

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

In the Matter of:

JOHN C. DEPP, II,

Petitioner,

v.

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION, BENJAMIN WIZNER, and  
ANTHONY ROMERO,

Respondents,

For an Order to compel response to out-of-  
state subpoenas served in the action entitled  
*John C. Depp, II v. Amber Laura Heard*, No.  
CL2019-0002911 in the Circuit Court of  
Fairfax County in the Commonwealth of  
Virginia.

Index No. \_\_\_\_\_

**AFFIRMATION OF JESSICA N.  
MEYERS IN SUPPORT OF PETITION  
TO COMPEL RESPONSE TO OUT-OF-  
STATE SUBPOENAS**

Jessica N. Meyers, an attorney at law admitted to practice before the courts of the State of New York, hereby affirms the following to be true under penalties of perjury pursuant to CPLR § 2106:

1. I am an associate at the law firm Brown Rudnick, LLP, with offices at 7 Times Square, New York, New York 10036, and counsel for the Petitioner John C. Depp, II (“Mr. Depp”) in the action entitled *John C. Depp, II v. Amber Laura Heard*, No. CL2019-0002911 (the “Virginia Action”) in the Circuit Court of Fairfax County in the Commonwealth of Virginia (the “Virginia Court”). I submit this Affirmation, with exhibits, in support of Mr. Depp’s Petition to Compel Responses to Out-of-State Subpoenas (the “Petition”).

2. Mr. Depp commenced the Virginia Action against Amber Laura Heard (“Ms. Heard”) on March 1, 2019, alleging that Ms. Heard made defamatory statements implying that Mr.

Depp domestically abused her in an opinion piece published in the *Washington Post* on December 18, 2018 (the “Op-Ed”). A true and correct copy of Mr. Depp’s complaint in the Virginia Action (the “Complaint”) is annexed hereto as **Exhibit 1**. The Complaint alleges that, in her Op-Ed, Ms. Heard republished a false claim she first made in May 2016, when she sought a temporary restraining order and divorce from Mr. Depp, that Mr. Depp had perpetrated domestic violence against her during their marriage (Compl. ¶¶ 2-3, 8-9, 18).

3. In August 2016, it was publicly reported that Mr. Depp and Ms. Heard reached a \$7 million divorce settlement and Ms. Heard issued a public statement in which she claimed that she was donating the \$7 million to charity, with the donation to be split equally between the American Civil Liberties Union (“ACLU”) and the Children’s Hospital of Los Angeles. True and correct copies of articles covering Mr. Depp’s and Ms. Heard’s divorce and Ms. Heard’s public statement that she was donating the \$7 million divorce settlement to charity are annexed hereto as **Exhibit 2**.

4. Pursuant to Mr. Depp and Ms. Heard’s Stipulated Judgment of Dissolution of Marriage, which has been produced in the Virginia Action, Mr. Depp was to pay Ms. Heard the \$7 million divorce settlement in installments, with the final installment due on or before February 1, 2018. Upon information and belief, Mr. Depp paid the \$7 million settlement to Ms. Heard within the stipulated schedule for payment.

5. In May 2018, Mr. Depp initiated a libel suit against News Group Newspapers Ltd and Dan Wootton (the “UK Defendants”) in the United Kingdom (the “UK Action”) over an article published by UK Defendants entitled “GONE POTTY How can JK Rowling be ‘genuinely happy’ casting wife beater Johnny Depp in the new Fantastic Beasts film?”

6. In September 2019, Ms. Heard filed a demurrer and plea in bar in the Virginia Action seeking the dismissal of Mr. Depp's defamation claims. In support of her demurrer and plea in bar, Ms. Heard filed declaration, sworn on September 4, 2019, in which she identified certain of her contacts at the ACLU and the ACLU's involvement in drafting and placing the Op-Ed. A true and correct copy of the Ms. Heard's September 4, 2019 declaration is annexed hereto as **Exhibit 3**.

