



face of the subpoena itself or in a notice accompanying it), and the witness, in moving to quash, must establish either that the discovery sought is “utterly irrelevant” to the action or that the “futility of the process to uncover anything legitimate is inevitable or obvious.” Should the witness meet this burden, the subpoenaing party must then establish that the discovery sought is “material and necessary” to the prosecution or defense of an action, i.e., that it is relevant.

23 NY3d 32, 34 (2014).

Petitioner has satisfied the initial burden of stating the circumstances or reasons underlying the subpoena. With the exception of one category of demanded documents, the ACLU has failed to demonstrate that the information sought is utterly irrelevant to the action.

However, this Court finds that the documents requested “concerning Ms. Heard’s role as an ‘ambassador’ for the ACLU” are irrelevant to petitioner’s defamation case, which pertains only to the statements Ms. Heard made in her Op-Ed, and petitioner has failed to otherwise demonstrate why such documents are material and necessary to his prosecution.

ACLU’s argument that the subpoena is improper as Mr. Depp could obtain the information from another source (i.e. Heard) is unavailing, as “[CPLR] [s]ection 3101(a)(4) imposes no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source.” Kapon v Koch, 23 NY3d 32, 38 (2014) (holding “so long as the disclosure is relevant to the prosecution or defense of an action, it must be provided by the nonparty”).

Finally, this Court finds that the confidentiality protections proposed by Depp for any trade secrets or proprietary business information produced by the ACLU or its representatives are sufficient to protect the interests of respondents.

The Court has considered respondents’ remaining arguments and finds them to be unavailing and/or non-dispositive.

Thus, for the reasons stated herein, the petition is granted in part and denied in part, and respondents are ordered to comply with all subpoenas with the exception of those provisions of the subpoenas duces tecum that requests documents pertaining to Ms. Heard’s role as a brand ambassador for the ACLU.



ARTHUR F. ENGORON, J.S.C.

7/22/2021  
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: