

1 COOLEY LLP
 PATRICK E. GIBBS (183174)
 2 (pgibbs@cooley.com)
 JESSICA VALENZUELA SANTAMARIA (220934)
 3 (jvs@cooley.com)
 TIJANA M. BRIEN (286590)
 4 (tbrien@cooley.com)
 JENNA C. BAILEY (319302)
 5 (jbailey@cooley.com)
 3175 Hanover Street
 6 Palo Alto, California 94304-1130
 Telephone: +1 650 843 5000
 7 Facsimile: +1 650 849 7400

8 CRAIG E. TENBROECK (287848)
 (ctenbroeck@cooley.com)
 9 4401 Eastgate Mall
 San Diego, California 92121
 10 Telephone: +1 858 550 6000
 Facsimile: +1 858 550 6420

11 Attorneys for Defendants
 12 *Zoom Video Communications, Inc., Eric S. Yuan, and*
 13 *Kelly Steckelberg*

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA

16
 17 In re ZOOM SECURITIES LITIGATION

Case No.: 3:20-cv-02353-JD

18
 19 This Document Relates To:
 ALL ACTIONS.

**DEFENDANTS' REPLY ISO MOTION TO
 DISMISS THE CONSOLIDATED CLASS ACTION
 COMPLAINT**

Date: August 26, 2021
 Time: 10:00 a.m.
 Courtroom: 11, 19th Floor
 Judge: Hon. James Donato

20
 21
 22
 23
 24
 25
 26
 27
 28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
I. INTRODUCTION	1
II. ARGUMENT	1
A. Plaintiff Fails to Allege Any False or Misleading Statements	1
1. Plaintiff Fails to Allege That E2EE Had One Exclusive Definition	1
2. Plaintiff Fails to Allege Any Actionable Misstatements or Omissions Regarding Data Privacy	3
B. Plaintiff Fails to Establish “Maker” Liability	5
C. Plaintiff Fails to Allege a Strong Inference of Scienter	5
1. Plaintiff Fails to Plead Scienter as to End-to-End Encryption	5
2. Plaintiff Fails to Plead Scienter as to the Privacy Statements	7
3. After-the-Fact Statements and Events Do Not Support Scienter	7
4. Viewed Holistically, Plaintiff Fails to Plead Scienter	8
D. Plaintiff Fails to Plead Loss Causation	9
III. CONCLUSION	10

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4 *In re Allied Nevada Gold Corp. Sec. Litig.*,

5 743 F. App’x 887 (9th Cir. 2018) 8

6 *In re Alphabet, Inc. Sec. Litig.*,

7 1 F. 4th 687 (9th Cir. 2021) 4, 9

8 *In re Apple Inc., Sec. Litig.*,

9 2020 WL 2857397 (N.D. Cal. June 2, 2020) 4, 8

10 *In re Apple Inc. Sec. Litig.*,

11 2020 WL 6482014 (N.D. Cal. Nov. 4, 2020)..... 8

12 *Bonanno v. Cellular Biomedicine Grp., Inc.*,

13 2016 WL 4585753 (N.D. Cal. Sept. 2, 2016) 10

14 *Brody v. Transitional Hosps. Corp.*,

15 280 F.3d 997 (9th Cir. 2002)..... 3, 4

16 *City of Monroe Employees Retirement System v. Bridgestone Corp.*,

17 399 F.3d 651 (6th Cir. 2005)..... 8

18 *City of Sunrise Firefighters’ Pension Fund v. Oracle Corp.*,

19 2021 WL 1091891 (N.D. Cal. Mar. 22, 2021)..... 4

20 *In re Cloudera, Inc.*,

21 2021 WL 2115303 (N.D. Cal. May 25, 2021) 7

22 *Cunningham v. Identiv, Inc.*,

23 716 F. App’x 663 (9th Cir. 2018) 6

24 *Curry v. Yelp Inc.*,

25 875 F.3d 1219 (9th Cir. 2017)..... 7

26 *ECA, Loc. 134 IBEW Joint Pension Tr. of Chi. v. JP Morgan Chase Co.*,

27 553 F.3d 187 (2d Cir. 2009)..... 8

28 *Janus Cap. Grp., Inc. v. First Derivative Traders*,

 564 U.S. 135 (2011). (*See Mot. .*) 5

Khoja v. Orexigen,

 899 F. 3d 988 (9th Cir. 2018)..... 3

In re LendingClub Sec. Litig.,

 254 F. Supp. 3d 1107 (N.D. Cal. 2017) 4

TABLE OF AUTHORITIES**(Cont.)**

	Page(s)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

Lopes v. Fitbit, Inc.,
2020 WL 1465932 (N.D. Cal. Mar. 23, 2020), *aff'd*, 848 F. App'x 278 (9th
Cir. 2021) 7

In re Omnicom Grp., Inc. Sec. Litig.,
597 F.3d 501 (2d Cir. 2010)..... 10

Perlman v. Zell,
938 F. Supp. 1327 (N.D. Ill. 1996), *aff'd*, 185 F.3d 850 (7th Cir. 1999)..... 6

Purple Mountain Trust v. Wells Fargo & Co.,
432 F. Supp. 3d 1095 (N.D. Cal. 2020) 10

Reese v. Malone,
747 F.3d 557 (9th Cir. 2014)..... 8

In re Rigel Pharms., Inc. Sec. Litig.,
2009 WL 5125344 (N.D. Cal. Dec. 21, 2009) 10

In re Rigel Pharms., Inc. Sec. Litig.,
697 F.3d 869 (9th Cir. 2012)..... 5

Rok v. Identiv, Inc.,
2017 WL 35496 (N.D. Cal. Jan. 4, 2017) 6

Schueneman v. Arena Pharmaceuticals, Inc.,
840 F.3d 698 (9th Cir. 2016)..... 6

Tellabs, Inc. v. Makor Issues & Rights, Ltd.,
551 U.S. 308 (2007)..... 9

In re Tesla, Inc. Sec. Litig.,
477 F. Supp. 3d 903 (N.D. Cal. 2020) 8

In re Twitter, Inc. Sec. Litig.,
506 F. Supp. 3d 867 (N.D. Cal. 2010) 3

In re Twitter, Inc. Sec. Litig.,
2020 WL 4187915 (N.D. Cal. Apr. 17, 2020) 6

In re Verisign, Inc., Derivative Litig.,
531 F. Supp. 2d 1173 (N.D. Cal. 2007) 5

Webb v. SolarCity Corp.,
884 F.3d 844 (9th Cir. 2018)..... 5

TABLE OF AUTHORITIES
(Cont.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Wochos v. Tesla, Inc.,
985 F.3d 1180 (9th Cir. 2021)..... 1, 2

Statutes

15 U.S.C.
§ 78u-4(e)(1)-(3) 10

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.