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Absence of "Hard Numbers" Scuttles Securities Fraud Claims

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The U.S. District Court for the Northern District of California dismissed securities fraud claims against a dental device maker based on the plaintiffs' failure to allege sufficient "hard numbers" showing that the defendants knew their public statements were false when made.

Align Technology, Inc., a medical device company, had settled a lawsuit with a competitor and had—as part of the settlement—agreed to provide dental devices for the competitor's customers free of charge. In public statements issued after the settlement, Align asserted that its business prospects were positive and that the company was "positioned to generate significant top line growth." The company's stock price fell sharply when it later announced that it was shifting its priorities from generating new business to handling a backlog of orders related to the settlement. Investors sued Align for securities fraud under Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b–5, alleging that the company and its officers had knowingly made material misrepresentations and omissions in public statements regarding the company's performance.

The U.S. District Court for the Northern District of California granted defendants' motion to dismiss, holding that the investors failed to meet the specificity requirements of Rule 9(b) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995. Specifically, the court ruled that the investors' allegation that the defendants knew their optimistic appraisals of the company's performance were false was unsupported by "hard numbers" or other "specific information" that demonstrated defendants' scienter with the requisite specificity. The court also held that the company's public statements, such as the statement that the company was "positioned to generate significant top line growth," constituted mere expressions of optimism that did not support a securities fraud claim. (*Wozniak v. Align Technology, Inc.*, No. C-09-3671 MMC, 2011 WL 2269418 (N.D. Cal. June 8, 2011))

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