7. On February 26, 2020, Ms. Heard submitted a witness statement in the UK Action on behalf of the UK Defendants which responded to Mr. Depp's claim that Ms. Heard had married him for financial gain (the "Witness Statement"). A true and correct copy of Ms. Heard's Witness Statement in the UK Action is annexed hereto as **Exhibit 4**.

8. In May 2020, in the Virginia Action, Mr. Depp sought the issuance of subpoenas *duces tecum* to the American Civil Liberties Union, Inc. and the Children's Hospital of Los Angeles ("CHLA"), respectively, which both requested documents referring, reflecting, or relating to any donations made to the organizations by Ms. Heard. Mr. Depp was unable to effectuate service of the subpoena to the American Civil Liberties Union, Inc. in California or New York, but the CHLA was served with the subpoena in California on or around May 29, 2020.

9. A sixteen-day trial of the UK Action was conducted between July 7, 2020 and July 28, 2020. At this trial, Ms. Heard provided live testimony.

10. On July 29, 2020, Ms. Heard filed a petition to quash Mr. Depp's subpoena to the CHLA (the "CHLA Petition") in the Superior Court of California, County of Los Angeles (the "California Court").

11. On August 14, 2020, Mr. Depp served his Third Set of Requests for Production to Defendant Amber Laura Heard in the Virginia Action (the "Third RFPs"), which included requests

(Request Nos. 44, 45, 46, and 47) for the production of documents related to Ms. Heard's purported donation of any divorce settlement payments she received from Mr. Depp. A true and correct copy of the Third RFPs is annexed hereto as **Exhibit 5**.

12. On September 4, 2020, Ms. Heard served her responses and objections to Mr. Depp's Third RFPs (the "R&Os to Third RFPs"), in which Ms. Heard stood on her objections to Request Nos. 44, 45, 46, and 47, which sought documents related to Ms. Heard's purported donation of her divorce settlement from Mr. Depp. A true and correct copy of Ms. Heard's R&Os to Third RFPs is annexed hereto as **Exhibit 6**.

13. On September 4, 2020, Ms. Heard also filed motions *in limine* in the Virginia Action seeking, *inter alia*, to exclude evidence concerning the amount of Ms. Heard's charitable donations. At the time Ms. Heard filed her motions *in limine*, trial of the Virginia Action was scheduled to take place in May 2021. The Virginia Court entered an order denying Ms. Heard's motions *in limine* on September 25, 2020, a true and correct copy of which is annexed hereto as **Exhibit 7**.

14. On October 29, 2020, Mr. Depp filed a motion to compel Ms. Heard's responses to, *inter alia*, the Third RFPs (the "Motion to Compel"), including Request Nos. 44, 45, 46, and 47, which sought documents related to Ms. Heard's purported donation of her divorce settlement to the ACLU and the CHLA. Ms. Heard opposed Mr. Depp's Motion to Compel.

15. Also on October 29, 2020, the California Court held a hearing on Ms. Heard's CHLA Petition and denied her CHLA Petition, except with respect to two requests which sought communications with the CHLA about Mr. Depp and Ms. Heard's relationship, and clarified that the CHLA did not need to produce responsive accounting records related to any of Ms. Heard's donations. The California Court also found that awarding sanctions against Ms. Heard and her

counsel for filing the CHLA Petition was warranted. A true and correct copy of the of the transcript for the October 29, 2020 hearing before the California Court is annexed hereto as **Exhibit 8**. A true and correct copy of the California Court's December 18, 2020 order denying, in part, the CHLA Petition and awarding sanctions in connection therewith is annexed hereto as **Exhibit 9**.

16. On November 2, 2020, Justice Nicol handed down a judgment in the UK Action (the "UK Judgment") dismissing Mr. Depp's claim for libel against the UK Defendants. A true and correct copy of the November 2, 2020 judgment entered in the UK Action is annexed hereto as **Exhibit 10**. Mr. Depp timely sought permission to appeal from the UK Judgment.

