

U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:23-mc-80090-LJC

Twitter, Inc. v. GitHub, Inc.

Assigned to: Magistrate Judge Lisa J. Cisneros
Cause: Civil Miscellaneous Case

Date Filed: 03/24/2023

Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Petitioner

Twitter, Inc.

represented by **Rachel M. Kassabian**
Quinn Emanuel Urquhart & Sullivan, LLP
555 Twin Dolphin Drive
5th Floor
Redwood Shores, CA 94065
650-801-5000
Fax: 650-801-5100
Email: rachelkassabian@quinnemanuel.com
ATTORNEY TO BE NOTICED

V.

Respondent

GitHub, Inc.

Date Filed	#	Docket Text
03/24/2023	1	PETITION <i>Twitter's Request to the Clerk for Issuance of Subpoena</i> against GitHub, Inc. (Filing fee \$ 49, receipt number ACANDC-18108483.). Filed by Twitter, Inc.. (Attachments: # 1 Declaration of Julian Moore, # 2 Subpoena to GitHub, Inc.)(Kassabian, Rachel) (Filed on 3/24/2023) (Entered: 03/24/2023)
03/27/2023	2	Case assigned to Magistrate Judge Lisa J. Cisneros. (ark, COURT STAFF) (Filed on 3/27/2023) (Entered: 03/27/2023)

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3:23-mc-80090-LJC Twitter, Inc. v. GitHub, Inc.

Lisa J. Cisneros, presiding

Date filed: 03/24/2023

Date of last filing: 03/27/2023

Attorneys

Rachel M. Kassabian

Quinn Emanuel Urquhart & Sullivan, LLP

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5th Floor

Redwood Shores, CA 94065

650-801-5000

650-801-5100 (fax)

rachelkassabian@quinnemanuel.com

Assigned: 03/24/2023

ATTORNEY TO BE NOTICED

representing

Twitter, Inc.
(Petitioner)

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Rachel Herrick Kassabian

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Rachel Herrick Kassabian is a partner in the Silicon Valley office. She represents companies in a wide range of intellectual property and commercial litigation matters, with a special focus on Internet sector businesses and tech start-ups. Ms. Kassabian has served as lead counsel for such companies as **Pinterest, Google, OVH, Christian Dior, Cloudflare, IBM, Tumblr, Yandex and the Boy Scouts of America**, in a variety of intellectual property and business disputes. Ms. Kassabian also has represented many successful tech companies in fending off **ance**, Ms. Kassabian successfully **re first lawsuit ever brought against it,** **at the idea for Pinterest was** **ring a complete dismissal that was** **subsequently upheld on appeal. Additionally, Ms. Kassabian**

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has successfully defended various leading service providers, including search engines and hosting companies, in copyright infringement lawsuits by asserting safe harbor under the Digital Millennium Copyright Act. Rachel also played a key role in representing Samsung in the company's long-running smartphone litigations with Apple.

Ms. Kassabian has successfully tried multiple cases to verdict, and has defended her trial victories on appeal. She also has significant experience in corporate investigations, particularly in the context of allegations of economic espionage and trade secret misappropriation, employment matters and corporate governance issues. Related to her litigation work, Ms. Kassabian regularly advises startups and other tech clients, big and small, on intellectual property issues and best practices, to help them minimize and manage litigation risk while they grow their businesses.

Ms. Kassabian serves as Chair of the firm's Internet Litigation Practice, and is a member of the firm's Recruiting Committee.



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Rachel Herrick Kassabian 3rd
Partner at Quinn Emanuel Urquhart & Sullivan

- Quinn Emanuel Urquhart & Sullivan
- Harvard Law School

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About

Rachel Herrick Kassabian is Chair of Quinn Emanuel's Internet Litigation Practice. She represents businesses in a wide range of intellectual property and commercial litigation matters, with a special focus on Internet technology. Her areas of expertise include copyright infringement, trade secret misappropriation, trademark and trade dress infringement, false advertising, fraud, unfair competition, breach of contract and other commercial disputes. Ms. Kassabian has significant trial experience, having successfully tried several cases to verdict. She also has prevailed on numerous interlocutory and post-trial appeals.

