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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 HEY, INC.,  
8 Plaintiff,  
9 v.  
10 TWITTER, INC.,  
11 Defendant.

Case No. [22-mc-80034-DMR](#)

**ORDER ON EX PARTE APPLICATION  
FOR ISSUANCE OF AN ORDER  
UNDER 28 U.S.C. § 1782**

Re: Dkt. No. 1

12 Petitioner hey, Inc. (“hey”) filed an ex parte application seeking permission to issue a  
13 subpoena pursuant to 28 U.S.C. § 1782 to obtain discovery for use in foreign proceedings.  
14 [Docket No. 1.] This matter is suitable for resolution without a hearing. Civ. L.R. 7-1(b). Having  
15 considered the papers and the relevant legal authority, the court grants the application.

16 **I. BACKGROUND**

17 hey seeks discovery in aid of a lawsuit it plans to initiate in Japan to challenge four tweets  
18 posted on Twitter in 2021. It contends that the tweets are defamatory and constitute unlawful  
19 business interference under Japanese law. hey is a start-up company that plans, develops, and  
20 operates internet business in Japan. [Docket No. 1-1 (Nakazawa Decl., Jan. 28, 2022) ¶ 1.] Its  
21 current CEO is Yusuke Satao; its former CEO is Yusuke Mitsumoto. *Id.* at ¶ 4.

22 The four tweets were posted in September and October 2021 by anonymous Twitter users.  
23 *Id.* at ¶¶ 5-10. On September 10, 2021, an anonymous poster with the username @cogitopp  
24 tweeted that “the top of a certain company H has slept with so many employees back when he was  
25 at Frea○Out. And apparently, he hasn’t changed even at the certain company H. I don’t mind him  
26 playing around but it’s inappropriate as a CEO to continue hitting on employees...” [Docket No.  
27 1-2 (Reynolds Decl., Jan. 29, 2022) ¶¶ 2, 3, Exs. A (tweets in Japanese), B (English translation)  
28 (Tweet 1).] A second poster with the username @mlnk901 retweeted Tweet 1 and added the

1 following statement:

2           When a friend who works for a fund asked me about a certain  
3           company H, I told him there are some shady stuff lurking in multiple  
4           areas other than business potential and track record. He seemed to  
5           have decided not to be involved with the company after also  
6           personally feeling it risky. And the tequila incident happened  
7           sometime after that. I guess his decision turned out to be a good one.

6 Reynolds Decl. Exs. A, B (Tweet 2).

7           Petitioner asserts that Tweets 1 and 2 are discussing hey. According to Yuichi Nakazawa,  
8           an attorney for Petitioner, the “tequila incident” referenced in Tweet 2 was “a notable event”  
9           involving former CEO Mitsumoto. Nakazawa states Mitsumoto “played a ‘tequila game’ with a  
10          female in Tokyo, whose condition suddenly changed thereafter, and she was rushed to the hospital  
11          where she died.” Nakazawa Decl. ¶ 5. Current CEO Sato is a co-founder of a company named  
12          FreakOut, Inc. Therefore, according to Nakazawa, the tweets’ mention of the “tequila incident”  
13          and references to “company H” and “FreakOut” make clear that these tweets are about hey. *Id.*

14          On September 26, 2021, @mlnk901 posted a tweet responding to a post or press release  
15          announcing that Bain Capital had invested in hey:

16                 My impression of Bain Capital is that they are a group of super-  
17                 talented people and post excellent results, but I don’t understand why  
18                 they would invest on hey while being aware of the risks. I know my  
19                 acquaintances must be very intelligent and have enough common  
20                 sense to judge between right [sic] and wrong, but apparently there  
21                 seem to be someone not like that.

