Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—N.D. Cal.: Musk liable for misleading, but not scheming, about Twitter deal, (Mar. 23, 2026)

Securities Regulation Daily Wrap Up

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By Anne Sherry, J.D.

Musk's saying that his deal to buy Twitter was on hold pending a review of bot accounts amounted to securities fraud.

A jury has found Elon Musk liable for making misstatements that lowered Twitter's stock price before he acquired the company. Two out of three challenged statements violated Rule 10b-5(b), the jury found. However, the private plaintiffs did not prove scheme liability under Rule 10b-5(a) and/or (c) (Verdict form, *Pampena v. Musk*, No. 22-cv-05937 (N.D. Cal. Mar. 20, 2026)).

The complaint claimed that several of Musk's statements following his April 25, 2022, agreement to acquire Twitter were false or misleading. The district court in late 2023 thinned the field of misstatements by granting in part and denying in part Musk's motion to dismiss. The statements that proceeded to trial were:

(1) A May 13, 2022, tweet that read: "Twitter deal temporarily on hold pending details supporting calculation that spam/fake accounts do indeed represent less than 5% of users";
(2) A May 16, 2022, statement at a Miami conference that fake and spam accounts made up at least 20% of Twitter's users; and
(3) A May 17, 2022, tweet to the effect that the actual number of fake accounts at Twitter "could be *much* higher" than 20%, and that the deal could not go forward until the Twitter CEO showed proof to the contrary.

Following disputes relating to closing arguments and jury instructions, the jury found Musk liable for securities fraud.

Misleading, not scheming. The jury found that the first and third statements violated Rule 10b-5(b). The plaintiffs did not prove their claim for the second statement. The jury also found that the plaintiffs did not prove their Rule 10b-5(a) and/or (c) claim for engaging in a scheme to defraud Twitter investors.

The jury had asked a question about the scheme liability claim: "Should ['to defraud Twitter investors'] be interpreted to mean 'with the INTENT of defrauding investors' or 'with the EFFECT of defrauding investors'?" The court responded that both intent and effect are required for a scheme claim.

The jury also asked about a discrepancy in the jury instructions where some references were to false OR misleading statements, and others to false AND misleading statements. The court answered that the "and" was a typo that should have been an "or." Musk protested, saying that it was inaccurate to advise the jury that it may find liability if the statement is false OR misleading. Under Rule 10b-5(b) itself, the "misleading" prong relates to an omission, and the plaintiffs did not plead an omissions theory, Musk argued.

Damages. The jury also determined the amount of artificial deflation proved on each day of the class period and further awarded damages for Twitter options in the amount calculated by the plaintiffs' expert based on Musk's false statements.

The award of options damages was accomplished via a checkbox on the verdict form. Musk had unsuccessfully opposed the plaintiffs' motion to modify the verdict form to allow for this checkbox in lieu of a chart. The plaintiffs' expert said that Musk's chart with a single line for each day of the class period was unworkable because each day saw multiple options trades, with different expiration dates and strike prices.

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The case is No. 22-cv-05937.

Judge: Breyer, C.

Attorneys: Mark Cotton Molumphy (Cotchett, Pitre & McCarthy, LLP) for Giuseppe Pampena, The Twitter Investor Group, Steve Garrett, Nancy Price, John Garrett and Brian Belgrave. Stephen Andrew Broome (Quinn Emanuel Urquhart & Sullivan, LLP) for Elon Musk.

Companies: The Twitter Investor Group

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