

No. 20-15638

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re ALPHABET INC. SECURITIES LITIGATION

STATE OF RHODE ISLAND, Office of the Rhode Island Treasurer on
behalf of the Employees' Retirement System of Rhode Island; Lead Plaintiff,
Individually and On Behalf of All Others Similarly Situated,

Plaintiff – Appellant,

v.

ALPHABET INC., LAWRENCE E. PAGE, SUNDAR PICHAI, RUTH M.
PORAT, GOOGLE LLC, KEITH P. ENRIGHT and JOHN KENT WALKER, JR.,

Defendants – Appellees.

On Appeal from the United States District Court,
Northern District of California, No. 4:18-cv-06245-JSW,
The Honorable Jeffrey S. White

**DEFENDANTS-APPELLEES'
PETITION FOR REHEARING OR REHEARING EN BANC**

IGNACIO E. SALCEDA
BENJAMIN M. CROSSON
BETTY CHANG ROWE
STEPHEN B. STRAIN
EMILY A. PETERSON
WILSON SONSINI GOODRICH &
ROSATI
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304-1050
Telephone: (650) 493-9300
Facsimile: (650) 565-5100
Email: isalceda@wsgr.com

GIDEON A. SCHOR
WILSON SONSINI GOODRICH &
ROSATI
Professional Corporation
1301 Avenue of the Americas
40th Floor
New York, NY 10019-6022
Telephone: (212) 999-5800
Facsimile: (212) 999-5899
Email: gschor@wsgr.com

Attorneys for Defendants-Appellees

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Defendant-Appellees Alphabet Inc. (“Alphabet”) and Google LLC (“Google”) certify as follows:

Google is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet. Alphabet has no parent corporation, and no publicly held corporation owns 10% or more of Alphabet’s stock.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND RULE 35 STATEMENT	1
BACKGROUND	3
REASONS FOR GRANTING THE PETITION.....	4
I. The Panel’s Expansive Materialization-of-Risk Approach Conflicts with Supreme Court and Ninth Circuit Precedent.....	6
A. The Panel’s Decision Eviscerates Section 10(b)’s Requirement That a Statement Must Be False at the Time It Was Made.	7
B. By Erroneously Conflating Materiality with Falsity, the Panel’s Decision Manufactures a Novel Duty to Disclose Based on “Trust” That Is Inconsistent with Supreme Court and This Circuit’s Precedents.	10
C. The Panel’s Decision Is Inconsistent with Ninth and Sixth Circuit Precedent.	14
II. This Case Raises Questions of “Exceptional Importance.”	17
CONCLUSION.....	18
CERTIFICATE OF COMPLIANCE	
ADDENDUM	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

CASES

<i>Basic Inc. v. Levinson</i> , 485 U.S. 224 (1988).....	11, 12, 18
<i>Berson v. Applied Signal Tech., Inc.</i> , 527 F.3d 982 (9th Cir. 2008).....	7, 8, 13
<i>Bondali v. Yum! Brands, Inc.</i> , 620 F. App'x 483 (6th Cir. 2015).....	<i>passim</i>
<i>Brody v. Transitional Hosp. Corp.</i> , 280 F.3d 997 (9th Cir. 2002).....	12
<i>Dice v. ChannelAdvisor Corp.</i> , 671 F. App'x 111 (4th Cir. 2016).....	16
<i>Howard v. Arconic Inc.</i> , 395 F. Supp. 3d 516 (W.D. Pa. 2019).....	16
<i>In re ChannelAdvisor Corp. Sec. Litig.</i> , No. 15-CV-000307-F, 2016 WL 1381772 (E.D.N.C. Apr. 6, 2016).....	15
<i>In re LeapFrog Enters., Inc. Sec. Litig.</i> , 527 F. Supp. 2d 1033 (N.D. Cal. 2007).....	17, 18
<i>In re Marriott Int'l, Inc. Customer Data Security Breach Litig. Sec. Actions</i> , No. 19-MD-2879, 2021 WL 2407518 (D. Md. June 11, 2021).....	16
<i>In re NVIDIA Corp. Sec. Litig.</i> , 768 F.3d 1046 (9th Cir. 2014).....	18
<i>In re Rigel Pharm., Inc. Sec. Litig.</i> , 697 F.3d 869 (9th Cir. 2012).....	5, 7, 11, 12
<i>In re Silicon Graphics Inc. Sec. Litig.</i> , 183 F.3d 970 (9th Cir. 1999), <i>abrogated on other grounds</i> , <i>S. Ferry LP, No. 2 v. Killinger</i> , 542 F.3d 779 (9th Cir. 2008).....	10
<i>In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Prod. Liab. Litig.</i> , 480 F. Supp. 3d 1050 (N.D. Cal. 2020).....	16
<i>Khoja v. Orexigen Therapeutics, Inc.</i> , 899 F.3d 988 (9th Cir. 2018).....	8
<i>Lloyd v. CVB Fin. Corp.</i> , 811 F.3d 1200 (9th Cir. 2016).....	<i>passim</i>

Matrixx Initiatives, Inc. v. Siracusano,
563 U.S. 27 (2011).....*passim*

Metzler Inv. GMBH v. Corinthian Colleges, Inc.,
540 F.3d 1049 (9th Cir. 2008)10

Ronconi v. Larkin,
253 F.3d 423 (9th Cir. 2001)2, 5, 7, 18

Siracusano v. Matrixx Initiatives, Inc.,
585 F.3d 1167 (9th Cir. 2009),
aff'd, 563 U.S. 27 (2011).....8

Tellabs, Inc. v. Makor Issues & Rights, Ltd.,
551 U.S. 308 (2007).....10

TSC Indus., Inc. v. Northway, Inc.,
426 U.S. 438 (1976).....6, 8, 18

Wochos v. Tesla, Inc.,
985 F.3d 1180 (9th Cir. 2021)2, 12, 13

STATUTES

15 U.S.C. § 78j(b)*passim*

RULES

Fed. R. App. P. 35(a)5, 6

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.