Ms. Kassabian regularly advises startups and other tech clients, big and small, on intellectual property issues and best practices, to help them minimize and manage litigation risk while they grow their businesses.

Activity

831 followers

Rachel Herrick Kassabian commented on a post · 1mo

Thank you Michele for your generous commitment to serve this amazing organization and support its lifr changing work!

161

11 comments

Rachel Herrick Kassabian commented on a post · 1mo

Huge congratulations, Lisa, on bring honored by SFCASA! And thank you for devoting your brilliance and energy to this critically important cause.

78

34 comments

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Experience



Chair, Internet Litigation Practice

Quinn Emanuel Urquhart & Sullivan

Jul 2001 - Present · 21 yrs 9 mos

Silicon Valley

Bio located at: <http://www.quinnemanuel.com/attorneys/kassabian-rachel-herrick-.aspx>



Judicial Law Clerk to the Honorable Frank C. Damrell, Jr.

U.S. District Court, Eastern District of California

1999 - 2001 · 2 yrs

Sacramento, California

Judicial law clerk



Litigation Associate

Foley & Lardner

Oct 1997 - Jul 1999 · 1 yr 10 mos

San Francisco, CA

Education



Harvard Law School

Doctor of Law (J.D.), Cum Laude

1994 - 1997



University of California, Los Angeles

Bachelor of Arts, Communication Studies, Magna Cum Laude, College

Honors

1989 - 1993

Skills

Trade Secrets

Endorsed by Robert Stone who is highly skilled at this

Endorsed by 5 colleagues at Quinn Emanuel

10 endorsements

Unfair Competition

Robert Stone has given an endorsement for this skill

5 endorsements

Trademarks

Endorsed by Emmanuel Larere who is highly skilled at this

Endorsed by 2 colleagues at Quinn Emanuel

6 endorsements

Show all 20 skills →

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Partner, Co-Chair of National Trial Practice at Quinn Emanuel

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Sara Jenkins · 3rd
Quinn Emanuel

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Donald Reinhard · 3rd+
Attorney at Quinn Emanuel

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Roger Huddle · 3rd+
Associate at Quinn Emanuel

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Margret Caruso · 3rd
Chair, Trademark & Copyright Practice Group at Quinn Emanuel Urquhart & Sullivan

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No. 10-56316

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

PERFECT 10, INC.,

Plaintiff-Appellant,

v.

GOOGLE INC.,

Defendant-Appellee.

*On Appeal from the United States District Court
For the Central District of California
Hon. A. Howard Matz, District Judge*

RESPONSE BRIEF OF DEFENDANT-APPELLEE

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Attorneys for Defendant GOOGLE
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 4 Redwood Shores, CA 94065
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6 *Attorneys for Defendant*
CloudFlare, Inc.

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

10 ALS SCAN, INC.,

11 Plaintiff,

12 vs.

13 CLOUDFLARE, INC., et. al.

14 Defendants.

Case No. 2:16-cv-05051-GW-AFM

**NOTICE OF APPEARANCE ON BEHALF
 OF CLOUDFLARE, INC.**

Courtroom: 10
 Judge: Hon. George H. Wu

Action Filed: July 11, 2016

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NOTICE OF APPEARANCE

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF
RECORD:

PLEASE TAKE NOTICE that Carolyn Homer of Quinn Emanuel Urquhart & Sullivan, LLP hereby enters her appearance as counsel of record for CloudFlare, Inc. The filing of this form constitutes the first appearance in this case of the attorney listed above. Rachel Kassabian of this attorney's firm has previously appeared as lead counsel in the case.


Copies of all pleadings, papers, correspondence, and electronic filing notices should be directed to:

Carolyn M. Homer (Bar No. 286441)
Quinn Emanuel Urquhart & Sullivan, LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Tel.: 650-801-5000
Fax.: 650-801-5100
carolynhomer@quinnemanuel.com

Dated: September 5, 2016

Respectfully submitted,

QUINN EMANUEL URQUHART &
SULLIVAN LLP

By 

Carolyn Homer

*Attorneys for Defendant
CloudFlare, Inc.*

No. 11-704

IN THE
Supreme Court of the United States

PERFECT 10, INC.,
Petitioner,

v.

