

Yacht broker responds to antitrust lawsuit: We've 'done nothing wrong'

S [sun-sentinel.com/2024/04/02/yacht-broker-responds-to-antitrust-lawsuit-weve-done-nothing-wrong](https://www.sun-sentinel.com/2024/04/02/yacht-broker-responds-to-antitrust-lawsuit-weve-done-nothing-wrong)

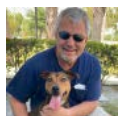
Ron Hurtibise

April 2, 2024



Sun Sentinel file photo

Yachts are among the vessels seen on display in this 2019 file photo in Palm Beach County. New lawsuits, filed in 2024, aim to upend years-old ways of awarding commissions to brokers representing boat sellers and buyers. (South Florida Sun Sentinel file photo)



By Ron Hurtibise | rhurtibise@sunsentinel.com | South Florida Sun Sentinel

PUBLISHED: April 2, 2024 at 6:53 a.m. | UPDATED: April 2, 2024 at 6:55 a.m.

A Fort Lauderdale-based yacht broker is seeking to dismiss a lawsuit alleging that it and numerous other members of South Florida's yacht industry engage in unfair competition by requiring 10% commissions be paid by purchasers of preowned boats.

Denison Yacht Sales is the first of a group of yacht brokers, mostly based in South Florida, to respond to allegations leveled so far in three antitrust lawsuits filed in U.S. District Court in Fort Lauderdale.

The yacht broker lawsuits claim that trade associations, including the International Yacht Brokers Association, work in conjunction with Multiple Listing Services and individual yacht brokers to require that commissions are paid to brokers for both sellers and buyers.

The first lawsuit was filed by Wyoming company Ya Mon Expeditions on Feb. 29. That lawsuit, and two others that name Denison among more than a dozen other defendants, seek class action status.

The second lawsuit was filed on March 22 by Alabama customer Kip Lamar Snell, while a third was filed on March 26 by a company called Magna Charter LLC, identified as a yacht purchaser who paid a commission.

Related Articles

The lawsuits are patterned after litigation that accused the National Association of Realtors of conspiring with real estate brokers to artificially inflate commissions paid when homes are sold.

A federal jury in Kansas City, Missouri, issued a ruling in October favoring the plaintiff. On March 15, the Realtors agreed to a settlement that's expected to force major changes in how homes are sold in the United States.

Denison's motion in the Ya Mon Expeditions case requests dismissal of the claims against only Denison, asserting that the company "has done nothing wrong and is being sued for merely being a yacht brokerage and having had an executive that served on the board of" the International Yacht Brokers Association.

Denison states that it has been "lumped into these broad-stroke allegations" that it has "implemented," "adopted" and "enforced" a rule requiring inflated commissions of 5% each for the seller's and buyer's brokers.

The lawsuits refer to the alleged commission requirement as the "Buyer's Broker Commission Rule."

But Denison's motion states that the broker "has no such requirement, does not require its brokers to be members of any association" and does not "require use of any MLS, nor mandate brokers pay cooperating brokers (inclusive of buyer's brokers)."

Denison is "purely free market" and its "only major requirements are that its brokers be legally licensed and impeccably honest," the motion states.

Further, the motion states that the lawsuit fails to make specific allegations regarding Denison while making "vague and conclusory" charges against all 15 defendants.

The only specific allegation that forms the basis for naming Denison as a co-defendant, the motion states, stems from company president Bob Denison's membership on the International Yacht Broker Association board of directors, the motion states. That allegation

cannot be used to hold Denison Yacht Sales liable, because there is a lack of “evidence of actual knowledge of, and participation in” what the plaintiffs allege is an illegal scheme.

Other shortcomings of the complaint, as identified in the motion, include failure to allege reasonable restraint on trade or an antitrust injury.

Denison is represented by Beverly Hills, California-based attorney Christopher Brainard, and Emily Heim of Bayramoglu Law Office LLC of Henderson, Nevada. Heim did not respond to an email on Monday and Brainard said he had no comment on Denison’s motion or the cases against the yacht broker industry.

Denison’s response is likely just the first of a cascade of court filings to follow in what has so far amounted to three separate antitrust complaints against the yacht broker industry.

Late last week, attorneys came forward representing defendants Boats Group LLC, Permira Advisers LLC, United Yacht Sales LLC, HMY Yacht Sales, Galati Yacht Sales LLC, MarineMax Inc., and Northrop & Johnson Yacht Ships LLC.

And on Thursday, two of the law firms representing Ya Mon Expeditions and Kip Lamar Snell filed a request to consolidate all three “nearly identical” lawsuits into a single class action lawsuit and appoint as interim co-lead counsel Robbins Geller Rudman & Dowd LLP, an antitrust firm with offices in 10 cities, and Miami-based Podhurst Orseck P.A., a nationally known firm that specializes in complex commercial and class action claims.

Consolidation, the request said, “will result in a more efficient process for this court.”

Ron Hurtibise covers business and consumer issues for the South Florida Sun Sentinel. He can be reached by phone at 954-356-4071, on Twitter @ronhurtibise or by email at rhurtibise@sunsentinel.com.

Uber Execs, Directors Allegedly Downplayed Rider Safety Issues

By Ben Miller

- **COURT:** D. Del.
- **TRACK DOCKET:** [1:24-cv-00403](#)

Bloomberg Law News 2024-04-02T10:04:2324414199-04:00

Uber Execs, Directors Allegedly Downplayed Rider Safety Issues

By Ben Miller 2024-04-01T15:59:32000-04:00

- **COURT:** D. Del.
- **TRACK DOCKET:** [1:24-cv-00403](#)

Uber Technologies Inc. executives and directors allegedly neglected, concealed, and otherwise downplayed safety issues, particularly for women passengers, until reports and litigation revealed widespread incidents of sexual assault, a shareholder derivative suit says.

The ridesharing giant's board and officers touted a commitment to Uber riders' safety in advertisements and shareholder reports, misrepresenting the reality of women's safety on the platform in public filings, according to the complaint filed March 29 in US District Court for the District of Delaware.

Uber's leadership was allegedly aware of more than 9,000 instances of sexual assault that had been reported against its drivers between 2017 and 2020, but continued to portray the ridesharing platform as a safe transportation alternative for women and girls. These omissions and false statements artificially inflated Uber's share price, during which time company insiders have profited from lucrative equity trades.

CEO Dara Khosrowshahi, who is named as a defendant, has made more than \$123 million in compensation, as well as more than \$30 million in unlawful insider trading proceeds during the period of misrepresentations, the plaintiff claims. Former Chief Financial Officer Nelson Chai, also a defendant, allegedly made more than \$4 million selling his shares at artificially inflated prices, according to the complaint.

The company has since faced several other lawsuits arising from passenger assaults or harassment, with Uber named as a defendant in 399 such lawsuits as of February 2024, according to the complaint.

Plaintiffs in a separate multi-district litigation against Uber filed their consolidated complaint on Feb. 15, alleging that the company was aware of the prevalence of sexual assault by drivers on its platform, but failed to conduct adequate background checks, train them properly, or respond adequately to riders' reports.

Shareholder Rohit Jain seeks to recover damages for Uber, alleging that the individual defendants violated the Securities Exchange Act. He also seeks legal fees, the complaint says.

Uber didn't immediately respond to a request for comment.

Robbins Geller Rudman & Dowd LLP and Chipman Brown Cicero & Cole LLP represent the plaintiff.

The case is Jain v. Khosrowshahi , D. Del., No. 1:24-cv-00403, complaint filed 3/29/24 .

To contact the reporter on this story: Ben Miller in New York City at bmiller2@bloombergindustry.com

To contact the editor responsible for this story: Brian Flood at bflood@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved



@annmlipton@esq.social
@AnnMLipton

...

nothing makes me more annoyed than these opinions. the ludicrous demands of particularity are as irrational as they are unpredictable, but if a plaintiff tries to head off all possible objections - wrong again!



Law360 @Law360 · 17h

A Colorado federal judge has dismissed without prejudice a shareholder suit against software and analytics company Palantir Technologies, criticizing the redundancy and excessive length of the complaint.

[law360.com/articles/18196...](https://www.law360.com/articles/18196...)

6:03 PM · Apr 1, 2024 · 2,509 Views



1



28



2



Post your reply

Reply



Gelbach in Exile @jonahbgelbach · 4h

...

Story gated for me, but given PSLRA plus general post-Twombly zeitgeist, dismissing for length and complexity of a complaint's allegations should require a truly extreme situation



1



30



@annmlipton@esq.social @AnnMLipton · 4h

...

academics can get free law360 subs, you know. but



1



21



Gelbach in Exile @jonahbgelbach · 4h

...

Actually think I even have one, but I forgot about it. Thanks for the reminder.



1



19



National Vision Gets Investors' Securities Fraud Suit Tossed

By Bernie Pazanowski

- Officers allegedly made \$34 million in insider proceeds
- Not shown with particularity that statements were false

Bloomberg Law News 2024-04-02T10:03:1886244648-04:00

National Vision Gets Investors' Securities Fraud Suit Tossed

By Bernie Pazanowski 2024-04-01T14:53:31000-04:00

- Officers allegedly made \$34 million in insider proceeds
- Not shown with particularity that statements were false

National Vision Holdings Inc. successfully defended against an investors' class action alleging that false statements it made during and post-pandemic caused the value of its stock to drop 60%, a federal court said.

The plaintiffs didn't "plead with particularity facts showing that any challenged statement was false or misleading at the time it was made," Judge Victoria Marie Calvert said May 30 in an opinion for the US District Court for the Northern District of Georgia.

The City of Southfield General Employees' Retirement System and International Union of Operating Engineers, Local No. 793, and Members Pension Benefit Trust of Ontario brought the class action on behalf of themselves and all other purchasers of National Vision common stock between May 13, 2021 and Feb. 28, 2023. They alleged, among other things, that NV and two of its officers L. Reade Fahs and Patrick R. Moore violated securities laws when Fahs gained \$30.6 million and Moore \$3.4 million in insider proceeds through the sale of stock during the class period.

According to the plaintiffs, Fahs and Moore knew that National Vision's "churn and burn business model" couldn't keep up with the demand for low-cost eye exams and glasses after the pandemic, but they continually "made false and misleading statements and omissions assuring the market that National Vision was skillfully navigating the post-pandemic business environment."

Immunovant Sheds Shareholder Lawsuit Over Autoimmune Drug

By Peter Hayes

- No showing of 'material misrepresentations or omissions'
- Court says claims based on how to interpret scientific data

Bloomberg Law News 2024-04-02T10:01:41686921312-04:00

Immunovant Sheds Shareholder Lawsuit Over Autoimmune Drug

By Peter Hayes 2024-04-01T14:22:14000-04:00

- No showing of 'material misrepresentations or omissions'
- Court says claims based on how to interpret scientific data

Biopharmaceutical company Immunovant Inc. won the dismissal of a proposed securities class action alleging its corporate officers made material misstatements and omissions regarding the development, testing, and marketing of a drug to treat autoimmune diseases.

Lead plaintiff SEPTA Pension Plan Master Trust failed to show that the company's statements "constitute material misrepresentations or omissions," Judge Kiyo A. Matsumoto of the US District Court for the Eastern District of New York ruled, affirming a US Magistrate Judge's report and recommendation.

"The R&R found that in addition to faulting the design of Defendants' clinical trials, 'Plaintiff's allegations against Defendants are founded on a fundamental disagreement as to the interpretation of scientific data,' including data from the Drug's clinical trials, and other scientific literature," Matsumoto said.

But "competing interpretations or analyses of scientific data are not actionable under federal securities law," Matsumoto said.

SEPTA challenged the magistrate judge's finding that "the overarching issue" as to "whether Defendants' challenged statements were material misrepresentations or omissions because the clinical trials for the Drug should have been designed differently, such that cholesterol levels should have been monitored in earlier phases of the trials, and because the decision not to monitor cholesterol in earlier phases of the trials should be haven disclosed to investors."

The court rejected SEPTA's argument that the real focus of the complaint is the defendants' failure to "provide complete and accurate disclosures" to investors about the decision not to monitor patients' cholesterol levels in early trials.

The magistrate judge's finding "that 'Plaintiff's allegations against Defendants are founded on a fundamental disagreement as to the interpretation of scientific data' is an accurate description of Plaintiff's own allegations," Matsumoto said.

SEPTA's objection to the magistrate judge's description of the "overarching issue" of the claims, "is frivolous and is overruled," Matsumoto said.

The court also affirmed the magistrate judge's finding that the US Food and Drug Administration's "approval of the clinical trial design supports the reasonableness" of the defendants' decision "to design the clinical trials without cholesterol monitoring."

The plaintiffs also failed to establish scienter—or showing of a guilty mind—necessary to establish Securities Exchange Act of 1934 claims, the court said.

The complaint alleged that the "defendant's misrepresentations and omissions about Immunovant and IMVT-1401 caused an artificial inflation in the price of Immunovant securities," which "enabled Defendant Immunovant and others to sell hundreds of millions of dollars of Company stock to investors through several follow-on stock offerings."

The complaint included claims under the Securities Act of 1933 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934.

The complaint also named as defendants Roivant Sciences Ltd., as "a controlling shareholder of the company," and multiple "underwriter defendants" who allegedly "were negligent in failing to ensure that the Registration Statement and Prospectus for the September 2020 Offering were prepared properly and accurately."

The underwriter defendants were SVB Securities LLC f/k/a SVB Leerink LLC; LifeSci Capital LLC; Chardan Capital Markets LLC; Guggenheim Securities, LLC; and Robert W. Baird & Co. Inc.

Robbins Geller Rudman & Dowd LLP represents lead plaintiff SEPTA. Cooley LLP represents Immunovant.

The case is *Pitman v. Immunovant Inc.*, 2024 BL 108747, E.D.N.Y., No. 21-cv-918, 3/29/24.

To contact the reporter on this story: Peter Hayes in Washington at PHayes@bloombergindustry.com

To contact the editor responsible for this story: Blair Chavis at bchavis@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Bloomberg Law

Research Trail

My Work

000888

Help

Account

Securities Law

Search Securities Law

?

Select Sources

Go

Home

Practice Centers

Litigation

Transactional

Business

Practitioner Tools

News & Analysis

Laws & Regulations

Secondary Sources

Manage Subscription

Securities Law

April 1, 2024, 10:39 AM PDT

Revance Wins Dismissal of Investor Suit Over Frown Wrinkle Drug

By Matthew Bultman

Documents

- Opinion
- Docket

- Investors allege being misled about timeframe for approval
- Nothing to suggest company intended to deceive, judge says

Bloomberg Law News 2024-04-02T13:05:4992280808-04:00

Revance Wins Dismissal of Investor Suit Over Frown Wrinkle Drug

By Matthew Bultman 2024-04-01T13:39:06000-04:00

Investors allege being misled about timeframe for approval

Nothing to suggest company intended to deceive, judge says

Revance Therapeutics Inc. convinced a judge to dismiss a lawsuit brought by investors who allege the biotech company misled them about the time frame for regulators’ approval of an anti-wrinkle injection.

Even if Revance’s timeline was overly optimistic after regulators flagged “deficiencies” at the company’s manufacturing site, there’s nothing to suggest the company intended to defraud investors, Judge Araceli Martínez-Olguín in the US District Court for the Northern District of California said in a March 30 decision.

“Plaintiffs have not pointed to any evidence that Defendants believed that FDA approval was unlikely or would be delayed because of the deficiencies,” Martínez-Olguín said. The judge gave investors a chance to amend their complaint.

The lawsuit was filed in December 2021, two months after the Food and Drug Administration denied Revance’s application for the drug candidate, Daxi, used to treat frown lines. FDA inspectors had found record-keeping and quality control problems during an inspection.

Revance addressed those issues and the FDA has since approved the drug, viewed as a competitor to Botox.

Investors argue Revance failed to disclose the problems that made FDA approval unlikely in 2021. The suit also alleges various statements from the company expressing confidence in FDA approval were misleading.

Revance has called the case a “textbook attempt to plead fraud by hindsight.”

Martínez-Olguín said that, as alleged, several of Revance's statements weren't false or misleading.

While others could be, the judge wasn't convinced by arguments that Revance was motivated to deceive investors by a desire to inflate stock prices, among other reasons. None of the defendants was alleged to have sold stock during the relevant period, Martínez-Olguín said.

"The Court finds that Defendants' general financial motives cannot show scienter," the judge said.

Faruqi & Faruqi LLP represents the investors. Cooley LLP represents Revance.

The case is Aramic LLC v. Revance Therapeutics, Inc. , N.D. Cal., No. 21-cv-09585, 3/30/24 .

To contact the reporter on this story: Matthew Bultman in New York at mbultman@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Bloomberg Law

Contact Us

View Full Desktop Site

 Manage Subscription

Documents

 Docket

- Investors said insurer overstated sales personnel training

The judge also agreed with an argument by Brookside Equity Partners LLC, also named as a defendant, that its minority ownership of SelectQuote stock don't give it the power to direct the company's management and policies.

Two pension funds that serve as lead plaintiffs in the consolidated class action have until May 31 to file an amended complaint, according to the order. In their consolidated complaint, they alleged that SelectQuote's share price had declined from their May 2020 market debut by 83% in February 2022, the end of the class period.

The plaintiffs seek to recover damages for "hundreds or thousands" of investors who acquired SelectQuote stock around the company's initial public offering, or between May 20, 2020 and Feb. 7, 2022. They alleged that the company, its executives, Brookside, and the IPO underwriters violated the Securities Exchange Act.

Bernstein Litowitz Berger & Grossmann LLP represents plaintiffs and the proposed class.

Wachtell, Lipton, Rosen & Katz represents SelectQuote and the executive defendants. Patterson Belknap Webb & Tyler LLP represents Brookside Equity Partners. Orrick Herrington & Sutcliffe LLP and Weil, Gotshal & Manges LLP represent the underwriter defendants.

The case is In re SelectQuote Inc. Sec. Litig. , S.D.N.Y., No. 1:21-cv-06903, 4/1/24 .

To contact the reporter on this story: Ben Miller in New York City at bmiller2@bloombergindustry.com

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Bloomberg Law

Contact Us

View Full Desktop Site

Bloomberg Law

🕒 Research Trail ▾

📁 My Work ▾

📄 000888 ▾

❓ Help ▾

👤 Account ▾

Home
▾Practice
Centers
▾Litigation
▾Transactional
▾Business
▾Practitioner
Tools ▾News &
Analysis
▾Laws &
Regulations
▾Secondary
Sources
▾

✉ Manage Subscription

[Securities Law](#)

April 2, 2024, 8:17 AM PDT

Playstudios Fails to Shake Bulk of Securities Claims Over MergerBy [Peter Hayes](#)**Documents**📄 [D. Nev. Order](#)📄 [D. Nev. Docket](#)

- Stock price plummeted nearly 70% after merger, complaint says
- Plaintiffs allege bugs in role-playing game Kingdom Boss hidden

Bloomberg Law News 2024-04-02T12:36:56115852728-04:00

Playstudios Fails to Shake Bulk of Securities Claims Over MergerBy [Peter Hayes](#) 2024-04-02T11:17:41000-04:00

Stock price plummeted nearly 70% after merger, complaint says

Plaintiffs allege bugs in role-playing game Kingdom Boss hidden

Playstudios Inc., a maker of casino-themed free-to-play video games, must defend the majority of shareholder claims in a proposed class action stemming from its billion-dollar merger with special purpose acquisition company Acies Acquisition Corp.

The complaint alleges that the company concealed bugs in its role-playing game known as Kingdom Boss to facilitate the acquisition.

To pitch the merger to investors, the company claimed in its proxy/registration statement that Kingdom Boss would launch in the second half of 2021, boosting its revenues from \$269.8 million in 2020 to \$435.2 million in 2022, lead plaintiffs Phoenix Insurance Company Ltd. and Phoenix Provident Pension Fund Ltd. allege.

The company's stock price has plummeted by nearly 70% since the merger, "which was effected through a defective and negligently prepared proxy and registration statement registered with the SEC," the complaint says.

Judge Richard F. Boulware II of the US District Court for the District of Nevada ruled that all of the statements identified in the amended complaint, except those made in a conference call on Feb. 2, 2021, are actionable.

The claims against Playstudios; the Acies directors; Andrew Pascal, co-founder and shareholder of Acies and co-founder, chairman, and CEO of Playstudios; and the post-merger Playstudios directors may go forward under Section 11 of the Securities Act of 1933, Boulware said.

The statements in the proxy/registration, which was finalized on May 25, 2021, as well as the April 7, 2021 interview, and May 11, 2021, press release were all misleading because they failed to disclose any of the risks associated "with the severe playability issues that had materialized as early as November 2020," Boulware said.

The claims against Pascal and Playstudios under Section 10(b) and Rule 10b-5 based on statements made after the merger also survive, Boulware said. Throughout the summer of 2021, the plaintiffs allege, bugs and crashes continued to persist but the company “made no mention of the pervasive inoperability issues that the game had been exhibiting,” Boulware said.

The court also greenlighted the plaintiffs’ claims against Playstudios and Acies directors under Section 14(a) of the Exchange Act for allegedly making material misrepresentations or omissions in the proxy statement. The statements made in the April 7, 2021, interview, the May 11, 2021, press release and conference call, and the proxy/registration statement “constituted material misrepresentations and omissions absent additional disclosures of facts,” the court said.

Finally, the claims of control person liability against Pascal may proceed under Section 15 and Section 20(a) of the Securities Act of 1933, Boulware said.

The statements made in a Feb. 2, 2021, conference call, however, weren’t misleading, the court said. At that time, the technical problems with Kingdom Boss were only three months old, so there wouldn’t have been enough data to determine whether the problems would affect the development schedule.

Pomerantz LLP is lead counsel for the plaintiffs. Fenwick & West LLP and Snell & Wilmer LLP represent Playstudios.

The case is *Felipe v. Playstudios Inc.*, 2024 BL 111293, D. Nev., No. 22-cv-01159, 3/31/24 .

