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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 NEWS GROUP NEWSPAPERS  
14 LIMITED, a company incorporated under  
15 the laws of England and Wales, and DAN  
16 WOOTTON, an individual,

17 Petitioners,

18 v.

19 MÉLANIE INGLESSIS, an individual,

20 Respondent.

Case No. 2:20-mc-00020-UA-PJW

**MOTION TO QUASH ORDER  
COMPELLING MELANIE  
INGLESSIS TO PROVIDE  
TESTIMONY IN FOREIGN  
PROCEEDING UNDER 28 U.S.C.  
§1782 (DKT. 7)**

[Declaration of Anya Goldstein and  
[Proposed] Order Filed Concurrently  
Herewith]

*Hon. Patrick J. Walsh*

Hearing Date: June 15, 2020  
Hearing Time: 1:30 p.m.  
Courtroom: 790

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1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 15, 2020, at 1:30 p.m., or as soon  
3 thereafter as the matter may be heard by the Honorable Patrick J. Walsh, in Courtroom  
4 790 of the above-entitled Court, Roybal Federal Building and United States  
5 Courthouse, 255 E. Temple St., Los Angeles, CA, 90012, 7th Floor,<sup>1</sup> Respondent  
6 Mélanie Inglessis will and hereby does move the Court for an Order quashing the *ex*  
7 *parte* Order Compelling Mélanie Inglessis to Provide Testimony in Foreign Proceeding  
8 Under 28 U.S.C. §1782 (Dkt. 7) (“§1782 Order”). At a minimum, the Court should  
9 modify the §1782 Order such that it does not require Ms. Inglessis to leave her house  
10 before state and local stay-at-home orders are lifted.

11 Ms. Inglessis makes this motion on the grounds that the Court should decline to  
12 exercise its discretionary power to compel Ms. Inglessis, an unwilling, uninvolved third  
13 party, to testify in a foreign proceeding under §1782 because:

- 14 • NGN could procure her testimony without §1782;
- 15 • Comity and parity weigh against the grant of discretionary relief;
- 16 • NGN’s request poses a serious risk to and places an undue burden on  
17 Ms. Inglessis in light of COVID-19, the death threats and harassment she  
18 has already faced, and the risks to her career;
- 19 • The burden placed on Ms. Inglessis is “undue” because NGN rejected her  
20 reasonable alternative proposal; and

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22  
23 <sup>1</sup> At the time of filing, the Chief Judge’s Order 20-042 activating the Continuity  
24 of Operations Plan (“COOP”) had been extended through June 1, 2020, (*See* General  
25 Order No. 20-05.) The COOP currently provides that “hearings in civil cases will only  
26 go forward by video or telephonic conference.” (*Id.*, ¶4.) Should the COOP be  
27 extended, Ms. Inglessis respectfully requests a video or telephonic hearing, or  
28 alternatively submission of the matter without hearing, such that the parties may  
receive a ruling before NGN seeks to compel Ms. Inglessis’s testimony between  
July 17 and July 28, 2020. (Goldstein Decl., ¶2.)

- NGN’s misuse of the §1782 process should not be rewarded with discretionary relief at the expense of an uninvolved third party.

This Motion is based on this Notice and supporting Memorandum of Points and Authorities; the concurrently-filed Declaration of Anya Goldstein (“Goldstein Decl.”); the documents filed in this action; the arguments of counsel; and any other matter that the Court may properly consider.

This Motion is made following the conferences of counsel pursuant to Local Rule 7-3, which took place on April 10, 2020, April 29, 2020, May 4, 2020, May 12, 2020, and May 14, 2020, between undersigned counsel and counsel of record for Petitioners News Group Newspapers Limited and Dan Wootton (collectively, “NGN”). The parties were unable to reach a resolution that would obviate the need for this Motion.

Respectfully submitted,

DATED: May 16, 2020

SUMMA LLP

By /s/ Anya J. Goldstein

Anya J. Goldstein  
Attorneys for Respondent  
Mélanie Inglessis

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Twice in the midst of this global pandemic, NGN has sought *ex parte* relief from  
4 this Court due to emergencies of its own making. Both times, NGN tried to force  
5 uninvolved third-party witness Mélanie Inglessis to travel to a semi-public place to give  
6 testimony in violation of state and local stay-at-home orders and CDC guidance.