GOOGLE, INC.,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

BRIEF FOR RESPONDENT IN OPPOSITION

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RACHEL HERRICK KASSABIAN
JEFF ATTEBERRY
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& SULLIVAN LLP
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ANDREW H. SCHAPIRO
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DAVID B. SCHWARTZ
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(212) 849-7000
AndrewSchapiro@
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February 3, 2012

Counsel for Respondent

Select A Case

Rachel H Kassabian is an attorney in 5 cases.

[3:12-cv-01521-WHA](#) Perfect 10, Inc. v. **Yandex N.V.** filed 03/27/12 closed 08/28/13

[3:15-mc-80061-MEJ](#) **The Dow Chemical Company** v. Scribd, Inc. filed 02/11/15 closed 02/11/15

[4:11-cv-04910-YGR](#) SocialApps LLC v. **Zynga Inc** et al filed 10/04/11 closed 11/06/12

[4:16-cv-03807-JST](#) Love v. **Scripps Networks Interactive, Inc.** filed 07/07/16 closed 08/30/16

[5:11-cv-01846-LHK](#) Apple Inc. v. **Samsung Electronics Co. Ltd.** et al filed 04/15/11 closed 06/27/18

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Lisa Cisneros · 3rd
United States Magistrate Judge

- United States District Court for the Northern District of California
- UC Berkeley School of Law (Boalt)

San Francisco, California, United States · [Contact info](#)

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About

Civil Rights Enforcement Section

Activity

691 followers

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Experience



United States Magistrate Judge

United States District Court for the Northern District of California · Full-time
Sep 2022 - Present · 7 mos
San Francisco, California, United States



Deputy Attorney General

California Department of Justice
Feb 2019 - Sep 2022 · 3 yrs 8 mos
Oakland



Attorney/Program Director, LGBT Program

California Rural Legal Assistance, Inc.
Sep 2014 - Feb 2019 · 4 yrs 6 mos
Watsonville, CA



Associate

Lief Cabraser Heimann & Bernstein
Oct 2012 - Sep 2014 · 2 yrs
San Francisco



Law Clerk

United States District Court, Northern District of California

Sep 2010 - Aug 2012 · 2 yrs

Show all 6 experiences →

Education



UC Berkeley School of Law (Boalt)

Doctor of Law (J.D.)

2004 - 2007



Brown University

Bachelor of Arts (B.A.), Political Science

1997 - 2001

Skills

Legal Writing



Endorsed by Kristen Law Sagafi who is highly skilled at this



Endorsed by 2 colleagues at Lief Cabraser Heimann & Bernstein, LLP



11 endorsements

Litigation



8 endorsements

Courts



2 endorsements

Show all 14 skills →

Interests

Companies

Schools



DHG Legal, P.C.

129 followers

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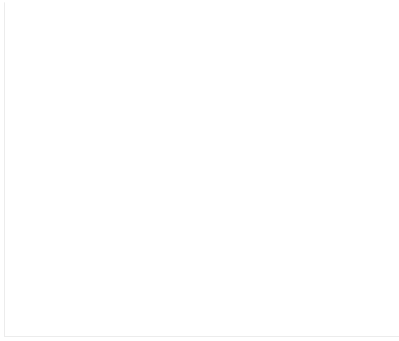
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California Deputy A.G. Lisa Cisneros for Magistrate Judgeship in San Francisco

The U.S. District Court for the Northern District of California is pleased to announce that it has selected California Deputy Attorney General Lisa J. Cisneros to fill the magistrate judgeship recently vacated by Judge Jacqueline Scott Corley upon her appointment as a U.S. District Judge.

Ms. Cisneros will join the court from the California Department of Justice, where she serves as a Deputy Attorney General in the Civil Rights Enforcement Section. In this capacity, she has represented California and its agencies in complex affirmative and defensive litigation, primarily in the federal trial and appellate courts. Ms. Cisneros has led teams litigating cases in the areas of gender equality, immigration, healthcare, workplace safety, and antidiscrimination law.