To contact the reporter on this story: Peter Hayes in Washington at PHayes@bloombergindustry.com

To contact the editor responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Bloomberg Law

Contact Us

Bloomberg Law[®]

Research Trail

My Work

000888

Help

Account

Home

Practice Centers

Litigation

Transactional

Business

Practitioner Tools

News & Analysis

Laws & Regulations

Secondary Sources

 [Manage Subscription](#)

[Class Action](#)
April 1, 2024, 12:14 PM PDT
Vista Sued by Fund Over Cvent's \$4.6 Billion Sale to Blackstone
By [Mike Leonard](#)
Documents

-  [Complaint](#)
-  [Docket](#)
-  [Judge: Vice Chancellor Paul A. Fioravanti Jr.](#)
-  [Company: Vista Equity Partners Management LLC](#)
-  [Company: Cvent Holding Corp.](#)

- COURT:** Del. Ch.
- TRACK DOCKET:** [No. 2024-0299](#)

Bloomberg Law News 2024-04-02T11:03:44197393814-04:00
Vista Sued by Fund Over Cvent's \$4.6 Billion Sale to Blackstone

By Mike Leonard 2024-04-01T15:14:35000-04:00
COURT: Del. Ch.
TRACK DOCKET: [No. 2024-0299](#)

A pension fund sued Vista Equity Partners Management LLC over the \$4.6 billion sale of Cvent Holding Corp., saying Vista accepted an unfair price in exchange for a sweetheart side deal with Blackstone Inc.

The lawsuit, made public Monday, says the transaction significantly undervalued the events business, which Vista took public about a year earlier for \$5.3 billion. But Vista got the chance to roll over \$1.25 billion in equity on above-market terms that steered the sale's proceeds away from public investors, according to the complaint.

"The Vista-dominated board initially balked" at the price, changing its tune only when Blackstone proposed the rollover, the suit says. Although Cvent's filings suggest Vista would have preferred to be cashed out, "Vista is not in the business of self-sacrifice, and actions speak louder than carefully lawyered words," according to the proposed class action.

Vista and Cvent didn't immediately respond to requests for comment Monday. The complaint also targets Cvent's CEO and five former board members with employment ties to Vista. Blackstone isn't named as a defendant.

According to the complaint, Vista combined Cvent with a special purpose acquisition company in a December 2021 blank-check merger that followed about five years after it took the event planning business private for \$1.65 billion.

The market allegedly agreed with the transaction's \$10-per-share valuation, more or less—shares closed at \$9.75 on the first subsequent trading day—and Cvent was projected to sextuple its adjusted earnings by 2028. But Vista nevertheless accepted a Blackstone bid that suggested the company had lost value, the lawsuit says.

"No adverse intervening developments accounted for this discrepancy," according to the complaint. "Indeed, Cvent's business—focused on live event management—was poised for significant growth as the pandemic waned."

The transaction was negotiated by Cvent corporate leaders with significant longstanding connections to Blackstone, and it was never put to vote of minority investors, making the sale a done deal thanks to Vista's 81% stake, the suit says.

The board allegedly set up a two-member special committee at the eleventh hour, after the rollover investment was on the table. But the committee rubberstamped the transaction, while the board's principal financial adviser, Qatalyst Partners, had extensive conflicts stemming from both its fee structure and its relationship to Vista, according to the complaint.

As a result, the terms of Vista's rollover investment "received no meaningful scrutiny," the lawsuit says. "Selling out to an opportunistic private equity buyer was not in the best interest of Cvent's public, minority common stockholders."

The complaint was originally filed under seal March 25 in Delaware's Chancery Court by the Genesee County Employees' Retirement System.

The pension fund is represented by Labaton Keller Sucharow LLP, Block & Leviton LLP, Friedman Oster & Teitel PLLC, Saxena White PA, and Bernstein Litowitz Berger & Grossmann LLP. Vista and the board members haven't yet made court appearances.

The case is Genesee Cty. Emp. Ret. Sys. v. Vista Equity Partners Mgmt. LLC, Del. Ch., No. 2024-0299, complaint unsealed 4/1/24.

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Argentina Defeats Hedge Fund Suits Over GDP-Linked Warrants (1)

By Bob Van Voris

- NY judge dismissed suits led by Aurelius Capital Management
- Aurelius sued Argentina in 2019 for payment on bond warrants

Bloomberg Law News 2024-04-02T10:00:4635612583-04:00

Argentina Defeats Hedge Fund Suits Over GDP-Linked Warrants (1)

By Bob Van Voris2024-04-01T17:36:52778-04:00

- NY judge dismissed suits led by Aurelius Capital Management
- Aurelius sued Argentina in 2019 for payment on bond warrants

Argentina won the dismissal of lawsuits by Aurelius Capital Management and other hedge funds seeking payment on securities tied to the performance of the South American nation's economy.

Aurelius' 2019 lawsuit claimed it was entitled to payment on gross domestic product-linked warrants issued in connection with restructurings of sovereign debt in 2005 and 2010. Other funds followed with similar claims. All of the cases were thrown out in a ruling made public Monday in Manhattan federal court.

US District Judge Loretta Preska said the suits were barred by a "no-action clause" in the bond agreement that required investors to meet five preconditions before filing suit. These included getting at least 25% of the bondholders to make a written request to the bond trustee.

"Plaintiffs' failure to take the contractually required steps precludes them from bringing suit," the judge said in her ruling.

Lawyers for Aurelius declined to comment.

Argentina, which defaulted on \$95 billion in sovereign debt in 2001, offered investors new bonds at a sharp discount in the restructurings. To sweeten the deal, the nation agreed to give investors warrants entitling them to payments when its GDP expanded by more than 3% in a year.

Preska rejected the hedge funds' argument that their claims fell under an exception for bondholders to sue for principal and interest, saying that didn't apply to warrants. Aurelius and the other funds said Argentina should have paid on the warrants in 2014 and now owed principal and interest.

In addition to the suit by Aurelius, Judge Preska dismissed claims by Novoriver SA, ACP Master Ltd., 683 Capital Partners, Adona LLC and Ape Group SpA.

The case is ACP Master Ltd. v. Republic of Argentina, 19-cv-10109, U.S. District Court, Southern District of New York (Manhattan).

(Updates with lawyers for Aurelius declining to comment.)

To contact the reporter on this story:

Bob Van Voris in federal court in Manhattan at rvanvoris@bloomberg.net

To contact the editors responsible for this story:

Anthony Lin at alin364@bloomberg.net

Steve Stroth

© 2024 Bloomberg L.P. All rights reserved. Used with permission.

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

**Bloomberg
Law**[Request a Demo](#)[Login](#)[Securities Law News](#)

April 1, 2024, 11:50 AM PDT

WEC Energy 401(k) Plan Fee Lawsuit Dismissed by Wisconsin Judge

By Jacklyn Wille

Bloomberg Law News 2024-04-02T10:04:48561330969-04:00

WEC Energy 401(k) Plan Fee Lawsuit Dismissed by Wisconsin Judge

By Jacklyn Wille 2024-04-01T14:50:24000-04:00

WEC Energy Group Inc. defeated a proposed class action by workers challenging the recordkeeping fees and investment options in the Midwestern energy provider's \$2 billion 401(k) plan.

Judge J.P. Stadtmueller of US District Court for the Eastern District of Wisconsin dismissed the lawsuit in a March 29 judgment. His order accompanying the dismissal wasn't immediately publicly available.

- The lawsuit says WEC offered pricey actively managed funds in its 401(k) plan and failed to take advantage of the plan's large size to negotiate a better deal on recordkeeping and managed account services
- Stadtmueller's order also denied as moot the plan participants' motion to certify a 5,000-person class and WEC's motion for summary judgment, which was filed alongside its bid for dismissal
- Hundreds of proposed class actions challenging retirement plan fees have been filed in federal court over the past few years, leading to mixed results in the federal appeals courts

Mayer Brown LLP and Quarles & Brady LLP represent WEC. Walcheske & Luzi LLC represents the workers.

The case is Munt v. WEC Energy Grp., Inc. , E.D. Wis., No. 2:22-cv-00555, 3/29/24 .

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloomberglaw.com

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Mattel Is Latest Employer Sued Over 401(k) Plan Forfeiture Usage

By Jacklyn Wille

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** [No. 2:24-cv-02624](#)

Bloomberg Law News 2024-04-02T10:01:11343421429-04:00

Mattel Is Latest Employer Sued Over 401(k) Plan Forfeiture Usage

By Jacklyn Wille 2024-04-01T15:12:27000-04:00

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** [No. 2:24-cv-02624](#)

A former Mattel Inc. employee on Monday filed a proposed class action challenging how the toy maker handles the 401(k) plan money forfeited by workers who leave their jobs after short periods.

Mattel has consistently put 401(k) forfeitures toward the employer contributions it's required to make to the plan instead of using these amounts to reduce the administrative expenses charged to workers, plaintiff Nicholas Prattico said in a complaint filed in the US District Court for the Central District of California.

Mattel used this practice to save nearly \$11 million during a five-year period in which plan participants were charged more than \$6.3 million in administrative fees, according to the complaint, which was filed on behalf of a proposed class of more than 7,000 people.

Several large employers have been sued in the past few months over how they handle forfeitures in their 401(k) plans.

This series of cases, which also target Qualcomm Inc., Intuit Inc., Clorox Co., and Honeywell International Inc., center on the portion of an employee's 401(k) account that comes from contributions made by their employer. Unlike contributions from an employee's salary, which are immediately fully vested, employer contributions can remain unvested for a period of time and can be forfeited in whole or in part when a worker leaves the company after a few months or years.

The lawsuits say an employer runs afoul of the Employee Retirement Income Security Act when it exercises discretion over these forfeitures to benefit itself over workers. According to the lawsuits, the companies used forfeitures to reduce the money they'd otherwise have to contribute to their plans, instead of using it to reduce the administrative expenses borne by workers.

Mattel didn't immediately respond to a request for comment.

Hayes Pawlenko LLP represents Prattico, along with the employees suing Qualcomm, Intuit, and others over this practice.

The case is Prattico v. Mattel, Inc. , C.D. Cal., No. 2:24-cv-02624, complaint 4/1/24 .

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloomberglaw.com

To contact the editor responsible for this story: Brian Flood at bflood@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Bloomberg Law

Research Trail

My Work

000888

Help

Account

Class Action

Search Class Action

?

Select Sources

Go

Home

Practice Centers

Litigation

Transactional

Business

Practitioner Tools

News & Analysis

Laws & Regulations

Secondary Sources

 [Manage Subscription](#)

[Class Action](#)
April 1, 2024, 3:20 PM PDT
REI Defeats Lawsuit Over PFAS 'Forever Chemicals' in Clothing
By [Shweta Watwe](#)
Documents

-  [Order](#)
-  [Docket](#)

- REI disclosed some PFAS; other claims were 'too vague'
- Plaintiff also didn't show his jacket had high levels of PFAS

Bloomberg Law News 2024-04-02T11:04:28179326181-04:00
REI Defeats Lawsuit Over PFAS 'Forever Chemicals' in Clothing

By Shweta Watwe 2024-04-01T18:20:15000-04:00
REI disclosed some PFAS; other claims were 'too vague'
Plaintiff also didn't show his jacket had high levels of PFAS

Recreational Equipment Inc. defeated a proposed class action alleging it deceptively markets waterproof clothing as safe and sustainable when they contain per- and polyfluoroalkyl substances.

Jacob Krakauer lacked standing to sue the company because he didn't test the jacket he purchased, or the same model, for PFAS, the US District Court for the Western District of Washington said March 29. Krakauer also couldn't show he overpaid for the jacket because he didn't allege facts about alternative products that were available.

PFAS treatments are used to make textiles water-repellent. The substances are also known as "forever chemicals" because they don't easily break down in the environment or human body. Exposure even at low levels is linked to hormone disruptions and increased risk of blood cancers.

Krakauer said he bought the company's XeroDry GTX jacket and alleged the company fraudulently omitted the presence of PFAS from the jacket's labeling and packaging. He said he relied on the company's statements that said it had acquired third-party certifications and that it had eliminated long-chain PFAS from its products.

A test from Toxic-Free Future, an environmental health advocacy group, found REI's garments contained dangerous levels of PFAS. But the group didn't test Krakauer's jacket or its model.

"Without more facts regarding the material or chemical coating, the inference that his XeroDry jacket contains PFAS based on TFF's tests of different REI apparel is not reasonable," Judge Benjamin H. Settle said

<https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X7BDA718000000?bc=W1siU2VhcmNoICYgQnJvd3NlIiwiaHR0cHM6L...>

1/3

Additionally, the company discloses that it uses short-chain PFAS where other alternatives don't exist. In light of that concession, Krakauer needed to either test the same jacket model or establish his jacket had a dangerous level of the chemical.

Krakauer's contention that PFAS are harmful at very low levels "is too vague to support his claim," Settle said.

Krakauer also failed to show that REI didn't hold up its end of the purchase bargain. Because he relied on REI's disclosure of its occasional short-chain PFAS use and the lack of mention of PFAS on the jacket's tags, "a completely PFAS-free product was not a part of the bargain," Settle said.

And because Krakauer didn't specify an unacceptable level of PFAS, REI couldn't rebut fraud claims about the jacket's level of danger, Settle said.

Krakauer has three weeks to file an amended complaint.

As researchers uncover just how harmful PFAS can be, states are moving towards phasing the substances out of clothing production and other uses. New York Gov. Kathy Hochul (D) signed a law banning the use of PFAS in some kinds of clothing, and is eyeing a more expansive restriction.

Krakauer was represented by Bursor & Fisher PA, Carson & Noel PLLC, and Richman Law & Policy.

REI was represented by Schwabe Williamson & Wyatt and Benesch Friedlander Coplan & Aronoff LLP.

The case is *Krakauer v. Recreational Equipment Inc.*, W.D. Wash., No. 3:22-cv-05830, 3/29/24.

To contact the reporter on this story: Shweta Watwe in Washington at swatwe@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Google and plaintiffs reach multibillion-dollar settlement over incognito mode data tracking

DJ [dailyjournal.com/articles/377893-google-and-plaintiffs-reach-multibillion-dollar-settlement-over-incognito-mode-data-tracking](https://www.dailyjournal.com/articles/377893-google-and-plaintiffs-reach-multibillion-dollar-settlement-over-incognito-mode-data-tracking)

Apr. 2, 2024

Under the terms of the deal, Google will rewrite its disclosures to inform users that it collects private browsing data, delete billions of data records, allow incognito mode users to block third-party cookies by default, and delete "private browsing detection bits" that were uncovered by the plaintiffs.

Google LLC and a class of consumer plaintiffs asked a federal judge on Monday to approve a multibillion-dollar data privacy settlement resolving allegations that the tech giant tracked users' internet data while they were browsing in incognito mode.

"We are pleased to settle this lawsuit, which we always believed was meritless. The plaintiffs originally wanted \$5 billion and are receiving zero. We never associate data with users when they use incognito mode. We are happy to delete old technical data that was never associated with an individual and was never used for any form of personalization," Google spokesperson Jose Castaneda said in an email. The Mountain View company is represented by Quinn Emanuel Urquhart & Sullivan LLP and Cooley LLP.

However, Mark C. Mao of Boies Schiller Flexner LLP characterized the agreement as "groundbreaking," saying it was a "historic step in requiring dominant technology companies to be honest in their representations" about how they use personally identifiable data. According to the proposed settlement, which must be approved by U.S. District Judge Yvonne Gonzalez Rogers in Oakland, Google will rewrite its disclosures to inform users that it collects private browsing data and must delete billions of data records from class members' private browsing activities.

Furthermore, Google must allow incognito mode users to block third-party cookies by default and delete "private browsing detection bits" uncovered by the plaintiffs and for which the tech giant was sanctioned twice. U.S. Magistrate Judge Susan Van Keulen ordered Google to pay nearly \$1 million in 2022 for discovery misconduct and ordered the company last March to pay the fees for two plaintiff expert witnesses and a \$79,000 fine for failing to comply with a discovery order.

According to the plaintiffs' damages expert, the settlement value over \$5 billion. Morgan and Morgan PA and Susman Godfrey LLP also represented the consumer class. *Brown et al. v. Google LLC et al.*, 4:20-cv-03664-YGR (N.D. Cal., filed Jun. 2, 2020).

Google generates billions of dollars in profit each year through incognito mode tracking, Mao wrote in the complaint. "Google accomplishes its surreptitious interception and data collection through means that include Google Analytics, Google 'fingerprinting' techniques, concurrent Google applications and processes on a consumer's device, and Google's Ad Manager ... When a user's web-browsing software accesses one of those websites, hidden Google software 'scripts' cause the user's device to send detailed, personal information to Google's servers," said Mao.

Denying any wrongdoing, Google said its disclosure statements made clear that users' data may be accessed by other websites on incognito mode. "The incognito notice reminded the plaintiffs every time ... that private browsing means simply that other people who use the device will not see their activity, but that activity might still be visible to third parties," wrote Quinn Emanuel partner Andrew H. Schapiro.

The parties notified in the court that they had reached a tentative agreement in December, less than two months before the case was scheduled for trial. A preliminary approval hearing is scheduled for July 30 before Gonzalez Rogers.

#377893

Sunidhi Sridhar

Daily Journal Staff Writer
sunidhi_sridhar@dailyjournal.com

Google to destroy browsing data to settle consumer privacy lawsuit

 [reuters.com/technology/google-destroy-browsing-data-settle-consumer-privacy-lawsuit-2024-04-01](https://www.reuters.com/technology/google-destroy-browsing-data-settle-consumer-privacy-lawsuit-2024-04-01)

Jonathan Stempel

The Google logo is seen on the Google house at CES 2024, an annual consumer electronics trade show, in Las Vegas, Nevada, U.S. January 10, 2024. REUTERS/Steve Marcus/File Photo/File Photo Purchase Licensing Rights , opens new tab

April 1 (Reuters) - Google agreed to destroy billions of data records to settle a lawsuit claiming it secretly tracked the internet use of people who thought they were browsing privately.

Terms of the settlement were filed on Monday in the Oakland, California federal court, and require approval by U.S. District Judge Yvonne Gonzalez Rogers.

Lawyers for the plaintiffs valued the accord at more than \$5 billion, and as high as \$7.8 billion. Google is paying no damages, but users may sue the company individually for damages.

The class action began in 2020, covering millions of Google users who used private browsing since June 1, 2016.

Users alleged that Google's analytics, cookies and apps let the Alphabet (GOOGL.O) , opens new tab unit improperly track people who set Google's Chrome browser to "Incognito" mode and other browsers to "private" browsing mode.

They said this turned Google into an "unaccountable trove of information" by letting it learn about their friends, favorite foods, hobbies, shopping habits, and the "most intimate and potentially embarrassing things" they hunt for online.

Under the settlement, Google will update disclosures about what it collects in "private" browsing, a process it has already begun. It will also let Incognito users block third-party cookies for five years.

"The result is that Google will collect less data from users' private browsing sessions, and that Google will make less money from the data," the plaintiffs' lawyers wrote.

Google spokesman Jose Castaneda said the company was pleased to settle the lawsuit, which it always considered meritless.

The video player is currently playing an ad. You can skip the ad in 5 sec with a mouse or keyboard

"We never associate data with users when they use Incognito mode," Castaneda said. "We are happy to delete old technical data that was never associated with an individual and was never used for any form of personalization."

David Boies, a lawyer for the plaintiffs, in a statement called the settlement "a historic step in requiring honesty and accountability from dominant technology companies."

A preliminary settlement had been reached in December, averting a scheduled Feb. 5, 2024 trial. Terms were not disclosed at the time. The plaintiffs' lawyers plan to later seek unspecified legal fees payable by Google.

Alphabet is based in Mountain View, California.

The case is Brown et al v Google LLC et al, U.S. District Court, Northern District of California, No. 20-03664.

(This story has been refiled to say 'averting', not 'advertising', in paragraph 12)

The Technology Roundup newsletter brings the latest news and trends straight to your inbox. Sign up here.

Reporting by Jonathan Stempel in New York, Editing by Louise Heavens and Aurora Ellis

NY court rejects authors' bid to block OpenAI cases from NYT, others

 [reuters.com/legal/ny-court-rejects-authors-bid-block-openai-cases-nyt-others-2024-04-01](https://www.reuters.com/legal/ny-court-rejects-authors-bid-block-openai-cases-nyt-others-2024-04-01)

Blake Brittain

Item 1 of 3 OpenAI and The New York Times logos are seen in this illustration taken December 27, 2023. REUTERS/Dado Ruvic/Illustration/File Photo

[1/3]OpenAI and The New York Times logos are seen in this illustration taken December 27, 2023. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights](#) , opens new tab

April 1 (Reuters) - A group of authors suing OpenAI for copyright infringement in California failed to convince a New York federal court on Monday to halt related cases brought in Manhattan by the New York Times, the Authors Guild and others.

U.S. District Judge Sidney Stein said that the writers [opens new tab](#), including Michael Chabon, Ta-Nehisi Coates and comedian Sarah Silverman, did not have a strong enough interest in the New York cases to justify letting them intervene.

The writers had sought to convince the New York court to dismiss the cases against OpenAI and Microsoft (MSFT.O) [opens new tab](#), OpenAI's largest financial backer, or move them to California. The California court rejected a related request last month.

"It's unconventional to proceed with the same claims in different places but certainly something we are equipped to handle," the writers' attorney Joseph Saveri said in a statement on Monday.

Representatives for OpenAI did not immediately respond to a request for comment. Spokespeople for Microsoft, the New York Times and the Authors Guild declined to comment.

Several groups of copyright owners have sued major tech companies over the alleged misuse of their work to train generative artificial-intelligence systems. The authors in the California case sued OpenAI last summer, accusing it of using their books without permission to train the AI model underlying its popular chatbot ChatGPT.

The Authors Guild filed a similar lawsuit in New York in September on behalf of other writers including John Grisham and George R.R. Martin. That lawsuit was followed by additional complaints from nonfiction authors and the Times.

The California authors told Stein that allowing the "copycat" cases to continue would lead to inconsistent rulings and waste resources. But Stein on Monday said that the California and New York cases had "substantial differences."

"More importantly, for the claims that do overlap, the California Plaintiffs have no legally cognizable interest in avoiding rulings that apply to entirely different plaintiffs in a different district," Stein said.

Jumpstart your morning with the latest legal news delivered straight to your inbox from The Daily Docket newsletter. [Sign up here](#).

Reporting by Blake Brittain in Washington, Editing by Alexia Garamfalvi, Louise Heavens and Chizu Nomiya

Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

Blake Brittain
Thomson Reuters

Blake Brittain reports on intellectual property law, including patents, trademarks, copyrights and trade secrets, for Reuters Legal. He has previously written for Bloomberg Law and Thomson Reuters Practical Law and practiced as an attorney.

