

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

----- :
JOHN C. DEPP, II, :

Petitioner, :

v. :

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

Respondents.
----- :

Index No. 154545/2021

Part 37

Hon. Arthur F. Engoron

Motion Sequence No. 001

AFFIRMATION OF STEPHANIE TEPLIN

Stephanie Teplin, an attorney duly admitted to practice law in the State of New York,
hereby affirms as follows:

1. I am a partner at Patterson Belknap Webb & Tyler LLP and am counsel for the
American Civil Liberties Union Foundation (“ACLU”), Mr. Benjamin Wizner, and Mr. Anthony
Romero (together, the “ACLU Non-Parties”) in the above-captioned action. I am fully familiar
with the facts and circumstances herein.

2. I make this affirmation in support of the ACLU Non-Parties’ opposition to
Petitioner John C. Depp, II’s Petition to Compel Responses to Out-of-State Subpoenas. *See*
[NYSCEF Dkt. 1](#).

3. This action concerns three foreign subpoenas *duces tecum* and three foreign
subpoenas *ad testificandum* (together, the “Subpoenas”). The subpoenas directed to Mr. Wizner
were served on February 15, 2021. The subpoenas directed to the ACLU were served on March
10, 2021. The subpoenas directed to Mr. Romero were served on March 19, 2021.

The Virginia Action

4. The Subpoenas arise from the underlying proceeding captioned *John C. Depp, II v. Amber Laura Heard*, No. CL2019-0002911 (Va. Cir. Ct., Fairfax Cnty.) (the “Virginia Action”). The Virginia Action was brought by Mr. Depp against Amber Laura Heard, and concerns an op-ed article that Ms. Heard wrote for the Washington Post (the “Op-Ed”).

5. In defending against Mr. Depp’s claims, Ms. Heard invoked Virginia’s Anti-SLAPP statute, Va. Code Ann. § 8.01-223.2(A). In January 2021, Mr. Depp moved to dismiss Ms. Heard’s Anti-SLAPP defense. Ms. Heard responded by arguing that the Op-Ed related to matters of public concern because it addressed violence against women, the #MeToo movement, and legislative solutions. A true and correct copy of Ms. Heard’s opposition is attached as **Exhibit A**.

6. In March 2021, the Virginia court held that Ms. Heard’s statements in the Op-Ed relate to matters of public concern as a matter of law. A true and correct copy of the Virginia court’s decision is attached as **Exhibit B**.

7. Attached as **Exhibit C** is a transcript of a hearing in the Virginia Action held on October 23, 2020. During this hearing, the Virginia court revoked the *pro hac vice* admission of Mr. Depp’s counsel.

8. The Virginia Action has received a significant amount of publicity and media coverage. At least two ACLU employees and former employees have received distracting and harassing emails and press inquiries related to Mr. Depp and Ms. Heard’s dispute.

9. The Virginia Action was originally scheduled for trial in May 2021, but was rescheduled for April 2022 due to COVID-related trial backlogs. A true and correct copy of the Virginia court’s order resetting the trial date is attached as **Exhibit D**.

10. Mr. Depp's Petition in this proceeding describes a separate litigation that he brought in the UK in May 2018 against the publisher of *The Sun* for libel. The ACLU Non-Parties were never subpoenaed in the UK proceeding and were not involved in that proceeding in any way.

The ACLU Non-Parties' Responses to the Subpoenas and the Parties' Negotiations

11. The ACLU Non-Parties served written responses and objections to the six Subpoenas. [NYSCEF Dkt. 27](#), [31](#), [33](#). These written responses and objections stated that the ACLU Non-Parties would not produce documents in response to requests for documents or communications related to donations to the ACLU by Ms. Heard or others acting on her behalf, along with numerous other objections.

12. I participated in several meet-and-confer telephone calls with Mr. Depp's counsel in March and April 2021 concerning the Subpoenas. In addition, my colleague Michael Schwartz and I exchanged numerous emails with Mr. Depp's counsel concerning the Subpoenas.

13. During my conversations with Mr. Depp's counsel, and consistent with the ACLU Non-Parties' response and objections to the Subpoenas, I told counsel that the ACLU Non-Parties intended to make a document production, consistent with the limitations in their written responses and objections, by April 9, 2021. In addition, my colleague Mr. Schwartz emailed Mr. Depp's counsel on March 18, 2021, and stated that the ACLU Non-Parties would "aim to make our document production by April 9." A true and correct copy of Mr. Schwartz's March 18 email is attached as **Exhibit E**.

14. I also told Mr. Depp's counsel during our conversations that the ACLU Non-Parties were willing to produce an ACLU corporate witness for a deposition, consistent with the limitations in the ACLU's written responses and objections. However, I told Mr. Depp's counsel

that the ACLU Non-Parties would not make any document productions until the parties executed a confidentiality agreement.

15. In anticipation of making a production on April 9, the ACLU Non-Parties used custodial email searches and identified, reviewed, and prepared for production over 500 emails and documents related to the drafting, editing, and placement of the Op-Ed.

16. During the parties' meet-and-confer calls and email exchanges, Mr. Depp's counsel continued to press for the production of documents related to Ms. Heard's donations to the ACLU. Although the ACLU Non-Parties disputed the relevance of the donation information, I asked Mr. Depp's counsel what information was lacking from Ms. Heard's prior document production concerning her donations to the ACLU. I also offered to discuss ways to authenticate the documents provided by Ms. Heard, if necessary. Mr. Depp's counsel did not articulate any gaps in Ms. Heard's production or explain what additional information he required.

