that Armistice dumped its shares. The Notice informed investors that "any members of the Class who purchased contemporaneously with

---

[38] *Homyk v. ChemoCentryx, Inc.*, 2024 WL 1141699, at *6 (N.D. Cal. Mar. 6, 2024) (citing *SEB Inv. Mgmt. AB v. Align Tech., Inc.*, 335 F.R.D. 276, 286 (N.D. Cal. 2020); *Hodges v. Akeena Solar, Inc.*, 274 F.R.D. 259, 272 (N.D. Cal. 2011)). In such contexts, the court must still define what "contemporaneous" means for purposes of jury instructions and distribution of damages.

[39] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

the Armistice Defendants' June 26 and 29, 2020 sales of Vaxart common stock and were damaged thereby are also members of the Subclass."[40] To the extent putative 20A class members had any questions, the Notice also expressly advised investors that, at the time:

> The Court has not yet determined precisely who fits within the definition of a "contemporaneous" trader (i.e., just how close in time putative Subclass members' purchases or sales need to have occurred relative to the Defendants' June 26 and 29, 2020 sales in order to be considered "contemporaneous"). ***Please note that all members of the Subclass are also members of the Class***; by contrast, not all members of the Class are members of the Subclass.

It advised investors that:

> ***If you are still not sure whether you are included, you can ask for free help.*** You can call toll-free 844-388-1723 or visit www.VaxartSecuritiesLitigation.com for more information. You may also contact Class Counsel (see Question 18, below, for their contact details).[41]

(No investor reached out to Class Counsel because they were unsure whether they were included.) And the Notice also advised investors who were considering exclusion to "talk to your own lawyer promptly, because your claims may be subject to a statute of limitations or statute of repose."[42]

Third, requiring an updated class notice could now prejudice the very investors Class Counsel and the Court seek to protect because of Section 20A's statute of limitations. According to Section 20A(b)(4) of the Exchange Act: "No action may be brought under this section more than 5 years after the date of the last transaction that is the subject of the violation."[43] Because the sales at issue occurred on June 26 and 29, 2020, ***the statutory deadline to bring any Section 20A claim expired on June 29, 2025***. Supreme Court precedent further suggests that tolling under *Am. Pipe & Construction Co. v. Utah*, 414 U.S. 538, 554 (1974) may not provide investors with relief.[44]

---

[40] Summary Notice at 1 (ECF No. 494-2); *see also* Detailed Notice at 1 & 3 (ECF No. 494-3).

[41] Detailed Notice at 3.

[42] *Id.* at 4.

[43] 15 U.S.C. § 78t-1(b)(4).

[44] In *Cal. Pub. Employees' Ret. Sys. v. ANZ Sec., Inc.*, 582 U.S. 497 (2017) ("*CalPERS*"), the Court held that statutes of repose, including the Securities Act's three-year statute of repose, "are not subject to equitable tolling," including *Am. Pipe*'s tolling rule. *Id.* at 508–11. The Third Circuit applied this reasoning directly to Exchange Act claims—including Section 20A claims—in *N. Sound Cap. LLC v. Merck & Co., Inc.*, 702 F. App'x 75 (3d Cir. 2017). Although

As things currently stand, all Vaxart investors who met the Class definition (barring the four who opted out[45]) remain eligible to participate in any judgment or settlement. Defendants likewise suffer no prejudice. The purpose of statutes of limitations and repose is to provide a fresh start or freedom from liability after a determined period of time.[46] That purpose has been served: Defendants face no risk of individual opt-out actions under Section 20A because the limitations period has expired. Limiting the contemporaneous trading period now does not expand Defendants' liability; it merely clarifies which class members will receive an allocation of any recovery Section 20A. Of course, Defendants may well prefer a more narrow definition to reduce the pool of claimants. But narrowing the definition would only exclude investors who already assented to recovering damages through a class vehicle; it would not expand the class to include new people who could recover new damages from previously uncertified claims.

By informing class members that the "contemporaneous" definition had "not yet" been determined, the notice signaled that a future judicial ruling would supply the answer. Class members who read the Notice and remained in the Class accepted that framework. If any after wished to pursue individual claims, they had every opportunity to do so while this action was pending, were advised to consult counsel, and could have opted out under the prior deadline.

Regardless, should the Court decide that a new Notice is necessary, Class Counsel contend that this new Notice must inform investors who originally chose to stay in the Section 10(b) Class about the potential impact of Section 20A's statute of limitations on their decision to opt out.

CONCLUSION

For these reasons, the Court should find that the contemporaneous trading period in this case spanned at least from June 26 to June 29, 2020, and lasted to June 30, 2020, at the latest.

---

the Ninth Circuit has not squarely addressed whether Section 20A's five-year period is a statute of repose, the question admits of little doubt. The statute's language—"in no event" and "more than [X] years after" the violation—is the hallmark of a statute of repose, not a statute of limitations subject to discovery-rule tolling. *See CalPERS*, 582 U.S. at 505–06.

[45] *See* ECF No. 540.

[46] *See CalPERS*, 582 U.S. at 505.

DATED: January 5, 2026

Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

/s/ Steve W. Berman
Steve W. Berman (*pro hac vice)*
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
steve@hbsslaw.com

Reed R. Kathrein (139304)
Lucas E. Gilmore (250893)
715 Hearst Avenue, Suite 300
Berkeley, CA 94710
Telephone: (510) 725-3000
reed@hbsslaw.com
lucasg@hbsslaw.com

Raffi Melanson (*pro hac vice)*
1 Faneuil Hall Sq., 5th Floor
Boston, MA 02109
Telephone: (617) 475-1978
raffim@hbsslaw.com

SCOTT+SCOTT ATTORNEYS AT LAW LLP

William C. Fredericks (*pro hac vice*)
Jeffrey P. Jacobson (*pro hac vice*)
Mandeep S. Minhas (*pro hac vice*)
The Helmsley Building
230 Park Avenue, 24th Floor
New York, NY 10169
Telephone: (212) 233-6444
wfredericks@scott-scott.com
jjacobson@scott-scott.com
mminhas@scott-scott.com

Jessica M. Casey (*pro hac vice*)
156 S. Main Street
Colchester, CT 06415
Telephone: (860) 537-5537
jcasey@scott-scott.com

Class Counsel