No. 09-1156

In the Supreme Court of the United States

MATRIXX INITIATIVES, INC., *ET AL.*,
Petitioners,
v.
JAMES SIRACUSANO AND NECA-IBEW PENSION FUND,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS SEEKING REVERSAL

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

INTEREST OF *AMICI CURIAE*[1]

The Securities Industry and Financial Markets Association ("SIFMA") is a securities industry trade association that brings together the shared interests of hundreds of securities firms, banks, and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, DC, is the United States of America regional member of the Global Financial Markets Association.

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. The Chamber directly represents 300,000 members and indirectly represents the interests of an underlying membership of 3,000,000 companies and professional organizations of every size, in every industry sector, and from every region of the country. Chamber members transact business throughout the United States and a large number of countries around the world. An important

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[1] Pursuant to Rule 37.6 of the Rules of this Court, the undersigned hereby state that no counsel for a party authored any part of this brief, that no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person or entity other than *amici curiae*, their members, or their counsel has made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.3(a) of the Rules of this Court, letters of consent from all parties to the filing of this brief are on file or have been submitted to the Clerk of the Court.

function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

SIFMA and the Chamber regularly file *amicus curiae* briefs in cases such as this that raise issues of vital concern to the participants in the securities industry and the nation's business community at large. Both have appeared before this Court as *amici curiae*, jointly or separately, in several cases involving issues arising under the federal securities laws, most recently *Morrison v. National Australia Bank, Ltd.*, 130 S. Ct. 2869 (2010) (extraterritorial application of anti-fraud provisions of federal securities laws), *Merck & Co., Inc. v. Reynolds*, 130 S. Ct. 1784 (2010) (statute of limitations for bringing private securities fraud claim), and *Jones v. Harris Associates L.P.*, 130 S. Ct. 1418 (2010) (breach of fiduciary duty under the Investment Company Act of 1940).

Amici submit this brief in support of Petitioners, Matrixx Initiatives, Inc., *et al.* ("Defendants"), in their petition seeking reversal of the decision of the United States Court of Appeals for the Ninth Circuit reversing the district court's dismissal of the complaint filed against them by Respondents James Siracusano and NECA-IBEW Pension Fund ("Plaintiffs"). *Amici* are concerned that the Ninth Circuit's decision, if upheld by this Court, will magnify the exposure of market participants to liability under the federal securities laws by leaving them with little or no guidance as to what disclosures are required under those laws and by opening the floodgates to mischievous strike suits.

SUMMARY OF THE ARGUMENT

The Ninth Circuit's decision applied the incorrect legal standard to Plaintiffs' allegations of materiality and improperly rejected the District Court's use of a general standard to evaluate the issue of whether Plaintiffs had sufficiently pled materiality.

First, the Ninth Circuit, in evaluating the sufficiency of Plaintiffs' materiality allegations, improperly applied the "notice pleading" standard embodied by Federal Rule of Civil Procedure 8. Materiality is an essential "circumstance" of the alleged securities fraud. As a result, materiality, like all other elements of a securities fraud, is subject to the heightened pleading standard of Federal Rule of Civil Procedure 9(b) and must be pled with particularity.

Second, the Ninth Circuit embraced the misguided view that materiality is almost always a matter for a jury to decide. Courts may appropriately address materiality on a motion to dismiss because, at that stage of the case, the well-pleaded allegations assessed by the judge are uncontroverted and accepted as true, and the judge therefore does not encroach upon the jury's role to weigh the evidence.

Finally, based on its misguided views about the propriety of addressing materiality at the pleading stage of a case, the Ninth Circuit wrongly rejected the district court's use of a "statistical significance" standard to evaluate whether Plaintiffs had sufficiently pled materiality. Materiality standards are not barred by this Court's holding in *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988), and are widely

and properly applied by the federal circuits in evaluating the adequacy of materiality allegations in federal securities fraud cases.

For the foregoing reasons, *Amici* urge this Court to reverse the Ninth Circuit's decision.