20 Reynolds Decl. ¶¶ 2, 5, Exs. E (tweet in Japanese), F (English translation) (Tweet 3).

21          Finally, on October 27, 2021, a poster with the username @DJ\_AsadaAkira tweeted about  
22          Mitsumoto and Sato:

23                 I believe entrepreneurship embracing unethical and law-evading  
24                 spirits such as Yusuke Mitsumoto and supporters like . . . Yusuke Sato  
25                 in the entrepreneurial community should be criticized first to purge  
26                 out from the community before making political statements. What do  
27                 you think?

26 Reynolds Decl. ¶¶ 2, 6, Exs. G (tweet in Japanese), H (English translation) (Tweet 4).

27          Nakazawa states that Tweets 1 and 2 “contain false factual statements that . . . Sato had a  
28          sexual relationship with multiple employees immorally, and constitute defamation” under

1 Japanese law as to Sato and hey, given the “strong nexus” between hey and Sato’s reputation.  
 2 Nakazawa Decl. ¶¶ 8, 10. He avers that Tweets 3 and 4 also constitute defamation under Japanese  
 3 law “as they diminish the objective social evaluation of [hey’s] morality, reputation and  
 4 trustworthiness. *Id.* at ¶ 9. Nakazawa further states that the four tweets “were tweeted for  
 5 harassment purposes, and constitute defamation and unlawful business interference against” hey  
 6 under Japanese law. *Id.* at ¶ 10.

7 hey filed this application seeking leave to issue a subpoena to Twitter for documents  
 8 identifying the user(s) of the three accounts that posted the tweets for use in an anticipated  
 9 Japanese lawsuit against the individual poster(s). *Id.* at ¶¶ 11, 12. It requests all documents  
 10 identifying the user(s) of the accounts, the names and addresses of credit card holders registered  
 11 on the accounts, and access logs for the accounts. [Docket No. 1-5 (Proposed Subpoena).]

## 12 **II. LEGAL STANDARD**

13 Petitioner seeks discovery pursuant to 28 U.S.C. § 1782, which provides:

14 The district court of the district in which a person resides or is found  
 15 may order him to give his testimony or statement or to produce a  
 16 document or other thing for use in a proceeding in a foreign or  
 17 international tribunal, including criminal investigations conducted  
 18 before formal accusation. The order may be made . . . upon the  
 19 application of any interested person and may direct that the testimony  
 or statement be given, or the document or other thing be produced,  
 before a person appointed by the court . . . . To the extent that the  
 order does not prescribe otherwise, the testimony or statement shall  
 be taken, and the document or other thing produced, in accordance  
 with the Federal Rules of Civil Procedure.

20 28 U.S.C. § 1782(a). The purpose of section 1782 is “to provide federal-court assistance in the  
 21 gathering of evidence for use in a foreign tribunal.” *Intel Corp. v. Advanced Micro Devices, Inc.*,  
 22 542 U.S. 241, 247 (2004); *see also Schmitz v. Bernstein Liebhard & Lifshitz, LLP*, 376 F.3d 79, 84  
 23 (2d Cir. 2004) (noting that section 1782 has the “twin aims” of “providing efficient means of  
 24 assistance to participants in international litigation in our federal courts and encouraging foreign  
 25 countries by example to provide similar means of assistance to our courts” (citation and quotations  
 26 omitted)).

27 A district court is authorized to grant a section 1782 application where (1) the person from  
 28 whom the discovery is sought resides or is found in the district of the district court to which the

1 application is made, (2) the discovery is for use in a proceeding before a “foreign or international  
2 tribunal,” and (3) the application is made by the foreign or international tribunal or “any interested  
3 person.” 28 U.S.C. § 1782(a); *see also Intel*, 542 U.S. at 246-47; *In re Republic of Ecuador*, No.  
4 C-10-80255-CRB (EMC), 2010 WL 3702427, \*2 (N.D. Cal. Sept. 15, 2010).

