

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARIA RUTENBURG,
Plaintiff,
v.
TWITTER, INC.,
Defendant.

Case No. 4:21-cv-00548-YGR

**ORDER: (1) DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER; AND
(2) DENYING AS MOOT *EX PARTE* MOTION
TO SHORTEN TIME**

Re: Dkt. Nos. 9, 10

United States District Court
Northern District of California

Having reviewed the motion for temporary restraining order filed by plaintiff Maria Rutenburg, the motion for a temporary restraining order is **DENIED**. A fundamental flaw in Rutenburg’s entire case is that the claimed rights under the First Amendment (and the corollary claims under the Fourteenth Amendment) cannot be enforced against a private entity such as defendant Twitter, Inc. *See Manhattan Cmty. Access Corp. v. Halleck*, 139 S.Ct. 1921, 1928 (2019) (“The text and original meaning of those Amendments, as well as this Court’s longstanding precedents, establish that the Free Speech Clause prohibits only *governmental* abridgment of speech. The Free Speech Clause does not prohibit *private* abridgment of speech.” (emphasis in original)); *Belgau v. Inslee*, 975 F.3d 940, 946 (9th Cir. 2020) (“The Supreme Court has long held that ‘merely private conduct, however discriminatory or wrongful,’ falls outside the purview of the Fourteenth Amendment.” (citing *Blum v. Yaretsky*, 457 U.S. 991, 1002, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982))); *Roberts v. AT&T Mobility LLC*, 877 F.3d 833, 837 (9th Cir. 2017) (“A threshold requirement of any constitutional claim is the presence of state action. . . . Because the First Amendment right to petition is a guarantee only against abridgment by [the] government, . . . state action is a necessary threshold which [a plaintiff] must cross before we can even consider whether [a defendant] infringed upon [a plaintiff’s] First Amendment rights” (internal

United States District Court
Northern District of California

1 citations and quotation marks omitted)); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 157 (1978)
2 (“While as a factual matter any person with sufficient physical power may deprive a person of his
3 property, only a State or a private person whose action may be fairly treated as that of the State
4 itself . . . may deprive him of an interest encompassed within the Fourteenth Amendment's
5 protection” (internal citations and quotation marks omitted)). Further, Rutenburg failed to
6 comply with the Court’s local rules and effectuate service, and accordingly, the motion is
7 procedurally defective. *See, e.g.*, Fed. R. Civ. P. 65(b)(1).

8 Moreover, in light of the foregoing, Rutenburg’s *ex parte* motion to shorten the briefing
9 schedule on the motion for temporary restraining order is **DENIED AS MOOT**.

10 This Order terminates Docket Numbers 9 and 10.

11 **IT IS SO ORDERED.**

12 Dated: January 28, 2021

13
14 
15 YVONNE GONZALEZ ROGERS
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28