ARGUMENT

To establish a securities fraud claim based on fraudulent statements, a plaintiff must plead and prove a misstatement or omission of a *material* fact. *Basic*, 485 U.S. at 238. "It is not enough that a statement is false or incomplete, if the misrepresented fact is otherwise insignificant." *Id.*; *see also Greenhouse v. MCG Capital Corp.*, 392 F.3d 650, 656 (4th Cir. 2004) ("The plain language of Rule 10b-5 . . . requires any successful securities fraud suit to allege a fact that is both untrue *and* material."). A fact is material when there is "'a substantial likelihood'" that a reasonable investor would view it as "'significantly alter[ing] the "total mix" of information made available.'" *Basic*, 485 U.S. at 231-32 (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

The materiality requirement serves important public policy purposes, both for investors and for other market participants. Investors benefit from a standard that "filter[s] out essentially useless information that a reasonable investor would not consider significant," *Basic,* 485 U.S. at 234, and that prevents corporations from "bury[ing] the shareholders in an avalanche of trivial information – a result that is hardly conducive to informed decisionmaking," *TSC Indus.*, 426 U.S. at 448-49. Issuers, financial intermediaries and other market participants, on the other hand, can take comfort in

the fact that this Court has established an objective materiality standard that treats "a 'reasonable investor' [a]s neither an ostrich, hiding her head in the sand from relevant information, nor a child, unable to understand the facts and risks of investing." *Greenhouse*, 392 F.3d at 656. Accordingly, securities defendants expect that courts will dismiss securities fraud actions that do not adequately plead materiality – either because the plaintiffs have failed to explain how the allegedly false facts were material or because the allegedly false facts are immaterial as a matter of law.

In light of this legal and public-policy background, the Ninth Circuit's approach to assessing Plaintiffs' materiality allegations was fundamentally flawed. As described below, in a securities fraud case, plaintiffs must plead this element of their claim with particularity. The Ninth Circuit never analyzed whether Plaintiffs' materiality allegations met this standard. Moreover, contrary to the Ninth Circuit's decision, the issue of materiality is appropriately addressed at the pleading stage of a case, and courts frequently and properly apply materiality standards in determining whether materiality has been adequately pled as a matter of law.

I. Materiality Is an Element of a Fraud Claim and Must Be Pled with Particularity.[2]

In evaluating Plaintiffs' materiality allegations, the Ninth Circuit applied the "notice pleading" standard embodied in Federal Rule of Civil Procedure 8 ("Rule 8"). To determine the sufficiency of a complaint's materiality allegations under Rule 8 for purposes of a motion to dismiss, a court need examine only whether the complaint fails to "'state a claim to relief that is plausible on its face.'" *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This was an error. In fact, the Ninth Circuit should have evaluated Plaintiffs' materiality allegations subject to the heightened pleading standard found in Federal Rule of Civil Procedure 9(b) ("Rule 9(b)").

Rule 9(b) requires a plaintiff to "state with particularity the circumstances constituting fraud." Claims under Section 10(b) of the Securities Exchange Act necessarily sound in fraud. *See Chiarella v. United States*, 445 U.S. 222, 234-35 (1980) (Section 10(b) catches fraud). Moreover, this Court has emphasized that materiality is an element and an essential "circumstance" of a Section 10(b) and Rule 10b-5 securities fraud claim. *Basic*, 485 U.S. at 232. "[A] plaintiff must show that the statements were *misleading* as to a

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[2] Petitioners argued before the Ninth Circuit that Respondents had failed to "allege sufficiently particularized facts" demonstrating materiality. *See* Brief of Defendants-Appellees, *Siracusano v. Matrixx Initiatives, Inc.*, 585 F.3d 1167 (9th Cir. 2009) (No. 06-15677), 2006 WL 3380679 at *11.

material fact. It is not enough that a statement is false or incomplete, if the misrepresented fact is otherwise insignificant." *Id.* at 238. *See also Neder v. United States*, 527 U.S. 1, 21-23 (1999) (materiality is an element of fraud).

While no circuit court has specifically addressed whether Rule 9(b) applies to the pleading of materiality, a number of courts have held in general terms that Rule 9(b) applies to *all* elements of a federal securities fraud claim. *See, e.g.*, *Thompson v. Relationserve Media, Inc.*, 610 F.3d 628, 633 (11th Cir. 2010) ("Because Rule 10b-5 sounds in fraud, the plaintiff must plead the elements of its violation with particularity."); *Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1095 (10th Cir. 2003) (Rule 9(b) applies to "the elements of a securities fraud claim").[3] Moreover, courts specifically have found that Rule 9(b) applies to analogous elements of a Section 10(b) claim, including loss causation and reliance. The Fourth Circuit has observed that "[a] strong case can be made that because loss causation is among the circumstances constituting fraud for which Rule 9(b) requires particularity, loss causation should be pleaded with particularity." *Teachers' Ret. Sys. of La. v. Hunter*, 477 F.3d 162, 185-86 (4th Cir. 2007). The same "strong case" exists for materiality. Similarly, and even more definitively, the Eighth Circuit has held that plaintiffs must "plead reliance in accordance with the specificity requirements of

[3] The pleading standard for the element of scienter (i.e., fraudulent intent), is addressed separately in the Private Securities Litigation Reform Act of 1995, which creates a "strong inference" requirement. 15 U.S.C. § 78u-4(b)(2).

