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Court Rules No Scierter Required

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Both Corporations Code Section 25401 and Rule 10b-5 concern securities fraud. Section 25401, however, was modeled on Section 12(2) (now 12(a)(2)) of the Securities Act of 1933 while Section 10b-5 was adopted under Section 10(b) of the Securities Exchange Act of 1934. This basic history is important because it explains why these two seemingly similar anti-fraud provisions differ so greatly when it comes to the elements of a violation. Section 25401 does not require pleading or proof of scierter while Rule 10b-5 does.

U.S. District Court Judge Gonzalo P. Curiel made this clear yesterday when he refused to dismiss claims under Section 25401:

"In opposition, Plaintiff argues that scierter is not required to assert a violation of California securities law under sections 25401 and 25501. Playground does not address this argument in its reply. The Court agrees with Plaintiff that scierter is not an element of sections 25401 and 25501. See *I-Enterprise Co. LLC v. Draper Fisher Jurvetson Mgmt. Co. V, LLC*, No. C-03-1561-MMC, 2005 U.S. Dist. LEXIS 39481, 2005 WL 3590984, at *27 (N.D. Cal. Dec. 30, 2005) (violations of sections 25401 and 25501 does not require proof of intent); *BayStar Capital Mgmt. LLC v. Core Pacific Yamaichi Int'l (H.K.) Ltd.*, CV 05-1091 ABC (CWx), 2007 WL 9711373, at *4 (C.D. Cal. Apr. 16, 2007) (reliance and scierter need not be shown for section 25501)."

Brooks v. Tarsadia Hotels, 2019 U.S. Dist. LEXIS 98166, *42-43. The plaintiff did not dispute that scierter was required under Section 10(b) and Judge Curiel therefore granted the defendant's motion to dismiss under that statute.

Despite ruling for the plaintiff on the question of scierter under Section 25401, Judge Curiel nonetheless dismissed the plaintiff's state securities claims on the basis that he had failed to allege sufficiently the existence of a security. This should be no surprise an issue already addressed by the Ninth Circuit Court of Appeals in *Salameh v. Tarsadia Hotel*, 726 F.3d 1124 (9th Cir. 2013). See [Your Condo May Be Secure, But Not A Security](#).

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