

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SCHENECTADY**

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CAROLINE B. MCGRAW,

Petitioner,

-Against-

TWITTER, INC.

Respondent.

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**DECISION, ORDER, AND  
JUDGMENT**

Index No.: 2022-604

Petitioner CAROLINE B. MCGRAW having brought this special proceeding action, pursuant to Section 3102(c) of the Civil Practice Law and Rules of the State of New York ("C.P.L.R."), to obtain pre-action discovery of information as to the identity of the alleged anonymous Defamer(s), specifically log data, direct messages, tweets, email addresses, and/or cell phone numbers, and the names of the individuals associated with Twitter handle @niskyfails; and

Petitioner's Verified Petition having alleged in her application for pre-action disclosure from Respondent, Twitter, Inc.:[1] meritorious causes of action for defamation/libel per se and intentional infliction of emotional distress against the Defamer(s); [2] that Petitioner is without necessary information that would identify the Defamer who is responsible for creating and using the Twitter handle @niskyfails to anonymously defame Ms. McGraw so that formal legal action may be taken to clear Ms. McGraw's reputation from the false and libelous claims made against her; and [3] that the information being sought herein is wholly material and necessary to the actionable wrong; and

Petitioner also having obtained, an Order to Show Cause, on April 19, 2022, from the undersigned directing Respondent, Twitter, Inc., to show cause why an order should not be made and entered pursuant to CPLR § 3102(c) permitting Petitioner pre-action discovery, by [I] specifically ordering the disclosure of information as to the identity of the alleged anonymous Defamer(s); and [2]

ordering Respondent to preserve the postings and all related information, pending further order of the Court; and

Petitioner having duly and timely served the Order to Show Cause and all supporting papers upon which it was based upon the Respondent, Twitter, Inc.; and opposition having been supplied by Respondent, Twitter, Inc. via the affirmation of counsel, Jeffrey D. Vanacore, Esq., before the Respondent was dismissed from this special proceeding upon the joint request of the Parties, counsel for Twitter orally represented to the Court on May 17, 2022 that the Respondent served via a direct message the Order to Show Cause and supporting papers upon their account holder @niskyfails on April 18, 2022. Despite being made aware of these proceedings by Twitter and presumably by local media coverage of this case, the account holder has failed to appear in these proceedings; and

**NOW** on reading the Verified Petition, dated April 12, 2022, the affidavit of Caroline McGraw, sworn to on April 12, 2022, the Memorandum of Law, dated April 12, 2022, and the affirmation of Jeffery D. Vanacore, dated May 13, 2022, on behalf of Twitter, Inc., as well as the oral representations of Counsel to the Court during a conference held on May 17, 2022; and the matter having come on before me to be heard and due consideration having been had; it is hereby

**ORDERED** that the account holders that are the target of the requested pre-action discovery ("Anonymous Defamers") have been afforded reasonable notice of these proceedings, and have not submitted any opposition despite having adequate opportunity to be heard in opposition; and it is further

**ORDERED** that Petitioner is without necessary information that would identify the alleged Defamer and that the information being sought herein is wholly material and necessary to the alleged actionable wrong, which is sufficient to establish that the pre-action discovery sought is not protected by the First Amendment; and it is further

**ORDERED** that Petitioner has demonstrated the pre-action discovery is material and necessary; and it is further

**ORDERED** that the Verified Petition for pre-action discovery is granted and Petitioner is authorized and empowered to issue a subpoena to Twitter, Inc., to obtain the pre-action discovery sought but only to the extent of obtaining Basic Subscriber Information to include but not be limited to: log data, customer records such as names of the account holder, email addresses, phone numbers, types of devices used to access Twitter and the like but not any content such as Tweets and Direct Messages protected under the Stored Communications Act; and it is further

**ORDERED** that the Petitioner shall domesticate their subpoena in this matter either in the State of California or the State of Delaware within 180 days of the entry of this Decision, in whatever manner permitted by the law of either of those States, provided that any subpoena shall: [1] incorporate the terms used in this order, [2] contain the names, addresses, and telephone numbers of all counsel of record appearing in this proceeding, [3] bear the caption and case number of this proceeding, [4] state the name of the superior court of the county in which the discovery is to be conducted, and [5] be in a form prescribed by the respective State Code of Civil Procedure; and it is further

**ORDERED** that the April 19, 2022, Order to Show Cause is hereby vacated in all respects.

Dated: Schenectady, New York

May 20<sup>th</sup>, 2022

ENTERED:

  
HON. MARK POWERS