Read Next / Editor's Picks

Governor's former chief of staff among potential trial witnesses

B [toledoblade.com/local/courts/2024/04/02/governor-s-former-chief-of-staff-among-potential-trial-witnesses/stories/20240402121](https://www.toledoblade.com/local/courts/2024/04/02/governor-s-former-chief-of-staff-among-potential-trial-witnesses/stories/20240402121)



Jim Provance

The Blade

jprovance@theblade.com

Apr 2, 2024

9:19 AM

COLUMBUS — State prosecutors have indicated they will call Gov. Mike DeWine's former chief of staff and her lobbyist husband as witnesses in the corruption trial of Ohio's former top utilities regulator and two former FirstEnergy Corp. executives.

The names were among many potential witnesses listed in a filing this week in Summit County Common Pleas Court by Special Assistant Attorney General Matthew Meyer.

The state is prosecuting Samuel Randazzo, former chairman of the Public Utilities Commission of Ohio; Charles (Chuck) Jones, former FirstEnergy president and CEO, and Michael Dowling, a former corporate vice chairman.

Many of the names on the witness list are already familiar either from testifying at or being brought up during last year's federal racketeering trial of former House Speaker Larry Householder and former Ohio Republican Party Chairman Matt Borges.

DeWine spokesman Dan Tierney declined to comment. The office has already said the governor's now counselor, Laurel Dawson, learned of the \$4.3 million payment that FirstEnergy Corp. made to Mr. Randazzo as he was being vetted to chair the powerful Public Utilities Commission of Ohio.

Mr. DeWine's office, however, has said she didn't bring that information to the governor's attention until after Akron-based utility revealed the payout was not the final installment to a Randazzo consulting contract it had been purported to be but rather a bribe.

Ms. Dawson is a long-time adviser to the governor, serving as his chief of state when he was in Congress.

Also on the witness list is her husband, Michael Dawson, former staffer under Gov. George Voinovich and then U.S. Sen. DeWine and a former FirstEnergy lobbyist.

Not on the list is either Mr. DeWine or Lt. Gov. Jon Husted. The governor has said that Mr. Randazzo's experience with FirstEnergy and big industrial users of electricity was a plus in his consideration of him for PUCO chair.

The case relates to but goes beyond the \$61 million bribery scandal that led to the Householder and Borges convictions, for which they are serving 20 year and five-year federal prison sentences, respectively.

At the heart of the scandal is the 2019 passage of House Bill 6, the law that promised a \$1.3 billion customer-financed bailout of two struggling nuclear power plants that were weighing down a FirstEnergy subsidiary at the time.

Mr. Randazzo, Mr. Jones, and Mr. Dowling face 27 counts of bribery, theft, corruption, and other charges in connection with what the utility has already admitted was a scheme to bribe the incoming PUCO chairman to push House Bill 6 and take other action to help the corporate bottom line.

Mr. Randazzo also faces federal charges, but this case marks the first time that alleged executive decision-makers at FirstEnergy have been criminally charged.

The lengthy list of potential witnesses also includes former political strategist and Householder ally Jeff Longstreth and former Columbus lobbyist Juan Cespedes. Both pleaded guilty to racketeering conspiracy and testified during the Householder-Borges federal trial in hopes of getting lenient sentences.

Robert Cupp, the former Ohio Supreme Court justice who replaced Householder as Speaker of the House, is on the list. The prosecution indicated that he was interviewed as part of the investigation last fall.

Former state Rep. Dave Greenspan (R., Westlake) had testified at the federal trial and may be called again. His initial complaint to the FBI triggered the Householder investigation. He voted against House Bill 6, the bailout law at the center of the investigation, and ultimately lost his bid for re-election.

The witness list also includes current and former utilities commissioners, including Jenifer French who replaced Mr. Randazzo as chairman, and staff members.



Jim Provance

Follow to receive notifications any time Jim Provance publishes a new story

**Bloomberg
Law**

Request a Demo

Login

[Securities Law News](#)

April 1, 2024, 11:10 AM PDT

Matt Levine's Money Stuff: Trump Media's Business Doesn't Matter

By Matt Levine

Opinion

Bloomberg Law News 2024-04-02T09:59:19452589365-04:00

Matt Levine's Money Stuff: Trump Media's Business Doesn't Matter

By Matt Levine 2024-04-01T14:10:52758-04:00

Trump SPAC

What if fundamental analysis of stock prices was a temporary phenomenon? I have previously written my half-joking history of stock markets in three eras:

1. For hundreds of years, stock markets existed, you could buy and sell stocks, but you had limited access to high-quality public financial information, and no access at all to Microsoft Excel, so it was pretty hard to estimate a company's future cash flows and discount them back to present value. Stock-market speculation was a psychological gambling game. "The actual, private object of the most skilled investment today," wrote Keynes, is "to outwit the crowd, and to pass the bad, or depreciating, half-crown to the other fellow."

- 2. Then, starting in about the late 1930s, a favorable set of conditions came together for the rise of fundamental analysis. Public companies were required to publish audited financial statements, so you could analyze their cash flows. Books were written explaining how to do so. There were lots of fairly stable industrial companies, so you could predict their cash flows. Eventually, computer technology made it possible to do this more quickly and reliably. Mutual funds grew up with professional investors who did this analysis. Later, the development of leveraged buyout technology made it possible for you to *realize* the value of a company's cash flows: If your fundamental analysis of a company said that it was worth more than its stock price, you could buy all the stock and take the cash flows for yourself. The result is that it was possible to *do* fundamental analysis, and there was a clear plausible *link* between that fundamental analysis and the value of the stock.

- 3. But eventually — like, three years ago? — people realized that there was a flaw in that reasoning. While the value of a company's cash flows probably *does* set a real floor under its stock price — if the stock is worth

less than the cash flows, someone can buy the company and take the cash flows — it does not put a *ceiling* on the price. If the stock has cash flows worth \$10, and you want to pay \$20 for it, I can't stop you, and I cannot directly monetize the difference: I can't, like, sell all the stock for \$20 and then buy it back for \$10; I can't force the price down to the fundamental value. If everyone just collectively decides to pay \$20 for a thing with cash flows of \$10, or \$0, then it's worth \$20, isn't it? There is no law of nature requiring that a stock's price has to equal the present value of its future cash flows, or even that it has to equal the market's collective *estimate* of its future cash flows. That's just a matter of tradition, and the tradition is only like 80 years old. But the tradition could always change. Now maybe stocks will trade based on ... I don't know, something else, collective attention, online sentiment, the desire to "outwit the crowd." Stocks can once again be pure tokens in a psychological gambling game.

I said that the third era started "like three years ago," because that's when GameStop Corp.'s stock went to the moon and inaugurated the era of meme stocks, stocks that trade purely on sentiment and attention rather than anyone's views about fundamental value. But really I think the third era started a bit earlier, with cryptocurrency. I once wrote:

Before the rise of Bitcoin, the conventional thing to say about a share of stock was that its price represented the market's expectation of the present value of the future cash flows of the business. But Bitcoin has no cash flows; its price represents what people are willing to pay for it. Still, it has a high and fluctuating market price; people have gotten rich buying Bitcoin. So people copied that model, and the creation of and speculation on pure, abstract, scarce electronic tokens became a big business.

A share of stock is a scarce electronic token. It's also something else! A claim on cash flows or whatever. But one thing that it is is an electronic token that's in more or less limited supply. If you and your friends online want to make jokes and invest based on those jokes, then, depending on your sense of humor and which online chat group you're in, you might buy either Dogecoin or GameStop Corp. stock, and for your purposes those things are not *that* different.

I don't know, I don't entirely mean any of this? A week into the GameStop thing in 2021, I wrote:

I don't think, however many days we are into this nonsense, that GameStop is a particularly important story (though of course it's a fun one!), or that it points to any deep problems in the financial markets. There have been bubbles, and corners, and short squeezes, and pump-and-dumps before. It happens; stuff goes up and then it goes down; prices are irrational for a while; financial capitalism survives.

But I tell you what, if we are still here in a month I will *absolutely freak out*. Stock prices can get totally disconnected from fundamental value for a while, it's fine, we all have a good laugh. But if they stay that way forever, if everyone decides that cash flows are irrelevant and that the important factor in any stock is how much fun it is to trade, then ... what are we all doing here?

We were still there in a month, and people kept emailing me to be like “are you freaking out yet,” and I kind of was, though now GameStop is down about 86% from its highs of January 2021. Meanwhile the market capitalization of Dogecoin has been higher than \$7 billion for about three years now. *Much* higher for much of that time, and about \$30 billion today, but consistently above \$7 billion. With no cash flows at all. People just like that dog.

With time, I have become more comfortable with the answer to “what are we all doing here?” The answer is “not fundamental analysis.” Maybe it is “having fun online.” Maybe it is “playing a complex game of mass psychology.” Maybe it is “using our investments as a form of self-expression, buying stocks and cryptocurrencies we identify with and feeling better about ourselves if they go up.” The third era is new, and we do not understand the mechanisms here as well as we understand discounted cash flow analysis, but maybe there *are* mechanisms to discover; maybe in 10 years there will be textbooks on Meme Stock Analysis.

And maybe there will be a first-year M.B.A. course in Meme Stock Analysis. And maybe it will have a final exam question — really a first-week pop quiz question — like: “Donald Trump has a publicly traded company with the ticker symbol DJT (his initials), he owns more than half of the stock, its business model is to ‘fight back against the big tech companies ... that it believes collude to curtail debate in America and censor voices that contradict their woke ideology,’ and last year it had a net loss of \$58.2 million on \$4.1 million of revenue. How much is that company worth?” And if you write “well Meta Platforms Inc. trades at like 9.3 times revenues so maybe \$40 million?” you will fail.

I don’t know what you should write! The textbook is not yet written. But it does seem — as an empirical matter, but also just intuitively — like a lot of people would want to buy shares of an electronic token called “DJT” that represents their fondness for Donald Trump, that marks them out as members of a Donald Trump-supporting club, and that actually makes Trump himself richer and supports him in his endeavors. And so they might pay money for that token. And the cash flows just don’t enter into it at all.

Again, I don’t think I’m all that serious about any of this, or at least I hope I’m not. But Bloomberg’s Bailey Lipschultz reports today:

Trump Media & Technology Group Corp.’s stock fell as much as 22% on Monday to as low as \$48.03 per share, below the \$49.95 level where the blank-check vehicle it merged with was trading a week ago. The company has still delivered a meteoric gain this year to date, with its market value sitting at about \$6.6 billion after it became a meme stock and captivated retail traders.

The company generated just \$4.1 million in revenue for the full year, results reported in a filing Monday morning show, underscoring how richly valued Trump Media is relative to its peers. ...

The discrepancy between where Trump Media’s shares trade and how the underlying business performs indicates that investors use it as a way to bet on Trump’s push for re-election. The stock, which has been trading since 2021 under the SPAC’s ticker, has tripled this year as the retail-trading crowd pumps it with posts across Stocktwits and Reddit’s WallStreetBets forum.

"Use it as a way to bet on Trump's push for re-election." If he's elected, will that make the company's business more lucrative? Oh, quite possibly; maybe he'll sign an executive order requiring companies to advertise on Truth Social. But I don't think you have to posit a mechanism like that. You can just say "people want to bet on Trump, so they buy Trump Media."

Or Dan Primack writes today that "it's not possible to even pretend that the equity value has any relation to the underlying business. At this point, owning TMTG is basically an in-kind donation to Donald Trump. Both financially and reputationally." Yes! A lot of people want to associate themselves with Donald Trump, and also for some reason want to make him richer, and Trump Media's stock is a quite straightforward way to do that. Why does it *have* to have any relation to the underlying business?

Back when the Trump Media special purpose acquisition company deal was first announced in 2021, the stock jumped, and I pointed out that there was not a single dollar sign in the investor presentation. I said:

I think that a more realistic valuation method here is not to worry about cash flows at all — *as Trump SPAC clearly does not* — and treat the stock simply as a token of public interest in Donald Trump. My guess is that the price of Trump SPAC stock will not, for instance, be much affected by its earnings announcements, unless Trump himself does the earnings calls in which case it will go up no matter what he says. ... My guess is that each day that goes by without Trump news, the stock will go down a bit. My guess is that the stock is essentially a bet on Trump's personal newsmess, on Trump-news volatility.

I suppose that was wrong, specifically, in that the stock was down 22% today on spectacularly bad earnings, but I do think it was right in spirit. After those earnings, Trump Media is trading at only like 1,500 times revenues. It's just not about the earnings!

One other important point from Lipschultz's article:

The heightened valuation has made it costly and risky to bet against with short sellers facing annual financing costs of 500% to borrow, according to brokerages. That makes it the most expensive US company to bet against with over \$100 million of short interest by a large margin, data from financial analytics firm S3 Partners show.

Again, fundamental value is a *floor* on stock price, but not a ceiling. If you think that a stock is overvalued, you can't do anything to force it down to fair value. You can't just short unlimited shares: You have to borrow them, and pay 500% per year to do so, and not many shares are available to borrow. But even if you could short all you wanted for free, people could keep buying them! The price could keep going up. It's possible that the old rules of fundamental value still apply. But are you sure?

April Fools!

Ugh sure fine here's a roundup of corporate April Fools' Day pranks, including Elon Musk tweeting that he's joining Disney "as their Chief DEI Officer" to "make their content MORE woke," hilarious. And here is a story about Citigroup Inc. Chief Executive Officer Jane Fraser doing pranks at work:

In early 2022, Citigroup Chief Executive Jane Fraser startled her senior team with a request: Please sign these waivers to go skydiving.

Executives questioned the sanity of the bank's leaders all jumping out of a plane. Does the board know, one of them emailed. I'm not sure my heart is healthy enough, another replied. ...

After watching her team squirm for a while, Fraser emailed again: April Fools'.

It was March 31.

There are few more "you had to be there" genres of comedy than corporate pranks, and particularly pranks that a boss plays on her underlings. "A classic Fraser prank is to 'celebrate' birthdays or work anniversaries by displaying embarrassing photos of her targets." Okay super.

Insider trading (1)

All the way back in 2013 I coined what I eventually called the "Second Law of Insider Trading," which is, if you *are* going to do insider trading, "don't do it by buying short-dated out-of-the-money call options on merger targets." "They check for that," I sometimes add. I am pleased to report that this has apparently become an official position of the US Securities and Exchange Commission:

"It baffles me that folks still think that they could buy way-out-of-the-money call options before some announcement, and not think that they'll trigger some sort of alert or some sort of tool that we have out there looking at this information and get caught," Gurbir Grewal, the SEC's enforcement chief, said earlier [in March]. He didn't reference any particular case or investigation.

That's from a Bloomberg News story from last week titled "Minor League Players Accused of Insider Trading in Del Taco." Here are the SEC's announcement of that case, the related criminal case, and the SEC complaint.

Basically the story of the complaint is that four guys "attended Pepperdine and played on the school's baseball team together" in the mid-2010s. After graduation, one of them ended up working "on finance-related matters" at Jack in the Box Inc.; the other three played minor-league baseball. The Jack-in-the-Box guy hung out with his former teammates and allegedly discussed his company's planned acquisition of Del Taco Restaurants Inc. in front of them, including on a four-hour Zoom call about the deal while in a car with one of the minor leaguers. The minor leaguers then allegedly traded call options on Del Taco, which is bad.

The *Third* Law of Insider Trading is "don't text or email about it," and these guys allegedly did. But they actually did a nice job of sending *good* texts:

In their initial texts, Qsar, Witherspoon, and Individual 1 demonstrated that they knew they had obtained material nonpublic information by attempting to concoct an alternative explanation for their eventual trades.

For example, on or about October 5, 2021, Witherspoon texted Qsar and Individual 1, “[c]heck out this stock guys Del taco, this chart is looking bullish to me. Might try to gamble on some options or something, I love to eat at del taco.” ...

Qsar responded, “I’m thinking about it too[.] Chart looks primed to boom[.] What’s it [sic] 52 week high?”

Witherspoon responded, “\$11.99[.] Could see it hitting \$10 easy[.]”

Qsar responded, “If we break 10 new 52 week highs could follow[.] The payout could be ridiculous if we buy the January 2022 calls[.]”

I dunno. If you assume they were insider trading, then I suppose those texts “demonstrated that they knew they had obtained material nonpublic information by attempting to concoct an alternative explanation for their eventual trades.” But if you *don’t* assume that, then I suppose it is nice to have texts saying “I like the stock” before you go out and buy call options.

Insider trading (2)

The rough rule of US insider trading law is that it is illegal to trade stock when (1) you have material nonpublic information and (2) you have some obligation to somebody not to use it to trade that stock. Most straightforwardly:

A company has fiduciary obligations to its shareholders, and isn’t supposed to trade in its own stock without disclosing all material information.

- A company’s employees have fiduciary obligations to the company, and aren’t supposed to trade its stock when they have material nonpublic information.
- A company’s various service providers — bankers, lawyers, etc. — have confidentiality obligations to the company and aren’t supposed to use inside information to trade its stock.

There are more complicated cases:

The employees (and bankers, lawyers, etc.) of the *acquirer* in a possible merger have obligations to that acquirer, and are not supposed to use inside information to trade the *target’s* stock.

- A romantic partner or golf buddy or former baseball teammate of a corporate employee (or banker, lawyer, etc.) has a duty of trust and confidence to the employee, and is not supposed to use inside information to trade her company’s stock. (And a romantic partner of an employee of an acquirer is not supposed to use inside information to trade the target’s stock.)

You need *something*, some duty to keep the information confidential. Famously, in the US, if you overhear a banker talking about a deal on a train, you can go ahead and trade on that. (Not legal advice!) What makes the insider trading illegal is the breach of a duty, not *just* the inside information.

The US Securities and Exchange Commission does keep trying to expand the boundaries, though. We have talked a few times about its “shadow trading” case, in which it argues that an employee of a company is not allowed to use inside information about that company to trade in *other* companies with correlated stocks. The SEC sued an employee of a biotech company that was a merger target who traded in a competitor’s stock, which went up when the merger was announced. The theory is that the employee had a duty to his company not to use that inside information to trade *any* stock, not just his own company’s stock.

Or here’s one from last week:

The Securities and Exchange Commission [Tuesday] announced insider trading charges against Andreas “Andy” Bechtolsheim, the founder and Chief Architect of Silicon Valley-based technology company Arista Networks, Inc. To settle the SEC’s charges, Bechtolsheim agreed to pay a civil penalty of nearly \$1 million.

According to the SEC’s complaint, Bechtolsheim misappropriated material nonpublic information regarding the impending acquisition of Acacia Communications, Inc., a manufacturer of highspeed optical interconnect products. The SEC alleges that Bechtolsheim, who was Arista Networks’s chair at the time, learned of Acacia’s impending acquisition on July 8, 2019, through his and Arista Networks’s longstanding relationship with another multinational technology company that was also considering acquiring Acacia and consulted with Bechtolsheim concerning the potential acquisition. Immediately after learning this information, Bechtolsheim allegedly traded Acacia options in the accounts of a close relative and an associate. The next day, July 9, 2019, before the market opened, Acacia and Cisco announced that Cisco had agreed to acquire Acacia for \$70 per share. That day, Acacia’s stock price increased by 35.1 percent.

That’s unusually indirect: Bechtolsheim did not work at Acacia. He did not work at Cisco, the company that acquired Acacia, or at its banks or law firms. He did not work at the (unnamed) company that was *considering* acquiring Acacia, or at its banks or law firms. He works at a *fourth* company, Arista, which has some sort of technology and business relationship with the unnamed third company. When the unnamed tech company was pinged about maybe buying Acacia, its executives asked Bechtolsheim for advice, and he allegedly went and bought Acacia call options. He worked for a company that talked to a company that thought about competing with a company that bought a company, and he traded that last company’s stock. That’s about as outside as insider trading gets, but probably enough.

Don't put it in texts!

In Canada, a former analyst at an investment management firm sued her firm for wrongful dismissal and whistleblower violations. As part of the discovery in that lawsuit, she has to turn over some of her text messages to her former firm. Two of her friends — who presumably work in finance, possibly at the same firm — sued *her*, anonymously, to prevent her from turning over their texts. Because the texts are bad. Here is a somewhat funny Canadian court opinion dismissing *that* lawsuit and saying sure, go ahead, turn over those texts:

The plaintiffs submit that their text messages include irrelevant comments, gifs, emojis, and colorful language that have no place in a formal legal proceeding. They ask me to find that the text messages were private discussions among friends. That may all be true. But it has nothing to do with whether the text messages are subject to disclosure in the other lawsuit.

The plaintiffs swear that their text messages are irrelevant to the other litigation. They are not lawyers and have no basis to make such a determination of law or mixed fact and law in their affidavits. ...

The real gravamen of the plaintiffs' complaint is that the plaintiffs swear they will be seriously prejudiced if Ms. Whitford's former employer sees their exchanges with her. I do not doubt that. I have read the text messages.

Sadly the judge does not reproduce the texts. But apparently they're very good!

Things happen

Bridgewater CEO's Turnaround Hinges on Wooing Restless Clients. Giant Merger Deals Stage a Comeback. Inside the Russian Shadow Trade for Weapons Parts, Fueled by Crypto. SNB Research Details Billions Needed to Keep Currency in Check. Huge AI funding leads to hype and 'grifting', warns DeepMind's Demis Hassabis. Tupperware Delays Filing Annual Results Amid Accountant Shortage. Crypto group Copper launches review after 'embarrassing' sushi party.

If you'd like to get Money Stuff in handy email form, right in your inbox, please subscribe at this link. Or you can subscribe to Money Stuff and other great Bloomberg newsletters here. Thanks!

To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:

Wendy Pollack at wpollack@bloomberg.net

- 1. Incidentally, when I read about an internet publishing business with \$4 million of revenue, my first thought is to compare it to prominent one-person email newsletters, some of which seem to bring in mid-seven-digit revenues. Trump Media & Technology Group is about as lucrative as a top Substack newsletter, but vastly more expensive to run.

- 2. One that probably doesn't implicate campaign finance laws, which other ways to give him money might. (Not legal advice!)
- 3. The Jack-in-the-Box guy wasn't charged, and the SEC says: "The Finance Employee expected that Qsar would keep this additional information confidential, and Qsar was aware that the Finance Employee expected him to maintain its confidentiality."
- 4. From the complaint: "Tech Company A and Arista Networks at all relevant times shared a confidential business relationship. ... Tech Company A Manager suggested to the CFO that Tech Company A Manager contact Bechtolsheim confidentially to help them assess the impact of an acquisition of Acacia."
- 5. Well, it wasn't really an unsolicited ping. From the complaint: "Tech Company A and Acacia engaged in confidential discussions concerning Tech Company A's potential acquisition of Acacia from April 2019 through July 8, 2019. On the morning of July 8, 2019,¹ a representative of Acacia contacted Tech Company A's Chief Financial Officer ('CFO') to inform him that another company had made an offer to acquire Acacia and inquired whether Tech Company A would be in a position to submit a competing offer for Acacia."

