

# Cooley Secures Complete Dismissal of Securities Class Action for Stitch Fix

October 4, 2021

Cooley litigators scored a win on behalf of Stitch Fix, a company that provides online personal styling services, obtaining a complete dismissal of a putative class action alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. Cooley lawyers Patrick Gibbs, Jessica Valenzuela Santamaria, Claire A. McCormack, Zaneta Kim and Rebecca Ferrari led the winning effort on behalf of Stitch Fix.

On September 30, 2021, Judge James Donato of the Northern District of California issued an order dismissing all claims with prejudice, holding that the plaintiff failed to allege any false or misleading statement to support an actionable securities fraud claim.

This consolidated action came before the court after four putative class actions were filed against Stitch Fix and certain of its officers, each alleging that the company made material misrepresentations about its active client growth and television advertising efforts. Stitch Fix's first motion to dismiss was granted, but the plaintiff was given a chance to amend.

In his amended consolidated complaint, the plaintiff renewed his attack on Stitch Fix's statements concerning its television advertising efforts while dropping his challenge to the statements about active client growth. Like the initial complaint, the amended complaint alleged that the company made material misrepresentations to its investors by stating that its advertising efforts included television when the company had in fact halted national television advertising for ten weeks out of that quarter to test the efficacy of that marketing channel. Stitch Fix again moved to dismiss arguing that the challenged statements were not false and misleading because, although the company halted *national* television advertising for some period, the company continued to run *local* television advertising. And the company never represented to its investors that national television advertising was ongoing.

The court agreed with Stitch Fix. Namely, Judge Donato held that Stitch Fix's statements about television advertising were "too general" to be misleading—the statements "not contain any misleading representation about the status of national television advertisements during that time." Thus, the investors had no reason to believe that the company's statements about television advertising *generally* were about *national* television advertising. The court also held that Stitch Fix did not have a duty to disclose its ten-week stoppage of national television advertising to its investors, because the plaintiff failed to show that Stitch Fix "touted" the importance of television advertising to the company's growth as to give rise to such duty.

This decision serves as a useful authority for defendant companies in securities fraud actions where a plaintiff's claim is based on a company's failure to disclose certain information as it suggests that the plaintiff should allege, at minimum, a previous statement by the defendant that specifically speaks to the very subject matter of the alleged misrepresentation.

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