17. After Ms. Heard's CHLA Petition was denied, the CHLA produced the documents sought by Mr. Depp's subpoena, but Ms. Heard designated the documents as confidential under the protective order entered in the Virginia Action (the "Protective Order"). Mr. Depp made an emergency motion to the Virginia Court to de-designate the CHLA documents, which was heard at calendar control on December 15, 2020. The Virginia Court found that Ms. Heard had designated the CHLA documents as confidential in bad faith and entered an order on December 16, 2020 granting Mr. Depp's emergency motion to de-designate the CHLA documents. A true and correct copy of the Virginia Court's December 16, 2020 order is annexed hereto as **Exhibit 11**.

18. On December 18, 2020, a hearing was held in the Virginia Action on Mr. Depp's Motion to Compel. At that hearing, the Virginia Court granted Mr. Depp's Motion to Compel responses to Request Nos. 44, 45, 46, and 47, which sought documents related to Ms. Heard's donation of her divorce settlement from Mr. Depp. A true and correct copy of the transcript for the December 18, 2020 hearing before the Virginia Court is annexed hereto as **Exhibit 12**. On December 30, 2020, the Virginia Court issued an order directing Ms. Heard to produce documents

in her possession, custody, or control in response to the Third RFPs, Request Nos. 44, 45, and 47, on or before January 4, 2021. A true and correct copy of the December 30, 2020 order entered in the Virginia Action is annexed hereto as **Exhibit 13**.

19. On January 4, 2021, Ms. Heard made a 35-page production which included, *inter alia*, documents responsive to Mr. Depp's Third RFPs, Request Nos. 44, 45, 46, and 47. A true and correct copy of the portion of Ms. Heard's production relating to donations to the ACLU by Ms. Heard or on Ms. Heard's behalf is annexed hereto as **Exhibit 14**. A true and correct copy of the portion of Ms. Heard's production relating to donations to the CHLA by Ms. Heard or on Ms. Heard's behalf is annexed hereto as **Exhibit 15**. The documents produced by Ms. Heard on January 4, 2021 reveal that Ms. Heard had not donated the entire amount of her \$7 million divorce settlement to the ACLU and CHLA.

20. On or around January 14, 2021, Mr. Depp made an application, in connection with his requested appeal of the UK Judgment, for permission to adduce and provide new evidence in support of his appeal, namely the documents produced by Ms. Heard in the Virginia Action on January 4, 2021, which showed that she had not donated the entirety of her \$7 million divorce settlement to the ACLU and CHLA. Following a hearing held on March 18, 2021, the UK Court of Appeal handed down a judgment on March 25, 2021 ("Judgment on Appeal") dismissing Mr. Depp's application for permission to adduce new evidence and his application for permission to appeal. A true and correct copy of the March 25, 2021 Judgment on Appeal is annexed hereto as **Exhibit 16**.

21. On January 22, 2021, Ms. Heard submitted a declaration of Ben Wizner (the "Wizner Declaration"), who identified himself as an employee of the American Civil Liberties Union Foundation (the "ACLU Foundation"), in the Virginia Action. A true and correct copy of

the Wizner Declaration is annexed hereto as **Exhibit 17**. Ms. Heard submitted the Wizner Declaration in support of her claim of immunity under Virginia's anti-SLAPP statute as a defense to Mr. Depp's defamation claims, a defense that Mr. Depp had moved the Virginia Court to deny. On March 24, 2021, the Virginia Court denied Mr. Depp's motion, declining to deny Ms. Heard's plea in bar for anti-SLAPP immunity before trial.

22. Based upon information discerned from Ms. Heard's January 4, 2021 production and the Wizner Declaration, Mr. Depp sought the issuance of subpoenas *duces tecum* and *ad testificandum* to the American Civil Liberties Union Foundation (the "ACLU Foundation"), and two of its employees, Ben Wizner ("Mr. Wizner") and Anthony Romero ("Mr. Romero," and, together with the ACLU Foundation and Mr. Wizner, the "ACLU Witnesses"). On February 4, 2021, the Virginia Court issued the subpoenas *duces tecum* and *ad testificandum* to the ACLU Foundation, Mr. Wizner, and Mr. Romero:

- (a) True and correct copies of the subpoena *duces tecum* and subpoena *ad testificandum* to the ACLU Foundation which were issued by the Virginia Court on February 4, 2021 are annexed hereto as **Exhibit 18** and **Exhibit 19**, respectively (the "ACLU Subpoenas").
- (b) True and correct copies of the subpoena *duces tecum* and subpoena *ad testificandum* to Mr. Wizner which were issued by the Virginia Court on February 4, 2021 are annexed hereto as **Exhibit 20** and **Exhibit 21**, respectively (the "Wizner Subpoenas").
- (c) True and correct copies of the subpoena *duces tecum* and subpoena *ad testificandum* to Mr. Romero which were issued by the Virginia Court on February 4, 2021 are annexed hereto as **Exhibit 22** and **Exhibit 23**, respectively (the "Romero Subpoenas" and, together with the ACLU Subpoenas and Wizner Subpoenas, the "Subpoenas").

23. On or around February 15, 2021, the Wizner Subpoenas were personally served upon Mr. Wizner at his residence in Brooklyn, New York. On March 1, 2021, I received an e-mail from Mr. Wizner's counsel attaching a letter and written responses and objections to the Wizner Subpoenas. A true and correct copy of this March 1, 2021 e-mail from Mr. Wizner's counsel, with attachments, is annexed hereto as **Exhibit 24**. Also on March 1, 2021, my colleague Ben Chew received an e-mail from Ms. Heard's counsel attaching Ms. Heard's objections to the Wizner Subpoenas. True and correct copies of Ms. Heard's objections to the Wizner Subpoenas are annexed here to as **Exhibit 25**.

24. On or around February 11, 2021, the ACLU Subpoenas were personally served upon Abdi Soltani, who was believed to be the ACLU Foundation's agent for service of process. When my firm received the March 1, 2021 e-mail from Mr. Wizner's counsel, my colleague inquired whether Mr. Wizner's counsel also represented the ACLU Foundation in connection with the ACLU Subpoenas.

25. By an e-mail dated March 3, 2021, Mr. Wizner's counsel stated that they also represented the ACLU Foundation, that the ACLU Foundation had "not been served with a subpoena," but that they were "authorized to accept electronic service of a properly-issued New York subpoena on the ACLU Foundation." My firm arranged a meet and confer with counsel for the ACLU Foundation and Mr. Wizner to discuss the responses and objections to the Wizner Subpoenas, which was held on March 5, 2021. After the March 5<sup>th</sup> meet and confer, by an e-mail dated March 10, 2021, I sent the ACLU Subpoenas to the ACLU Foundation's counsel requesting that they confirm that they would, as stated in their prior correspondence, accept service of the subpoenas on behalf of the ACLU Foundation. By an e-mail dated March 11, 2021, counsel for the ACLU Foundation confirmed that they would accept service of the ACLU Subpoenas and the



parties arranged another meet and confer to discuss the Wizner Subpoenas and ACLU Subpoenas, which occurred on March 16, 2021.

26. On the March 16<sup>th</sup> meet and confer, the parties agreed on a deadline of March 24, 2021 for the ACLU Foundation to serve its responses and objections to the ACLU Subpoenas, discussed a deadline in mid-April for the ACLU Foundation and Mr. Wizner to produce documents responsive to the subpoenas *duces tecum* and the confidential treatment of such documents. On that call, I inquired as to whether counsel to the ACLU Foundation represented Mr. Romero and was authorized to accept service of the Romero Subpoenas, as the process server retained by Mr. Depp had been unable to locate and personally serve Mr. Romero. I also stated that we believed it made sense to hold off on scheduling depositions for the ACLU Witnesses until after we received document productions pursuant to the Subpoenas, that we anticipated taking such depositions remotely, and that we would tender witness fees to the ACLU Witnesses reasonably in advance of such depositions.

27. After the March 16<sup>th</sup> meet and confer, I sent the ACLU Foundation's counsel the Protective Order entered in the Virginia Action and the Romero Subpoenas and requested that counsel advise whether they are authorized to accept service of the subpoenas on Mr. Romero's behalf. A true and correct copy of the Protective Order is annexed hereto as **Exhibit 26**.