5 “However, simply because a court has the authority under § 1782 to grant an application  
6 does not mean that it is required to do so.” *In re Republic of Ecuador*, 2010 WL 3702427, at \*2  
7 (citing *Intel*, 542 U.S. at 264). The Supreme Court has identified several discretionary factors that  
8 a court should take into consideration in ruling on a Section 1782 request: (1) whether the “person  
9 from whom discovery is sought is a participant in the foreign proceeding”; (2) “the nature of the  
10 foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the  
11 foreign government or the court or agency abroad to U.S. federal court judicial assistance”; (3)  
12 whether the request “conceals an attempt to circumvent foreign proof-gathering restrictions or  
13 other policies of a foreign country or the United States”; and (4) whether the request is “unduly  
14 intrusive or burdensome.” *Intel*, 542 U.S. at 264-65.

### 15 **III. DISCUSSION**

#### 16 **A. Authority to Issue Subpoena**

17 The court determines that hey’s application satisfies the statutory requirements of section  
18 1782. Twitter’s headquarters are in San Francisco, California, which is in this district. The  
19 requested discovery is for a lawsuit hey intends to file in Japan against the individual(s) who  
20 posted the tweets. Nakazawa Decl. ¶¶ 11, 14. It does not matter that the suit has not yet been  
21 filed, as “Section 1782(a) does not limit the provision of judicial assistance to ‘pending’  
22 adjudicative proceedings.” *Intel*, 542 U.S. at 259 (rejecting view “that § 1782 comes into play  
23 only when adjudicative proceedings are ‘pending’ or ‘imminent;’” they need only be “within  
24 reasonable contemplation.”). Finally, the court concludes that hey qualifies as an “interested”  
25 party, since it plans to initiate litigation abroad.

#### 26 **B. Discretionary Factors**

27 Having concluded that it has the statutory authority to issue the subpoena pursuant to  
28 section 1782, the court now turns to the four discretionary *Intel* factors.

1           When the party from whom discovery is sought is not a participant in the foreign  
2 proceeding, the first factor weighs in favor of granting the application. *See Intel*, 542 U.S. at 264.

3 As the Court explained:

4                   [W]hen the person from whom discovery is sought is a participant in  
5 the foreign proceeding . . . , the need for § 1782(a) aid generally is not  
6 as apparent as it ordinarily is when evidence is sought from a  
7 nonparticipant in the matter arising abroad. A foreign tribunal has  
8 jurisdiction over those appearing before it and can itself order them to  
produce evidence. In contrast, nonparticipants in the foreign  
proceeding may be outside the foreign tribunal’s jurisdictional reach;  
hence, their evidence, available in the United States, may be  
unobtainable absent § 1782(a) aid.

9 *Id.* (internal quotations and citations omitted). Here, Twitter will not be a party to the anticipated  
10 foreign proceedings in Japan. Nakazawa Decl. ¶ 14. hey’s stated goal is to identify the  
11 individual(s) responsible for the tweets to bring a lawsuit alleging defamation and unlawful  
12 business interference. *Id.* at ¶¶ 10, 11. The first factor thus weighs in favor of granting leave to  
13 issue the subpoena.

14           As to the nature and receptivity of the foreign tribunal, there is no indication that Japanese  
15 courts would not be willing to consider the information sought by the requested discovery. “In the  
16 absence of authoritative proof that a foreign tribunal would reject evidence obtained with the aid  
17 of section 1782, courts tend to err on the side of permitting discovery.” *In re: Ex Parte*  
18 *Application Varian Med. Sys. Int’l AG*, No. 16-MC-80048-MEJ, 2016 WL 1161568, at \*4 (N.D.  
19 Cal. Mar. 24, 2016) (quotation and citation omitted). The second factor also supports issuance of  
20 the subpoena.

21           With respect to the third factor, nothing in the record suggests that hey is attempting to  
22 circumvent foreign proof-gathering restrictions. Therefore, this factor also weighs in favor of  
23 granting the application.

24           The fourth factor examines whether the requested discovery is “unduly intrusive or  
25 burdensome.” *Intel*, 542 U.S. at 265. “Requests are unduly intrusive and burdensome where they  
26 are not narrowly tailored, request confidential information and appear to be a broad ‘fishing  
27 expedition’ for irrelevant information.” *In re Ex Parte Application of Qualcomm Inc.*, 162 F.  
28 Supp. 3d 1029, 1043 (N.D. Cal. 2016). Here, the proposed subpoena requests documents

1 identifying the user(s) of the three accounts; names and addresses of credit card holders registered  
2 on the accounts; and access logs for the dates the tweets in question were posted. Proposed  
3 Subpoena. [See also Docket No. 1-3 (Togi Decl., Jan. 29, 2022) ¶¶ 7-8 (explaining the relevance  
4 of the requested access logs).] This discovery is appropriately tailored to documents and  
5 information identifying the individual(s) responsible for the tweets by the @cogitopp, @mlnk901,  
6 and @DJ\_AsadaAkira accounts.

7 These findings do not preclude Twitter from contesting the subpoena. The Ninth Circuit  
8 has held that applications for subpoenas pursuant to section 1782 may be filed ex parte because  
9 “[t]he witnesses can . . . raise[ ] objections and exercise[ ] their due process rights by motions to  
10 quash the subpoenas.” *In re Letters Rogatory from Tokyo Dist.*, 539 F.2d 1216, 1219 (9th Cir.  
11 1976). Given the nature of the information sought by the subpoena, the court finds that the  
12 subpoena should contain a mechanism by which the affected individual(s), i.e., the user(s) of the  
13 @cogitopp, @mlnk901, and @DJ\_AsadaAkira accounts, may contest the disclosure of their  
14 personal identifying information pursuant to the subpoena. Accordingly, Twitter shall serve a  
15 copy of the subpoena and a copy of this order on the user(s) of the @cogitopp, @mlnk901, and  
16 @DJ\_AsadaAkira accounts within 30 days of the date of service on Twitter. Twitter may serve  
17 the user(s) by any reasonable means, including written notice sent to their last known address,  
18 transmitted either by first-class mail or via overnight service and shall file proof of service.

19 Twitter and each individual associated with the @cogitopp, @mlnk901, and  
20 @DJ\_AsadaAkira accounts shall have 30 calendar days from the date of service upon them to file  
21 any motions in this court to contest the subpoena. If the 30-day period lapses without an  
22 individual contesting the subpoena, Twitter shall have 10 days to produce to hey the information  
23 responsive to the subpoena with respect to that individual.

#### 24 **IV. CONCLUSION**

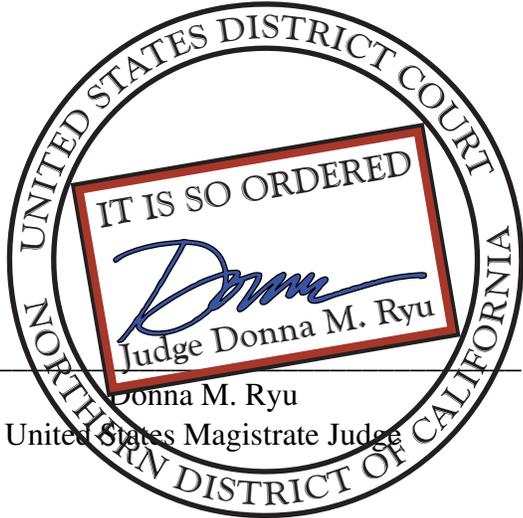
25 For the foregoing reasons, the court grants the application. hey may serve a finalized  
26 version of the subpoena attached to its application. Twitter and the individual(s) associated with  
27 the @cogitopp, @mlnk901, and @DJ\_AsadaAkira accounts shall be permitted to contest the  
28 subpoena in accordance with the procedure set forth above. hey must serve a copy of this order on

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Twitter with the subpoena.

**IT IS SO ORDERED.**

Dated: April 19, 2022



Donna M. Ryu  
United States Magistrate Judge

United States District Court  
Northern District of California