7 Relief under §1782 is committed to this Court’s sound discretion, and NGN’s  
8 behavior in this matter precludes such relief. NGN has misused the §1782 process,  
9 disregarded this Court’s rules, and ignored the health and safety of Ms. Inglessis (and  
10 the community). NGN also rejected a reasonable alternative proposal that would have  
11 provided NGN with the testimony it seeks without unduly burdening Ms. Inglessis or  
12 taking this Court’s time. Ms. Inglessis has offered to provide deposition testimony in a  
13 related U.S. case—with identical issues—to satisfy NGN’s perceived need for her  
14 testimony while giving her some measure of protection. Despite offering the same  
15 accommodation to other U.S. witnesses, NGN has inexplicably rejected her offer.

16 In light of NGN’s actions and the undue burden on Ms. Inglessis, this Court  
17 should quash the §1782 Order.

18 **II. BACKGROUND.**

19 The actor Johnny Depp sued NGN in the U.K. in 2018. (Dkt. 2, at 2.) The U.K.  
20 trial was originally scheduled for March 23, 2020. (*Id.*) NGN knew since at least  
21 December 4, 2019 that Ms. Inglessis would not voluntarily participate in the U.K. trial.  
22 (Goldstein Decl., ¶3.) Yet it sat on its hands until March 5, 2020—just two and a half  
23 weeks before the U.K. trial was set to start—before initiating this proceeding via *ex*  
24 *parte* application. (Dkt. 2.) In other words, NGN filed this action after the point at  
25 which it could have filed a regularly-noticed motion to be heard before its foreign trial  
26 began, *see* Local Rule 6-1, despite knowing of the grounds for its supposedly “crucial”  
27 application for over three months. (Dkt. 2, at 3.) Unlike in its other §1782 action,  
28 against witness Laura Divinere, NGN has provided no explanation at all for this delay.

1 (*Compare NGN v. Laura Divenere, et al.*, No. 2:20-mc-27-ODW (C.D. Cal. March 16,  
2 2020), NGN Application (Dkt. 1), at 5 (explaining, in §1782 request filed on March 16,  
3 2020, that “it only became apparent to [NGN] that the Application would indeed be  
4 required on March 10, 2020”) *with* Dkt. 2 (no mention of December 4, 2019 to March  
5 5, 2020 delay or reason for three month delay).)

6 NGN did not notify Ms. Inglessis of the filing of the *ex parte*, so she was not  
7 provided an opportunity to be heard before the Court issued its §1782 Order (Dkt. 7).  
8 (Goldstein Decl., ¶4.) The *ex parte* §1782 Order required Ms. Inglessis, once served, to  
9 appear to testify in the U.K. trial via videolink at the Beverly Hills Bar Association on  
10 April 1, 2020, or, upon 48 hours’ notice from NGN, to appear to testify at any other  
11 location in Los Angeles County, on that date or on any other date set by NGN. (Dkt.  
12 7.) By the time NGN filed this first *ex parte* application, both California and Los  
13 Angeles had declared a state of emergency due to COVID-19. (Goldstein Decl., ¶5.)

14 NGN was unable to serve Ms. Inglessis with the §1782 Order in the three days it  
15 had apparently allotted to itself to do so before its trial. (Dkt. 8, at 2.) So, on March  
16 17, 2020, it filed a second emergency *ex parte* application, this one less than a week  
17 before the U.K. trial was set to begin. (Dkt. 8.) At that point, President Trump had  
18 already declared a national emergency due to COVID-19, schools had closed across the  
19 state, and Chief Judge Phillips had issued a general order suspending jury trials in the  
20 Central District. (Dkt. 8; Goldstein Decl., ¶6; General Order No. 20-02.) And, as late  
21 as March 20, 2020, after Governor Newsom had ordered a legally-enforceable,  
22 statewide shelter-in-place order, NGN persisted in its attempts to compel Ms. Inglessis  
23 to fly from the Florida Keys, where she was located at the time, back to California, in  
24 order to testify in Beverly Hills, where she would no doubt have been required to  
25 interact with other, unknown individuals, on April 1, 2020. (Goldstein Decl., ¶7.)