28. On March 19, 2021, I received an e-mail from counsel for the ACLU Foundation ("ACLU Counsel") stating that they received authorization to accept service of the Romero Subpoenas on the condition that they have until April 2, 2021 to serve responses and objections, which we agreed to. A true and correct copy of this e-mail correspondence is annexed hereto as **Exhibit 27**.

29. On March 24, 2021, I received an email from ACLU Counsel serving the ACLU Foundation's responses and objections to the ACLU Subpoenas, a true and correct copy of which is annexed hereto as **Exhibit 28**. After reviewing the ACLU Foundation's responses and objections to the ACLU Subpoenas, I e-mailed ACLU Counsel to notify them that Mr. Depp planned to move to compel more fulsome compliance with the ACLU Subpoenas and Wizner Subpoenas so that they could take this into account as they collected documents for production pursuant to the Subpoenas. I also requested a meet and confer for April 5, 2021 so that we could discuss the parties' dispute over the discovery sought by the ACLU Subpoenas and Wizner Subpoenas, and any issues raised by Mr. Romero's forthcoming responses and objections to the Romero Subpoenas.

30. On March 25, 2021, I received an e-mail from ACLU Counsel which attached a proposed addendum to the Protective Order that would apply to the documents to be produced by the ACLU Witnesses in response to the Subpoenas. A true and correct copy of this e-mail, with the attached proposal, is annexed hereto as **Exhibit 29**. After reviewing this proposal, I e-mailed ACLU Counsel on March 30, 2021 stating that we could not accept their proposed addendum to the Protective Order, but that we were willing to expand the Protective Order's definition of "confidential" information to include "information protected from disclosure by statute, trade secrets, and proprietary business information," to address the confidentiality concerns of the ACLU Witnesses. On April 2, 2021, ACLU Counsel sent over a counterproposal for expanding the Protective Order's definition of "confidential" information based on language from model confidentiality orders used in New York's Commercial Division and proposed that counsel discuss on the meet and confer scheduled for April 5, 2021.

31. On April 2, 2021, I also received an e-mail from ACLU Counsel serving Mr. Romero's responses and objections to the Romero Subpoenas, a true and correct copy of which is annexed hereto as **Exhibit 30**. Ms. Heard also served her objections to the Subpoenas directed to the ACLU Foundation and Mr. Romero on April 2, 2021, true and correct copies of which are annexed hereto as **Exhibit 31** (objections to the ACLU Foundation Subpoenas) and **Exhibit 32** (objections to the Romero Subpoenas).

32. On April 5, 2021, I attended a final meet and confer with ACLU Counsel to discuss the ACLU Witnesses' responses and objections to the Subpoenas and the confidential treatment of the documents sought by the Subpoenas. On the meet and confer, we were unable to resolve any of the ACLU Witnesses' objections to the Subpoenas or agree upon an addendum to the Protective Order that would apply to the documents sought from the ACLU Witnesses pursuant to the Subpoenas. ACLU Counsel stated that the ACLU Witnesses would not produce any documents pursuant to the Subpoenas until the confidentiality issue was resolved, so I told ACLU Counsel that I would let them know by the following day whether we had any final counterproposal concerning the confidential treatment of the documents sought by the Subpoenas. The following day, on April 6, 2021, I e-mailed ACLU Counsel to inform them that we had no additional counterproposal on behalf of Mr. Depp and that Mr. Depp would address the parties' confidentiality dispute in his forthcoming motion to compel compliance with the Subpoenas. A true and correct copy of my April 6, 2021 e-mail is annexed hereto as **Exhibit 33**.

Dated: New York, New York  
May 10, 2021

/s/ Jessica N. Meyers  
Jessica N. Meyers

**CERTIFICATION OF COMPLIANCE**

In accordance with Section 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court, I certify that this foregoing Affirmation contains 3,288 words, exclusive of the caption, table of contents, table of authorities, the cover page and the signature block, based on a Word Count check performed by our word processing system.

Dated: May 10, 2021

/s/ Jessica N. Meyers  
Jessica N. Meyers