

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED

FEB 04 2020

JULIA C. DUDLEY-SLEEK
BY: 
DEPUTY CLERK

In Re Subpoena To Twitter, Inc.)
_____))
TREVOR FITZGIBBON,)
)
Plaintiff,)
v.)
JESSELYN A. RADACK,)
)
Defendant.)

Misc. Case No.: 3:20mc00003
Action currently pending in
U.S. District Court E.D. Va.
(Case No. 3:19-cv-477-REP)

MOTION TO QUASH SUBPOENA BY NON-PARTY TWITTER, INC.

Non-party Twitter, Inc. ("Twitter") respectfully moves the Court pursuant to Federal Rule of Civil Procedure 45 to quash the subpoena (the "Subpoena"), served on it by counsel for Trevor Fitzgibbon in connection with a lawsuit pending in the United States District Court for the Eastern District of Virginia, captioned *Fitzgibbon v. Radack*, 3:19-cv-00477-REP (the "*Fitzgibbon* Litigation"). In support of this motion, Twitter states as follows:

1. On June 28, 2019, Plaintiff, Trevor Fitzgibbon, filed a complaint, subsequently amended on September 29, 2019, and again on December 10, 2019, against Jesselyn Radack in the Eastern District of Virginia. *Fitzgibbon*, 3:19-cv-00477-REP, ECF Nos. 1, 13, 43.
2. Twitter is not a defendant in, or otherwise a party to, the *Fitzgibbon* Litigation.
3. Fitzgibbon served the Subpoena on December 23, 2019. The Subpoena purports to compel Twitter to produce documents at 300 West Main Street, Charlottesville, Virginia, a location within the Western District of Virginia, by January 27, 2020 at 10:00 am.
4. At Twitter's request, counsel for Mr. Fitzgibbon agreed to extend the return date of the Subpoena to February 6, 2020.

5. The Subpoena must be quashed under Rule 45(d)(3)(A)(iii) and (iv) of the Federal Rules of Civil Procedure because it would require disclosure of privileged or otherwise protected material (including records and information subject to protections under the First Amendment to the U.S. Constitution and other federal law) and subjects Twitter to undue burden.

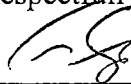
6. Pursuant to Rule 45(d)(1), Twitter should be awarded its fees and costs incurred in connection with this Motion. Such relief is warranted because Fitzgibbon's counsel failed to take reasonable steps to avoid imposing undue burden on Twitter and appears in at least one respect to have issued the Subpoena for an improper purpose.

7. Counsel for Twitter attempted to meet and confer with Fitzgibbon's counsel to resolve this discovery dispute outside of court prior to filing this motion. Those efforts were unsuccessful.

WHEREFORE, for the foregoing reasons and the reasons detailed in the accompanying memorandum of law incorporated herein, Twitter moves the Court to grant its Motion and to enter an Order quashing the Subpoena under one or more bases set forth by Rule 45 of the Federal Rules of Civil Procedure.

Dated: February 4, 2020

Respectfully Submitted,



Charles K. Seyfarth (VSB No. 44530)
Mary Grace Miller (VSB No. 86368)
O'HAGAN MEYER
411 East Franklin Street, Suite 500
Richmond, Virginia 23219
Telephone: (804) 403-7137
Facsimile: (804) 403-7110
Email: cseyfarth@ohaganmeyer.com
Email: mgmiller@ohaganmeyer.com

Patrick J. Carome (*pro hac vice* forthcoming)
patrick.carome@wilmerhale.com
Ari Holtzblatt (*pro hac vice* forthcoming)
ari.holtzblatt@wilmerhale.com
WILMER CUTLER PICKERING

HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006
Telephone: (202) 663-6000
Facsimile: (202) 663-6363

Counsel for Non-Party Twitter, Inc.

CERTIFICATE OF SERVICE

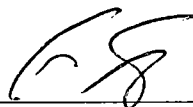
I hereby certify that on February 4, 2020, a true copy of the above document was served via U.S. Mail, postage pre-paid, on counsel listed below:

Steven S. Biss, Esquire
300 West Main Street
Suite 102
Charlottesville, VA 22903

Counsel for Plaintiff

D. Margeaux Thomas, Esquire
The Thomas Law Office PLC
11130 Fairfax Blvd
Suite 200G
Fairfax, VA 22030

Counsel for Defendant



Charles K. Seyfarth