26 Despite being in contact with Ms. Inglessis on other matters, NGN did not  
27 provide notice to Ms. Inglessis, seek her position, or provide her position to the Court  
28 in this second *ex parte* application. (*Id.*, ¶8.) Instead, NGN first notified Ms. Inglessis

1 of the second *ex parte* application two days after its filing, at 1:56 p.m. on March 19,  
2 2020, after both NGN and Ms. Inglessis had received a call from the Court’s  
3 Courtroom Deputy seeking to schedule a telephonic hearing for the next day. (*Id.*)  
4 Ms. Inglessis filed her opposition within 12 hours. (*Id.*) As explained in that  
5 opposition, the relief NGN sought (service via counsel) was entirely unauthorized by  
6 relevant law (or a good faith argument for extension of law), as evidenced by NGN’s  
7 failure to cite a single California or binding case in support of its position. (Dkt. 10, at  
8 2-4.) Moreover, *ex parte* relief was entirely inappropriate because the “emergency”  
9 was of NGN’s own making. (*Id.*, at 4-6.)

10 Approximately 6 hours after Ms. Inglessis filed her opposition, NGN sought to  
11 postpone the telephonic hearing (via email to the Court’s Courtroom Deputy).  
12 (Goldstein Decl., ¶9.) NGN eventually withdrew this second *ex parte* application (via  
13 email to the Courtroom Deputy) because the U.K. trial was continued—not because it  
14 recognized the unreasonable risk posed to Ms. Inglessis by its request. (*Id.*, ¶10.)

15 The U.K. trial has now been rescheduled for July 7, 2020. NGN has notified Ms.  
16 Inglessis it will seek to compel her testimony on some date between July 17 and July  
17 28, 2020, irrespective of the status of the COVID-19 pandemic at that time. (*Id.*, ¶2.)

18 In an attempt to avoid the need to file this motion, Ms. Inglessis offered to be  
19 deposed in the related U.S. case, *Depp v. Heard*, Civil Action No. CL-2019-2911,  
20 currently pending in the Circuit Court of Fairfax County, Virginia, prior to the U.K.  
21 trial (so long as she could do so safely, such as by videolink from her own home if  
22 necessary), such that NGN could use her deposition testimony in the U.K. trial. (*Id.*,  
23 ¶11.) NGN did not dispute that key issue in its U.K. action—whether Mr. Depp beat  
24 his then-wife, Amber Heard—is identical to the key issue in Mr. Depp’s U.S.  
25 defamation lawsuit against Ms. Heard. (Dkt. 2, at 3; Goldstein Decl., ¶11.) NGN did  
26 not dispute that it seeks the exact testimony that counsel in the U.S. matter would  
27 seek—whether Ms. Inglessis saw bruises on Amber Heard’s face in December 2015.  
28 (Dkt. 2, at 4; Goldstein Decl., ¶11.) NGN did not dispute that the deposition testimony



1 would be admissible in the U.K. trial. (Goldstein Decl., ¶11.) In fact, for other U.S.  
2 witnesses, NGN has forgone the §1782 process in favor of using U.S. deposition  
3 testimony. (*Id.*) But NGN rejected Ms. Inglessis’s offer, stating the deposition  
4 testimony “would carry less evidential weight in the English proceedings” than live  
5 testimony and, therefore, that it preferred to pursue its §1782 request. (*Id.*)

6 After multiple meet-and-confers failed to resolve Ms. Inglessis’s concerns, she  
7 was forced to bring the instant Motion to Quash.

### 8 III. §1782 RELIEF IS DISCRETIONARY.

9 Section 1782 allows a court to order a person in its district to provide evidence in  
10 a foreign proceeding if three elements are met: (1) the witness resides or is found in the  
11 district where the application is made; (2) the testimony is for use in a proceeding  
12 before an international or foreign tribunal; and (3) the application is made by the  
13 tribunal or an “interested person.” 28 U.S.C. §1782(a).

14 NGN spends the entirety of its §1782 request explaining why it meets these  
15 minimum statutory requirements. (Dkt. 2.) But these requirements are not in dispute.  
16 The issue is whether NGN’s conduct in pursuing Ms. Inglessis’s testimony, and the  
17 undue burden it has placed upon her, render it undeserving of discretionary relief.

18 In *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), the  
19 Supreme Court’s seminal decision on §1782, the Court emphasized that “a district court  
20 is not required to grant a §1782(a) discovery application simply because it has the  
21 authority to do so.” *Id.* at 264. Instead, relief under §1782 is discretionary. *Id.*; *see*  
22 *also* 28 U.S.C. §1782(a) (“The district court . . . may order [the witness] to give his  
23 testimony . . . .”) (emphasis added). In other words, “[w]hether, and to what extent, to  
24 honor a request for assistance pursuant to § 1782 has been committed by Congress to  
25 the sound discretion of the district court.” *United Kingdom v. United States*, 238 F.3d  
26 1312, 1318-19 (11th Cir. 2001).