Federal Rule 9(b)." *In re NationsMart Corp. Secs. Litg.*, 130 F.3d 309, 321 (8th Cir. 1997). Accordingly, the Ninth Circuit should have examined Plaintiffs' pleading of materiality subject to Rule 9(b)'s particularity requirement.

The proper choice of pleading standards is important. Among other functions, Rule 9(b)'s heightened pleading standard serves to weed out meritless fraud claims. *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (Rule 9(b) serves to prohibit plaintiffs from "unilaterally imposing upon the court, the parties and society enormous social and economic costs absent some factual basis") (internal quotation marks omitted); *United States ex rel. Williams v. Martin-Baker Aircraft Co.*, 389 F.3d 1251, 1256 (D.C. Cir. 2004) (Rule 9(b) "discourages the initiation of suits brought solely for their nuisance value, and safeguards potential defendants from frivolous accusations of moral turpitude") (internal quotation marks omitted). Pursuant to Rule 9(b), Plaintiffs must "explain why the statements were fraudulent," *Rombach v. Chang*, 355 F.3d 164, 170 (2d Cir. 2004) (quoting *Mills v. Polar Molecular Corp.*, 12 F.3d 1170, 1175 (2d Cir. 1993)), by alleging "the who, what, when, where and how: the first paragraph of a newspaper story." *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1262 (11th Cir. 2006) (internal quotation marks omitted). As to materiality, the complaint should include details from which a judge could infer that the alleged misstatement or omission involved a fact that a reasonable investor would have considered important. *See Cal. Pub. Emps.' Ret. Sys. v. Chubb Corp.*, 394 F.3d 126, 144 (3d Cir. 2004) (Rule 9(b)

requires plaintiffs to "inject[] precision and some measure of substantiation into their allegations of fraud"). And the complaint should be dismissed if it does not do so. *Id.* (Rule 9(b) is "rigorously applied in securities fraud cases"). In this case, the Ninth Circuit never conducted the required Rule 9(b) particularity analysis.

II. Materiality Is Appropriately Addressed on a Motion to Dismiss.

The pleading of materiality with particularity is a threshold requirement for overcoming a motion to dismiss. Moreover, it is necessary because, contrary to the Ninth Circuit's position, it is appropriate for a court to determine whether materiality exists as a matter of law at the pleading stage of a case. On a motion to dismiss, the facts are not in dispute and there can be no suggestion that a court is usurping the proper role of the trier of fact in making this determination.

The Ninth Circuit found that "[q]uestions of materiality . . . involv[e] assessments peculiarly within the province of the trier of fact" and that, as a result, materiality rarely can be addressed at the pleading stage of a case. *Siracusano v. Matrixx Initiatives, Inc.*, 585 F.3d 1167, 1178 (9th Cir. 2009) (internal quotation marks and citations omitted). The court's insistence that materiality should not be evaluated on a motion to dismiss, however, is based on an incorrect reading of this Court's precedent.

In *TSC Industries*, 426 U.S. 438, and *Basic*, 485 U.S. 224, this Court reviewed grants of summary judgment against the plaintiffs. In both cases, the lower courts had decided the issue of materiality

based on the evidence. In addressing the question of whether materiality could be decided on *summary judgment*, this Court explained that "[t]he determination [of materiality] requires delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him" – effectively warning that judges themselves should not ordinarily evaluate the evidence and decide the issue of materiality. *Basic*, 485 U.S. at 236 (citing *TSC Indus.*, 426 U.S. at 450).

Based on these *summary judgment* decisions, a number of courts, including the Ninth Circuit in this case, have held *at the pleading stage* that materiality is almost always a matter for a jury to decide. *See, e.g.*, *Miss. Pub. Emps.' Ret. Sys. v. Boston Scientific Corp.*, 523 F.3d 75, 87 (1st Cir. 2008) ("The existence of a material omission is usually a question for the trier of fact."); *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1189 (11th Cir. 2002) ("The trier of fact usually decides the issue of materiality."). That view is misguided, however, because neither *TSC Industries* nor *Basic* addressed the issue of materiality within the context of *the pleadings*. [4]

Deciding whether a plaintiff has adequately pled materiality for purposes of a motion to dismiss

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[4] The Fourth Circuit has expressed some healthy skepticism about why lower courts have misapplied these decisions. As noted in its *Greenhouse* decision: "When courts decide they wish for a jury to hear a claim, they generally take pains to emphasize the fact-specificness of materiality. . . . No shortage of cases, however, make clear that materiality may be resolved by a court as a matter of law." 392 F.3d at 657.