17. During the parties' meet-and-confer calls and email exchanges, Mr. Depp's counsel did not continue to press for production of documents concerning the relationship between Mr. Depp and Ms. Heard, their divorce proceeding, Ms. Heard's work as an ACLU Ambassador, or the Virginia Action, and counsel did not give any reason why such documents were relevant or appropriate to seek from a non-party.

18. During the parties' meet-and-confer calls and email exchanges, Mr. Depp's counsel did not explain why multiple depositions were necessary or appropriate, particularly in light of the ACLU's offer to produce a corporate representative.

19. The parties also discussed entering into a confidentiality agreement, which the ACLU Non-Parties had made clear was a precondition to making any document production.

20. The ACLU Non-Parties reviewed the confidentiality order between Mr. Depp and Ms. Heard in the Virginia Action ([NYSCEF Dkt. 29](#)). On March 25, 2021, my colleague Mr. Schwartz emailed Mr. Depp's counsel and stated that the ACLU Non-Parties were "generally comfortable with its terms" but requested two adjustments concerning the definition of "confidential" and an assurance that Mr. Depp would only use the ACLU Non-Parties' documents and testimony for purposes of litigating the Virginia Action. A copy of Mr. Schwartz's email can be found at [NYSCEF Dkt. 32](#).

21. Mr. Depp objected to the ACLU Non-Parties' proposal, stating that it went "beyond the categories of information for which New York and Virginia courts have recognized confidential treatment is appropriate." The ACLU Non-Parties accordingly proposed adopting the definition of "confidential" in Justice Jennifer G. Schechter or Justice Andrea Masley's model confidentiality order. Attached as **Exhibit F** is a true and correct copy of the email exchange with Mr. Depp's counsel, dated April 2, 2021, discussing this proposal.

22. A true and correct copy of Justice Schechter's model confidentiality order is attached as **Exhibit G**. It is also publicly available at https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Confidentiality_Stip_Part_54.pdf.

23. A true and correct copy of Justice Masley's model confidentiality order is attached as **Exhibit H**. It is also publicly available at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/JMasley-CStip.pdf>.

24. A true and correct copy of The New York City Bar Association's model confidentiality order is attached as **Exhibit I**. It is also publicly available at <https://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>.

25. In addition, Mr. Depp's counsel rejected the ACLU Non-Parties' request that their documents and testimony would not be "shared, or disclosed for any purposes other than preparing for or conducting [the Virginia Action]." [NYSCEF Dkt. 32](#). Mr. Depp's counsel stated that he intended to use the ACLU Non-Parties' documents and testimony in unspecified current or future proceedings other than the Virginia Action.

26. In the Petition, Mr. Depp raises several concerns about what it means to use, share or disclose produced information only in connection with the Virginia Action. [NYSCEF Dkt. 37](#) at 20 n.7. Mr. Depp's counsel did not raise these questions or concerns in the parties' meet-and-confer calls or email exchanges.

27. After the ACLU Non-Parties and Mr. Depp were unable to reach agreement on a confidentiality order, Mr. Depp's counsel stated that he would consider a temporary confidentiality arrangement to allow the ACLU to make its document production while discussions continued. However, Mr. Depp subsequently stated that after further consideration he had "no additional proposal concerning the confidential treatment of documents." A true and correct copy of Mr. Depp's counsel's email dated April 6, 2021 is attached as **Exhibit J**.

28. On May 27, 2021, after receiving Mr. Depp's Petition, and in a further effort to compromise, the ACLU Non-Parties proposed entering into a stipulation confirming the dates and amounts of all payments made to the ACLU by Ms. Heard or anyone acting on her behalf.

29. On June 1, 2021, Mr. Depp's counsel rejected the proposed stipulation and continued to press for the full scope of documents requested in the Subpoenas.

Additional Relevant Documents

30. Mr. Depp attached to his Petition an ACLU Pledge Form, which states that Ms. Heard "pledge[s] to make a gift to the Centennial Campaign in the amount of \$3,500,000.00"

and “[p]ayments will begin on . . . 8/19/2016.” [NYSCEF Dkt. 17](#). The Pledge Form also has a logo for the “ACLU Centennial Campaign.” *Id.*

31. The ACLU began its Centennial Campaign and use of the “ACLU Centennial Campaign” logo in 2014. One purpose of the Centennial Campaign was to solicit donations to the ACLU in honor of the ACLU’s upcoming 100th anniversary. Attached as **Exhibit K** is a true and correct screen image of the website <https://www.aclu.org/bio/mark-wier>, as visited on June 2, 2021. This website includes a biography of Mark Wier, the ACLU’s Chief Development Officer, and explains that the Centennial Campaign began in 2014.

32. Attached as **Exhibit L** is a true and correct image of the website <https://www.aclu.org/bio/anthony-d-romero>, as visited on June 2, 2021.

33. Attached as **Exhibit M** is a true and correct image of the website <https://www.aclu.org/about/aclu-history>, as visited on June 2, 2021.

Dated: New York, New York
June 4, 2021

/s/ Stephanie Teplin
Stephanie Teplin