27 In *Intel*, the Supreme Court listed four factors to be considered in the exercise of  
28 that discretion: (1) whether the person from whom testimony is sought is a participant

1 in the foreign proceeding and, if a nonparticipant, whether “their evidence, available in  
2 the United States, may be unobtainable absent §1782 aid”; (2) the nature of the foreign  
3 tribunal, the character of the proceedings underway abroad, and the receptivity of the  
4 foreign government or the court or agency abroad to U.S. federal court judicial  
5 assistance; (3) whether the request conceals an attempt to circumvent foreign proof-  
6 gathering restrictions or other policies of a foreign country or the U.S.<sup>2</sup>; and (4)  
7 whether the request is unduly intrusive or burdensome. *Intel Corp.*, 542 U.S. at 264-65.

8 The *Intel* factors are neither dispositive nor exhaustive: courts may reject §1782  
9 requests where the applicant is undeserving of discretionary relief for some other  
10 reason. *See, e.g., Comcast Cable Commc’ns, LLC v. Hourani*, 190 F. Supp. 3d 29, 35  
11 (D.D.C. 2016) (exercising discretion to deny §1782 request for information for U.K.  
12 proceeding where, *inter alia*, affected party objected to release of requested  
13 information); *In re IPC Do Nordeste, LTDA*, No. 12-50624, 2012 WL 4448886, at \*8  
14 (E.D. Mich. Sept. 25, 2012) (exercising discretion to deny §1782 request, where, *inter*  
15 *alia*, same information would be available by less burdensome means); *In re Hulley*  
16 *Enterprises, Ltd.*, 358 F. Supp. 3d 331, 351-52, (S.D.N.Y. 2019), *aff’d*, 400 F. Supp. 3d  
17 62 (S.D.N.Y. 2019) (noting “case law makes clear that delay appropriately counsels  
18 against providing section 1782 assistance when a court determines whether to exercise  
19 its discretion under section 1782,” collecting cases holding the same, and declining to  
20 exercise discretion in part due to petitioner’s delay); *In re Degitechnic*, 2007 WL  
21 1367697, at \*5 (W.D. Wash. May 8, 2007) (quashing §1782 Order because, *inter alia*,  
22 “[g]iven Digitechnic’s complete failure to justify the timing of this request, the Court  
23 finds little difficulty with the idea that the instant discovery proceedings will unduly  
24 burden Microsoft”); *In re: the Application of TJAC Waterloo, LLC*, No. 3:16-MC-9-

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<sup>2</sup> The second and third factors are sometimes analyzed together and referred to  
by the shorthand “comity and parity concerns.” *See, e.g., Intel Corp.*, 542 U.S. at 261  
(noting “comity and parity concerns may be important as touchstones for a district  
court’s exercise of discretion in particular cases”).

1 CAN, 2016 WL 1700001 (N.D. Ind. Apr. 27, 2016) (determining that, even if it had  
 2 jurisdiction, court would not grant 782 request on grounds of unreasonable delay); *In re*  
 3 *FG Wilson (Eng’g) Ltd.*, No. 10-20843-MC, 2011 WL 5361073, at \*1 (S.D. Fla. Nov.  
 4 7, 2011) (exercising discretion to quash §1782 order where order not timely served);  
 5 *Euromepa S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1101 n.6 (2d Cir. 1995) (noting  
 6 district court’s discretion to deny a §1782 request based on applicant’s bad faith or  
 7 unreasonable conduct); *see also Intel Corp.*, 542 U.S. at 266 (after determining that the  
 8 minimum statutory requirements of §1782(a) were met, remanding for the district  
 9 court’s determination of “what, if any, assistance is appropriate”).<sup>3</sup>

#### 10 IV. THE *INTEL* FACTORS ARE FATAL TO NGN’S REQUEST

##### 11 A. NGN could procure Ms. Inglessis’s testimony without §1782, even 12 though she is not a participant in the foreign proceeding.