© 2024 Bloomberg L.P. All rights reserved. Used with permission.

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Malcolm Nance reposted



Josh Marshall

@joshtpm

...

Truth Social just released their 8-K, so the SEC mandated disclosures where you can't lie without committing a crime. Lots of focus on the dollars, which are hilarious: Just over \$4.1 M in revenue, \$58M in costs. ... app.quotemedia.com/data/downloadF...

8:50 AM · Apr 1, 2024 · 1.3M Views



212



1.7K



7.5K



484



Post your reply

Reply



Josh Marshall @joshtpm · 6h

...

I've mentioned before that this is only barely more than TPM brings in each year and since we're a real business we have costs well under \$58m. But these aren't the important data points in this filing. In theory a social platform can be losing a lot of money and still ...



6



71



1.1K



118K



484



Josh Marshall @joshtpm · 6h

...

3/ legitimately be worth a ton of money. Facebook had already become a force of nature before Zuckerberg even real turned his attention to monetization. That turned out to be a really good idea. He put his energy into building network effects, platform dominance and only after...



6



50



883



114K



484



Josh Marshall @joshtpm · 6h

...

4/ he'd basically won that game did he turn in earnest to monetization. So even though Truth Social losing a ton of money and only having very meager revenue makes it seem like a joke, it doesn't prove it's a joke. For the proof you need to skip down to the 4th paragraph under...

At this juncture in its development, TMTG believes that adhering to traditional key performance indicators, such as signups, average revenue per user, ad impressions and pricing, or active user accounts including monthly and daily active users, could potentially divert its focus from strategic evaluation with respect to the progress and growth of its business. TMTG believes that focusing on these KPIs might not align with the best interests of TMTG or its shareholders, as it could lead to short-term decision-making at the expense of long-term innovation and value creation. Therefore, TMTG believes that this strategic evaluation is critical and aligns with its commitment to a robust business plan that includes introducing innovative features and new technologies. See the section below titled "Key Operating Metrics" and the section titled "Risk Factors — Risk Factors Related to TMTG — TMTG does not currently, and may never, collect, monitor or report certain key operating metrics used by companies in similar industries" incorporated in this Current Report on Form 8-K by reference to the Proxy Statement/Prospectus.



10



85



873



114K



484



Josh Marshall @joshtpm · 6h

...

5/ Overview. And then you also look at the section titled Key Operating Metrics, which you can see here.

Since its inception, TMTG has focused on developing Truth Social by enhancing features and user interface rather than relying on traditional performance metrics like average revenue per user, ad impressions and pricing, or active user accounts, including monthly and daily active users. While many industry peers may gather and report on these or similar metrics, given the early development stage of the Truth Social platform, TMTG's management and board has not relied on any particular key performance metric to make business or operating decisions. TMTG believes that this evaluation is critical and in line with its commitment to implement a robust business plan that may involve introducing innovative features and potentially incorporating new technologies. At this juncture in its development, TMTG believes that adhering to traditional key performance indicators, such as signups, average revenue per user, ad impressions and pricing, or active user accounts including monthly and daily active users, could potentially divert its focus from strategic evaluation with respect to the progress and growth of its business. TMTG believes that focusing on these KPIs might not align with the best interests of TMTG or its shareholders, as it could lead to short-term decision-making at the expense of long-term innovation and value creation. Therefore, TMTG believes that this strategic evaluation is critical and aligns with its commitment to a robust business plan that includes introducing innovative features and new technologies.

In connection with such an evaluation, and consistent with SEC guidance, TMTG will consider in the future the relevant key performance indicators for its then-current business operations and determine whether it has effective controls and procedures in place to process information related to the disclosure of key performance indicators and metrics. This will ensure consistency and accuracy over time, or assess the feasibility of implementing any such controls and procedures. Should this be the case, TMTG may decide to collect and report such metrics if they are deemed to significantly enhance investors' understanding of TMTG's financial condition, cash flows, and other aspects of its financial performance. However, TMTG may find it challenging or cost-prohibitive to implement such effective controls and procedures and may never collect, monitor, or report any or certain **key operating metrics**. As the platform evolves and new technologies and features are added, TMTG's management and board expect to reevaluate whether TMTG will gather and monitor one or more metrics and rely on such information in making management decisions. At such time, TMTG expects to present such material **key operating metrics** appropriately in its periodic reports to enhance investors' understanding of its financial condition, cash flows, and any other changes in financial condition and results of operations. See "Risk Factors — Risk Factors Related to TMTG — TMTG does not currently, and may never, collect, monitor or report certain **key operating metrics** used by companies in similar industries" incorporated in this Current Report on Form 8-K by reference to the Proxy Statement/Prospectus.

5

68

778

99K



Josh Marshall @joshtpm · 6h

...

6/ Here it tells us that "adhering to traditional key performance indicators ... could potentially divert its focus from strategic evaluation with respect to the progress and growth of its business." Among those "traditional" indicators it includes ad impressions and ...

2

52

752

96K



Josh Marshall @joshtpm · 6h

...

7/ revenue per user. Again, that's reasonable in theory. That's monetization not building the engine, if we go back to the Facebook analogy. But it also includes "active user accounts including monthly and daily active users". This is where you get the hard record scratch ...

1

60

756

80K



Josh Marshall @joshtpm · 6h

...

8/ sound effect straight to bullshitville. It goes on to say that it may NEVER release those numbers. What this means is they are going to release no information about how many people use Truth Social or the details of that use. As noted, Truth Social has trivial levels of ...

3

104

962

80K





Josh Marshall @joshtpm · 6h

...

9/ and like 15x the expenses. So business bleeding money like crazy. But if this two year old social network were in the process of building a robust user base which showed strong signs of on-going growth that might not matter. Again, think of Zuckerberg riding a tiger ...

1 60 754 72K



Josh Marshall @joshtpm · 6h

...

10/ of explosive network/platform growth and focusing on that over near-term monetization. Truth Social is saying that it won't tell investors how many users it has, how quickly that base is growing or what its characteristics are. In fact, it says there's a good chance ...

6 91 764 69K



Josh Marshall @joshtpm · 6h

...

11/ it won't ever release that data. This is clear cut. This company has zero actual value. The best case for its value is that they haven't actually tried to build the user base. So it's as tho it was still a prospectus with an amazing strategy. But in fact it's been around ...

5 144 1K 80K



Josh Marshall @joshtpm · 6h

...

12/ for two years and has an INSANE amount of publicity behind it. Again, this company has no value. Or I guess better to say that whatever value it may have is premised on the say so of Donald Trump.

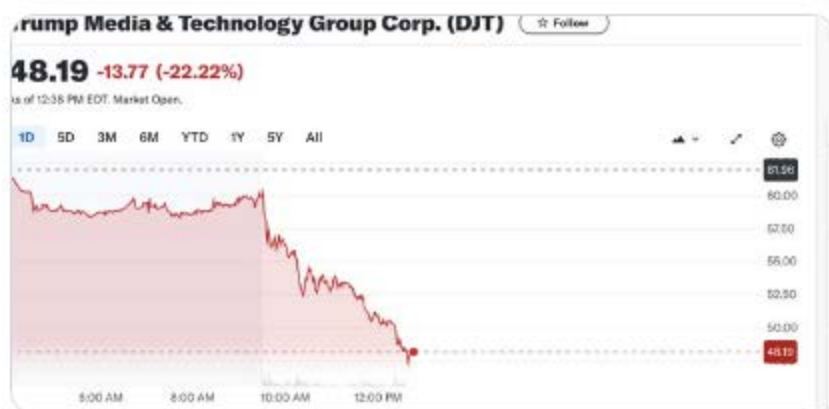
53 138 1.2K 80K



Aaron Astor @AstorAaron · 5h

...

It's doing great today...



5 22 293 29K



Josh Marshall @joshtpm · 5h

...

buy on the dip!

19 2 205 24K

 **deCadmus** 🍷 @deCadmus · 6h ...
If you don't have growing MAU you don't have a social product. Period.

💬 4 ↻ 6 ❤️ 212 📊 41K 📌 ⬆

 **Josh Marshall** @joshtpm · 6h ...
exactly

💬 4 ↻ 4 ❤️ 125 📊 36K 📌 ⬆

⋮ [Show replies](#)

 **Centrist Sisyphus** 🇺🇦🇷🇺 @Byedon2 · 6h ...
TS exists because one almost 80yo man posts on it. That doesn't seem like a solid business plan, so its investors are either suckers or have 'other interests' in mind. I wouldn't want to be holding TS stock on Nov. 6 when those other interests go pfffft.

💬 4 ↻ 16 ❤️ 351 📊 33K 📌 ⬆

 **Josh Marshall** @joshtpm · 6h ...
look, people live longer these days. he could live 50 more years. so who knows?

💬 26 ↻ 5 ❤️ 135 📊 28K 📌 ⬆

⋮ [Show replies](#)

 **Jayarama Shenoy** @eecraft · 5h ...
One thing that jumped out:
Cost of revenue \$165k (this is annual).

These are hosting costs and usually include the operations personnel administering the site.

Site doesn't serve much traffic at all. In 2021, Twitter had \$5B revenue (1000x) and \$1.8B cost of revenue (10000X).

💬 3 ↻ ❤️ 53 📊 14K 📌 ⬆

 **Josh Marshall** @joshtpm · 5h ...
I didn't read too much into that since I figured they cld be fudging it somehow. But if that's actually techs/admin and hosting our pretty small site spends almost twice that much. arguably more.

💬 3 ↻ 2 ❤️ 53 📊 12K 📌 ⬆

⋮ [Show replies](#)



Darren Kaplan  @DarrenKaplan · 5h

...

Lockup agreements with, among others, Daniel Scavino Jr., Devin G. Nunes, Donald J. Trump, Jr., President Donald J. Trump, and Kashyap "Kash" Patel.

I cannot imagine giving a nickel to any one of them.



2



3



106



14K



CommonSense  @CommonSense4444 · 5h

...

Indeed. I did not read the whole thing, would need to see how many shares were registered, but at first glance it looked like ARC Global Investments & United Atlantic Venture has no lock-up period. The two own 17 million shares. I don't want to spend the time to really look, I...

[Show more](#)



1



2



9



10K



Taft McGinley @TaftMcGinley · 4h

...

The costs for what they're doing are just..... insane. Insane. They have some tiny, tiny fraction of that in network services expenses — and the rest is pure gift



26



3.2K



Investor in Trump SPAC to Change Plea in Insider Trading Case

By Chris Dolmetsch

Bloomberg Law News 2024-04-02T09:58:43568222768-04:00

Investor in Trump SPAC to Change Plea in Insider Trading Case

By Chris Dolmetsch2024-04-01T14:56:50806-04:00

One of the three investors charged with insider trading in connection with the listing vehicle that took Donald Trump's media company public intends to change his not-guilty plea in the case less than a month before a federal court trial is set to begin.

US District Judge Lewis J. Liman on Monday scheduled a hearing on the plea change later in the week, but didn't specify in his order how Michael Shvartsman will plead. Such entries usually reflect a decision by defendants to admit guilt in at least one charge. Prosecutors and lawyers for Shvartsman didn't respond to inquiries seeking comment.

A trial is set to start April 29 for Shvartsman, the chief executive officer of Rocket One Capital LLC, his brother Gerald, and Bruce Garelick, a Rocket executive and former member of Digital World Acquisition Corp.'s board. They're accused of making more than \$22 million trading ahead on confidential information about potential targets of the SPAC, including Trump Media & Technology Group Corp.

The three men were invited to invest in Digital World Acquisition and another SPAC, and they signed nondisclosure agreements that gave them access to confidential information about potential targets of the company, including Trump Media, according to the government.

Digital World announced an agreement to merge with Trump Media in October 2021, sending the shares soaring and handing the three men millions of dollars in profit from trades they made beforehand, according to prosecutors. Shares of Trump's media company debuted last week after the deal with Digital World closed, providing a much-needed cash infusion following years of delays.

The three men were arrested in June and charged with securities fraud, conspiracy and other counts. If found guilty, they each face as many as 25 years in prison on the most serious fraud charges, though they would probably get less time under federal sentencing guidelines.

Read More: Trump's Meme Stock Is Skyrocketing But for How Long?

The case is US v. Shvartsman, 23-cr-307, US District Court, Southern District of New York (Manhattan).

To contact the reporter on this story:

Chris Dolmetsch in Federal Court in Manhattan at cdolmetsch@bloomberg.net

To contact the editors responsible for this story:

Misyrlena Egkolfopoulou at megkolfopoul@bloomberg.net

Steve Stroth, Anthony Lin

© 2024 Bloomberg L.P. All rights reserved. Used with permission.

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Bloomberg Law

Research Trail

My Work

000888

Help

Account

Securities Law

Search Securities Law

?

Select Sources

Go

Home

Practice Centers

Litigation

Transactional

Business

Practitioner Tools

News & Analysis

Laws & Regulations

Secondary Sources

 [Manage Subscription](#)

Securities Law

April 2, 2024, 2:18 AM PDT

Ajax to Fire Chief Executive on Insider-Trading Allegations (1)

By Cagan Koc

- Club alleges Kroes bought shares a week before role announced
- Suspension is latest in series of off-pitch scandals for Ajax

Bloomberg Law News 2024-04-02T12:52:46683291601-04:00
Ajax to Fire Chief Executive on Insider-Trading Allegations (1)

By Cagan Koc2024-04-02T05:18:54998-04:00
Club alleges Kroes bought shares a week before role announced
Suspension is latest in series of off-pitch scandals for Ajax

AFC Ajax NV suspended its Chief Executive Officer Alex Kroes and said it plans to dismiss him after “strong indications” of insider trading.

The club alleges that Kroes, who was also the chairman of Ajax’s executive board, purchased over 17,000 shares of the club a week before his appointment was announced on August 2.

“Kroes’ actions are not in line with what Ajax stands for,” said Michael van Praag, chairman of the club’s supervisory board, in a statement Tuesday. “The timing of his share purchase indicates insider trading. Such a violation of the law cannot be tolerated by a publicly listed company, especially when it involves the CEO.”

https://www.bloomberglaw.com/product/blaw/bloomberglawnews/securities-law/XB01FR9K000000?bc=W1siU2VhcmNoICYgQnJvd3NlIiwiaHR0cHM6... 1/3



Alex Kroes

Source: DeFodi Images/Getty Images

Ajax, which is currently fifth in the Dutch Eredivisie during a difficult season for the club, has been grappling with managerial scandals in recent years. In September, Ajax fired its Director of Football Affairs **Sven Mislintat** due to “disappointing” performances, shortly after an investigation into an [alleged conflict of interest](#) arising from the [transfer](#) of a defender.

Mislintat was a successor to longtime director **Marc Overmars**, who had to step down in 2022 following reports about [inappropriate messages](#) sent to several female staff members.

The stock has fallen by around 9% since the time Kroes is alleged to have bought shares last year. Ajax shares were trading at around €10.3 (\$11) on Tuesday, reversing an earlier decline.

Dutch state broadcaster NOS reported that Kroes did not accept Ajax’s decision to suspend him and will seek an independent opinion from the market regulator, known as the Dutch Authority for the Financial Markets.

“I believe that you radiate confidence to your fellow shareholders and stakeholders when you buy shares and therefore also run financial risks yourself,” Kroes was cited as saying by NOS. “As much as I am convinced of my good intentions, I now understand, after consulting with my lawyer, that I did not make the most sensible decision,” he said.

Other board members will take over Kroes’ duties, according to the statement. The club will soon hold an extraordinary general meeting for shareholders.

Sign up for Bloomberg’s Business of Sports newsletter for the context you need on the collision of power, money and sports.

(Updates with Kroes’ reaction in the seventh paragraph)

To contact the reporter on this story:

Cagan Koc in Amsterdam at ckoc2@bloomberg.net

 [Manage Subscription](#)

By Georgi Azar

Bloomberg Law

Research Trail

My Work

000888

Help

Account

Securities Law

Search Securities Law

Select Sources

Go

Home

Practice Centers

Litigation

Transactional

Business

Practitioner Tools

News & Analysis

Laws & Regulations

Secondary Sources

Manage Subscription

Securities Law

April 2, 2024, 7:24AM PDT

Autodesk Falls After Disclosing Internal Probe Into Accounting

By Brody Ford

- Focus on free cash flow, non-GAAP operating margin practices
- Company put off release of annual financial report as a result

Bloomberg Law News 2024-04-02T12:37:36158667547-04:00

Autodesk Falls After Disclosing Internal Probe Into Accounting

By Brody Ford2024-04-02T10:24:11352-04:00

Focus on free cash flow, non-GAAP operating margin practices

Company put off release of annual financial report as a result

Autodesk Inc. fell by the most in almost a month after disclosing an internal investigation into its own accounting practices and putting off the release of its annual financial report.

The San Francisco-based software maker received information that has prompted “an internal investigation with the assistance of outside counsel and advisors,” Autodesk said in a [filing](#) late Monday. The probe involves accounting practices around free cash flow and non-GAAP operating margin practices, the company said, while noting it doesn’t believe the review will affect previously issued financial statements.

Shares dropped as much as 4.7% on Tuesday before erasing some losses and trading at \$251.98 at 9:52 a.m. New York time. The stock is up about 21% over the past twelve months, lagging the gains of a broader iShares software sector fund.

Read More: [Autodesk Business-Model Changes Spur Accounting Hurdles: React](#)

A recent change in Autodesk’s transaction model, by which the company is now sending prices directly to customers rather than using third parties, may be the source of the disruption, Bloomberg Intelligence analyst **Niraj Patel** said. The approach “could yield higher net revenue, lower operating margin and no change to free cash flow,” he said.

The company said it has voluntarily [contacted](#) the US Securities and Exchange Commission about the investigation and plans to update the agency as the review proceeds.

To contact the reporter on this story:

Brody Ford in New York at bford61@bloomberg.net

To contact the editors responsible for this story:

Sarah Frier at sfrier1@bloomberg.net

Brody Ford, Lynn Doan

https://www.bloomberglaw.com/product/blaw/bloomberglawnews/securities-law/X4G3EL5S000000?bc=W1siU2VhcmNoICYgQnJvd3NlIiwiaHR0cHM6... 1/2

Bloomberg Law

Research Trail

My Work

000888

Help

Account

Securities Law

Search Securities Law

?

Select Sources

Go

Home

Practice Centers

Litigation

Transactional

Business

Practitioner Tools

News & Analysis

Laws & Regulations

Secondary Sources

Manage Subscription

Securities Law

April 2, 2024, 4:56 AM PDT

Autodesk Falls After Delaying 10-K Report on Internal Probe (1)

By Hari Govind and Subrat Patnaik

Bloomberg Law News 2024-04-02T12:35:23136033034-04:00

Autodesk Falls After Delaying 10-K Report on Internal Probe (1)

By Hari Govind and Subrat Patnaik2024-04-02T07:56:18854-04:00

(Updates stock move and adds Stifel comments.)

Autodesk fell as much as 3.5% in premarket trading on Tuesday after the software company filed to delay its 10-K annual report, citing an internal investigation on the company’s free cash flow and adjusted operating margin practices.

- Audit committee investigation with the assistance of outside counsel is ongoing
- The company voluntarily contacted the SEC and intends to provide additional information as the investigation proceeds
- Currently does not believe the investigation will affect any previously issued financial statements
- To view the source of this information, click [here](#)
- Stifel analyst **Adam Borg** says “given that this management team has historically been very careful with its choice of words, it does not appear at this point that historical financials or guidance is at risk”
- However, curious to see if this “delay has anything to do with complexities surrounding Autodesk’s new agency model transition”

To contact the reporters on this story:
Hari Govind in San Francisco at hgovind@bloomberg.net;
Subrat Patnaik in London at spatnaik22@bloomberg.net

To contact the editors responsible for this story:
Sunil Kesur at skesur@bloomberg.net

Amanda Fung

© 2024 Bloomberg L.P. All rights reserved. Used with permission.

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com.

<https://www.wsj.com/business/autos/teslas-first-quarter-vehicle-sales-fell-as-ev-market-cools-45bad95f>

BUSINESS | AUTOS

Tesla's Quarterly Deliveries Fall for First Time Since 2020

EV maker cites production setbacks for the sales drop, which is worse than Wall Street expected

By [Rebecca Elliott](#) [Follow](#)

Updated April 2, 2024 1:11 pm ET



Tesla is facing a drought of new products, with its low-cost car not expected until late 2025 at the earliest. PHOTO: CFOTO/ZUMA PRESS

Tesla TSLA **-4.89%** ▼ reported its first year-over-year decline in quarterly deliveries since 2020, badly missing Wall Street's expectations and stoking further concern about the company's growth prospects this year.

Elon Musk's electric-vehicle maker delivered 386,810 vehicles globally in the first three months of 2024, down 8.5% from a year earlier. It was the company's lowest quarterly performance since the third quarter of 2022.

The result was enough for Tesla to reclaim the title from China's BYD as the world's top electric-vehicle seller on a quarterly basis. Yet, it is a troubling sign for the world's most valuable automaker and the broader EV market, where growth is slowing and automakers are recalibrating investment plans after

finding consumers to be less enthusiastic about going electric than the companies had expected.

Tesla shares were down about 5% in afternoon trading Tuesday. The company's stock had fallen nearly 30% this year through Monday, making it the worst performer in the S&P 500 index.

Analysts have slashed their expectations for Tesla's first-quarter performance over the past several weeks. Those surveyed by FactSet forecast Tesla would deliver around 457,000 vehicles globally in the first quarter, though that reflects some stale estimates. Others expected results to be weaker.

Tesla attributed the result partly to production setbacks in the first three months of the year.

First, the company halted output at its plant in Germany for two weeks beginning in late January, citing parts shortages stemming from attacks on ships in the Red Sea. Then, in March, the assembly line ground to a halt once more after an arson attack on the grid that supplies power to the factory.

Meanwhile, Model 3 production tumbled in the U.S. as the company introduced its refreshed version of the car domestically.

Tesla produced 433,371 vehicles in the first quarter, down from 440,808 in the first three months of 2023. Most of them were Model Y crossovers and Model 3 cars. The company didn't disclose how many Cybertruck pickups it produced.

