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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: TWITTER INC. SECURITIES
LITIGATION

This Order Relates To:

ALL ACTIONS

Case No. 16-cv-05314-JST

**ORDER DENYING RELIEF FROM
NON-DISPOSITIVE MAGISTRATE
JUDGE ORDER**

Re: ECF No. 163

Before the Court is Plaintiff’s motion for relief from Magistrate Judge Kim’s non-dispositive discovery order. ECF No. 163.

The Court will overturn a non-dispositive magistrate judge order only where the order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). The Court reviews factual determinations for clear error. *Perry v. Schwarzenegger*, 268 F.R.D. 344, 348 (N.D. Cal. 2010).

Here, the parties filed a joint letter brief before Judge Kim regarding discovery disputes concerning Plaintiff’s first request for production of documents (“RFP”). ECF No. 157. The parties dispute the scope of documents Defendants must produce regarding Twitter’s Monthly Average Users (“MAU”) and user growth. *Id.* at 7. Defendants agree to produce:

- (1) Documents discussing or reflecting the impact of User Growth on Twitter’s business or financial results or prospects.
- (2) Documents discussing or reflecting the quality of new MAUs added.
- (3) Documents discussing the importance of User Growth to the Company.
- (4) Documents discussing the relationship between User Growth, on the one hand, and User Engagement on the other hand.

1 (5) Documents Defendants considered or relied upon in connection
2 with their public disclosures or discussion of MAU, including any
projections regarding the same.

3 (6) Documents concerning the need to disclose or not disclose any
4 Engagement Metric in conjunction with MAU in Twitter’s public
statements or SEC filings.

5 Id. at 13. Defendants also agreed to provide documents related to MAU to satisfy other RFPs. Id.
6 Namely, Defendants agreed to produce daily, weekly, monthly and quarterly MAU data;
7 documents regarding the impact of user engagement on MAU; documents pertaining to public
8 statements about MAU; and documents regarding factors or reasons that led to any change in the
9 price of Twitter common stock at any time. Id.

10 In addition to the foregoing categories of documents, Plaintiff sought the production of the
11 following three additional categories:

12 (1) Documents quantifying, calculating, or analyzing User Growth
13 (“MAU Analyses”);

14 (2) Documents discussing or reflecting changes (either actual or
potential) in User Growth (“MAU trends”); and

15 (3) Documents concerning disclosures or statements (either actual or
16 contemplated) about User Growth at Analyst Day, in filings with the
SEC, on earnings calls or at investor conferences where a Twitter
17 executive delivered remarks (“MAU disclosures”).

18 Id. at 7.

19 The Court previously dismissed Plaintiff’s claim based on affirmative statements regarding
20 positive MAU trends. ECF No. 113 at 32. The Court recognized, however, that MAU was an
21 important metric to Defendants, and had significant interplay with Plaintiff’s remaining DAU and
22 user engagement claims. Id. at 7 n.6, 23. Specifically, the Court concluded that Plaintiff’s claim
23 regarding the omission of DAU was actionable because Defendants should have disclosed adverse
24 DAU and user engagement trends to allow investors to “understand that Twitter’s statements
25 about MAU acceleration were unrealistic.” Id. at 25. The Court also recognized that Plaintiffs
26 could show scienter including through Defendants’ awareness of the interplay between, and
27 importance of, MAU and DAU. Id. at 35.

28 Plaintiffs argued in the letter brief that because the Court’s order recognized the interplay

1 between DAU and MAU, and acknowledged that MAU informed the issues of loss causation and
2 scienter, the additional requested MAU data is relevant. ECF No. 157 at 8-10. Plaintiff argued
3 that, for example, a document containing the phrase “MAU growth is stagnant” would be
4 produced under its categories but not under Defendants’. Id. at 9. Plaintiff also argued that the
5 discovery is not burdensome because, according to Defendants, the search terms hit only 18,765
6 documents, amounting to less than three percent of the total documents Defendant agreed to
7 review. Id. at 12.

8 Defendants countered that Plaintiff’s categories are overbroad, as their categories
9 addressed the relationship between MAU and DAU/user engagement while Plaintiff’s addressed
10 only MAU. Id. at 13. Defendants argued that they will produce the information that Plaintiffs
11 seek in other productions. Id. at 14. For example, Defendants explained that Plaintiff will obtain
12 documents showing that stagnant MAU caused Twitter’s stock price to decline, if any such
13 documents exist, when Twitter produces documents regarding “the possible or actual factors or
14 reasons that led to any change in the price of Twitter common stock at any time.” Id. at 14.
15 Defendants did not argue that the production would be burdensome, but rather argued that the
16 documents requested were irrelevant. Id. at 15.

17 Judge Kim concluded that because the dispute “centers on the relationship between MAU
18 and other metrics, . . . Defendants proffered categories are targeted to the remaining allegations in
19 the this suit.” ECF No. 160 at 4. According to Judge Kim, “Plaintiff’s requests are phrased as if
20 the allegations about MAU were still in the suit.” Id. Accordingly, Judge Kim denied Plaintiff’s
21 request to compel the additional three categories. Id.

22 Plaintiff argues that Judge Kim’s ruling was clearly erroneous because the MAU
23 documents they seek “bear directly on falsity, scienter and loss causation.” ECF No. 163 at 4.¹

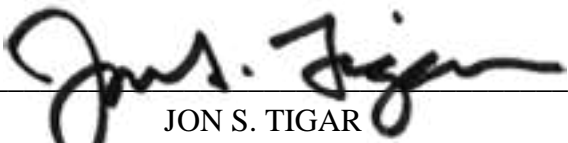
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26 ¹ Plaintiff argues that “Judge Kim observed that Plaintiff was correct that MAU documents are
27 relevant to this suit, even if the allegations about MAU were dismissed.” ECF No. 163 at 3-4
28 (citation and quotation marks omitted). Plaintiff misquotes and mischaracterizes Judge Kim’s
order, which stated that “Plaintiff is correct about the definition of relevance” and that “Plaintiff
argues that the documents sought are relevant to this suit, even if the allegations about MAU were
dismissed.” ECF No. 160 at 4.

1 Plaintiff also argues that documents about MAU analyses, trends, and disclosures are relevant to
2 the claim that the omission of DAU was misleading because investors were led to believe MAU
3 was accelerating when it was not. *Id.* at 4-5. Plaintiff fails to explain, however, why Defendants
4 proffered categories would not provide this information. The Court agrees with Judge Kim that
5 Defendants' categories more accurately capture the remaining allegations regarding the
6 relationship between MAU and DAU/user engagement.

7 Plaintiff also argues that Judge Kim erred in concluding that the request was burdensome,
8 particularly where Defendants' chief objection was to relevance, and where the request was not
9 burdensome in fact. ECF No. 163 at 6. Judge Kim considered both relevance and burden. ECF
10 No. 139. The Court agrees that Judge Kim did not clearly err in concluding that the documents
11 requested were not relevant. *Perry*, 268 F.R.D. at 348. Plaintiff's motion for relief is accordingly
12 DENIED.

13 **IT IS SO ORDERED.**

14 Dated: April 25, 2018

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17 JON S. TIGAR
18 United States District Judge