13 As explained above, NGN does not dispute that it seeks the exact testimony that  
 14 counsel in the U.S. matter will seek—whether Ms. Inglessis saw bruises on Amber  
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16 <sup>3</sup> In the meet-and-confer, NGN suggested—without any authority—that some  
 17 different standard may apply because the Court has already entered the §1782 Order.  
 18 That is incorrect. NGN sought—and the Court granted—the Order *ex parte*, with no  
 19 notice to Ms. Inglessis. At the time, NGN told the Court that Ms. Inglessis would have  
 20 a later opportunity to challenge the §1782 Order. (Dkt. 2, at 8.) Other than a being a  
 21 violation of local rules (*see* Part V below), that was not improper, so long as Ms.  
 22 Inglessis is permitted to raise objections and exercise her due process rights now via a  
 motion to quash. *See In re Letters Rogatory from Tokyo Dist., Tokyo, Japan*, 539 F.2d  
 1216, 1219 (9th Cir. 1976).

23 But contrary to NGN’s suggestion, the Court must apply the §1782 standards  
 24 without deference to its prior *ex parte* Order, and NGN retains the burden of showing  
 25 that §1782 assistance is warranted, because this is Ms. Inglessis’s first opportunity to  
 26 object. *See, e.g., In re Microsoft Corp.*, No. C06-80038 JF (PVT), 2006 WL 825250, at  
 27 \*2 n.3 (N.D. Cal. Mar. 29, 2006) (“Because the order allowing the subpoenas to be  
 28 served was issued on an *ex parte* basis, this is Sun and Oracle’s first opportunity to  
 object to Microsoft’s motion for assistance under Section 1782. Thus, the court will  
 apply to this motion the standards applicable to requests for assistance under Section  
 1782, and will deem that the burden of showing such assistance is warranted remains  
 on Microsoft.”) (citing *In re Letters Rogatory*, 539 F.2d at 1219).

1 Heard's face in December 2015. (Goldstein Decl., ¶11.) Ms. Inglessis offered to be  
2 deposed in the U.S. case prior to the U.K. trial (provided that she was able to do so  
3 safely). (*Id.*) NGN rejected Ms. Inglessis's offer, stating as its reason that her  
4 deposition testimony "would carry less evidential weight in the English proceedings"  
5 than live testimony and, therefore, that it preferred to pursue its §1782 request. (*Id.*)  
6 NGN did not dispute that the deposition testimony would be admissible in the U.K.  
7 trial. And in fact, for other U.S. witnesses, NGN has forgone the §1782 process in  
8 favor of using U.S. deposition testimony. (*Id.*)

9 Because NGN could procure Ms. Inglessis's testimony without resort to §1782,  
10 but has chosen not to because of a perceived tactical advantage in its foreign case, this  
11 factor weighs heavily against NGN.

12 **B. Comity and parity weigh against the grant of discretionary relief.**

13 Comity and parity also weigh against granting NGN discretionary relief. One of  
14 the "twin aims" of §1782 was "encouraging foreign countries by example to provide  
15 similar assistance to our courts." *Intel Corp.*, 542 U.S. at 252. The U.K. has declined  
16 the invitation, forcing U.S. litigants to navigate the time-consuming and expensive  
17 Hague Convention process if they want to seek trial evidence in the U.K., and refusing  
18 altogether to allow for pretrial discovery in aid of U.S. litigation. *See generally*  
19 Timothy P. Harkness, et al., *Discovery in International Civil Litigation: A Guide for*  
20 *Judges*, Federal Judicial Center (2015), at 80.

21 Nor should the fact that the U.K. court has apparently indicated its willingness to  
22 accept Ms. Inglessis's testimony (if procured) sway this Court's decision. *See, e.g.,*  
23 *United Kingdom*, 238 F.3d at 1319 ("[T]he district court was not obliged to grant the[]  
24 application simply by virtue of the English court's order or for any other reason.").  
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1 **C. NGN’s request poses a serious risk to and places an undue burden on**  
2 **Ms. Inglessis.**

3 **1. COVID-19**

4 This Court hardly needs a primer on the devastation wrought by COVID-19.  
5 The pandemic is an ongoing, once-in-a-century public health crisis. As of May 15,  
6 2020, there have been a breathtaking 1.4 million confirmed cases and roughly 86,000  
7 deaths from COVID-19 in the United States alone. (Goldstein Decl., ¶12.) Despite the  
8 early institution of drastic public health measures, Los Angeles is a COVID-19 hotspot,  
9 with nearly half of California’s confirmed cases and over half of California’s deaths.  
10 (*Id.*) The pandemic remains out of control and extremely dangerous.