The gap between production and deliveries suggests "that beyond the known production bottleneck, there may also be a serious demand issue," Deutsche Bank analyst Emmanuel Rosner wrote in a note to investors.

The company's first-quarter performance calls into question whether it will be able to achieve even modest growth in 2024, Rosner added.

Other major automakers are slated to report first-quarter U.S. sales throughout the day Tuesday, with investors paying particularly close attention to electric-vehicle deliveries as growth decelerates.

Wall Street is bracing for Tesla's deliveries to grow little, if at all, in 2024, given the company's aging lineup and elevated interest rates. As of February, the

average annual percentage rate on a new-car loan was around 7.1%, up from 4.4% two years earlier, according to Edmunds.

Tesla's slowdown represents a sharp change of fortunes for the world's most valuable carmaker, whose success opened the floodgates for investment in battery-powered vehicles.

After years of chasing 50% annual growth on average, the highflying carmaker has warned of "notably lower" growth in 2024, and Chinese rivals are nipping at its heels.

BYD, which briefly became the world's top seller of EVs in the fourth quarter, sold 300,114 all-electric vehicles globally in the first three months of the year, up 13% from the same period in 2023. It offers EVs that are less expensive than Tesla's and sells mostly in China.

China is the world's largest car market with a fiercely competitive electric-vehicle industry, where Tesla is facing growing pressure from domestic players.

The global electric-vehicle market expanded around 35% year-over-year in the first quarter, according to GlobalData estimates. U.S. sales of all-electric vehicles were poised to climb about 17% during the period.

Tesla is facing a drought of new products, with its highly anticipated low-cost car not expected until late 2025 at the earliest.

Meanwhile, Musk, the chief executive, is pushing to increase use of the company's driver-assistance package dubbed "Full Self-Driving Capability." The technology, which doesn't make cars fully autonomous, could bring in additional software revenue, bolstering the company's bottom line. Tesla recently began offering customers a one-month free trial of the technology, which normally costs \$12,000 outright or \$199 a month as a subscription.

Tesla is scheduled to report first-quarter financial results on April 23. Analysts surveyed by FactSet expect Tesla to report a quarterly profit of \$1.8 billion, down roughly 27% from the first three months of 2023 as the company's recent price cuts weigh on profitability. It would be the company's lowest quarterly profit in more than two years.

Revenue is expected to climb some 4% year-over-year to \$24.3 billion, according to FactSet.

Morgan Stanley analyst Adam Jonas, who has long been bullish about Tesla, wrote in a recent note to investors that the automaker “may be witnessing price-cut fatigue” as profitability narrows. “Such conditions may not significantly improve near-term given the age of Tesla’s product line-up,” he wrote.

Write to Rebecca Elliott at rebecca.elliott@wsj.com

Bloomberg Law

Research Trail

My Work

000888

Help

Account

Bloomberg T...

Search Bloomberg Terminal News

Advanced Search

Go

Home

Practice Centers

Litigation

Transactional

Business

Practitioner Tools

News & Analysis

Laws & Regulations

Secondary Sources

News from Bloomberg Terminal
April 2, 2024, 9:05 AM PDT
Tesla's Sales Flop Is Even More Shocking Than Elon Musk

By Liam Denning
(Bloomberg Opinion) --

A photograph of a Tesla dealership. The building is white with a large red Tesla logo on the side and the word "TESLA" in large, metallic letters above the entrance. The address "12845" is visible above the glass doors. In the foreground, several Tesla cars are parked in a lot. A bright red Tesla Model S is prominent on the left, and a blue Tesla Model 3 is next to it. Other cars, including a dark grey one, are visible in the background. The sky is blue with some white clouds, and there are green trees around the building.

Not a good showing.

Photographer: Brandon Bell/Getty Images

The best thing that might be said about Tesla Inc.'s first-quarter sales numbers released Tuesday is that the company won back the crown of biggest battery electric vehicle maker in the world. The more fanatical bulls might cling to that. Everyone else can save the high-fives.

Heading into Tuesday, the consensus estimate for Tesla's vehicle deliveries had been dropping at a brisk rate. A year ago, analysts expected Tesla to sell about 530,000 vehicles in the quarter just ended. By the start of the year, they had tweaked that down to half a million, and had dropped it since to just under 450,000. Tesla missed even that by 14%, reporting just under 387,000. True, that beat main rival BYD Co. Ltd., which surpassed Tesla's sales in the fourth quarter of 2023, but only because BYD's sales of battery electric vehicles fell by even more.

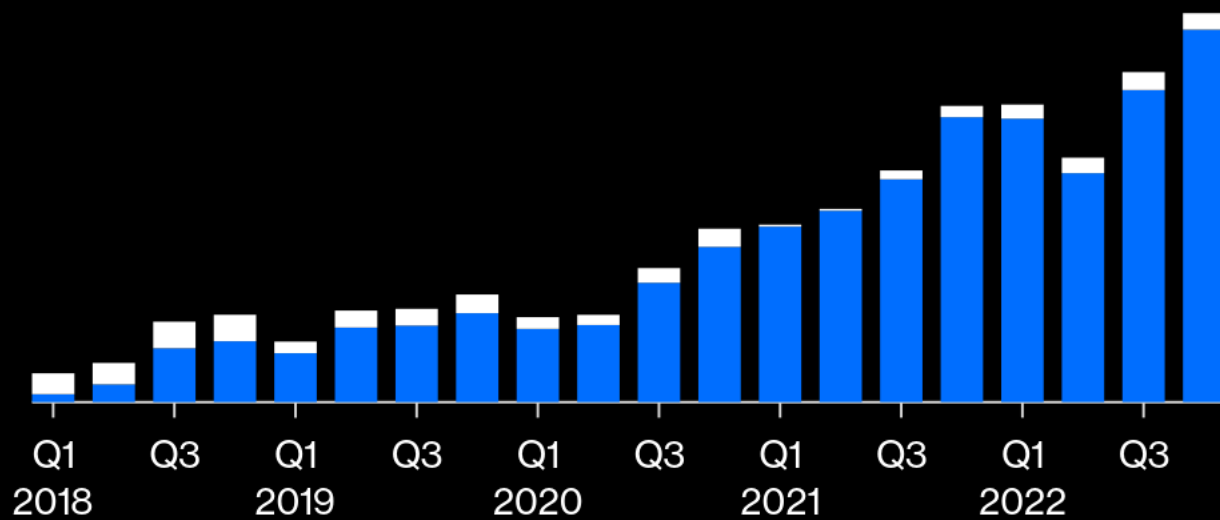
This is the first year-over-year decline in Tesla's vehicle deliveries since the pandemic.

https://www.bloomberglaw.com/bloombergtterminalnews/bloomberg-terminal-news/SBBOOGT1UM0W?bc=W1siU2VhcmNoICYgQnJvd3NliiwiaHR0c... 1/4

Screech

Tesla's quarterly vehicle deliveries

■ Models 3/Y ■ Other models



Source: Tesla

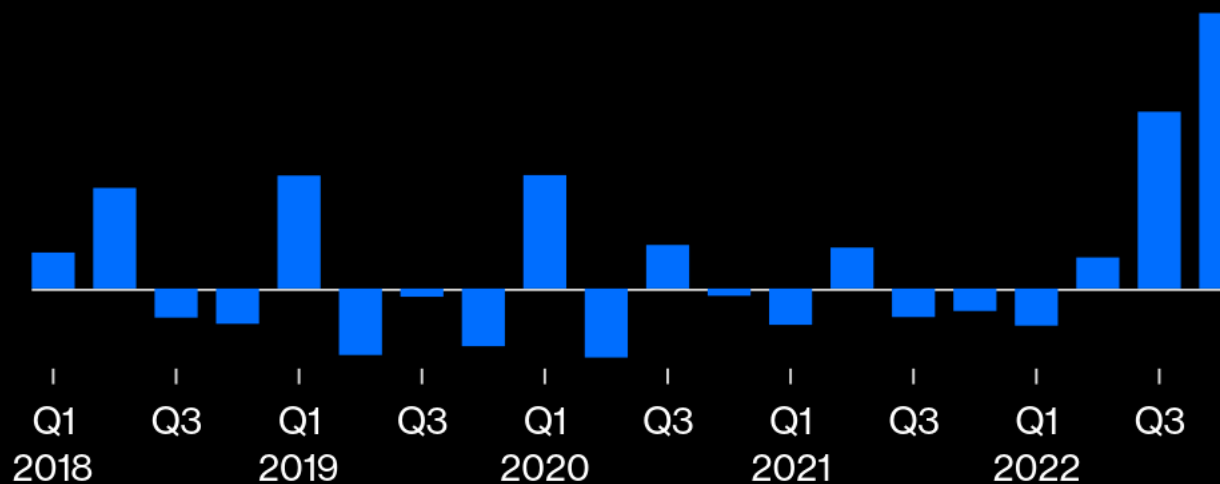
Note: Other models include the S, X and Cybertruck.

Weakness was broad-based. Despite the addition of the Cybertruck at the end of 2023, sales of Tesla's higher-price models came in at about 17,000, within the typical range of 15,000 to 20,000. Sales of the mainstay 3 and Y models were also weak, hitting their lowest level since the summer of 2022.

Tesla blamed several factors related to production and logistics, including its refresh of the Model 3, the blackout that hit its factory near Berlin and shipping disruptions in the Middle East. Yet production still outpaced deliveries by the widest margin yet, at more than 46,000 vehicles. Tesla has now produced more vehicles than it sold in seven of the past eight quarters.

Stockpiling

Tesla's quarterly vehicle production less deliveries



Source: Tesla

The immediate implication is that with Tesla having missed even the lowest estimate in Bloomberg's consensus table, first-quarter financial estimates must be torn up. The emerging narrative since the start of 2023 has been a series of price cuts that failed to spark a rebound in sales, crushing margins. These figures point to a reckoning when financial results are released in three weeks. Given the investment in the Cybertruck, its implied slow start – or, perhaps, weakness in sales of the Models S and X – will weigh on margins. Moreover, the big buildup in finished inventory, a working capital sink, presents a formidable headwind to cash flow.

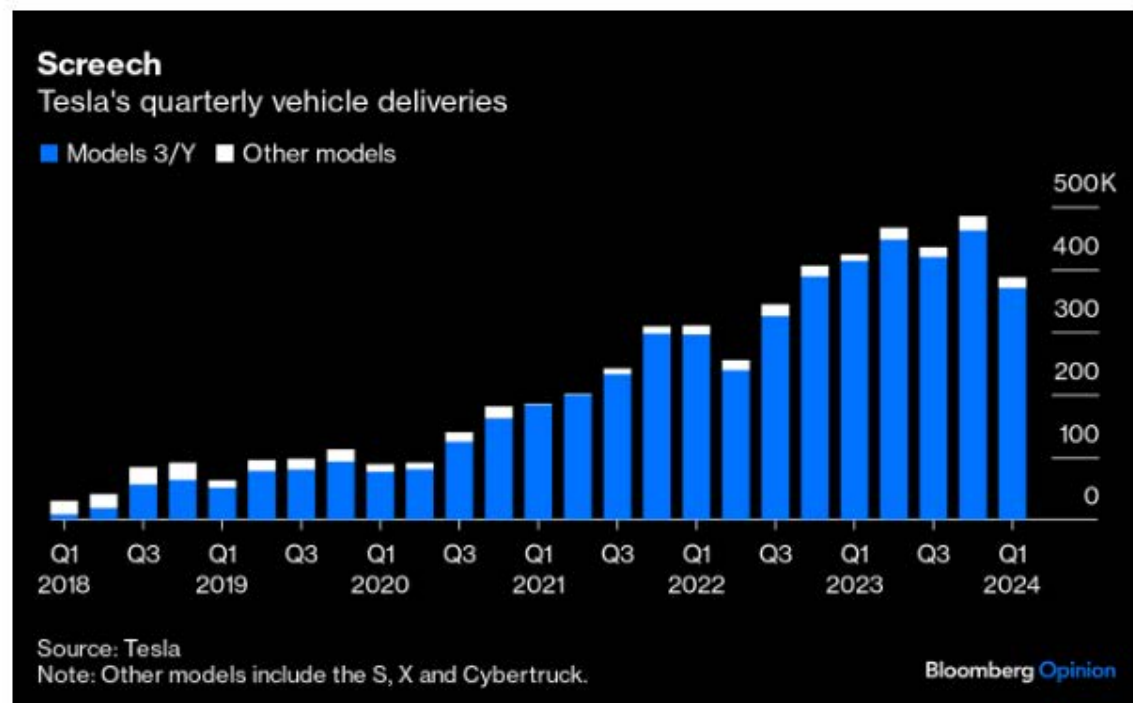
Looking ahead to the year as a whole, analysts were forecasting Tesla to deliver just over two million vehicles in 2024. That implies growth of just 11%. After these figures, however, Tesla would need to sell an average of about 543,000 in each of the next three quarters to hit even that. That would be a marked turnaround not only from the quarter just gone, but Tesla's best quarter to date, the prior one, when it delivered about 485,000 vehicles. Besides first-quarter estimates, earnings expectations for the year require big revisions.

It perhaps goes without saying that it is just odd that Tesla, a member of the S&P 500 sporting a market cap of over half a trillion dollars, didn't bother to issue any sort of warning ahead of missing estimates so widely. Then again, we got a warning of sorts last week when an internal email from Chief Executive Elon Musk leaked. In it, he mandated that all buyers in the US would have to be given a short demonstration of Tesla's "full-self driving," or FSD, driver assistance technology before getting their vehicle. Later that day, he also announced, on X, free one-month trials of FSD for those drivers who hadn't taken it.

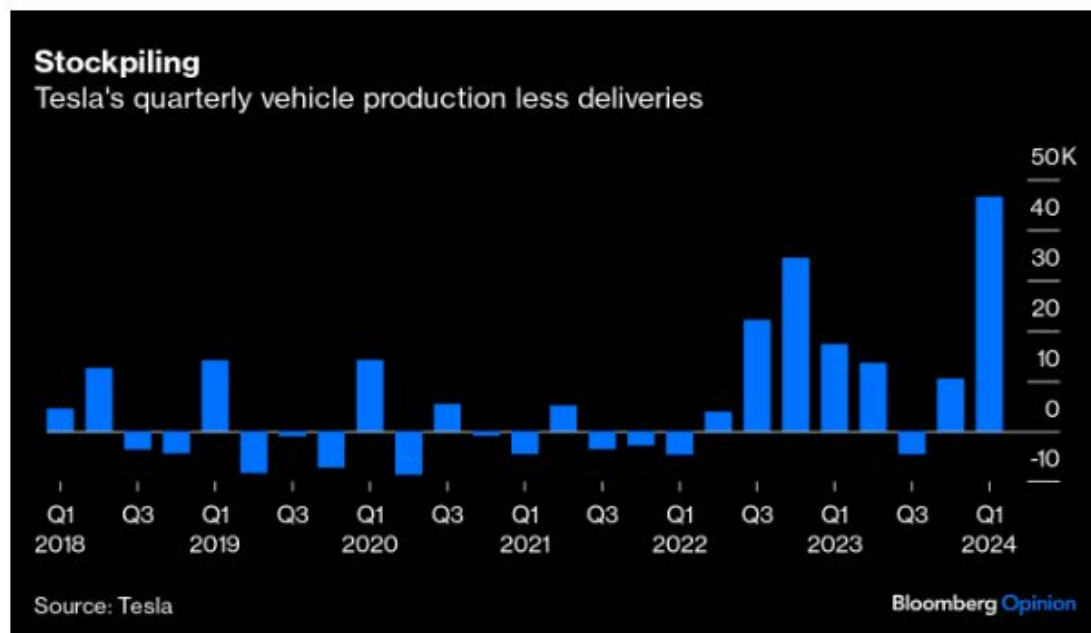
Musk has any number of reasons to push full self-driving; at least 12,000 of them. That's the price, in dollars, you pay for the option and, assuming software-like margins of about 90%, it transforms the profits, given that Tesla's average gross margin per vehicle sold last year was a bit less than \$9,000. In addition, despite FSD not actually fully self-driving the vehicle – Musk referred to it as "(supervised) FSD" in his email, and those parentheses are doing yeoman's work – the concept of robotaxis is critical to Tesla's inflated valuation, so it helps to keep the dream alive.

Musk also noted in his email that the demonstrations would likely slow down sales, which at least makes for a nice line when folks inevitably ask about the drop in sales on the eventual earnings call. Given how dreadful earnings are likely to be, and Tesla's stock being the worst performer in the S&P 500 so far this year, a share buyback remains a distinct possibility. Yet resorting to that would also serve to emphasize the main problem: the glaring mismatch between soaring expectations embedded in Tesla's valuation and the hard reality of its reported numbers.

pandemic.



Weakness was broad-based. Despite the addition of the Cybertruck at the end of 2023, sales of Tesla's higher-price models came in at about 17,000, within the vehicles than it sold in seven of the past eight quarters.



The immediate implication is that with Tesla having missed even the lowest estimate in Bloomberg's consensus table, first-quarter financial estimates must be

Musk's Tesla Threats Unlikely to Shake Delaware's Dominance

By Jennifer Kay

- Venture capital, investors push for Delaware incorporation
- Recent rulings stoke corporate uncertainty, but not an exodus

Bloomberg Law News 2024-04-02T09:58:00484371587-04:00

Musk's Tesla Threats Unlikely to Shake Delaware's Dominance

By Jennifer Kay 2024-04-02T05:01:02000-04:00

- Venture capital, investors push for Delaware incorporation
- Recent rulings stoke corporate uncertainty, but not an exodus

Many more companies are trying to incorporate in Delaware than outside of it, despite recent Court of Chancery opinions on controlling shareholder duties and protections for minority shareholders, which prompted Elon Musk's recent statements about moving Tesla Inc. to Texas.

It's possible to smoothly exit Delaware, if a publicly held company really wants to reincorporate. Generally, the steps a company needs to follow to reincorporate are simple: Fill out the paperwork. Hold a shareholder vote. Avoid litigation. It helps to follow the guidelines laid out in opinions like the recent TripAdvisor Inc. one, which has widely been seen as a road map for Musk if he follows through on moving Tesla.

Reaction to recent Court of Chancery opinions exploring how broadly to define control and conflict in transactions—what duties are owed by controlling shareholders, and the protections for minority shareholders that must be met—ranged from confusion to alarm to near-fatalism among court watchers over Delaware's role as the premier corporate home. Some critics argue the court has introduced too much uncertainty into judicial reviews of insider deal conflicts, shareholder challenges to mergers, or boards amending shareholder pacts.

But until Delaware courts issue an opinion "so burdensome that it precludes businesses from functioning in their day to day, I suspect we're not going to see a massive shift in interest in becoming or remaining as a Delaware-governed entity," said Benjamin Hicks, co-founder of Wagner Hicks PLLC.

Often it's venture capital firms and other investors who push for Delaware incorporation, identifying the state as they "undisputed preeminent jurisdiction for corporate matters," Hicks said.

"If the company's choosing to do it, it's often to make themselves more appealing for investors," he said.

Large public companies rarely try to leave Delaware, but it's not the state or Chancery Court that's stopping them, said Michal Barzuza, a University of Virginia law professor.

"If it's hard for companies to get out of Delaware now, it's because their shareholders don't want it," she said.

When companies do announce a move, they usually say it's because they want to be incorporated where their headquarters are located, or because they want lower incorporation taxes, she said. They don't usually say, as TripAdvisor did, that they want to move to Nevada because of its "potentially greater protection from unmeritorious litigation for directors and officers."

Nevada explicitly promotes itself as different from Delaware in terms of shareholder protections, while other state laws hew closer to the precedents set by Delaware courts, Barzuza said.

But none of the roughly two dozen states with designated courts for complex business matters have the two centuries of case law that makes Delaware's Chancery Court so dominant. A new business court in Texas won't officially get up and running until later this year, and it's had trouble recruiting judges.

Those other state business courts exist primarily to resolve disputes for mom-and-pop businesses, not the massive corporations that appear before Chancery Court, said Carliss Chatman, a Southern Methodist University law professor.

"These big shareholder disputes impact our 401(k)s and, yes, it impacts all of us on a macro level. But the things that impact small businesses day to day, where it would just be really, really helpful to have a sophisticated judge, that's what the Texas business court gets at," she said.

Musk's Moves

Should Musk follow through with his apparent desire to move Tesla from Delaware to Texas, he shouldn't expect a green light to overrule shareholders who disagree with him, Chatman said.

"There is not a state that is going to let him run a publicly traded company into the ground," she said.

"There is nothing he can do with publicly traded companies that is 100% what he wants to do. That's what happens when you take money from the general public."

Musk's frustrated threat to relocate the publicly held electric car maker, followed by the ruling allowing TripAdvisor to reincorporate in Nevada, jump-started some hand-wringing over whether Delaware was losing its corporate appeal.

Musk already relocated his privately held companies to Nevada and Texas. He's said he'd hold a Tesla shareholder vote on reincorporation, but it hasn't happened yet.

Tesla shareholder support isn't guaranteed, and an investor could sue to block the deal. That was the case with TripAdvisor over its plan to move its incorporation to Nevada, where shareholders allege it's harder to hold directors and officers accountable.

Delaware's judiciary has largely responded to the consternation with something akin to dismissal.

Roughly two million corporate entities called Delaware home in 2022, double the number of just a decade before, Supreme Court Chief Justice Collins Seitz Jr. told lawmakers in February. The number keeps rising because corporate attorneys drafting merger contracts keep choosing Delaware as their forum to resolve multimillion- or multibillion-dollar disputes, he said.

Of TripAdvisor's imminent departure and Musk's criticism, Seitz said, "I do not see these as threats to our franchise in Delaware. Far from it."

To contact the reporter on this story: Jennifer Kay in Philadelphia at jkay@bloomberglaw.com

To contact the editors responsible for this story: Patrick L. Gregory at pgregory@bloombergindustry.com; Alex Clearfield at aclearfield@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Colo. Judge Pleads For Brevity In Palantir Shareholder Suit

By **Daniel Ducassi**

Law360 (April 1, 2024, 5:17 PM EDT) -- A Colorado federal judge has dismissed without prejudice a shareholder suit against software and analytics company Palantir Technologies, criticizing the redundancy and excessive length of the complaint, and chastising the plaintiffs for seemingly expecting him to sift through alleged fraudulent statements for them.

U.S. District Judge Gordon P. Gallagher bemoaned the 212-page complaint's repetition and "shotgun approach" for asserting allegedly fraudulent statements.