Ms. Cisneros graduated from Brown University in 2001 and received her law degree from UC Berkeley School of Law in 2007. She began her legal career at California Rural Legal Assistance, Inc., (CRLA) where she started and led the LGBT Program. The Program provides direct representation and advocacy for low-income LGBT individuals in rural areas; it has become a nationwide model for LGBT legal services. At CRLA, Ms. Cisneros also assisted with federal litigation outside of the LGBT Program and participated in several mediations and settlement negotiations.

From 2010–2012, Ms. Cisneros served as a law clerk for U.S. District Judge Claudia Wilken of this court. Following her clerkship, Ms. Cisneros practiced for two years as an Associate at Lief Cabraser Heimann & Bernstein, LLP, where she assisted with suits on behalf of employees and consumers in mass tort, class action, and antitrust cases. This work involved extensive exposure to discovery disputes, settlement conferences, and multidistrict litigation. Ms. Cisneros also maintained an active pro bono practice, including writing amicus briefs to the federal appellate courts, including the Supreme Court. Ms. Cisneros then returned to CRLA for four years, before moving to her current role at the California Department of Justice in 2019.

In addition to her law practice, Ms. Cisneros was appointed by the Governor as a member of the California Fair Employment & Housing Council, where she promulgated regulations and conducted hearings from 2017–2018.

The Court warmly welcomes Magistrate Judge-Select Cisneros and anticipates that her knowledge of federal law and practice will enhance the Court's service to litigants

in the San Francisco Division. Her selection is contingent on the successful completion of a background review by the FBI.

By **Ricardo Tovar**

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Salinas native appointed as US Magistrate Judge for Northern District Federal Court



TED Talk

SACRAMENTO, Calif. (KION-TV)- The U.S. District Court for the Northern District of California has announced that Salinas-native Lisa J. Cisneros will be appointed as a Magistrate Judge in San Francisco.

The 43-year-old Salinas High School graduate will move on from her role as Deputy Attorney General in the Civil Rights Enforcement Section.

Ms. Cisneros graduated from Brown University in 2001 and received her law degree from UC Berkeley School of Law in 2007. She began her legal career at California Rural Legal Assistance, Inc., (CRLA) where she started and led the LGBT Program. The Program provides direct representation and advocacy for low-income LGBT individuals in rural areas; it has become a nationwide model for LGBT legal services. At CRLA, Ms. Cisneros also assisted with federal litigation outside of the LGBT Program and participated in several mediations and settlement negotiations.

U.S. District Court Northern District of California



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CALIFORNIA DEPUTY A.G. **LISA CISNEROS** FOR MAGISTRATE JUDGESHIP IN SAN FRANCISCO

[BALIF Administrator](#) (Administrator) | 19 Aug 2022 12:00 PM

The U.S. District Court for the Northern District of California is pleased to announce that it has selected California Deputy Attorney General Lisa J. Cisneros to fill the magistrate judgeship recently vacated by Judge Jacqueline  Scott Corley upon her appointment as a U.S. District Judge.

Ms. Cisneros will join the court from the California Department of Justice, where she serves as a Deputy Attorney General in the Civil Rights Enforcement Section. In this capacity, she has represented California and its agencies in complex affirmative and defensive litigation, primarily in the federal trial and appellate courts. Ms. Cisneros has led teams litigating cases in the areas of gender equality, immigration, healthcare, workplace safety, and antidiscrimination law.



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3 555 Twin Dolphin Drive, 5th Floor
Redwood Shores, California 94065-2139

Telephone: (650) 801-5000

4 Facsimile: (650) 801-5100

5 Attorneys for Petitioner

Twitter, Inc.