11 The continued severity of the crisis is reflected in the ongoing state and local  
12 stay-at-home orders. The Los Angeles County Public Health Director stated this week  
13 that the county’s stay-at-home orders will “with all certainty” be extended for the next  
14 three months, *i.e.*, into early August 2020. (*Id.*) The World Health Organization, the  
15 CDC, and numerous state and local health agencies continue to direct individuals not to  
16 travel or meet in groups. (*Id.*) Courthouses in the Central District of California remain  
17 closed except for the most urgent of matters, as do the county courthouses. (*Id.*) Grand  
18 and petit juries remain suspended. (*Id.*) The county has just recently ordered that  
19 masks be worn at all times when Angelenos leave their homes for purposes permitted  
20 by the stay-at-home orders. (*Id.*)

21 The §1782 Order sought by NGN compels Ms. Inglessis to appear at a semi-  
22 public place (either the Beverly Hills Bar Association or any other location in Los  
23 Angeles County suitable to NGN) on 48 hours’ notice, without regard to the status of  
24 the COVID-19 pandemic or state and local stay-at-home orders. (Dkt. 7, ¶5.) NGN  
25 has notified Ms. Inglessis that it currently intends to take her testimony between July 17  
26 and July 28, 2020 at the Beverly Hills Bar Association. (Goldstein Decl., ¶2.) NGN  
27 intends to do so even if stay-at-home orders remain in effect, as they are expected to be.

1 (*Id.*) NGN intends to require Ms. Inglessis to remove any mask she wears while she is  
2 testifying. (*Id.*)

3 NGN's position, while upsetting, is not surprising in light of the cavalier attitude  
4 it has taken towards the COVID-19 crisis's effects on Ms. Inglessis and this Court  
5 throughout this process. As noted, NGN initiated this proceeding via an urgent *ex parte*  
6 application on March 5, 2020, after both California and Los Angeles had declared a  
7 state of emergency—despite the fact that it had known for over three months that Ms.  
8 Inglessis would not testify voluntarily in the U.K. trial. (Dkt. 2; Goldstein Decl., ¶¶3,  
9 4.) It then filed a second *ex parte* application seeking emergency action from the Court  
10 on March 17, 2020, after President Trump had declared a national emergency, schools  
11 had closed across the state, and Chief Judge Phillips had issued a general order  
12 suspending jury trials in the Central District. (Dkt. 8; Goldstein Decl., ¶6; General  
13 Order No. 20-02.) And as late as March 20, 2020, after Governor Newsom had ordered  
14 a legally-enforceable, statewide shelter-in-place order, NGN persisted in its attempts to  
15 compel Ms. Inglessis to fly from the Florida Keys to California, in order to testify at the  
16 Beverly Hills Bar Association on April 1, 2020. (Goldstein Decl., ¶7.) This, despite  
17 the fact that Ms. Inglessis could not have been compelled to be a trial witness in the  
18 Central District at the time. (*Id.*, ¶6.) NGN finally withdrew *its ex parte* application  
19 only because the U.K. trial was continued—not because it recognized the unreasonable  
20 risk posed to Ms. Inglessis by its request. (*Id.*, ¶10.)

21 Armed with a new trial date, NGN once again seeks to compel Ms. Inglessis to  
22 testify outside of her home without regard to the status of the COVID-19 pandemic and  
23 stay-at-home orders at the time of her intended testimony. (*Id.*, ¶2.) This Court should  
24 not put Ms. Inglessis in the position of filing her own emergency *ex parte* application in  
25 July if, as NGN has stated it intends to do, NGN again seeks to compel her testimony in  
26 violation of stay-at-home orders and public health guidance. (*Id.*, ¶2.) Instead, the  
27 Court should review NGN's track record, and decline to grant discretionary §1782  
28

1 relief based on the undue burden the request places on Ms. Inglessis in light of COVID-  
2 19.<sup>4</sup>

3 **2. NGN's request puts Ms. Inglessis's safety and career at risk.**

4 Even were it not for COVID-19, NGN's request is unduly burdensome because it  
5 puts Ms. Inglessis's safety and career at risk. As NGN recognized in its initial  
6 application, Ms. Inglessis has no interest in being a witness in this case. (Dkt. 2, at 5-  
7 6.) She is an uninvolved third party. (*Id.*) She has made no public statements about  
8 this case. (Goldstein Decl., ¶13.) Nevertheless, based on her perceived association  
9 with this matter and anticipated testimony, which apparently is presumed to be  
10 favorable to Ms. Heard and therefore to NGN, Ms. Inglessis has received death threats  
11 and faced online harassment. (*Id.*) This case, and the related U.S. case, are high-  
12 profile matters involving international celebrities and are receiving intense media  
13 scrutiny. (*Id.*) Ms. Inglessis genuinely fears for her safety as it is. (*Id.*) If she is  
14 forced to testify for NGN, and, by extension, for its controversial tabloid, *The Sun*, the  
15 threats and harassment she faces will undoubtedly escalate.

