

## BFA Defeats Motion to Dismiss in Five9 Securities Litigation

On February 23, 2026, Judge P. Casey Pitts of the Northern District of California denied Defendants' motion to dismiss the securities fraud class action *Lucid Alternative Fund, LP v. Five9, Inc., et al.* The Amended Complaint alleges that Five9 and certain of its senior management knew that Five9 would not meet its revenue guidance before reaffirming the guidance, in part because of known macroeconomic headwinds impacting both the net new and existing businesses. Judge Pitts concluded that the complaint adequately pleaded claims under Section 10(b) and Section 20(a) of the Securities Exchange Act of 1934.

Notably, Judge Pitts sustained Plaintiff's allegations that, by June 2024, CEO Burkland and CFO Zwarenstein were aware of information undermining annual revenue guidance when they affirmed it, including Burkland's admissions of underperformance in internal Five9 meetings prior to that June 2024 investor conference. Judge Pitts went on to hold that Plaintiff's allegations also support scienter in that Defendants had actual access to material information on Five9's flagging revenue growth and the impact of macro factors on net new business, and further, that "it would be absurd' for Burkland and Zwarenstein as the CEO and CFO of Five9 not to know the revenue metrics and sales trends for [Five9's] cloud software."

A team of BFA attorneys, including partners Joseph Fonti, Benjamin Burry, and George Bauer investigated and drafted the Amended Complaint and opposed Defendants' motion to dismiss. BFA partner Benjamin Burry argued the motion before Judge Pitts in December 2025.

The case will now proceed to discovery.