

ON THE CASE

Twitter wanted to redact key data in a summary judgment opinion. The judge said no

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(Reuters) — Last month, U.S. District Judge **Jon Tigar** of Oakland denied Twitter's motion for summary judgment in a securities fraud class action by shareholders who claimed the company misled investors in 2015 about its users' daily and monthly engagement with the site. The judge said Twitter failed to prove there were no genuine factual issues in dispute, so the case can move ahead toward a trial date.

Twitter disclosed the outcome in a Securities and Exchange Commission filing on May 5, but no one except for Twitter and class counsel at **Robbins Geller Rudman & Dowd** and **Motley Rice** could see the judge's opinion. Documents and expert witness reports in the case had been produced under a protective order. Motions were redacted. So Judge Tigar kept his April 17 summary judgment decision off of the public docket to give Twitter a chance to request redactions.

The company did so in an April 24 motion, arguing that the summary judgment ruling contained "highly sensitive, confidential non-public information related to Twitter's internal operating metrics." The company asked Judge Tigar for seven redactions of user statistics and citations to the internal documents that contain them. In an accompanying declaration, Twitter's senior litigation counsel said that disclosure of the performance metrics "would place Twitter at a competitive disadvantage."

Really, Twitter?

Robbins Geller and Motley Rice pointed out in their motion opposing the requested redactions that the information is already public — and that some of it was revealed by Twitter! The supposedly confidential data on declines in daily and monthly user engagement, for instance, came out in an earnings call Twitter held with analysts in July 2015. And data on Twitter's user churn rate was contained in an unsealed expert report filed by the plaintiffs. Moreover, shareholders argued, Twitter completely failed to explain exactly how its competitors would somehow gain an advantage from this years-old data. If Twitter were really worried about the confidentiality of its user engagement data, class counsel's opposition brief said, why did the company only request the redaction of unflattering stats?

Judge Tigar agreed with class counsel. In an order Monday, the judge said Twitter hadn't shown how competitors might use the data to their advantage, particularly because Twitter long ago disclosed a lot of the information it's now asking to redact. In case any of you Twitter competitors are anxiously waiting for this data, Judge Tigar released the unredacted summary judgment opinion on Monday. So you can read about how, in early 2015, Twitter's daily and monthly user engagement for its top 20 markets had fallen to 44.4%, even though the company allegedly told investors that the stats in mature markets were over 50%. Of course, according to the judge, you could also have learned that same information from Twitter itself in 2015.

Twitter's counsel at **Simpson Thacher & Bartlett** referred me to the company's press office, which did not respond to my email requesting comment. Twitter has said in SEC filings that it disputes the fraud allegations and will continue to defend the case vigorously. The trial of shareholders' claims had been slated to begin on June 22 but has been postponed because of COVID-19 court closures.

My point here isn't to slam Twitter in particular — or to suggest that the revelation of years-old user engagement data is of overriding public interest. But I want to salute Judge Tigar and class counsel for honoring the principle that court opinions and the evidence underlying them should be available to anyone who wants to see them. It's not enough for defendants to point to protective orders shielding discovery from public view, or to make general claims that disclosure will disadvantage them. As class counsel said in their brief opposing Twitter's motion for redaction, the public deserves to see the evidence that will prove — or disprove! — shareholders' claims that the company defrauded them.

My Reuters colleagues Dan Levine and Lisa Girion have done fantastic work over the last year to chronicle how court secrecy has actually cost lives. I seriously doubt anyone's life is at stake in the revelation that Twitter's user engagement stats in 2015 were less than 45%. But every time a judge takes the time to weigh corporate interests in secrecy against the public right of access to court records, we are all better off for it.