does not run afoul of this Court's guidance in *TSC Industries* and *Basic*. A motion to dismiss involves an assessment of the plaintiff's well-pleaded allegations – which necessarily are uncontroverted at that stage of the case – not of the evidence. *See Alternative Sys. Concepts, Inc. v. Synopsys, Inc.*, 374 F.3d 23, 26 (1st Cir. 2004) (explaining that a motion to dismiss is decided on the averments in the complaint, but a motion for summary judgment is decided on evidence); *Bell v. Fur Breeders Agric. Coop.*, 348 F.3d 1224, 1230 (10th Cir. 2003) (a court must "consider the conduct alleged in the complaint in deciding a motion to dismiss, while it must look beyond the pleadings to the evidence before it when deciding a motion for summary judgment"). Indeed, judgments on the pleadings cannot involve the "delicate assessments" to which this Court referred in *TSC Industries* and *Basic*. On a motion to dismiss, reasonable inferences are drawn in favor of the plaintiff. *See Makor Issues & Rights, Ltd. v. Tellabs, Inc.*, 513 F.3d 702, 705 (7th Cir. 2008) (on motion to dismiss, "the court must treat the pleaded facts as true and draw all reasonable inferences in favor of the plaintiff") (internal quotation marks omitted).

Accordingly, where the (alleged) facts regarding an issue are unchallenged – as they are on a motion to dismiss, where the court must accept all well-pled factual allegations as true – a decision on materiality as a matter of law is appropriate. *See, e.g.*, *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 530 (9th Cir. 2008) (mixed question of law and fact "may be considered on a motion to dismiss, which requires the court to consider all allegations as true"). A court therefore may decide at the

pleading stage whether "no reasonable jury could find it substantially likely that a reasonable investor would find the fact at issue material in the 'total mix' of information." *Greenhouse,* 392 F.3d at 657 (rejecting plaintiffs' argument that only a jury could decide issue of materiality at pleading stage); *see also Kapps v. Torch Offshore, Inc.*, 379 F.3d 207, 216 (5th Cir. 2004) ("Appellants claim that materiality should be a question of fact for the jury, but many Section 11 cases have been properly dismissed on the pleadings for lack of materiality."); *ABC Arbitrage Plaintiffs' Group v. Tchuruk*, 291 F.3d 336, 359 (5th Cir. 2002) ("[A] court can determine statements to be immaterial as a matter of law on a motion to dismiss.").

III. The Ninth Circuit Improperly Rejected the District Court's Use of a General Standard to Evaluate the Issue of Materiality as a Matter of Law.

Based on its erroneous determination that materiality decisions must be left to the trier of fact, the Ninth Circuit rejected the use of any general standards to evaluate whether an allegedly misrepresented fact is immaterial as a matter of law. *Siracusano*, 585 F.3d at 1178. The *Basic* decision, however, permits the use of materiality standards – the only issue is what *kind* of standard.

A fact is material for purposes of a federal securities fraud claim where there is "'a substantial likelihood'" that its disclosure "'would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.'" *Basic,* 485 U.S. at 231-32

(quoting *TSC Indus.*, 426 U.S. at 449). In *Basic,* the Court applied that principle to reject a proposed standard that refused to find material all pre-merger negotiations "not yet at the agreement-in-principle stage." 485 U.S. 233-36. As the Court explained, such a proposed standard would "artificially exclud[e] from the definition of materiality information . . . which would otherwise be considered significant to the trading decision of a reasonable investor." *Id.* at 236.

As Defendants persuasively argue in their opening brief, the statistical significance standard at issue in this case does not present the problem that concerned the Court in *Basic*.

> [F]ar from "artificially excluding" otherwise relevant information, the statistical significance standard *defines* the information a reasonable investor would consider relevant, i.e., information that may indicate that the company product can cause an adverse event, thereby potentially exposing the company to financial losses. And it works to "filter out essentially useless information," namely, [adverse-event reports] reporting events that cannot be distinguished from background incident rates of that event. [*Basic*, 485] at 234. Filtering out this type of information is precisely "[t]he role of the materiality requirement." *Id.*

Pet'rs' Br. at 43-44.