6

7

UNITED STATES DISTRICT COURT

8

NORTHERN DISTRICT OF CALIFORNIA

9

10 IN RE: DMCA SECTION 512(h)
SUBPOENA TO GITHUB, INC.

CASE NO: 3:23-mc-80090

11

**TWITTER, INC.'S REQUEST TO THE
CLERK FOR ISSUANCE OF SUBPOENA
TO GITHUB, INC. PURSUANT TO 17
U.S.C. § 512(h), TO IDENTIFY
ALLEGED INFRINGERS**

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1 Twitter, Inc. (“Twitter”), through its undersigned counsel of record, hereby requests that
2 the Clerk of this Court issue a subpoena to GitHub, Inc. (“GitHub”) to identify an alleged infringer
3 or infringers, pursuant to the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 512(h)
4 (the “DMCA Subpoena”). The proposed DMCA Subpoena is attached hereto as Exhibit A.

5 The DMCA Subpoena is directed to service provider GitHub. GitHub operates a website
6 to which the infringing party or parties (identified by their GitHub username as
7 FreeSpeechEnthusiast) posted various excerpts of Twitter source code, which posting infringes
8 copyrights held by Twitter in those materials (the “Infringing Content”). (*See* Declaration of Julian
9 Moore, ¶ 2.)

10 Twitter has satisfied the requirements for issuance of a subpoena pursuant to 17 U.S.C. §
11 512(h), namely:

12 (1) Twitter has submitted a copy of the DMCA notification required by 17 U.S.C. §
13 512(c)(3)(A) as Exhibit 1 to the Julian Moore Declaration, filed concurrently herewith;

14 (2) Twitter has submitted the proposed DMCA Subpoena concurrently herewith; and

15 (3) Twitter has submitted a sworn declaration confirming that the purpose for which
16 the DMCA Subpoena is sought is to obtain the identity of an alleged infringer or infringers, and
17 that such information will only be used for the purpose of protecting Twitter’s rights under Title
18 17 U.S.C. § 512(h)(2).

19 Accordingly, in support of its request for a DMCA Subpoena, Twitter submits and
20 attaches:

- 21 • A copy of the DMCA notification described in 17 U.S.C. § 512(c)(3)(A) (*see* Julian
22 Moore Decl., Ex. 1);
- 23 • A proposed DMCA Subpoena directed to the service provider, GitHub (Ex. A
24 hereto); and
- 25 • A sworn declaration that the purpose for which the DMCA Subpoena is sought is
26 proper under the DMCA. (*See* Julian Moore Decl., ¶ 4.)

27 Because Twitter has complied with the statutory requirements, Twitter respectfully
28 requests that the Clerk expeditiously issue and sign the proposed DMCA Subpoena pursuant to 17
U.S.C. § 512(h)(4) and return it to undersigned counsel for service on the subpoena recipient.

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DATED: March 24, 2023

QUINN EMANUEL URQUHART &
SULLIVAN, LLP



By

Rachel Herrick Kassabian
Attorneys for Twitter, Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT
for the
Northern District of California

IN RE: DMCA SECTION 512(h)
SUBPOENA TO GITHUB, INC.

)
)
) Civil Action No.3:23-cv-80090
)
)
)

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: GitHub, Inc., 88 Colin P Kelly Jr. St., San Francisco, California 94107

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: SEE ATTACHMENT A

Place: Quinn Emanuel Urquhart & Sullivan, LLP 555 Twin Dolphin Drive, 5th Floor Redwood Shores, California 94065-2139	Date and Time: April 3, 2023 at 10:00 a.m.
---	---

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____
Twitter, Inc. _____, who issues or requests this subpoena, are:
Rachel Herrick Kassabian, 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139, rachelkassabian@quinnemanuel.com,
(650) 801-5000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A
DOCUMENTS TO BE PRODUCED UNDER SUBPOENA

1. All identifying information, including the name(s), address(es), telephone number(s), email address(es), social media profile data, and IP address(es), for the user(s) associated with the following GitHub username: FreeSpeechEnthusiast. Please include all identifying information provided when this account was established, as well as all identifying information provided subsequently for billing or administrative purposes.
2. All identifying information, including the name(s), address(es), telephone number(s), email address(es), social media profile data, and IP address(es), for the users who posted, uploaded, downloaded or modified the data at the following URL:

<https://github.com/FreeSpeechEnthusiast/PublicSpace>

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
Rachel Herrick Kassabian (Bar No. 191060)
2 rachelkassabian@quinnemanuel.com
555 Twin Dolphin Drive, 5th Floor
3 Redwood Shores, California 94065-2139
Telephone: (650) 801-5000
4 Facsimile: (650) 801-5100
5 Attorneys for Petitioner
6 Twitter, Inc.
7
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11
12

13 IN RE: DMCA SECTION 512(h)
14 SUBPOENA TO GITHUB, INC.

MISCELLANEOUS ACTION NO. 3:23-mc-80090

**DECLARATION OF JULIAN MOORE IN
SUPPORT OF PETITIONER TWITTER, INC.’S
REQUEST FOR ISSUANCE OF SUBPOENA TO
GITHUB, INC. PURSUANT TO 17 U.S.C. §
512(h), TO IDENTIFY ALLEGED
INFRINGER(S)**

15
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20 **DECLARATION OF JULIAN MOORE**
21

22 I, Julian Moore, declare as follows:

23 1. I am Director and Associate General Counsel at Twitter, Inc. (“Twitter”). As part
24 of my duties, I am responsible for monitoring and addressing infringement of copyrights owned by
25 Twitter.

26 2. I am authorized to act on Twitter’s behalf. I submit this declaration in support of
27 Twitter’s request for issuance of a subpoena to GitHub, Inc. (“GitHub”), pursuant to the Digital
28 Millennium Copyright Act (“DMCA”), 17 U.S.C. § 512(h) (the “DMCA Subpoena”). The

1 purpose of Twitter’s DMCA Subpoena is to identify the alleged infringer or infringers who posted
2 Twitter’s source code on systems operated by GitHub without Twitter’s authorization, which
3 postings infringe copyrights held by Twitter (the “Infringing Content”). I have personal
4 knowledge of the facts contained herein and, if called upon to do so, I could and would testify
5 competently thereto.

6 3. On March 24, 2023, I submitted on behalf of Twitter a DMCA notification, via
7 GitHub’s online DMCA notification form (which can be accessed at [Copyright - DMCA](#)
8 [takedown notice - GitHub Support](#)), identifying the Infringing Content on GitHub’s systems and
9 providing the information required by 17 U.S.C. § 512(c)(3)(A). Attached hereto as Exhibit 1 is a
10 true and correct copy of the email reflecting the information I submitted through GitHub’s online
11 form, along with GitHub’s response to the DMCA notification. I was authorized to act on behalf
12 of Twitter in submitting this DMCA notification.

13 4. The purpose for which Twitter’s DMCA Subpoena is sought is to obtain the
14 identity of an alleged infringer or infringers, and such information will only be used for the
15 purpose of protecting Twitter’s rights under title 17 U.S.C. §§ 100, *et seq.*

16 **I declare under penalty of perjury under the laws of the State of California and the United**
17 **States of America that the foregoing is true and correct.**

18 Executed on **March 24, 2023** at San Francisco, California.


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21 
22 **Julian Moore**
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EXHIBIT 1



Julian Moore <REDACTED@twitter.com>

[GitHub Support] - DMCA takedown notice

GitHub Developer Support <developer@githubsupport.com>
Reply-To: GitHub Developer Support <developer@githubsupport.com>
To: jm-twtr <REDACTED@twitter.com>

Fri, Mar 24, 2023 at 10:13 AM

Please do not write below this line

Your request has been updated.

You can add a comment by replying to this email.



GitHub Trust & Safety Team (GitHub Support)

Mar 24, 2023, 5:13 PM UTC

Hi jm-twtr,

The following content has been disabled and the owners have been notified of the takedown. We will let you know if any of the users file a counter notice to have the content re-enabled:

<https://github.com/FreeSpeechEnthusiast/PublicSpace>

You have said:

Please preserve and provide copies of any related upload / download / access history (and any contact info, IP addresses, or other session info related to same), and any associated logs related to this repo or any forks thereof, before removing all the infringing content from Github.

We will forward this ticket to a team that will be able to assist you with this ask. Further updates will be communicated in this ticket but in the meantime, please let us know if you have any other questions.