"Defendants estimate that plaintiffs contest at least 147 discrete statements," Judge Gallagher **wrote** Sunday. "The real number is anyone's guess, though, given the complaint's tendency to lump reams of lengthy quotations together. What is clear is that plaintiffs threw in every statement they could in the apparent expectation that the court would sift through and pick out the potentially fraudulent ones."

Quoting the Seventh Circuit's 1991 decision in **U.S. v. Dunkel** , Judge Gallagher wrote that "judges are not like pigs, hunting for truffles buried in briefs."

The shareholders, led by the California Public Employees' Retirement System, alleged in their consolidated complaint that Palantir executives painted an unjustifiably rosy picture of future revenue growth, **misleading investors** about how much of its business was a temporary pandemic-related surge. Also named as a defendant is board Chairman Peter Thiel.

Judge Gallagher noted Sunday that this was the third time a Colorado federal judge had admonished lead counsel Robbins Geller Rudman & Dowd LLP for filing overly long complaints. U.S. District Judge Philip A. Brimmer called one such case "hydra-like" before tossing it in 2010, according to the ruling.

Judge Gallagher also quoted U.S. District Judge Marcia S. Krieger's dismissal of another case for the same rule violation in 2017, in which she criticized its "unnecessary summaries and recapitulation, boilerplate, and simply excess verbiage," as well as the "confusing and indirect" presentation of allegations.

"These criticisms apply equally here," Judge Gallagher wrote, noting that this complaint is even longer than the other two.

And though there are complex issues involved in the case and a heightened pleading standard for securities fraud claims, Judge Gallagher said those factors still don't warrant "the extreme length and unwieldy format" of the shareholders' complaint, adding in a footnote that the plaintiffs "should not confuse length and repetition with particularity."

But the shareholders will have the chance to try again, and Judge Gallagher dispensed some advice for the next attempt.

"A tighter, significantly more focused pleading will enable the court to conduct a more meaningful merits review, which is in the interest of all parties," Judge Gallagher wrote.

Counsel for the parties declined to comment.

The shareholders are represented by Darren J. Robbins, Luke O. Brooks, J. Marco Janoski Gray, Erika L. Oliver, Christopher R. Kinnon and Sarah A. Fallon of Robbins Geller Rudman & Dowd LLP and Jeffrey A. Berens of Johnson Fistel LLP.

Palantir and the executives are represented by David Livshiz, Nicholas A. Caselli and Boris Feldman of Freshfields Bruckhaus Deringer LLP and Sam D. Starritt and Nathan A. Keever of Dufford Waldeck.

The case is *Cupat v. Palantir Technologies Inc. et al.*, case number 1:22-cv-02384, in the U.S. District Court for the District of Colorado.

--Editing by Daniel King.

All Content © 2003-2024, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Optical Co. Beats Investor Suit Over Pandemic Staffing Levels

By **Katryna Perera**

Law360 (April 1, 2024, 8:12 PM EDT) -- A Georgia federal judge has permanently tossed an investor suit accusing National Vision of failing to disclose issues with its staffing levels during the pandemic, saying the investors did not adequately plead that any of the challenged statements allegedly made by the optical company were false or misleading.

U.S. District Judge Victoria Marie Calvert issued an **order** Saturday agreeing with National Vision Holdings Inc.'s argument that some of the amended complaint's challenged statements fall under the safe harbor provision of the Private Securities Litigation Reform Act of 1995, and some are nonactionable corporate "puffery." However, regardless of those deficiencies, the complaint fails for the independent reason that the investors "do not plead with particularity facts showing that any challenged statement was false or misleading at the time it was made," the judge found.

National Vision, which owns such subsidiaries as Eyeglass World and Walmart Vision Centers, was sued last year by a series of retirement funds. The case centered on three major dips in National Vision's stock price during the pandemic. The suit accused the company, along with CEO L. Reade Fahs and former Chief Financial Officer Patrick R. Moore, of covering up "extraordinary wage and labor pressures" related to optometrist retention and recruitment.

Attorneys for the company argued during a recent hearing on its dismissal motion that National Vision had been candid with investors about the staffing issues it faced during the pandemic and the trade-offs — such as elevated costs — it would take to address those problems. At the time, Judge Calvert **expressed uncertainty** about whether alleged "half-truths" and "omissions" pleaded by the investors rose to the level of willful securities fraud.

On Saturday, the judge confirmed her stance, saying that throughout the amended complaint, the investors failed to present any facts or evidence showing how the challenged statements were false or misleading.

"Plaintiffs' fail to allege facts that show defendants were reporting false or misleading information about National Vision's performance and that defendants knew or should have known that information was false or misleading," the order states. "Without particularized allegations, the court has no basis to determine the substance of the alleged fraud or whether defendants' statements were material."

Judge Calvert explicitly stated that the suit's claims show National Vision repeatedly informed investors it was experiencing wage inflation and retention pressures throughout the proposed class period, but that investors have not shown with specificity how those statements were false or misleading.

The same goes for the complaint's allegations related to the company's offerings of remote medicine, the judge said, and she called the claims "conclusory."

According to the order, the investors also argued that National Vision and individual defendants made misstatements about the company's post-pandemic operations and ability to sustain growth, telling investors that the company was "well positioned to navigate the rest of the pandemic and beyond;" set to "continue to outpace the industry and grow market share;" and "pursuing the right strategies to drive continued market share gains and sustainable growth."

Investors claimed that when these statements were made, National Vision "was already experiencing a labor crisis and exam capacity constraints, making profitability unsustainable."

Judge Calvert said this claim also fails due to a lack of particularized facts demonstrating why profitability was unsustainable or "how National Vision's labor crisis and exam capacity constraints were allegedly different from what they disclosed to investors."

The judge also tossed the suit's scienter and control person liability claims.

Representatives for the parties did not immediately respond to requests for comment Monday.

The investors are represented by Robert J. Robbins, Kathleen B. Douglas, Bailie L. Heikkinen and Mason G. Roth of Robbins Geller Rudman & Dowd LLP, Michael I. Fistel and Mary Ellen Conner of Johnson Fistel LLP, and Thomas C. Michaud of Vanoverbeke Michaud & Timmony PC.

The National Vision defendants are represented by B. Warren Pope, Bethany M. Rezek, Brian D. Barnes and Michael R. Smith of King & Spalding LLP.

The case is City of Southfield General Employees' Retirement System v. National Vision Holdings Inc. et al., case number 1:23-cv-00425, in the U.S. District Court for the Northern District of Georgia.

--Additional reporting by Chart Riggall and Sydney Price. Editing by Amy French.

All Content © 2003-2024, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Catching Up With Delaware's Chancery Court

By **Leslie A. Pappas**

Law360 (April 1, 2024, 7:31 PM EDT) -- Last week, Delaware's Court of Chancery saw a \$42.5 million settlement, dismissal of two big suits with two more remanded back, and new cases from shareholders of Walt Disney, Donald Trump's Truth Social, Rivian Automotive and BarkBox.

In case you missed it, here's the latest from Delaware's Chancery Court.

In the Courtroom

Raytheon Technologies Corp. **told the court** at a hearing in Wilmington that the company amended employee compensation plans in early 2020 to mitigate "head-spinning unprecedented volatility" from the COVID-19 pandemic, and a shareholder's allegations that directors acted in bad faith by failing to seek stockholder approval should be dismissed.

Decisions

Chancellor Kathaleen St. J. McCormick **dismissed a derivative suit** from stockholders of online used car retailer Carvana who sued the company's founders over a \$600 million direct stock offering, finding that a two-person special litigation committee that the company created to investigate the matter had done its job properly.

Vice Chancellor Paul A. Fioravanti **dismissed a derivative lawsuit** that a stockholder filed against two Mixmax Inc. directors without first notifying the company's board, finding that the investor had failed to prove that the board was too compromised to respond to the shareholder's concerns.

Back to Chancery

Delaware's Supreme Court **reversed** the Chancery Court's dismissal of a suit from former shareholders of TerraForm Power Inc. who challenged a squeeze-out merger by Brookfield Asset Management Inc., citing a proxy statement that allegedly failed to fully disclose certain conflicts of interest involving special advisers Morgan Stanley & Co. LLC and Kirkland & Ellis LLP.

And a Delaware federal judge **remanded** litigation filed by a Hong Kong company alleging that its interest in a lucrative port project near the Panama Canal is being stolen, ruling in a novel decision that an underlying arbitration in Panama did not confer federal jurisdiction.

Open the Books

An affiliate of Blackwell Capital with shares in Walt Disney Co. sought to force the company to **open its books** so the shareholder could look into potential wrongdoing and mismanagement stemming from the entertainment giant's dealings with ValueAct Capital.

A shareholder of Agiliti, a medical equipment and services provider on the cusp of being acquired and taken private by Thomas H. Lee Partners LP, sued the healthcare company **to get more information** about the controlling private equity stockholder's \$2.5 billion buyout bid.

New Cases

Investors behind the sponsor of the special-purpose acquisition company that took Donald Trump's Truth Social public **sued its managing member**, seeking a court declaration that they have validly

removed him from his post and that he has no authority to act on their behalf.

Shareholders of a special-purpose acquisition company that merged with dog-treat box company BarkBox in a \$1.6 billion deal **sued the executives and directors** of both entities, alleging they breached their fiduciary duties in connection with what the complaint calls "an extreme example of the 'churn-and-burn' SPAC frenzy."

A former stockholder of the special purpose acquisition company that took autonomous vehicle software provider Innoviz public **sued the architects** behind the \$1.4 billion merger, accusing them of unjust enrichment and breaches of fiduciary duty and calling the transaction "abysmal" for investors.

A shareholder of California-headquartered electric vehicle manufacturer Rivian Automotive Inc. **filed a derivative suit** against the company's top brass, alleging they made false and misleading statements concerning Rivian's financial model, including about production costs and pricing for its EV pickup truck and SUV.

A former stockholder of a blank-check company that merged with intelligent energy storage business Stem Inc. **filed a proposed class action** alleging breaches of fiduciary duty and unjust enrichment in connection with the April 2021 merger.

A stockholder of banking software services company MeridianLink Inc. filed a proposed derivative shareholder class action, alleging that Thoma Bravo, MeridianLink's largest stockholder, had caused the company to authorize a stock repurchase program that would give the private equity firm control over MeridianLink. The case is Louis Eisenberg v. Cody Cowan, et al., case number 2024-0309.

More Advance Notice Bylaw Suits

Stockholder suits challenging "acting in concert" provisions in companies' advance notice bylaws continued, with new filings last week from stockholders of Luminar Technologies Inc., Better Home & Finance Holding Co., Clover Health Investments Corp. and Weave Communications Inc.

Still Under Seal

Former stockholders of Cvent Holding Corp. filed a proposed class action against Vista Equity Partners and several of its funds for breaches of fiduciary duty. The complaint was filed under seal, but noted a related case, One68 Glob. Master Fund LP v. Cvent Hldg. Corp., case number 2023-0580. That case involved Blackstone's agreement to take Cvent Holding Corp. private at an approximate \$4.6 billion enterprise value. The new case is Genesee County Employees' Retirement System v. Vista Equity Partners Management et al., case number 2024-0299.

Settlements

Brookfield Property Partners LP **reached a tentative \$42.5 million deal** to bring an end to a nearly 6-year battle with stockholders who alleged they were given misleading information about the global real estate company's 2018 acquisition of U.S. mall operator GGP Inc.

Fees, Fees, Fees

Three former directors of cannabis company Left Coast Ventures Inc. **penned a six-page letter** to the court, complaining that the company still hadn't paid for their legal defense fees in a merger-related lawsuit — despite a court order for the company to advance the costs. In a **bench ruling at a teleconference** a few days later, Vice Chancellor Morgan T. Zurn gave the company more time to cough up the cash.

And in a separate case, Chancellor McCormick found that a Minnesota-based joint venture formed to make cannabis-infused health drinks **must partially indemnify** two directors it sued for breaches of fiduciary duty after the complaints against them were dismissed.

Quotable

"Today's decision may not be the end of the litigation of jurisdiction." – U.S. District Judge Gregory B. Williams, in an **order** remanding a case from federal court to Chancery.

--Additional reporting by Katryna Perera, Tom Zanki, Caroline Simson, Courtney Buble, Rose Krebs, Hailey Konnath. Editing by Michael Watanabe.

All Content © 2003-2024, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Intel Hid Chip Production Delays From Investors, 9th Circ. Told

By **Dorothy Atkins**

Law360 (April 1, 2024, 9:37 PM EDT) -- Intel investors urged the Ninth Circuit on Monday to revive a proposed class action alleging that the tech giant hid problems with the production of its highly anticipated new computer processors, arguing that Intel repeatedly assured investors that production was "on track," even when Intel management allegedly knew Intel wouldn't meet certain deadlines.

During a hearing before a three-judge panel, the investors' counsel, Christopher F. Moriarty of Motley Rice LLC, argued that Intel Corp. repeatedly assured investors that the production of its new 7-nanometer microprocessor chip products, which it had secured in part due to a U.S. Department of Energy contract for its first exascale supercomputer, was "on track" up until July 2020, making material misstatements about the production timeline between late 2019 and early 2020.

"Those statements were false when they were made because by no later than December 2019, an internal [Intel] road map said it was at least a year or two behind the market," Moriarty said. "Why didn't Intel tell the truth? By not doing so they avoided customer flight."

The attorney's arguments came during a hearing on Intel investors' appeal of U.S. District Judge Edward Davila's March 2023 order tossing a lawsuit filed in **July 2020**, days after Intel issued a press release with its second-quarter 2020 financial results and disclosed production delays for its 7-nanometer products.

Intel claims its 7-nanometer technology used in personal computer processors "offers double the area efficiency" of 10-nanometer products and will offer 20% higher performance per watt, but in July 2020, the company publicly announced it had identified a defect in the 7-nanometer process "that resulted in yield degradation," according to the complaint, and pushed back the production date by at least six months.

At the time of the announcement, Intel CEO Robert H. Swan said the company was considering outsourcing production to a third-party factory, which the complaint alleges was information that had been previously hidden from investors. On this news, the company's share price fell \$9.81, or approximately 16%, to close at \$50.59 per share on July 24, on unusually heavy trading volume, according to the complaint.

The lawsuit alleged that Intel hid from investors that it had identified a defect mode in its 7-nanometer process that would delay production, and ultimately, products to market.

During the hearing Monday, Moriarty argued that the lower court got it wrong in finding that the allegations don't meet the requisite pleading requirements to survive a motion to dismiss. He argued that Intel had known about the production problems for months before publicly disclosing them and that the company delayed the announcement solely to avoid the risk of losing the government contract and harming its reputation.

But U.S. Circuit Judge Andrew D. Hurwitz doubted whether Intel's statements about its production timeline were actionable and not forward-looking statements shielded from liability by safe harbor rule.

"I'm trying to find out why this isn't just somebody saying, 'Here are our future plans. We plan to roll it out in 2021.' It turns out they couldn't. But they're only talking about their future plans," the judge

said. "Why isn't this inside the safe harbor? The timeline is a prediction. ... It's not as if they say we have little checkpoints."

Moriarty replied that if the court looks at the facts underlying the statements, the court will see that the statements are not forward-looking, because Intel's own internal road maps say the 7-nanometer server central processing units, or CPUs, wouldn't be available until late 2023.

But another judge on the panel, U.S. Circuit Judge Anthony Devos Johnstone, also doubted the viability of the investors' claims.

"The problem there, Mr. Moriarty, is that the statements themselves don't speak to road maps. They speak to destinations. 'We're gonna get to here, here.' They don't talk about all of these intermediary steps that perhaps the company is quite worried about on the interior," Judge Johnstone said. "The forward-looking safe harbor applies to the statement, and the statement is the end date and not the intermediary dates."

However, Moriarty argued that Intel's chief engineering officer, Venkata S.M. Renduchintala, and Intel's renowned chip architect, Jim Keller, knew of the delays and met with Swan before the public disclosures in July 2020, and it would be "absurd" to suggest that Renduchintala wasn't aware of the problems. Even so, executives were reassuring investors publicly about the production timeline in June 2020.

"It's just not credible to believe that a process that is as designed and as lengthy as this would just do a complete 180 within the space of four weeks," Moriarty said.

In response, John M. Gildersleeve of Munger Tolles & Olson LLP argued on behalf of Intel and its executives that there's "no question" that the production delays were "bad news" for the company. However, he noted that the whole purpose of the Private Securities Litigation Reform Act's safe harbor provision is to stop the practice of investors suing every time there is bad news and a stock drop.

Gildersleeve argued that the lower court got it right in throwing out the litigation and that the statements at issue are clearly protected by the safe-harbor provisions, particularly in light of the Ninth Circuit's 2021 holding in [Wochos v. Tesla Inc.](#) , which Gildersleeve argued included "checkpoints" in the Tesla production timeline.

The attorney argued that the Tesla ruling suggests that if there are prior public disclosures regarding certain "checkpoints" along a production timeline, any statement suggesting that production is proceeding suggests that the checkpoints have been met. But he noted that this case doesn't involve similar public disclosures regarding checkpoints or milestones along the production timeline, and he added that the allegations about what Intel's top brass new about the delays amount to inadmissible hearsay.

Judge Hurwitz questioned the attorney on his argument, asking him if he's taking the position summarized by baseball legend Yogi Berra who purportedly once said that it is difficult to make predictions, especially about the future.

"Are you saying as long as we're talking about the future that's enough, we're done?" the judge asked.

The attorney replied "yes," because even if every element of a securities fraud claim might be pleaded, it's still not actionable if the statement is forward-looking.

At the end of the hearing, the panel took the arguments under consideration.

U.S. Circuit Judges Andrew D. Hurwitz and Anthony Devos Johnstone, and U.S. District Judge Brian Morris, sitting by designation, sat on the panel for the Ninth Circuit.

The investors are represented by Christopher F. Moriarty of Motley Rice LLC.

Intel and its executives are represented by John M. Gildersleeve of Munger Tolles & Olson LLP.

The appellate case is KBC Asset Management NV et al. v. Intel Corp. et al., case number 23-15695, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Rich Mills.

All Content © 2003-2024, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Skillz Hid 'Rudimentary' Gaming Tech, Investors Tell 9th Circ.

By **Dorothy Atkins**

Law360 (April 1, 2024, 6:53 PM EDT) -- Skillz Inc. investors urged the Ninth Circuit Monday to revive a consolidated proposed class action alleging the mobile-gaming company misled investors about its growth prospects surrounding its 2021 go-public merger with a special-purpose acquisition company — arguing Skillz skewed revenues and misleadingly touted its gaming technology, which was in reality "rudimentary."

The investors' counsel, Christian Levis of Lowey Dannenberg PC, told a three-judge panel in a hearing that the suit is a "pretty straight forward securities case." The case involves, investors allege, a series of misstatements by the San Francisco-based company and its top brass before its SPAC merger that allowed Skillz executives to cash out nearly a quarter billion dollars in shares in a March 22, 2021, secondary offering at artificially inflated prices — while investors lost once the misstatements were corrected in April and May of 2021.

Levis argued that the company and its executives publicly misstated its revenue growth, its user metrics and Skillz's gaming platform's technical capabilities. They did so, in part, by publicly claiming in late 2020 that Skillz's gaming platform was expanding to include "synchronous gameplay," which involves real-time play against opponents in other locations, Levis said, adding that Skillz even described those games as first-person shooters, real-time strategy and racing games

But actually, the company's gaming capabilities were "rudimentary" and had only "nonrobust features that were currently in testing," he said.

"What comes out through corrective disclosures is that, in reality, that type of gaming is impossible. What the company can do ... is at best in its infancy," Levis said.

Levis' comments came during a hearing on an appeal of U.S. District Judge Richard Seeborg's **March 2023 order** tossing the litigation, which was initially filed in May 2021 after the SPAC tie-up went public in December 2020.

That month, Skillz stock began trading on the market at \$17.89 per share. After Skillz touted its technology capabilities and revenues, the stock reached a high of more than \$42 per share the following February. However, the stock quickly dropped back to the mid-\$20s range in the following months. And after a series of disclosures, it closed around \$15.48 per share on May 5, 2021, according to court documents.

Although Judge Seeborg found the most recent revision of the suit failed to resolve issues with investors' reliance on a pair of reports published by short sellers, the appellate judges' questions and attorney arguments Monday focused on the specific alleged misstatements.

During the hearing, Levis noted that Skillz CEO Andrew Paradise earned \$196.1 million on March 22, 2021, as he and other corporate insiders were dumping their shares. But U.S. Circuit Court Judge Andrew D. Hurwitz interjected.

"I don't care what he cashed out," Judge Hurwitz said, adding, "I mean, it's a nice jury argument," but he suggested that the amount of money Paradise made off his stock sale isn't necessarily relevant to the pleading issue at hand.

Levis replied that Skillz's technology's capabilities were so nascent in late 2020 and early 2021 that they weren't relevant to Skillz's revenue, but that Skillz executives "oversold it" to investors at the IPO to boost the stock price.

Levis also argued that the company didn't clearly disclose its monthly active user, or MAU, revenues and that it later admitted its MAU growth did not necessarily correlate to revenue for the business, because not all users were paying subscribers. He added that the company saw a nearly 9% stock drop following a May 4, 2021, call with analysts who asked to clarify its MAU and revenue statistics.

Levis added that Skillz hid that it was offering certain paying users cash bonus incentives to keep playing on the platform, and that the company was "on the hook" to pay players those cash bonuses.

But Melanie Blunschi of Latham & Watkins LLP argued on behalf of Skillz and its executives that the lawsuit doesn't meet the stringent pleading requirements to state a viable securities fraud claim, and that the complaint doesn't allege any of the MAU statistics were incorrect.

Blunschi defended Skillz's disclosures. She also argued that Skillz was always clear it could only make money from users who were paying to use the platform, and that the company always disclosed the percentage of paying MAU's, which she acknowledged fluctuated.

Throughout the hearing, the judges asked both parties many questions, and Judge Hurwitz appeared to side with the company on its argument that it accurately disclosed its revenues by including the percentage of revenue-generating MAU's in its reports.

However, U.S. District Judge Brian Morris, who sat on the panel by designation, appeared open to reviving at least one claim regarding Skillz's app download statistics, saying, "If it's not misleading, it's certainly right up to the line."

At the end of the hearing, the panel took the arguments under consideration.

Last month, another investor, Laurie A. Hanna, filed a public version of a heavily redacted derivative shareholder complaint against Skillz, its top brass and dozens of Skillz investors in Delaware Chancery Court. Hanna alleges the defendants, including Paradise, dumped "massive" amounts of Skillz stock in March 2021 in allegedly illegal trading just ahead of timed negative public disclosures that caused the stock to plummet days.