Moreover, the Ninth Circuit's blanket rejection of the use of materiality standards in determining whether an allegedly misrepresented fact is

material as a matter of law threatens to undermine a wealth of well-established precedent. A number of materiality standards – all of which seek to properly define the information a reasonable investor would consider relevant – feature prominently within the federal securities fraud jurisprudence. For example, courts have held that the following categories of allegedly misrepresented facts are immaterial as a matter of law: (1) soft, "puffing" statements and vague, optimistic statements that lack specificity, *see, e.g., ECA & Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 206 (2d Cir. 2009); (2) predictions of future business prospects not worded as guarantees, *see, e.g.*, *Raab v. Gen. Physics Corp.*, 4 F.3d 286, 289-91 (4th Cir. 1993); and (3) factual omissions that do not affect stock price when disclosed, *see, e.g., Oran v. Stafford*, 226 F.3d 275, 282 (3d Cir. 2000) (Alito, J.) These materiality standards are judicial determinations that for certain categories of facts "no reasonable jury could find it substantially likely that a reasonable investor would find the fact at issue material." *Greenhouse*, 392 F.3d at 657.

Along with their jurisprudential benefits, concrete and discernible materiality standards give clear guidance to public companies regarding the disclosures that can lead to securities fraud liability, thereby reducing the number of statements that can trigger the filing of claims. Materiality standards also promote consistency across the federal circuits and lend predictability to the outcome of securities fraud lawsuits. These materiality standards should remain undisturbed by the Court's decision in this case.

IV. Dismissing Cases That Cannot Establish Materiality Deters Meritless Securities Fraud Actions.

The use of Rule 9(b)'s heightened pleading requirement and materiality standards to eliminate meritless claims at the earliest stage in the litigation is particularly important in light of the unique vulnerability of issuers, financial intermediaries and other market participants to the deleterious effects of abusive private securities litigation. Over 35 years ago, the Court acknowledged that the *in terrorem* threat of costly litigation gives significant settlement value to even the most groundless securities fraud claims. *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 740-41 (1975). To curtail the filing of meritless claims, courts rigorously apply Rule 9(b)'s heightened pleading standard. *See, e.g.*, *Lentell v. Merrill Lynch & Co., Inc.*, 396 F.3d 161, 168 (2d Cir. 2005) ("[Rule 9(b)] is applied assiduously to securities fraud.").

In 1995, Congress responded to the problem of strike suits by passing the Private Securities Litigation Reform Act of 1995 ("Reform Act"), whose purpose was to suppress abuses in securities class-action litigation, including: (1) the routine filing of lawsuits against issuers of securities in response to any significant change in stock price, regardless of defendants' culpability, (2) the targeting of "deep pocket" defendants regardless of their culpability, and (3) the abuse of the discovery process to coerce settlements. *See* H.R. Conf. Rep. No. 104-369, at 31 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 730. The Reform Act significantly increased a securities fraud plaintiff's

burden beyond Rule 9(b)'s mandate by requiring him to plead his claim, especially as to scienter, "with an unprecedented degree of specificity and detail." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

Just a few years after the passage of the Reform Act, Congress spoke again on the issue of frivolous securities lawsuits with the passage of the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), which was designed to prevent plaintiffs from sidestepping the Reform Act's rigorous pleading requirements by filing securities class actions in state courts. *See Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Dabit*, 547 U.S. 71, 82 (2006) (Congress enacted SLUSA to "prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the Reform Act") (internal quotation marks omitted).

Despite these judicial and legislative efforts, the problem of abusive securities fraud litigation and coerced settlements still exists. The filing of securities class actions has continued apace, with an average of 242 new cases being filed every year. *See* Stephanie Plancich, PhD and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2009 Year-End Update*, NERA Economic Consulting, at 2 (Dec. 2009).[5] Only a handful of securities class actions ever go to trial, and the average settlement value of securities class actions reached a high of $42 million in 2009, over five

[5] This report is available at http://www.securitieslitigationtrends.com/Recent_Trends_Report_01.10.pdf.

times the average settlement value of such cases in 1996 and just under twice the average settlement value in 2002. *See id.* at 14.

This case provides an opportunity for the Court to confirm that materiality – like any other circumstance of a federal securities fraud claim – must be pled with particularity. Moreover, if plaintiffs fail to adequately explain how the allegedly false facts were material, or if the allegedly false facts themselves are immaterial as a matter of law, the claim must be dismissed. To the extent that the Ninth Circuit's decision would permit district courts to duck their responsibility to determine at an early stage in a securities fraud case whether a *real* issue of materiality exists for a trier of fact to decide, this Court should reject that approach.

CONCLUSION

For the reasons stated above, *Amici* respectfully urge the Court to reverse the Ninth Circuit's decision. The Court should hold that materiality is subject to the heightened pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure and is appropriately addressed through a motion to dismiss. The Court also should clarify that its decisions in *TSC Industries* and *Basic* do not foreclose the use of materiality standards to determine whether a plaintiff has sufficiently pled materiality as a matter of law.

Respectfully submitted,

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