

Tonya Pointer

NO. DC-16-16077

IN RE:)	IN THE DISTRICT COURT
)	
PETITION OF KURT EICHENWALD)	DALLAS COUNTY, TEXAS
)	
REQUESTING PRE-SUIT)	
)	
DEPOSITION UNDER RULE 202)	JUDICIAL DISTRICT

VERIFIED PETITION REQUESTING EXPEDITED DISCOVERY BEFORE SUIT

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner, Kurt Eichenwald (hereinafter referred to as “Petitioner”) submits this Verified Petition requesting authority to take the various depositions and obtain relevant documents.

SUMMARY OF PETITION

1. Petitioner is a senior writer with Newsweek who covers numerous topics, including politics. Petitioner has epilepsy, a fact about which he has written and discussed on national television programs. On the evening of December 15, 2016, John Doe (a/k/a Ari Goldstein, a/k/a @jew_goldstein) (“Doe”) tweeted to Petitioner an image known to trigger seizures in people with epilepsy, *e.g.*, a strobe image flashing at a rapid speed. Doe sent this image with the intent of causing a seizure, as evidenced by the words Doe typed onto the strobe, “You deserve a seizure for your posts.” Doe succeeded in his effort to use Twitter as a means of committing assault, causing Petitioner to have a seizure which led to personal injury.

DEPOSITION SOUGHT

2. Petitioner seeks the deposition of a Custodian of Records of Twitter, Inc., as authorized by Texas Rule of Civil Procedure 202.

GROUND FOR RULE 202 PETITION

3. Petitioner seeks to obtain the identity of Doe in order to bring a suit against Doe for assault and other intentional torts.

4. Absent a need for litigation to facilitate production of the identity of Doe for his having engaged in assault, Petitioner will not be bringing suit against Twitter for the publication of the depraved and illegal actions of Doe. Upon information and belief, Twitter suspended Doe's account upon learning of the assault.

5. Petitioner seeks to identify and investigate Doe and any other individuals who may have acted in concert with him/her in engaging in the assault against Petitioner.

6. Petitioner anticipates that the deposition will help identify Doe and any other individual who may have acted in concert with Doe. Petitioner thereafter anticipates he will be in a better position to determine which claims should be prosecuted and/or a lawsuit should be filed against Doe or any other individual who acted in concert with Doe.

7. Petitioner seeks to depose a Custodian of Records of Twitter, whose headquarters is located at 1355 Market Street, Suite 900, San Francisco, California 94103. As such, Petitioner intends to serve deponent Twitter with a copy of this Petition.

SUBJECTS OF TESTIMONY

8. The substance of the testimony Petition expects to elicit from deponent involves the identity of Doe and any other individual who may have acted in concert with Doe.

9. Deponent possesses unique and superior knowledge relevant to this subject.

10. Rule 202 provides the procedure for investigating potential claims and potential defendants in the situation present in this request for Rule 202 Deposition.

11. The Court, by allowing the Petitioner to take the requested deposition (likely on written questions alone), may prevent a failure or delay of justice in the anticipated suit. Petitioner would also request that the requested deposition, pursuant to Rule 191 of the Texas Rules of Civil Procedure, be on an expedited basis so as to avoid the destruction of Doe ESI and the nature of the conduct of Doe.

12. Further, the deponent has unique, if not exclusive, knowledge of the facts and circumstances regarding the issues and questions noted herein that is not obtainable from any other source. The basis for Petitioner's belief is that Twitter's registration process requires a user to provide a name and address before he or she can post a tweet. Further, on information and belief, Twitter also records the user's Twitter account information and IP address every time he or she logs into Twitter and posts a tweet. Petitioner needs to conduct an investigation in order to identify Doe and any other individual who acted in concert with Doe. Since most, if not all, of the key facts are within the exclusive possession of the deponent, the deposition needs to occur and the documents requested need to be produced.

13. The discovery sought is necessary because the identity of the Twitter user(s) responsible for the posts on @jew_goldstein is unknown to Petitioner, as the user(s) of the @jew_goldstein handle are and remain intentionally anonymous. Additionally, Twitter's Privacy Policy requires a court order prior to releasing personal information about its users, and therefore the information regarding the anonymous user(s) of the @jew_goldstein handle is unavailable to Petitioner by any other means.

14. Request is hereby made for the Court to issue an order allowing the Petitioner to take the requested deposition of a Custodian of Records and receive the documents requested to identify Doe and any other individual who acted in concert, and Petitioner would therefore request the Court authorize Petitioner to take the deposition of deponent.

DOCUMENTS REQUESTED

15. Petitioner requests that deponent Twitter be required to produce for inspection and copying any and all documents (including, but not limited to ESI), including relevant Internet Protocol (“IP”), addresses which utilizing the Twitter “handle” of the potential defendants, the account information, usage history of this user under all other “handles” and other user information (a) identifying Doe and (b) identifying any other individual who acted in concert with Doe.

PRAYER

WHEREFORE, request is hereby made that the Court allow Petitioner to take the requested deposition on an expedited basis in order to prevent a failure or delay of justice in the anticipated suit, in order to allow the Petitioner to identify Doe and any other individual who acted in concert with Doe. Petitioner prays for such other and further relief, both general and special, at law or in equity, to which Petitioner may be justly entitled.

Respectfully submitted,

Underwood Perkins, P.C.

/s/ Timothy S. Perkins

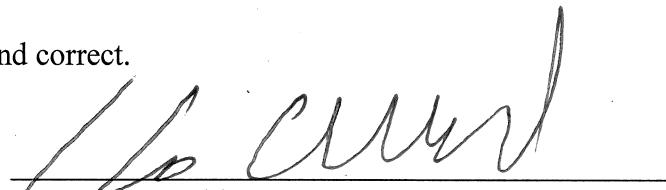
Timothy S. Perkins
State Bar No. 15790900
Two Lincoln Centre
5420 LBJ Freeway, Suite 1900
Dallas, Texas 75240
Telephone: (972) 661-5114
Facsimile: (972) 788-3353
Email: tperkins@uplawtx.com

Attorneys for Petitioner Kurt Eichenwald

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

Verification

Before Me, the undersigned Notary Public, on this day personally appeared Kurt Eichenwald (hereinafter "Affiant"), who is over the age of 21 and of sound mind and body, who being by me duly sworn, on his oath deposed and said that he has read the foregoing Petition Requesting Deposition Before Suit and that the statements of fact contained herein are within Affiant's personal knowledge and are true and correct.



Kurt Eichenwald

Subscribed and Sworn To Before Me, on this 19th day of December, 2016, to certify which witness my hand and official seal.

(Seal)



Dianne Miller

Notary Public, State of Texas