Regards,
GitHub Trust & Safety



GitHub Trust & Safety Team (GitHub Support)

Mar 24, 2023, 4:35 PM UTC

Hello jm-twtr,

Thanks for contacting GitHub Trust & Safety.

We've received your report and will get back to you once our review is complete. In the meantime, please let us know if there is anything else we can help you with.

Regards,
GitHub Trust & Safety



jm-twtr

Mar 24, 2023, 3:49 PM UTC

****Are you the copyright holder or authorized to act on the copyright owner's behalf?***

Yes, I am authorized to act on the copyright owner's behalf.

****Are you submitting a revised DMCA notice after GitHub Trust & Safety requested you make changes to your original notice?***

Yes

****Please provide the Zendesk ticket number of your previously submitted notice. Zendesk ticket numbers are 7 digit ID numbers located in the subject line or body of your confirmation email.*****

2074870

****Does your claim involve content on GitHub or npm.js?***

GitHub

****Please describe the nature of your copyright ownership or authorization to act on the owner's behalf.*****

I am a Director on Twitter's in-house legal team.

****Please provide a detailed description of the original copyrighted work that has allegedly been infringed. If possible, include a URL to where it is posted online.*****

Proprietary source code for Twitter's platform and internal tools.

****What files should be taken down? Please provide URLs for each file, or if the entire repository, the repository's URL.*****

<https://github.com/FreeSpeechEnthusiast/PublicSpace>

****Do you claim to have any technological measures in place to control access to your copyrighted content? Please see our [Complaints about Anti-Circumvention Technology](https://docs.github.com/articles/guide-to-submitting-a-dmca-takedown-notice#complaints-about-anti-circumvention-technology) if you are unsure.*****

No

****[Have](https://docs.github.com/articles/dmca-takedown-policy#b-what-about-forks-or-whats-a-fork) you searched for any forks of the allegedly infringing files or repositories? Each fork is a**

distinct repository and must be identified separately if you believe it is infringing and wish to have it taken down.**

No

**Is the work licensed under an open source license?*

No

**What would be the best solution for the alleged infringement?*

Other Change

Describe the change.

Please preserve and provide copies of any related upload / download / access history (and any contact info, IP addresses, or other session info related to same), and any associated logs related to this repo or any forks thereof, before removing all the infringing content from Github.

Do you have the alleged infringer's contact information? If so, please provide it.

No

I have a good faith belief that use of the copyrighted materials described above on the infringing web pages is not authorized by the copyright owner, or its agent, or the law.

I have taken fair use into consideration.

I swear, under penalty of perjury, that the information in this notification is accurate and that I am the copyright owner, or am authorized to act on behalf of the owner, of an exclusive right that is allegedly infringed.

I have read and understand GitHub's Guide to Submitting a DMCA Takedown Notice.

So that we can get back to you, please provide either your telephone number or physical address.

Attn: Legal, Twitter, [1355 Market St #900, San Francisco, CA 94103](#)

Please type your full legal name below to sign this request.

Julian D. Moore

This email is a service from GitHub Support.

[DL8K8D-YD4O3]

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT
for the
Northern District of California

)	
IN RE: DMCA SECTION 512(h))	Civil Action No. 3:23-mc-80090
SUBPOENA TO GITHUB, INC.)	
)	
)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: GitHub, Inc., 88 Colin P Kelly Jr. St., San Francisco, California 94107

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: SEE ATTACHMENT A

Place: Quinn Emanuel Urquhart & Sullivan, LLP 555 Twin Dolphin Drive, 5th Floor Redwood Shores, California 94065-2139	Date and Time: April 3, 2023 at 10:00 a.m.
---	---

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____
Twitter, Inc. _____, who issues or requests this subpoena, are:
Rachel Herrick Kassabian, 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139, rachelkassabian@quinnemanuel.com,
(650) 801-5000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

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- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

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(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

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(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

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(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

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(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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2. All identifying information, including the name(s), address(es), telephone number(s), email address(es), social media profile data, and IP address(es), for the users who posted, uploaded, downloaded or modified the data at the following URL:

<https://github.com/FreeSpeechEnthusiast/PublicSpace>