

# Investors Represented by BLB&G Prevail In Significant Ninth Circuit Win

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In a significant victory for investors represented by BLB&G, on July 28, 2017, the United States Court of Appeals for the Ninth Circuit reversed a district court's dismissal of *In re Quality Systems, Inc. Securities Litigation*, Case No. 13-cv-01818 (C.D. Cal.), at the pleading stage. The appellate court ruled that plaintiffs had adequately alleged that Quality Systems, Inc. ("QSI"), a health practice management software company, and its top executives made material misstatements and omissions regarding QSI's business.

The complaint against QSI alleges claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 arising from misrepresentations regarding QSI's sales, sales growth, and revenue and earnings projections. According to the complaint, the defendants artificially inflated QSI's stock price between May 26, 2011 and July 25, 2012 by misrepresenting the company's sales pipeline, market conditions, and financial performance. Before the truth emerged, the company's CEO sold **nearly 90%** of his shares, reaping enormous profits from the stock's artificially inflated price. The Ninth Circuit found the timing and amount of these sales to be "suspicious," "to say the least," and highly supportive of a strong inference that the misrepresentations were made knowingly or recklessly.

Despite the strong evidence of fraud, defendants prevailed in the district court by arguing that the alleged misstatements were either vague "puffery" or forward-looking statements that were protected by a statutory "safe harbor." The Ninth Circuit, however, disagreed. As for "puffery," the court held that the misstatements "went beyond feel good optimistic statements." The Ninth Circuit also reaffirmed that, in any event, "even general statements of optimism, when taken in context, may form the basis for a securities fraud claim."

In its well-reasoned 37-page opinion, the Ninth Circuit clarified the narrow exemptions provided by the statutory safe harbor, which the court found did not apply to defendants' misstatements. The court explained that many assertions were not forward-looking statements entitled to safe harbor protection, but were instead mixed statements that included alleged misrepresentations of present fact. The court held that "non-forward-looking

portions of mixed statements are not eligible for the safe harbor” and that “Defendants made a number of mixed statements that included projections of growth in revenue and earnings based on the state of QSI’s sales pipeline,” *i.e.*, based on misrepresented present facts.

In sum, the Ninth Circuit’s ruling stands as a victory for investors’ rights, and a clear warning to securities issuers that the statutory safe harbor “does not confer a *carte blanche* to lie in . . . representations of current fact.”