The former Skillz investors named as defendants in that case include SVB Financial Group, which is the former parent of the defunct Silicon Valley Bank, and former NBA All Star and LA Laker forward Luol Deng

As of Monday, the defendants in that case had not yet filed a public answer to the complaint or any motions, according to the Delaware Chancery Court docket.

Skillz first **unveiled plans** in September 2020 to merge with two former Hollywood executives' blank check company, Flying Eagle Acquisition Corp., taking the gaming enterprise public as part of a deal guided by Winston & Strawn LLP and White & Case LLP that valued its equity at \$3.5 billion.

In June, the company performed a 1-for-20 reverse stock split. As of close on Monday, Skillz stock was trading at \$6.80 per share with a market capitalization of \$129.20 million.

In February, Skillz General Counsel Andrew Dahlinghaus **announced** he planned to step down from his role less than one year after joining the company. Just days before Dahlinghaus' resignation, a California federal jury **awarded** Skillz \$42.9 million in a patent infringement suit against rival gaming app AviaGames, which is currently facing a criminal probe.

U.S. Circuit Court Judges Andrew D. Hurwitz and Anthony Devos Johnstone, and U.S. District Judge Brian Morris, sitting by designation, sat on the panel.

The investor appellants are represented by Christian Levis of Lowey Dannenberg PC.

Skillz and its executives are represented by Melanie Blunschi of Latham & Watkins LLP.

The appellate case is Thomas Jedrzejczyk et al. v. Skillz Inc. et al., case number 23-15493, in the U.S. Court of Appeals for the Ninth Circuit. The derivative shareholder suit filed last month is Laurie A. Hanna v. Andrew Paradise et al., case number 2024-0228, in the Court of Chancery of the State of Delaware.

–Additional reporting by Emilie Ruscoe and Christine DeRosa. Editing by Amy French.

All Content © 2003-2024, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Nasdaq Sank Minority-Led SPAC's Tech Co. Merger, Suit Says

By **Emilie Ruscoe**

Law360 (April 1, 2024, 8:19 PM EDT) -- The Nasdaq Stock Market along with in-house lawyers and other executives face claims they "arbitrarily and capriciously" abused their discretion to unfairly undermine a merger plan for a minority-led special purpose acquisition company seeking to bring a minority-led technology company onto the stock market.

In a complaint filed Thursday in Brooklyn federal court, Trident Capital Group Fund I LLC, an investor in the SPAC, Minority Equality Opportunities Acquisition Inc., claimed that MEOA's proposed combination with fast-growing tech company Digerati Technologies Inc. was derailed when the Nasdaq halted trading of MEOA shares right before the combinations' scheduled closing date.

According to Trident, the Nasdaq defendants "effectively rewrote the rules by which the SPAC market had understood a business combination would occur."

Describing the SPAC and its target as companies led by Black Americans and Hispanic Americans, the investor alleged that the Nasdaq had violated the U.S. Constitution's equal protection clause in connection with the matter because it had used "a more stringent and previously unstated standard" to evaluate the proposed merger than it used to evaluate three similar business combinations involving "majority-led companies."

The investor also accused the Nasdaq and its representatives of tortious interference with the companies' advantageous business relationships.

Alongside the Nasdaq, Trident's suit takes aim at Benjamin Haskell, who led the Nasdaq team that reviews applications for initial listings and oversees continued listing compliance; Nikolai Utochkin, Nasdaq's counsel for listing and governance; Eun Ah Choi, the U.S. head of listing qualifications for Nasdaq; Arnold Golub, a Nasdaq deputy general counsel; and Stanley Higgins, a Nasdaq regulation executive.

Connecticut-based Trident said it had a nearly 18% interest in the SPAC sponsor following its August 2021 initial public offering.

The investor claimed that the defendants "effectively repriced" the heavily negotiated transaction "through a succession of targeted, discriminatory and capricious actions."

According to the investor, that included the fact that the Nasdaq defendants questioned the SPAC's valuation of its target despite the valuation explanation it had included in its SEC-approved registration statement.

The investor claimed that the defendants "falsely asserted" that the SEC would require MEOA to use the "grossly undervalued" price at which its target traded over the counter for the target to meet the Nasdaq's initial listing standard.

Trident said that the timing of Nasdaq actions did "maximum damage" to the would-be combination, since it notified the companies of its decision to use Digerati's OTC price just days before the merger closed despite the fact it had had the project's listing application for six months already.

Once trading in the SPAC's shares was suspended, the investor claimed, MEOA could no longer use its

trading price to determine whether the combined company would meet relevant listing standards.

The resulting "weeks of unnecessary delays" eroded market confidence in the merger, "trapping MEOA shareholders in trades they could not exit," the investor said.

The investor also alleged that while the deal was in limbo, these events pushed Digerati's OTC trading prices down "below a level where an intensive restructuring of the business combination could not meet NASDAQ's listing standards," which led to MEOA abandoning the merger and liquidating.

The investor claimed that the series of events not only destroyed "massive amounts" of shareholder value, it prevented MEOA "from demonstrating ... that business combinations between minority-led SPACs and target companies could succeed and be an effective way to channel public and private capital to minority-founded, led, or impacting companies."

On Monday, a representative for the Nasdaq declined to comment and representatives for Trident didn't immediately respond to requests for comment.

Trident Capital Fund I LLC is represented by Denver G. Edwards and John K. Osei-Tutu of Bradford Edwards LLP.

Counsel information for the defendants wasn't immediately available Monday.

The case is Trident Capital Group Fund I LLC v. The NASDAQ Stock Market LLC et al., case number 1:24-cv-02318, in the U.S. District Court for the Eastern District of New York.

--Editing by Rich Mills.

All Content © 2003-2024, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Pharma Co. Beats Investor Suit Over Wrinkle Drug Approval

By **Sydney Price**

Law360 (April 1, 2024, 9:53 PM EDT) -- A California federal judge has dismissed a lawsuit from the investors of Revance Therapeutics Inc. accusing it and several executives of concealing quality control concerns that eventually led the U.S. Food and Drug Administration to deny the company a license for its wrinkle injectable, saying the defendants may not have known the approval timeline they presented was unattainable.

The putative class action suit, which was originally filed in December 2021 and amended in November 2022, alleged quality control deficiencies existed at Revance's manufacturing facility for its lead drug candidate, a frown-line treatment known as Daxi, making it unlikely that the drug would obtain approval for its biologic license application within the time frame the company had represented to investors.

In October 2021, Revance announced that the FDA had determined it could not approve the application because of the manufacturing center's deficiencies, leading to a nearly 40% decline of Revance shares, according to the suit. The biologic license application, once accepted in September 2022, allowed Revance to introduce the drug into interstate commerce, according to the suit.

But U.S. District Judge Araceli Martínez-Olguín said in an order Saturday that it is possible the defendants may have reasonably believed they could fix any deficiencies by the timeline they predicted.

"Although in hindsight, the projections may have been overly optimistic, plaintiffs have not alleged that defendants knew that the projected timeline for BLA approval was not possible," the motion stated.

In addition to Revance, the suit's other defendants include Revance CEO Mark J. Foley, Chief Financial Officer Tobin C. Schilke and former Chief Operating Officer Abhay Joshi.

According to the suit, the FDA provided Revance with "inspectional observations" July 2, 2021, noting that, among other things, Revance did not have a quality agreement in place with its third-party facility.

As part of the biologic license application approval process, Revance was required to enter into a quality agreement with a third-party testing facility, according to the suit. However, Judge Martínez-Olguín said the investors do not allege that the agreement was needed in 2019 or 2020, when some of the alleged misstatements were made.

The investors have also not shown that statements Revance made after the FDA inspection were misleading, Judge Martínez-Olguín said, because they have not alleged scienter. The suit does not sufficiently allege the defendants had motive to artificially inflate share prices, nor does it show the defendants knew the quality shortcomings would lead the FDA to reject the application, she said.

"Plaintiffs' theory is that defendants knew of the existence of various deficiencies, and therefore their statements about FDA approval were misleading," Judge Martínez-Olguín said. "However, plaintiffs have not pointed to any evidence that defendants believed that FDA approval was unlikely or would be delayed because of the deficiencies."

Counsel for the parties did not immediately respond to requests for comment Monday.

The investors are represented by James M. Wilson Jr., Lisa Tamiko Omoto and Robert W. Killorin of Faruqi & Faruqi LLP.

Revance and the individual defendants are represented by Brett Hom De Jarnette, Shannon Eagan, Patrick Edward Gibbs, Zaneta J. Kim and Amie Lea Simmons of Cooley LLP.

The case is Aramic LLC v. Revance Therapeutics Inc. et al., case number 3:21-cv-09585, in the U.S. District Court for the Northern District of California.

--Editing by Janice Carter Brown.

All Content © 2003-2024, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Inotiv Can't Toss Investor Suit Over Feds' 'Puppy Mill' Probe

By **Hannah Albarazi**

Law360 (April 1, 2024, 10:08 PM EDT) -- Medical research services provider Inotiv Inc. must face a proposed investor class action accusing it of failing to disclose that subsidiaries it acquired had come under investigations by the U.S. Department of Justice for animal welfare and smuggling violations, an Indiana federal judge ruled while lamenting the "appalling" mistreatment of beagles that investigators had found.

U.S. District Judge Philip P. Simon declined to dismiss a putative class action brought by Inotiv investors, finding that they had plausibly alleged that Inotiv and its key executives omitted critical information about government investigations, leading investors to falsely believe two recent acquisitions, Envigo RMS Holding Corp. and Orient Bio Resource Center, would be positive developments. Envigo was found to be operating a puppy mill, while an OBRC executive later pled guilty to lying to federal investigators about their involvement in an illegal primate smuggling ring.

"To say the least, the acquisitions were nothing short of a public relations nightmare," Judge Simon wrote in his order Friday.

"Despite ongoing government investigations into Envigo and OBRC's sketchy operations, plaintiff claims that none of these dirty details were shared with Inotiv's investors in public disclosures despite clear signals that the government investigations were likely to result in serious sanctions against Envigo, OBRC, and/or Inotiv's principal supplier of NHPs [non-human primates], which completely undermined the rosy financial projections Inotiv projected for the merged company," the judge wrote, summarizing what he described at the plaintiff's "unwieldy and sprawling" 141-page complaint.

The investors, led by lead plaintiff Oklahoma Police Pension and Retirement System, claim that Inotiv and its top brass issued a false proxy statement when soliciting stockholder votes for the merger. They say it omitted information about Envigo being on notice from several governmental agencies about existing animal welfare violations at its facility in Cumberland, Virginia.

In the summer of 2021, before Inotiv acquired Envigo for \$271 million in November of that year, Inotiv's top executives toured Envigo's facilities, including its "purpose-bred canine facility" in Cumberland, Virginia, which Judge Simon said is "a fancy phrase for what most folks would simply call an industrial puppy mill."

Inotiv executives also toured a primate-breeding facility in Alice, Texas, that summer before acquiring OBRC, an importer of non-human primates for medical research, in January 2022.

Investors supported the acquisitions because there was strong demand for beagles in the medical research industry. As Judge Simons put it, "Envigo used to sell them for upwards of \$1,000 a pop (or pup, as it were)."

Inotiv's troubles heated up in May 2022, when Inotiv disclosed that the DOJ had filed a complaint against Envigo, which it now owned, alleging violations of the Animal Welfare Act. The DOJ said Envigo mistreated thousands of beagles at its Cumberland dog-breeding facility.

A day after the filing of the DOJ's complaint, a Virginia federal judge issued a temporary restraining order citing "overwhelming evidence" that Envigo had consistently failed – despite repeated warnings

and opportunities for correction – to provide adequate care for the animals at the Cumberland facility.

Judge Simon, summarizing the elements of the complaint, said the temporary restraining order had been issued "based on what can only be described as appalling violations of the Animal Welfare Act dating back at least July 2021," when the U.S. Department of Agriculture conducted an inspection of the Cumberland facility.

The plaintiff claims the Inotiv executives knew about the inhumane conditions at the Cumberland facility and that Envigo had similar violations there dating back to 2017, but they failed to fix the issues. Inotiv also knew that Envigo's failure to come into compliance would expose Envigo to regulatory action, the plaintiff said.

While Inotiv touted its acquisition of Envigo as supported by extensive due diligence, including site visits, investors said U.S. regulators were finding violations of the Animal Welfare Act at the Cumberland facility.

Between the summer of 2021 and the spring of 2022, the Department of Agriculture performed five inspections at the Cumberland facility, finding dozens of violations, including several repeat violations, according to the complaint.

The inspectors listed violations, including over 300 puppy deaths due to unknown causes, nursing dogs denied food, high temperatures in the dogs' enclosures, contaminated food and dog fights resulting in injuries and deaths.

In May 2022, federal law enforcement officials raided the Cumberland facility and obtained an injunction based on the finding that the facility had ongoing violations.

"After the government brought the hammer down, Inotiv opted to close the Cumberland facility in June 2022," the judge said in his summary of the case.

In November 2022, Inotiv revealed that the U.S. Attorney's Office for the Southern District of Florida had criminally charged executives of Inotiv's principal supplier of non-human primates, along with Cambodian government officials, with conspiring to illegally import the animals into the U.S. from late 2017 to early 2022, in connection with an international smuggling ring.

The investors allege that Inotiv and its executives already knew about a June 2021 criminal case brought against an OBRC executive, who pled guilty a few months later, about subpoenas issued to OBRC and Envigo in June 2021 and their resulting production of documents to the DOJ, yet they waited months to tell investors. OBRC was ultimately identified as an unindicted co-conspirator in the smuggling ring.

The investors said Inotiv and its executives concealed information that had a strong material impact on Inotiv's business. When this information came to light through a series of corrective disclosures, Inotiv's stock price fell dramatically, from \$55.55 per share in September 2021 to just \$6.82 per share in November 2022.

Representatives and counsel for the parties did not immediately respond to requests for comment on Monday.

Plaintiffs are represented by Patrick T. Egan, Steven J. Buttacavoli, Justin Saif and Christina L. Gregg of Berman Tabacco and Scott D. Gilchrist and Richard E. Shevitz of Cohen & Malad LLP.

Inotiv is represented by Michael J. Diver, Michael J. Lohnes and Carrie M. Stickel of Katten Muchin Rosenman LLP and Darren A. Craig, of Frost Brown Todd LLC.

The case is *In re Inotiv Inc. Securities Litigation*, case number 4:22-cv-00045, in the U.S. District Court for the Northern District of Indiana.

--Editing by Vaqas Asghar.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Dish Says Investor Suit's 'Witnesses Witnessed Nothing'

By **Sydney Price**

Law360 (April 1, 2024, 5:45 PM EDT) -- Dish Network wants to dismiss a proposed shareholder class action accusing it of concealing its 5G network integration issues from investors, saying the court should ignore the testimonies of the suit's three confidential witnesses because they have no "basis of knowledge" of the company's inner workings.

The shareholder suit, which was most recently amended in February, alleges Dish ultimately revealed in corrective disclosures that it did not have a fully integrated and functional network as previously represented. According to the suit, Dish affirmed to the Federal Communications Commission in 2019 that it would build a nationwide 5G network covering 20% of the U.S. population by June 2022, and 70% by June 2023. If Dish failed to meet the FCC deadlines, it would be subject to \$2.2 billion in cash penalties and forfeiture of its spectrum licenses.

The suit alleges that Dish "secretly abandoned" its attempt to build a functioning network to focus on meeting the FCC's June 2022 deadline and that the defendants' misstatements ultimately made Dish's shares decline 62% over the two-year class period, which runs from Feb. 22, 2021, until Feb. 22, 2023.

The suit's individual defendants include Dish Chairman Charlie Ergen, former Executive Vice President of Network Development Dave Mayo, Chief Network Officer Mark Rouanne and former Chief Commercial Officer Stephen Bye.

But in a motion to dismiss filed on Friday, Dish said that allegations made by three confidential witnesses "add nothing to the scienter calculus" because they do not sufficiently plead that any of the individual defendants purposely made any misleading statements. None of the witnesses reported directly to the individual defendants, according to the motion.

"The confidential witnesses witnessed nothing," the motion states. "Plaintiffs' references to three 'confidential witnesses' should be ignored because these individuals do not have a basis of knowledge to report on the inner workings of Dish."

"CW1 and CW2 are not alleged to have 'personal knowledge' of any relevant facts 'or their delivery' to the speaker that supposedly uttered a misstatement ... CW3 also should be ignored because he was not employed by Dish as a network development engineer until mid-2022, nine months before the end of the class period and after every alleged misstatement about network integration," the motion states.

Dish said it did not give up on its plans to build a reliable 5G network and told investors that its June 2022 offering would not be "robust" since the company's main focus was meeting the FCC's limited functionality requirements.

Dish argues that the defendants' vague optimism about its network build-out cannot be considered misleading and that its forward-looking statements are not actionable. Dish also said it had no duty to disclose the specific details of its 5G network build-out plan.

"Plaintiffs' references to other supposed 'admissions' about delays or technical setbacks do not point to any knowing falsehood, but suggest at most that, in hindsight, 'things didn't work out according to [the] plan,'" the motion states.

Counsel for the parties did not immediately respond to requests for comment on Monday.

The plaintiffs are represented by Shannon L. Hopkins, Gregory M. Potrepka, David C. Jaynes and Rachel A. Berger of Levi & Korsinsky LLP.

Dish and the individual defendants are represented by Brian T. Frawley and Amy J. Taylor of Sullivan & Cromwell LLP and Kelley B. Duke of Ireland Stapleton Pryor & Pascoe PC.

The suit is Jaramillo v. Dish Network Corp. et al., case number 1:23-cv-00734, in the U.S. District Court for the District of Colorado.

--Editing by Jay Jackson Jr.

All Content © 2003-2024, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

2 Firms To Rep Marathon Digital Investors In Accounting Suit

By **Emilie Ruscoe**

Law360 (April 1, 2024, 9:38 PM EDT) -- Pomerantz LLP and the Schall Law Firm have beaten out two other legal teams to represent a proposed class of investors in a suit alleging crypto miner Marathon Digital misstated its revenue as a result of ineffective financial controls.

In a Friday order in Las Vegas federal court, U.S. District Judge Richard F. Boulware II granted a lead plaintiff appointment bid by an investor group comprising three individual investors, designating their attorneys at Pomerantz and Schall co-lead counsel and appointing Nevada firm Muehlbauer Law Office Ltd. liaison counsel.

Competing lead counsel bids were filed by legal teams including attorneys from The Rosen Law Firm PA and Levi & Korsinsky LLP, but Judge Boulware said the alleged losses of nearly \$593,000 of the Pomerantz and Schall clients showed they had the greatest financial interest in the litigation.

Pomerantz and Muehlbauer earlier represented Jaime R. Moreno, the Marathon investor who launched the suit in March 2023.

In the complaint, Moreno claims Marathon investors saw trading prices for their shares slide by about 8% from about \$7 to about \$6.50 in February 2023 when the company disclosed that the U.S. Securities and Exchange Commission had found accounting errors in certain financial statements for its 2022 and 2021 fiscal years.

According to Moreno, the company had understated its revenue and cost of revenue in some of its filings because it had been calculating the impairment of its digital assets on a daily basis using a standard cutoff time.

This calculation method didn't comply with a requirement calling for companies to use the intraday low price for digital assets instead of a cutoff time, the investor says.

The proposed class would include those who purchased Marathon shares between May 10, 2021, and Feb. 28, 2023.

In a Monday statement, Brian Schall, an attorney for the investors, said "the Schall Law Firm looks forward to vigorously prosecuting the case."

Representatives for Marathon did not immediately respond to a request for comment Monday.

Moreno is represented by Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP, and Andrew R. Muehlbauer of Muehlbauer Law Office Ltd.

The defendants are represented by Kimberly P. Stein of the Flangas Law Group and Jonathan D. Polkes and Caroline Hickey Zalka of Weil Gotshal & Manges LLP.

The case is *Moreno v. Marathon Digital Holdings Inc. et al.*, case number 2:23-cv-00470, in the U.S. District Court for the District of Nevada.

--Editing by Kristen Becker.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

3M Gets Final OK On PFAS Deal Worth Up To \$12.5B

By **Emily Field**

Law360 (April 1, 2024, 5:52 PM EDT) -- A South Carolina federal judge on Friday gave a final nod on a settlement between 3M and about 12,000 public water systems worth up to \$12.5 billion to end claims over so-called forever chemicals in firefighting foam, saying that otherwise it would take years to try the cases.

U.S. District Judge Richard Gergel said that without the settlement, it could take up to a decade to litigate the cases, even though the U.S. Environmental Protection Agency is expected shortly to issue a rule limiting the levels of per- and polyfluoroalkyl substances. Preparing cases for trial would also cost hundreds of thousands of dollars, and verdicts in favor of the water systems would also go through protracted appeals, the judge said.

"The alternative to the efficiency achieved through the proposed settlement would be for federal judges in 94 judicial districts to adjudicate — over 12,000 times — claims directly tied to 3M's alleged common course of conduct," Judge Gergel said.

More than 300 suits have been filed over PFAS contamination since 2018, with many being consolidated in the South Carolina-based multidistrict litigation focused on pollution involving PFAS in aqueous film-forming foam, used in firefighting applications.

PFAS chemicals, which have been used by companies such as DuPont and 3M to manufacture products like Teflon, firefighting foam and water-resistant fabrics have been shown to have a number of negative impacts on health, including birth defects, increased rates of cancer and elevated cholesterol and obesity rates.

The deal was **first announced in June** and was later revised after opposition by the attorneys general of 20 states, the District of Columbia, and the commonwealths of the Northern Mariana Islands and Puerto Rico to an indemnification clause that could have shifted future liability to local ratepayers, which 3M dropped.

Other factors weighing in favor of approving the deal include that — while it doesn't appear to be the case that 3M is insolvent — other defendants in the MDL have filed for bankruptcy due to the litigation, Judge Gergel said.

Additionally, only about 7.5% of the water systems in the class have opted out, and only seven have filed meritless objections, the judge said.

"This is yet another important step forward for 3M as we continue to deliver on our priorities," 3M CEO Mike Roman said in Monday statement. "The final approval of this settlement and continued progress toward exiting all PFAS manufacturing by the end of 2025 will further our efforts to reduce risk and uncertainty as we move forward."

Representatives for the plaintiffs didn't immediately respond to requests for comment.