16 NGN's request also jeopardizes Ms. Inglessis's career. Ms. Inglessis is an  
17 acclaimed celebrity and high-fashion makeup artist. (*Id.*, ¶14.) Her clients place a  
18 premium on their privacy, frequently requiring her to sign non-disclosure agreements  
19 before working with her. (*Id.*) If NGN's request is granted and Ms. Inglessis is forced  
20 to testify publicly in this high-profile matter about things she saw in a celebrity client's  
21 home while she was working, Ms. Inglessis's career will undoubtedly suffer.

22 Despite being aware of Ms. Inglessis's concerns, NGN has made no efforts to  
23 seek confidential treatment of any testimony procured from Ms. Inglessis or otherwise  
24 mitigate the burden its request places upon her. (*Id.*, ¶15.)

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28 <sup>4</sup> The Court could fashion its order to be without prejudice to a renewed  
application by NGN should COVID-19 conditions change meaningfully by July 2020.  
At a minimum, if the Court declines to quash the §1782 Order, it should at least modify  
the Order to be contingent on the lifting of state and local shelter-in-place orders.

1           **3. The burden placed on Ms. Inglessis is “undue” because NGN**  
2           **rejected her reasonable alternative proposal.**

3           As explained above, Ms. Inglessis proposed a reasonable alternative that would  
4 not have imposed an undue burden on her: she agreed to be deposed in the U.S. matter  
5 such that NGN could use her deposition testimony in the U.K. trial. (*Id.*, ¶11.) This  
6 proposal would have resolved both parties’ concerns. NGN would have Ms. Inglessis’s  
7 testimony to use in its case (again, the issues in the cases are identical). And Ms.  
8 Inglessis would only have to testify once—in a forum where she expects to be subject  
9 to the parties’ subpoena power, rather than in a forum where her participation is up to  
10 this Court’s discretion—and could do so safely, from her home if necessary.

11           NGN’s rejection of this proposal—despite not disputing that the testimony in the  
12 U.S. matter would be identical to that sought in the U.K. matter, or that the testimony  
13 would be admissible in the U.K., or that, for other U.S. witnesses, it is using U.S.  
14 deposition testimony rather than testimony procured via §1782—makes its request not  
15 merely extremely burdensome, but unduly so.

16           **V. NGN’S MISUSE OF THE §1782 PROCESS SHOULD NOT BE**  
17           **REWARDED WITH DISCRETIONARY RELIEF WHILE**  
18           **MS. INGLESSIS, AN UNINVOLVED THIRD PARTY, IS PUNISHED.**

19           NGN has misused the §1782 process and flouted this Court’s rules throughout  
20 the course of this proceeding.

21           NGN’s inexcusable delay in filing its §1782 application. As noted, NGN knew  
22 since at least December 4, 2019, that Ms. Inglessis would not voluntarily participate in  
23 the U.K. trial. (Goldstein Decl., ¶3.) Yet it sat on its hands for over three months, until  
24 March 5, 2020—just two and a half weeks before the U.K. trial was due to start—to  
25 initiate this proceeding. (Dkt. 2.) NGN has provided no explanation for this delay.

26           NGN’s improper *ex parte* application seeking service via counsel. As noted  
27 above, when NGN was then unable to serve Ms. Inglessis in the three days it had given  
28 to itself to do so, it filed a second emergency *ex parte* application, this one less than a



1 week before the U.K. trial. (Dkt. 8.) The relief NGN sought (service via counsel) was  
2 entirely unauthorized by relevant law. (Dkt. 10, at 2-4.) Moreover, *ex parte* relief was  
3 entirely inappropriate because the “emergency” was of NGN’s own making. (*Id.*, at 4-  
4 6.) NGN implicitly recognized at least the former of these points when it withdrew its  
5 *ex parte* and never re-filed it, instead seeking to serve Ms. Inglessis properly.

6 NGN’s improper use of emergency procedures was especially egregious in the  
7 early days of the COVID-19 pandemic given the enormous strain on the Court’s  
8 emergency procedures at that time.

