UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

E. OHMAN J:OR FONDER AB; STICHTING PENSIOENFONDS PGB, Lead Plaintiffs,	No. 21-15604
Plaintiffs-Appellants,	D.C. No. 4:18-cv-07669-HSG
and	
IRON WORKERS LOCAL 580 JOINT FUNDS,	OPINION
Plaintiff,	
v.	
NVIDIA CORPORATION; JENSEN HUANG; COLETTE KRESS; JEFF FISHER,	
Defendants-Appellees,	
and	
OAKLAND COUNTY EMPLOYEES' RETIREMENT SYSTEM; OAKLAND COUNTY VOLUNTARY EMPLOYEES'	

BENEFIT ASSOCIATION TRUST;
OAKLAND COUNTY
EMPLOYEES' RETIREMENT
SYSTEM TRUST,

    Defendants.

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Argued and Submitted May 10, 2022
San Francisco, California

Filed August 25, 2023

Before: J. Clifford Wallace, William A. Fletcher, and
Gabriel P. Sanchez, Circuit Judges.

Opinion by Judge W. Fletcher;
Dissent by Judge Sanchez

SUMMARY[*]

Securities Fraud

    The panel affirmed in part and reversed in part the
district court's dismissal of a securities fraud action brought

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[*] This summary constitutes no part of the opinion of the court. It has
been prepared by court staff for the convenience of the reader.

under §§ 10(b) and 20(a) of the Securities and Exchange Act of 1934 and Rule 10b-5 against NVIDIA Corp. and three of its officers.

Plaintiffs alleged that NVIDIA, a producer of graphics processing units, knowingly or recklessly made materially misleading and false statements regarding the impact of cryptocurrency sales on NVIDIA's financial performance in order to conceal the extent to which NVIDIA's revenue growth depended on the notoriously volatile demand for cryptocurrency. Plaintiffs alleged that the three individual defendants had actual knowledge that increases in demand for NVIDIA's Gaming-segment products were largely driven by crypto-related sales, that their public statements minimizing the impact of crypto-related sales on NVIDIA's revenues were materially false or misleading, and that the statements were made knowingly or recklessly. The district court dismissed plaintiffs' amended complaint for failure to sufficiently plead that defendants' allegedly false or misleading statements were made knowingly or recklessly.

In order to prevail on their claims under § 10(b) and Rule 10b-5, plaintiffs were required to show both that defendants' statements were materially false or misleading, and that their statements were made knowingly or recklessly. The panel held that the amended complaint sufficiently alleged that defendants Jensen Huang and Colette Kress made materially false or misleading statements, but the amended complaint did not sufficiently so allege as to defendant Jeff Fisher. The panel held that the amended complaint sufficiently alleged that Huang, but not Kress, made the statements knowingly or recklessly, in violation of § 10(b) and Rule 10b-5.

Section 20(a) assigns joint and several liability for any person who controls any person liable under

§ 10(b). Because the panel held that the amended complaint did not sufficiently plead a cause of action under § 10(b) and Rule 10b-5 against defendants Kress and Fisher, the only alleged primary violation was that committed by NVIDIA through defendant Huang. The panel affirmed the district court's dismissal of plaintiffs' § 20(a) claims against Kress and Fisher, vacated the dismissal of the § 20(a) claims as to Huang, and remanded for further proceedings as to those claims.

Dissenting, Judge Sanchez wrote that, under the pleading requirements of the Private Securities Litigation Reform Act of 1995, plaintiffs failed sufficiently to allege either falsity or scienter.

COUNSEL

Gregory P.N. Joseph (argued) and Rachel M. Cherington, Joseph Hage Aaronson LLC, New York, New York; Eric Gerard, Matthew L. Mustokoff, and Andrew L. Zivitz, Kessler Topaz Meltzer & Check LLP, Radnor, Pennsylvania; Jennifer L. Joost, Kessler Topaz Meltzer & Check LLP, San Francisco, California; John Browne and Michael Mathai, Bernstein Litowitz Berger & Grossman LLP, New York, New York; Lauren M. Cruz and Jonathan D. Uslaner, Bernstein Litowitz Berger & Grossman LLP, Los Angeles, California; for Plaintiffs-Appellants.

Patrick E. Gibbs (argued), John Dwyer, Samantha Kirby, Joshua Walden, and Claire A. McCormack, Cooley LLP, Palo Alto, California; Kathleen R. Hartnett, Julie M. Veroff, Cooley LLP, San Francisco, California; Sarah M. Lightdale and Patrick Hayden, Cooley LLP, New York, New York; for Defendants-Appellees.

OPINION

W. FLETCHER, Circuit Judge:

Lead Plaintiff E. Öhman J:or Fonder AB and others ("Plaintiffs") brought this putative class action on behalf of all persons or entities who purchased or otherwise acquired common stock of NVIDIA Corporation ("NVIDIA") during the proposed Class Period. Plaintiffs allege that during the Class Period defendant NVIDIA and three of its officers knowingly or recklessly made materially "misleading and false statements regarding the impact of cryptocurrency sales on NVIDIA's financial performance" in order to conceal the extent to which NVIDIA's revenue growth depended on the notoriously volatile demand for cryptocurrency ("crypto"). Individual defendants are Jensen Huang, NVIDIA's co-founder, President, and Chief Executive Officer; Colette Kress, NVIDIA's Executive Vice President and Chief Financial Officer; and Jeff Fisher, NVIDIA's Senior Vice President of the GeForce Business Unit and Head of Gaming during the Class Period.

Plaintiffs allege violations of Sections 10(b) and 20(a) of the Securities and Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and of Securities and Exchange Commission Rule 10b-5, 17 C.F.R. § 240.10b-5. Plaintiffs allege that the individual defendants had actual knowledge that increases in demand for NVIDIA's Gaming-segment products were largely driven by crypto-related sales, that their public statements minimizing the impact of crypto-related sales on NVIDIA's revenues were materially false or misleading, and that the statements were made knowingly or recklessly.

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