In **February**, the judge gave final approval to a \$1.18 billion settlement involving chemical companies DuPont, Chemours and Corteva, dismissing objections raised by three Washington cities and the North Texas Municipal Water District, among others.

In his order, the judge rejected objections expressed by the Washington cities of Vancouver, DuPont and Tacoma, as well as by the North Texas Municipal Water District, among others, which claimed the

deal must be rejected because it does not compare the value of the settlement to the damages that could have been obtained at trial.

3M is represented by Daniel L. Ring, Michael A. Olsen and Richard F. Bulger of Mayer Brown LLP and Brian Duffy of Duffy & Young LLC.

The interim co-lead class counsel for the MDL are Michael A. London of Douglas & London PC, Scott Summy of Baron & Budd PC, Paul J. Napoli of Napoli Shkolnik PLLC and Joe Rice of Motley Rice LLC.

Dupont De Nemours Inc., The Chemours Co. and Corteva Inc. are represented by attorneys from Shook Hardy & Bacon LLP, Norris McLaughlin & Marcus PA, Hood Law Firm LLC, Wyche PA and Bartlit Beck LLP.

The multidistrict litigation is In Re: Aqueous Film-Forming Foams Products Liability Litigation, case number 2:18-mn-02873, in the U.S. District Court for the District of South Carolina.

--Additional reporting by Madeline Lyskawa. Editing by Nicole Bleier.

All Content © 2003-2024, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

AT&T's Huge Data Breach Triggers Flood Of Consumer Suits

By **Peter McGuire**

Law360 (April 1, 2024, 7:23 PM EDT) -- Telecom giant AT&T Inc. was hit with a wave of litigation accusing the company of failing to safeguard customers' sensitive data just days after it reported that detailed personal information from more than 70 million past and current users surfaced online.

At least nine proposed class actions were filed against the Dallas-based company in Texas federal court over the weekend and on Monday, immediately following AT&T's Saturday announcement that a dataset with customers' information, including Social Security numbers, was released on the dark web about two weeks ago.

The data, which appears to be from 2019, affected about 7.6 million current AT&T account holders and another 65.4 million former customers, the company said.

A preventable cyberattack of such scale was enabled by AT&T's failure to use reasonable and appropriate security procedures and practices to protect private information that it required customers to hand over to use company services, according to the proposed class actions.

While filed separately, the customers raise similar allegations. The telecommunications company, which should have known it might be targeted by a cyberattack, did not implement industry-standard measures and federal regulators' guidelines to safeguard customers' information, the suits contend.

Customers were for years unaware their sensitive information was compromised and will now have to spend time and money to monitor their financial accounts, stay vigilant for identity theft, and suffer the consequences if their identity is stolen, the suits say. It is likely that phone numbers, addresses, full names and other information were exposed by hackers and put up for sale online, the customers add.

The consumers "now face a lifetime of constant surveillance of their financial and personal records, credit monitoring, and loss of rights," Jeffrey Cumo and Tiara Alston say in their Monday complaint.

Proposed national class actions were filed by Nicholas Nelli, Andrew March, Alex Petroski, Mike Montoya, Matthew Barkley, C. Mario Jaramillo, Lacrista A. Bagley, Richard Slovenkay and Wesley Hansen, Cumo and Alston in the U.S. District Court for the Northern District of Texas.

The suits broadly accuse AT&T of negligence, breach of contract and unjust enrichment, among other claims. Jaramillo further accuses the company of violating California's Unfair Competition Act and Consumer Privacy Act on behalf of a class of Golden State customers. The suits seek damages and court orders to make AT&T adequately protect the data it collects and stores.

Customers entrusted AT&T with sensitive and confidential material, "which includes information that is static, does not change, and can be used to commit myriad financial crimes," Cumo and Alston say in their Monday complaint.

The company "did not use reasonable security procedures and practices appropriate to the nature of the sensitive, unencrypted information they were maintaining for plaintiffs and class members, causing the exposure" of personal information, the pair add.

Patrick Yarborough of Foster Yarborough PLLC, who represents Jaramillo, told Law360 in a Monday

email he expects the cases to be consolidated.

AT&T did not immediately respond to a request for comment Monday. In a Saturday news release, the company said it was unsure whether the data originated from AT&T or one of its vendors. It has communicated with those impacted and will offer credit monitoring at its own expense, AT&T added.

"Currently, AT&T does not have evidence of unauthorized access to its systems resulting in exfiltration of the data set," the company said.

Representatives for the other customers did not immediately respond to requests for comment Monday.

Nelli is represented by Bruce W. Steckler of Steckler Wayne & Love PLLC, Jeff Ostrow and Steven Sukert of Kopelowitz Ostrow PA, Gary Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, and J. Gerard Stranch IV of Stranch Jennings & Garvey PLLC.

March is represented by Joe Kendall of Kendall Law Group PLLC and Terence R. Coates, Justin C. Walker and Jonathan T. Deters of Markovits Stock & Demarco LLC.

Petroski is represented by Joe Kendall of Kendall Law Group PLLC, Gary Klinger of Milberg Coleman Bryson Phillips Grossman PLLC and James J. Pizzirusso and Steven M. Nathan of Hausfeld LLP.

Montoya is represented by Joe Kendall of Kendall Law Group PLLC and Samuel J. Strauss and Raina Borrelli of Turke & Strauss LLP.

Barkley is represented by Bruce W. Steckler of Steckler Wayne & Love PLLC, Brian L. Bleichner and Philip J. Krzeski of Chestnut Cambronne PA.

Jaramillo is represented by David J. George, Brittany L. Brown, Lori G. Feldman and Janine L. Pollack of George Feldman McDonald PLLC and Patrick Yarborough of Foster Yarborough PLLC.

Bagley is represented by William B. Federman and Kennedy M. Brian of Federman & Sherwood.

Slovenkay is represented by Joe Kendall of Kendall Law Group PLLC and Mason A. Barney and Tyler J. Bean of Siri & Glimstad LLP.

Cumo is represented by Joe Kendall of Kendall Law Group PLLC and Joseph M. Lyon and Kevin M. Cox of The Lyon Firm.

Counsel information for AT&T was not immediately available Monday.

The cases are Nicholas Nelli v. AT&T Inc., case number 3:24-cv-00759, Andrew March v. AT&T Inc., case number 3:24-cv-00758, Alex Petroski v. AT&T Inc., case number 3:24-cv-00757, Mike Montoya v. AT&T Inc., case number 3:24-cv-00760, Matthew Barkley v. AT&T Inc., case number 3:24-cv-00769, C. Mario Jaramillo v. AT&T Inc., case number 3:24-cv-00761, Lacrista A. Bagley v. AT&T Inc., case number 3:24-cv-00770, Richard Slovenkay et al. v. AT&T Inc., case number 3:24-cv-00774, and Jeffrey Cumo et al., v. AT&T Inc., case number 3:24-cv-00772, all in the U.S. District Court for the Northern District of Texas.

--Editing by Kristen Becker.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Google Agrees To Delete Data To End 'Incognito' Class Claims

By **Lauren Berg**

Law360 (April 1, 2024, 7:49 PM EDT) -- Google LLC on Monday agreed to delete billions of data records that reflect certified class members' private browsing activities as part of a nonmonetary eve-of-trial settlement to resolve allegations that the tech giant surreptitiously tracks Chrome users running the browser's incognito mode.

Calling the deal a "historic step in requiring dominant technology companies to be honest in their representations to users about how the companies collect and employ user data," the users said in a motion for settlement approval that Google will rewrite its disclosures to inform users it collects private browsing data; will delete billions of private browsing data records; and will limit the amount of data it collects for the next five years.

In addition, Google will delete so-called incognito-detection bits, which are various terms used to produce Google traffic logs, that **led to sanctions** against the tech giant. That means Google will no longer track people's choice to browse privately, the users said.

But the users will not give up their right to sue Google individually for monetary damages, and many class members already have filed individual complaints in California state court, the motion said.

"Securing this relief through settlement is especially valuable because Google argued these changes exceed the court's inherent authority to order prescriptive injunctions," it said. "This settlement also delivers relief to class members far sooner, without the delay and uncertainty inherent in trial and any appeal."

"Based on plaintiffs' damages expert's valuation methods, the value of the relief obtained through this litigation and settlement is over \$5 billion," they said, adding that the "case required years of 'Herculean' efforts."

Plaintiffs' counsel David Boies of Boies Schiller Flexner LLP told Law360 in a statement Monday that the deal "is a historic step in requiring honesty and accountability from dominant technology companies. The settlement stops Google from surreptitiously collecting user data worth — by Google's own estimates — billions of dollars."

"Moreover, the settlement requires Google to delete and remediate, in unprecedented scope and scale, the data it improperly collected in the past," he said. "And the settlement is the product of several hard-fought rulings from the court on the merits of the plaintiffs' claims, as well as precedent-setting evidentiary and monetary sanctions won for Google's concealment of evidence."

Google spokesman José Castañeda told Law360 in a statement Monday that the company is "pleased to settle this lawsuit, which we always believed was meritless."

"The plaintiffs originally wanted \$5 billion and are receiving zero," he said. "We never associate data with users when they use incognito mode. We are happy to delete old technical data that was never associated with an individual and was never used for any form of personalization."

A jury trial was set to begin in early February, but the parties in late December announced they had **cut a deal**.

Google users Chasom Brown, Maria Nguyen and William Byatt **sued the company** in June 2020 and later **amended their complaint**, alleging the Silicon Valley giant allays privacy concerns by telling users they can control what data they share by entering incognito mode when in reality, Google continues to track their browsing data — including their IP addresses, location and browsing history — in real time, creating an "unaccountable trove of information so detailed and expansive that George Orwell could never have dreamed it."

The lawsuit accused Google of invasion of privacy, intrusion upon seclusion and violations of the federal Wiretap Act, the California Computer Data Access and Fraud Act and the California Invasion of Privacy Act.

The suit sought \$5,000 for each of the millions of class members for CIPA violations.

In March 2021, U.S. District Judge Lucy Koh **rejected Google's arguments** that users consented to the data collection and that Google disclosed its practices.

The case then headed into discovery and after **numerous disputes** — which eventually involved a special master — discovery closed in March 2022.

However, a few months later, in July 2022, a magistrate judge ordered Google to pay class counsel **\$1 million in attorney fees and costs** for violating three discovery orders by failing to disclose relevant witnesses and failing to disclose its so-called incognito-detection bits, which are various terms used to produce Google traffic logs.

In December 2022, U.S. District Judge Yvonne Gonzalez Rogers certified a nationwide class of tens of millions of members who seek injunctive relief but refused to certify a damages class.

The following March, a magistrate judge again sanctioned Google for missing a discovery deadline, ordering Google to pay an additional \$79,000 and modified the previous sanctions order to add several more people to the list of witnesses whose testimony the company would not be able to offer or rely upon at trial in light of its discovery misconduct.

Around the same time, Google **moved for summary judgment**, arguing it never promised the data of users browsing in incognito mode would not be collected and that its users agreed to the company's privacy policies.

In August, Judge Gonzalez Rogers rejected Google's argument, finding the public disclosures from the company **do not provide clarity** on its data collection practices.

Although the trial was set for November 2023, the judge pushed it back to 2024 with jury selection set to begin in a two-phase trial Feb. 5. The first trial phase would address liability, nonpunitive damages and whether the users are entitled to punitive damages. The second phase would have addressed the amount of punitive damages to be awarded if Google was found liable.

However, the parties struck a deal with the help of a mediator and former U.S. District Judge Layn R. Phillips.

According to the motion for settlement approval on Monday, Google agreed to immediately begin making changes to its disclosures, informing users that it collects private browsing data, with the changes being done by March 31. On the incognito splash screen, Google now prominently discloses that using incognito mode won't change how data is collected by the websites users visit, according to the motion.

Google's privacy policy also must disclose to users that activity on third-party sites that use Google services is collected no matter which browser mode is used, and that even using incognito mode doesn't guarantee that a third party using Google services won't still share information with Google, the motion said.

The deal also addresses Google's past data collection and specifically requires the company to delete billions of data records that reflect class members' private browsing activities, including deleting information that makes private browsing data identifying.

In addition, Google agreed to delete private browsing detection bits, which it used to track a user's decision to browse privately, the motion said.

"The settlement puts a stop to this practice once and for all," the users said. "Google will no longer infer private browsing using these detection bits. Google has further represented that there are no other detection bits for inferring Chrome's incognito mode and has further agreed to no longer use any of the detections bits to identify or track any private browsing."

The parties did not reach an agreement on attorney fees, litigation costs or service awards for the named plaintiffs, which will be left to the court's discretion, but Google has agreed to pay any amount the court awards, according to the motion.

Data privacy attorney Austin Chambers of Dorsey & Whitney LLP, who is not involved in the litigation, said Google's agreement to delete data is a "welcome development" that "sends a strong signal to the industry."

"Courts and regulators are increasingly seeking to 'disgorge' ill-gotten data in cases where data collection has been found to have been unfair, deceptive or otherwise noncompliant," Chambers said in a statement to Law360. "This prevents companies from profiting off of that data, and also requires them to undertake complex and costly data deletion efforts. In some cases, this could have a dramatic impact on products built around those datasets."

It also "reinforces that trend and makes clear that companies increasingly cannot just pay a fine and move on if they collect data inappropriately," Chambers added. "The trend towards compelled data deletion as a remedy in privacy cases underscores the importance of fair and compliant data collection practices, and the risks (and potential costs) that come with any data that hasn't been lawfully collected."

The users are represented by David Boies, Mark C. Mao, Beko Reblitz-Richardson, James W. Lee, Alison L. Anderson, M. Logan Wright and Rossana Baeza of Boies Schiller Flexner LLP, Amanda Bonn, Bill Carmody, Shawn J. Rabin, Steven Shepard and Alexander P. Frawley of Susman Godfrey LLP and John A. Yanchunis, Ryan J. McGee and Michael F. Ram of Morgan & Morgan PA.

Google is represented by Andrew H. Schapiro, Teuta Fani, Joseph H. Margolies, Diane M. Doolittle, Sara Jenkins, Stephen A. Broome, Viola Trebicka, Crystal Nix-Hines, Alyssa G. Olson, Jomaire Crawford, D. Seth Fortenbery, Carl Spilly and Jonathan Tse of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Chasom Brown et al. v. Google LLC, case number 4:20-cv-03664, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins, Craig Clough and Kelly Lienhard. Editing by Brian Baresch.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Nike Defeats Greenwashing Suit Over 'Sustainability' Line

By **Gina Kim**

Law360 (April 1, 2024, 8:02 PM EDT) -- Nike has defeated a proposed class action alleging it greenwashes its clothing by claiming they're made sustainably while using methods that harm the environment, after a Missouri federal judge concluded the plaintiff doesn't explain how she knows the products aren't made with recycled or organic materials and only provides conclusory statements.

In a **nine-page order** issued Thursday, U.S. District Judge Matthew T. Schelp granted Nike's Aug. 24 motion to dismiss Maria Guadalupe Ellis' proposed class action accusing the apparel giant of advertising its "Sustainability Collection" line of clothing as being made with organic fibers and recycled materials, despite less than 10% of the clothes being made in such a manner.

Ellis first **filed her suit** in May 2023 and submitted an amended version two months later, claiming she bought three items from **among the 2,028 products from Nike's Sustainability Collection** — a women's standard fit short sleeve crop top, a men's short sleeve running top and a women's luxe standard fit tank — after relying on the products' labeling and marketing.

On Thursday, Judge Schelp noted Ellis' amended pleading doesn't contain factual allegations that would allow him to reasonably infer Nike misled customers with its representations.

"Plaintiff declares that more than two thousand of Nike's products 'are not made with any "recycled and organic fibers,"' the judge said. "Rather, she says they 'are made with virgin synthetic and non-organic materials that are harmful to the environment' ... How does she know this to be true? She does not say."

Even if the court accepted as true her unsupported statements claiming Nike's representations are false or misleading, Ellis' claim under the Missouri Merchandising Practices Act still fails, since she doesn't plausibly allege she acted like a reasonable consumer would "in light of the circumstances," as the law requires, the judge said.

According to the ruling, the Missouri statute requires shoppers to demonstrate that the allegedly unlawful method used by the defendant caused them to make a purchasing decision that resulted in a loss, according to the ruling.

"Put differently, claims under the MMPA are governed by the 'reasonable consumer' test," Judge Schelp said. "Plaintiff put together a forty-seven page amended complaint. Given its length, it is remarkable how much plaintiff manages not to say in it."

Ellis' suit includes several screenshots, excerpts from Nike's website and product hangtags, and an image of a hangtag from a product Ellis did not buy, but Ellis doesn't mention anything about what she herself read or heard about the three items at issue before she purchased them, the judge noted.

Nor does Ellis allege specific statements from Nike that she saw on its website, advertising or social media pages; instead, she alleges a "catchall" she saw on a hangtag label that stated the products are made with recycled or organic materials, the judge said.

While the MMPA requires Ellis to plead allegations showing she acted the way a reasonable consumer would in light of the circumstances, those circumstances are vague, the judge said.

Ellis claimed she saw unspecific labeling, marketing and advertising, but it's uncertain whether she read them, which ones she saw, or what else they might've mentioned, the judge said.

"She supplies only fragmented excerpts from unidentified labels, marketing, and advertisements," Judge Schelp said. "Since she did not plead what information was available to her at the time, nor what she reviewed or did not review, the court does not have near enough of the circumstances."

Representatives for Ellis and Nike did not immediately respond to inquiries seeking comment Monday.

Ellis is represented by Daniel J. Orlowsky of Orlowsky Law LLC and Adam M. Goffstein of Goffstein Law LLC.

Nike USA Inc. is represented by David R. Singh and Morgan D. Macbride of Weil Gotshal & Manges LLP, and Beth A. Bauer of HeplerBroom LLC.

The case is Maria Guadalupe Ellis v. Nike USA Inc., case number 4:23-cv-00632, in the U.S. District Court for the Eastern District of Missouri.

--Editing by Lakshna Mehta.

All Content © 2003-2024, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Trump's Truth Social Florida Suit Leaves Del. Judge 'Agog'

By **Leslie A. Pappas**

Law360 (April 1, 2024, 7:09 PM EDT) -- A Florida lawsuit pitting Donald Trump's social media company against the two former "Apprentice" contestants who helped the former president create the Truth Social platform has flummoxed a Delaware Chancery judge, who said Monday the litigation left him "dumbfounded."

In a teleconference about the Florida case, Vice Chancellor Sam Glasscock III grilled Trump Media & Technology Group Corp. — the Trump-backed company that **merged** with Digital World Acquisition Corp. to take Truth Social public March 22 — about why the claims in a new Sarasota case weren't simply added to the existing Delaware litigation.

"I am somewhat dumbfounded to be in this position," the vice chancellor said, observing that a March 15 order he gave in the Delaware case, if not outright violated, had just been "rendered nugatory in fact."

United Atlantic Ventures LLC, a company owned by former "Apprentice" contestants Wes Moss and Andrew Litinsky, **sued** Trump Media & Technology Group Corp. in February, alleging Trump was scheming to dilute their 8.6% stake in TMTG to less than 1%.

Trump, who owns 90% of TMTG, was planning to issue another 900 million TMTG shares ahead of the merger for his associates and his children, the suit alleges.

At a virtual hearing in March, TMTG Corp. attorney Theodore A. Kittila of Halloran Farkas & Kittila LLP **assured** Vice Chancellor Glasscock that TMTG had no plans to dilute UAV's stake. He agreed that TMTG would put any newly issued shares into an escrow account and maintain the existing ownership ratios until after Digital World shareholders voted on the go-public merger.

Vice Chancellor Glasscock issued an order March 15 about implementing the escrow of any newly issued stock.

On March 24, two days after Digital World shareholders approved the merger, TMTG sued UAV, Moss and Litinsky in Florida, accusing them of multiple breaches of fiduciary duty leading up to the deal and seeking to claw back the value of their TMTG shares.

The **10-count Florida complaint** seeks a court declaration that a services agreement entitling UAV to the 8.6% stake is not enforceable, does not apply to TMTG, and does not prevent the dilution of UAV's shares. TMTG also asserts in the complaint that even if the agreement was enforceable, it has no obligation to honor the agreement because Moss and Litinsky allegedly "failed spectacularly" in their duties since the company was founded.

Patrick Orlando, a managing member of ARC Global Investments II LLC, the sponsor of the special-purpose acquisition company that took Truth Social public, was also named as a defendant in the suit.

In the hearing Monday, Vice Chancellor Glasscock said he had "a lot of concerns" about the litigation. "All I heard a couple of weeks ago was, 'I don't contest your ownership,'" the vice chancellor said. "I'm dumbfounded. I'm agog."

Richard I.G. Jones Jr. of Berger McDermott LLP, an attorney for UAV, called the Sarasota action a "clear breach of this court's order" that was filed in an "obvious" and "retaliatory" attempt to circumvent the vice chancellor's March 15 decision.

In addition to the lawsuit, TMTG has amended its charter and imposed a lockup on UAV's stock, so there is no way for UAV to sell its Truth Social stock, Jones told the court. "There is no legitimate purpose for imposing a lockup on our shares," he said.

The vice chancellor questioned why TMTG hadn't said anything about a lockup during earlier court hearings.

"That was withheld from me," the vice chancellor said. When UAV brought up concerns about a possible lockup of their shares, "nobody corrected them," he said.

UAV intends to amend its complaint and file a motion for contempt within the next two days, Jones told the court.

None of the parties immediately responded Monday to Law360's requests for comment.

UAV is represented in Delaware by Richard I.G. Jones Jr., David B. Anthony and Harry W. Shenton IV of Berger McDermott LLP and Christopher Clark and Benjamin Dozier of Clark Smith Villazor LLP. UAV's counsel information for the Florida case is not yet available.

TMTG is represented in Delaware by Theodore A. Kittila and William E. Green Jr. of Halloran Farkas & Kittila LLP and in Florida by Samuel J. Salario Jr., Jason B. Gonzalez and Raymond F. Treadwell of Lawson Huck Gonzalez PLLC.

The Delaware case is United Atlantic Ventures LLC v. Trump Media & Technology Group Corp. et al., case number No 2024-0184, in the Court of Chancery of the State of Delaware.

The Florida case is Trump Media & Technology Group Corp. v. United Atlantic Ventures LLC et al., case number 2024 CA 001545, in the Circuit Court for the Twelfth Judicial Circuit in and for Sarasota County, Florida, Civil Division.

--Additional reporting by Tom Zanki. Editing by Janice Carter Brown.