9 NGN’s misleading assertions to the Court of what Ms. Inglessis witnessed and  
10 how it came to know what she witnessed. In its application, NGN stated that it learned  
11 Ms. Inglessis’s anticipated testimony from Ms. Heard’s London-based barrister. (Dkt.  
12 2, at 4.) It also implied to the Court that the barrister spoke to Ms. Inglessis. (*Id.* (the  
13 barrister “acted as an intermediary between [NGN] and Ms. Inglessis.”)) That is not  
14 the case. As far as she is aware, Ms. Inglessis never spoke to Ms. Heard’s barrister.  
15 (Goldstein Decl., ¶16.) And some of what NGN implies Ms. Inglessis witnessed is  
16 incorrect or misleading. (*Id.*)

17 NGN’s misrepresentations to the Court and/or to Ms. Inglessis of U.K. law. In  
18 its §1782 application, NGN stated that “[t]aking [Ms. Inglessis’s] deposition is not an  
19 option because deposition testimony is not admissible under English law. Therefore  
20 this Application is the only way by which her testimony at trial can be obtained.” (Dkt.  
21 2-1, at 3.) Yet in its §1782 application in the *Divenere* case filed just 11 days later,  
22 NGN made a different representation as to English law, stating, “[t]o take Ms.  
23 Divenere’s deposition would not be as effective as live-cross examination evidence.”  
24 *NGN v. Laura Divenere, et al.*, No. 2:20-mc-27-ODW (C.D. Cal. March 16, 2020),  
25 NGN Application (Dkt. 1), at 8. And NGN has told Ms. Inglessis, both before and after  
26 its filing, that deposition testimony merely “would carry less evidential weight” than  
27 live testimony. (Goldstein Decl., ¶11.) Moreover NGN intends to use the U.S.  
28 deposition testimony of other witnesses, for whom it did not initiate §1782 proceedings,

1 in the U.K. trial. (*Id.*) Thus, NGN’s initial representations to this Court, which it has  
2 never corrected, that taking Ms. Inglessis’s deposition is “not an option because  
3 deposition testimony is not admissible under English law” and that its §1782  
4 application is “the only way by which her testimony at trial can be obtained” appear to  
5 be false.

6 NGN’s flagrant violations of this Court’s rules. NGN has flouted this Court’s  
7 rules numerous times, from failing to submit a proposed order with its initial  
8 application to failing to provide opposing counsel’s contact information in its *ex parte*  
9 applications to emailing the Courtroom Deputy in order to postpone hearings and  
10 withdraw filings rather than making these requests via public filings. (Dkt. 2; Dkt. 8;  
11 Goldstein Decl., ¶¶9, 10.)

12 But NGN’s rules violations have gone beyond the technical. Despite being in  
13 contact with Ms. Inglessis on other matters, NGN did not provide notice to  
14 Ms. Inglessis or seek her position on its *ex parte* regarding service. (*Id.*, ¶8.) Had  
15 NGN provided *ex parte* notice and sought Ms. Inglessis’s position, Ms. Inglessis would  
16 have informed NGN of the authority that demonstrated its application was baseless, and  
17 NGN would not have needlessly wasted the Court’s and Ms. Inglessis’s time preparing  
18 for hearing on an emergency *ex parte* that was ultimately withdrawn.

19 NGN’s prior COVID-19 related conduct. As noted above, NGN previously  
20 sought to force Ms. Inglessis to fly cross-country in the midst of this pandemic to  
21 testify in a semi-public place, in violation of stay-at-home orders and the guidance of  
22 all relevant public health authorities. It withdrew its request at the time only because its  
23 trial was postponed, not based on any recognition of the risks to Ms. Inglessis.

24 \* \* \*

25 Based on NGN’s conduct above, it does not deserve a grant of discretionary  
26 relief at Ms. Inglessis’s expense.

1 **VI. CONCLUSION.**

2 Because NGN has misused the §1782 process, because NGN has acted without  
3 regard to this Court’s rules or to Ms. Inglessis’s and the community’s health and safety,  
4 and because NGN has rejected a reasonable alternative proposal that would have  
5 provided NGN with the testimony it seeks without unduly burdening Ms. Inglessis or  
6 taking this Court’s time, the Court should grant this Motion to Quash and in so doing  
7 deny NGN the discretionary relief under §1782 that it seeks.

8  
9 Respectfully submitted,

10 DATED: May 16, 2020

SUMMA LLP

11 By /s/ Anya J. Goldstein

12 Anya J. Goldstein  
13 Attorneys for Respondent  
14 Mélanie Inglessis  
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