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Newspapers Limited and Dan Wootton

6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10 NEWS GROUP NEWSPAPERS  
11 LIMITED, a company incorporated  
under the laws of England and Wales,  
12 and DAN WOOTTON, an individual

13 Petitioners,

14 v.

15 MELANIE INGLESSIS, an individual,

16 Respondent.

CASE No. 2:20-mc-00020 UA (PJWx)

**PETITIONERS' OPPOSITION TO  
RESPONDENT'S MOTION TO  
QUASH ORDER COMPELLING  
RESPONDENT TO PROVIDE  
TESTIMONY IN FOREIGN  
PROCEEDING UNDER 28 U.S.C.  
§1782**

[Filed Concurrently with Request for  
Judicial Notice, Objections to Evidence  
In Support of Motion, Declaration of  
Jennifer Robinson, Declaration of Louis  
Charalambous, and Declaration of  
Alexander Rufus-Isaacs]

*Hon. Patrick Walsh*

Date: June 10, 2020  
Time: 1:30 pm  
Crtrm.: Telephonic Hearing

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1 **I. SUMMARY OF ARGUMENT**

2 Petitioners News Group Newspapers Limited (“NGN”) and Dan Wootton  
3 (jointly, “Petitioners”) oppose respondent Melanie Inglessis’ Motion to Quash the  
4 Order entered by this court on March 11<sup>1</sup> which compels her to give live testimony  
5 via video-link in a trial in the English High Court (the “Order”).

6 This Court’s decision to issue the Order was correct. In a related case  
7 (“Divenere Action”), Judge Wright granted Petitioners’ application for an identical  
8 order on March 27 over the respondent’s objections. (See Section .. below.)

9 As evidenced by a declaration that she signed in 2019, Ms. Inglessis’  
10 testimony is of critical importance at the trial. The alternative proposed by Ms.  
11 Inglessis (taking her deposition) is not acceptable because it would place  
12 Respondents at a significant disadvantage at trial.

13 All reasonable steps will be taken to protect Ms. Inglessis’ health. The offices  
14 and conference room in question will be cleaned and disinfected and social  
15 distancing protocols will be observed. In addition to herself and counsel, no one is  
16 likely to be in the office when she testifies except for an IT technician. The Motion  
17 exaggerates the risk to Ms. Inglessis of testifying in a private office at a time when  
18 courthouses, retail stores and other public places in Los Angeles have, or will have,  
19 reopened.

20 Lastly, the Motion should be denied because it contains important factual  
21 misstatements, falsely accuses Petitioners of misconduct, and is not supported by  
22 admissible evidence.

23 **II. PETITIONERS DID NOT DELAY IN MAKING THE APPLICATION**

24 Petitioners concede that on December 4, 2019, their English lawyers were  
25 told by Ms. Inglessis’ lawyer, Anya Goldstein, that her client would not give

26 \_\_\_\_\_

27 <sup>1</sup> All dates are in 2020 unless otherwise indicated.

28

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1 evidence in the English trial voluntarily. However, they had subsequent  
2 conversations with Ms. Goldstein which suggested that Ms. Inglessis might change  
3 her mind. [Declaration of Louis Charalambous (“Charalambous Decl.”), ¶2.] For  
4 example, on January 27, Ms. Goldstein stated in an email to NGN’s lawyer Louis  
5 Charalambous that she “believes Melanie is still a no but will be speaking to her  
6 again.” [Id.] This is far from an unequivocal refusal.

7 Encouraged by such hints, Mr. Charalambous and a colleague flew to Los  
8 Angeles in February, in part because they hoped to meet with Ms. Inglessis in  
9 person and persuade her to change her mind, but she declined to meet them. On  
10 February 4, they met Ms. Goldstein at her office in downtown Los Angeles, but to  
11 no avail. [Id., ¶3.]

12 In a final attempt to try to obtain Ms. Inglessis’ agreement to testify  
13 voluntarily, Mr. Charalambous emailed Ms. Goldstein on February 17, stating, “I  
14 refer to our recent meeting at your office and specifically to the on-going discussion  
15 about your client Melanie Inglessis. Following her refusal to co-operate with our  
16 request that she gives evidence along the lines of her witness summary in the  
17 London proceedings brought by Mr Depp against my clients I mentioned that I may  
18 be instructed to commence proceedings for her to be subpoenaed by the Los  
19 Angeles District Court. This will be to give video link evidence under the Hague  
20 Convention and appropriate English and US rules for her to attend at a Los Angeles  
21 location during the trial to give evidence over live videolink. I have now been  
22 instructed to do so by my clients. [¶] Please can you ask your client on one last  
23 occasion to re-consider her decision before this process is commenced?...” Ms.  
24 Inglessis did not reconsider, which left Petitioners with no choice but to file an  
25 Application under §1782. After instructing and briefing California counsel, that  
26 Application was filed on March 5. [Id., ¶4.]

27 Far from demonstrating any sort of culpable delay by Petitioners, this  
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1 chronology shows that they went to exceptional lengths, including a 12,000 mile  
2 round trip, to try to resolve the issue amicably, and they promptly retained local  
3 counsel to file an Application under 28 U.S.C. §1782 when it became clear that  
4 there was no other way to obtain Ms. Inglessis’ testimony at trial.

5 **III. NO PROCEDURAL MISCONDUCT BY PETITIONERS.**

6 Ms. Inglessis’ allegations that Petitioners engaged in procedural misconduct  
7 are unfounded.

8 After being retained, Petitioners’ California counsel Alexander Rufus-Isaacs  
9 contacted Ms. Goldstein, informed her that an Application under §1782 would be  
10 filed shortly, and asked if she would accept service on her client’s behalf.

11 [Declaration of Alexander Rufus-Isaacs (“ARI Decl.”), ¶2.] By email on February  
12 26, Ms. Goldstein stated that she was not authorized to do so. [Dkt. 8-4.] She did  
13 not inform Mr. Rufus-Isaacs that Ms. Inglessis was, or was about to go, out of town.  
14 [ARI Decl., ¶2.]

15 The Application was filed on March 5. It asked the Court to set a briefing  
16 schedule in order to give Ms. Inglessis an opportunity to file an opposition. (Dkt. 2,  
17 p. 8; Dkt 2-1, p. 4). However, when it issued its Order on March 11, the Court  
18 granted the Application without setting a briefing schedule.

19 Petitioners then instructed process servers to serve the Order and the  
20 Application on Ms. Inglessis at her home address in Los Angeles. [ARI Decl., ¶3.]  
21 The process servers went to that address on March 11, 12 and 14 at different times  
22 of day, but there was no answer. [Declaration of Daniel Mikulasch dated March 16 –  
23 Dkt. 8-2.] They also staked out the house on March 18 from 7-11 am., and from 4-8  
24 p.m., but saw no one enter or leave. [Declaration of Cesar Centano – Dkt. 11.] With  
25 hindsight, this was not surprising because as Petitioners subsequently learned from  
26 Ms. Goldstein on March 20, Ms. Inglessis was in the Florida Keys during this  
27 period. [ARI Decl., ¶4.]  
28

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1 As the date for Ms. Inglessis to testify (April 1) drew nearer without them  
2 having been able to serve her, Petitioners made an ex parte application on March 17  
3 for an order allowing them to serve Ms. Goldstein on Ms. Inglessis’ behalf because  
4 her whereabouts were unknown. [Dkt. 8.] Ms. Goldstein was notified about the ex  
5 parte application on March 19 when the court asked to set a status conference the  
6 following day.

7 On Friday, March 20, the trial of the English Action was postponed. Mr.  
8 Rufus-Isaacs immediately notified Ms. Goldstein and the court of this development  
9 at 7:49 am, and requested that the status conference scheduled for 10:30 am be  
10 postponed. Ms. Goldstein did not oppose the request, which was granted. [Exh. B in  
11 support of the Motion.]

12 On Monday, March 23, Petitioners formally withdrew their ex parte  
13 application, and shortly thereafter, they re-commenced their attempts to serve Ms.  
14 Inglessis. [ARI Decl., ¶5.] Finally, on April 16, Petitioners’ process server effected  
15 substitute service on Ms. Inglessis by serving an adult who answered the door at her  
16 home. [Declaration of Daniel Mikulasch dated April 20 (Exh. 2).]

17 On April 30, a new trial date in the English Action (July 7) was set by the  
18 High Court. Mr. Rufus-Isaacs emailed Ms. Goldstein the same day about the new  
19 date and informed her that Ms. Inglessis would probably be required to testify  
20 sometime between July 17 and 28. [ARI Decl., ¶6.]

21 In summary, Petitioners were placed in a difficult position because they could  
22 not serve Ms. Inglessis who was out of town and who declined to authorize Ms.  
23 Goldstein to accept service on her behalf.<sup>2</sup> She refused to cooperate with Petitioners,  
24

25 \_\_\_\_\_  
26 <sup>2</sup> In contrast, in the Divenere Action, the respondent’s attorney agreed to accept  
27 service on his client’s behalf, thereby avoiding the problems that have arisen in this  
28 case as a result of the difficulties in serving Ms. Inglessis. [ARI Decl., ¶7.]

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1 yet she criticizes them for failing to serve her – a classic example of wanting to have  
2 one’s cake and eat it.

3 **IV. THE MOTION FALSELY STATES THAT MS. INGLESSIS HAD NOT**  
4 **SPOKEN WITH MS. HEARD’S BARRISTER AND FALSELY**  
5 **ACCUSES NGN OF MISLEADING THE COURT.**

6 A heading on page 12 of the Motion reads, “NGN’s misleading assertions to  
7 the Court of what Ms. Inglessis witnessed and how it came to know what she  
8 witnessed.” It then refers to a section in the Application in which “NGN stated that  
9 it learned Ms. Inglessis’s anticipated testimony from Ms. Heard’s London-based  
10 barrister. (Dkt. 2, at 4.) It also implied to the Court that the barrister spoke to Ms.  
11 Inglessis. (Id. (the barrister “acted as an intermediary between [NGN] and Ms.  
12 Inglessis.”).) That is not the case. As far as she is aware, Ms. Inglessis never spoke  
13 to Ms. Heard’s barrister. (Goldstein Decl., ¶16.) And some of what NGN implies  
14 Ms. Inglessis witnessed is incorrect or misleading. (Id.)”

15 In this paragraph, Ms. Inglessis accuses Petitioners of misleading the court  
16 about her contacts with Ms. Heard’s barrister and about the nature of her expected  
17 testimony. However, she has not provided a declaration supporting these serious  
18 allegations, nor is there an explanation in the Motion for this glaring omission.  
19 Instead, the only purported support for these allegations are some conclusory  
20 statements in Ms. Goldstein’s Declaration that are clearly inadmissible<sup>3</sup>: “I am  
21 informed and believe that, as far as Ms. Inglessis is aware, she never spoke to Ms.  
22 Heard’s London-based barrister. And some of what NGN implies Ms. Inglessis  
23 witnessed is incorrect or misleading.” (Goldstein Decl., ¶16.)

24 No attempt has been made in either the Motion or Ms. Goldstein’s  
25 Declaration to explain why Ms. Inglessis considers Petitioners’ statements in the

26 \_\_\_\_\_

27 <sup>3</sup> See Objections to Evidence filed concurrently herewith, nos. 6 and 7.

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1 Application to have been incorrect or misleading.

2 To refute the allegation that she never spoke with Ms. Heard’s English

3 barrister, Petitioners obtained a declaration from that barrister, Jennifer Robinson.

4 [See Declaration of Jennifer Robinson filed concurrently herewith (“Robinson

5 Decl.”).] Ms. Robinson states that she spoke with Ms. Inglessis on two occasions.

6 The first was a telephone call on July 18, 2019, which took place after Ms. Inglessis

7 had provided Ms. Heard’s US counsel with a declaration that Ms. Robinson was

8 given to read. [Robinson Decl., ¶4, 5; Exh. 1.] The second time was on August 13,

9 2019. [Id., ¶6.] Ms. Robinson’s declaration provides a considerable amount of

10 additional detail about these conversations.

11 Ms. Inglessis’ declaration [Exh. 1 to Ms. Robinson’s declaration] is 100%

12 consistent with the Witness Summary that was prepared to reflect her expected trial

13 testimony [Dkt. 2-10], the description of that testimony in the Application [Dkt. 2,

14 Section III] and the declaration of Jeffrey Smele which supported the Application

15 [Dkt. 2-2, ¶10.] It states, inter alia, that Ms. Inglessis saw Ms. Heard had a split lip

16 and a bruise near her eye, and had a chunk of hair missing; that Ms. Heard told her

17 that Mr. Depp had tried to suffocate her; and that she applied make-up to cover up

18 these injuries before Ms. Heard appeared on “The Late Late Show.” [Exh. 1, ¶¶7-

19 11.] These are the injuries suffered by Ms. Heard that are referenced in Mr. Smele’s

20 Declaration in support of the Application as having occurred on or about December

21 15, 2015. [Dkt. 2-2, ¶10.]

22 Ms. Heard is expected to testify at trial that these injuries were caused by Mr.

23 Depp, who is expected to deny those allegations. Ms. Inglessis’ testimony will

24 therefore corroborate Ms. Heard’s testimony about a critical event which lies at the

25 heart of the case. She should not accuse Petitioners of misleading the Court about

26 the nature of that testimony, when their description of her testimony is corroborated

27 by her own declaration.

28

1 **V. DEPOSITION TESTIMONY LIKELY TO BE GIVEN LESS WEIGHT**  
 2 **AT THE ENGLISH TRIAL THAN LIVE TESTIMONY.**

3 On April 29, Ms. Goldstein emailed Mr. Rufus-Isaacs to suggest that  
 4 Petitioners should depose Ms. Inglessis and use the transcript at trial rather than  
 5 requiring her to testify live via video link. [Exh. D in support of the Motion.] On  
 6 May 4, Mr. Rufus-Isaacs replied: “We have discussed your offer to make Ms.  
 7 Inglessis available for deposition testimony voluntarily, which we respectfully  
 8 decline. Ms. Inglessis’ deposition testimony would carry less evidential weight in  
 9 English proceedings than her evidence in an English witness statement or her live  
 10 testimony at the trial. Even if it were logistically possible to depose her before the  
 11 trial, the deposition transcript would be treated as hearsay evidence at the trial in  
 12 London, and under §4(2) of the Civil Evidence Act 1995, the English court would  
 13 consider certain enumerated factors in assessing its evidential weight. One of these  
 14 factors is ‘whether it would have been reasonable and practicable...to have  
 15 produced the maker of the original statement as a witness.’ This factor would be the  
 16 subject of particular scrutiny given the fact that a §1782 order has already been  
 17 issued.” [Id.]

18 English courts are generally much less receptive to deposition testimony than  
 19 US courts, and as explained in this email, they treat them as hearsay evidence.  
 20 Moreover, if a party could have produced a witness to testify live at trial but does  
 21 not do so and instead proffers a deposition transcript, an English judge is likely to  
 22 give far less weight to that deposition testimony. [Charalambous Decl., ¶5.]

23 Because all civil trials in England are almost exclusively now non-jury, there  
 24 is more focus on the weight that a judge will give to a piece of evidence, rather than  
 25 on whether that evidence is admissible or inadmissible. English judges are generally  
 26 less likely to rule that questionable evidence is inadmissible because there is no  
 27 danger that such evidence might wrongfully influence a jury. Given their legal  
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1 training, they are more likely to review the evidence and then to decide what weight  
2 to give to it. [Id., ¶6.]

3 Given the importance of Ms. Inglessis’ testimony, Petitioners could not agree  
4 to Ms. Goldstein’s suggestion because of the danger that the English judge will  
5 likely place less weight on her deposition testimony, compared with her live  
6 testimony at trial via video-link. And it is unclear how attending a deposition would  
7 be less burdensome for Ms. Inglessis than testifying live via video-link.

8 **VI. HEALTH AND SAFETY ISSUES.**

9 **A. All Possible Steps Will Be Taken To Ensure Ms. Inglessis’ Safety**  
10 **When She Testifies**

11 The English High Court has strict requirements about this technology. [ARI  
12 Decl., ¶8.] Lawyers for Petitioners and Mr. Depp have agreed to use the Beverly  
13 Hills Bar Association (“BHBA”) for the live video testimony of both parties’ Los  
14 Angeles-based witnesses because BHBA has sophisticated video-conferencing  
15 equipment that meets the High Court’s technical requirements, and is otherwise a  
16 convenient location with the necessary resources.. [Id., ¶9.]

17 Another reason for using a single location for all witnesses is that a trial  
18 bundle made up of a number of ring binders containing exhibits and relevant  
19 documents will be on the conference room table at the BHBA for use by all of the  
20 witnesses. [Id., ¶10.]

21 All reasonable efforts will be made to ensure Ms. Inglessis’ safety when she  
22 visits the BHBA to testify. The office occupies the entire second floor of a private  
23 office building located at 9420 Wilshire Boulevard in Beverly Hills, known as the  
24 Rolex Building. Ms. Inglessis will be able to park in a private open air car park next  
25 to the building. She will have to provide her details to the security desk and then  
26 make her way to the second floor. She and her counsel will be able to use a private  
27 waiting room, or to go straight into the large conference room where the video  
28

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1 conferencing equipment is located. [Id., ¶1.]

2 BHBA has arranged for a professional cleaning service to clean and disinfect  
3 the binder, the conference room and the waiting room before and after each witness  
4 testifies. The restrooms and common area will also be cleaned and disinfected at  
5 regular intervals. [Id., ¶12.]

6 Currently the BHBA office is closed because of the COVID-19 restrictions. If  
7 the restrictions are still in place when Ms. Inglessis testifies, only one BHBA  
8 employee, an IT technician, will be in the office and once a satellite connection is  
9 established with the High Court, he will not be physically present in the conference  
10 room unless he is needed to fix a problem. Apart from Ms. Inglessis, the only other  
11 people in the conference room will be Petitioners’ counsel and her counsel.<sup>4</sup> Social  
12 distancing and the wearing of personal protective equipment will be required, save  
13 that Ms. Inglessis will be asked to remove her face mask while she testifies. [Id.,  
14 ¶13.]

15 **B. COVID-19 Restrictions Are Being Loosened; State Courthouses**  
16 **Will Reopen, And Trials Resume, On June 22.**

17 By General Order dated May 13, trials and court hearings will resume in the  
18 Los Angeles Superior Courts on June 22, and 400 court rooms in that court system  
19 will physically reopen on that date, subject to social distancing and other such rules.  
20 [Request for Judicial Notice, Exh. 3, ¶9.]

21 By Order dated April 13, the federal courts in the Central District of  
22 California are to remain closed until June 1. [Request for Judicial Notice, Exh. 4.]  
23 As of the date of filing this Opposition, Petitioners do not know when the federal  
24 \_\_\_\_\_

25 <sup>4</sup> If another witness will be testifying before her, Ms. Inglessis will be asked to stay  
26 in her car or adjacent area until the other witness leaves the office, and it has been  
27 disinfected. Likewise, if another witness will be testifying after her, that witness will  
28 be asked to stay outside the building until Ms. Inglessis leaves. [ARI Decl., ¶14.]

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1 courts in this district will reopen.

2 While many restrictions remain in place in Los Angeles County, they are  
3 being loosened. For example, LA County Public Health updated the Health Officer  
4 Order effective this week to allow for in-store shopping at all retail stores in LA  
5 County at no more than 50% of the maximum occupancy inside the retail store.  
6 [Request for Judicial Notice, Exh. 5.]

7 If she were subpoenaed to testify in a trial in Los Angeles Superior Court on  
8 or after June 22, Ms. Inglessis would have to attend. Given the precautions  
9 described above, the BHBA will be a much safer location than a courthouse, and  
10 probably presents far less risk to Ms. Inglessis than a trip to her grocery store.

11 The court should also bear in mind that according to Ms. Goldstein’s  
12 declaration, Ms. Inglessis was in the Florida Keys on March 20, i.e., while the full  
13 lockdown restrictions were in effect. [Dkt. 10, ¶5.] If she is now back in Los  
14 Angeles, she either flew on a commercial flight, flew in a private aircraft, or drove.  
15 In any of these eventualities, she would have come into close proximity with far  
16 more people than she will encounter when she attends the BHBA offices to testify.

17 **VII. THE COURT SHOULD EXERCISE ITS DISCRETION AND DENY**  
18 **THE MOTION.**

19 **A. The Intel Factors**

20 Petitioners agree that the decision of whether to grant an application under  
21 28. U.S.C. §1782 lies within the Court’s discretion, and respectfully request that the  
22 Court exercise its discretion by denying this Motion because all 4 of the factors set  
23 forth in *Intel Corp. v Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), which are  
24 described at length in the Motion on pp. 4-6, weigh in Petitioners’ favor.

25 On the first factor, Petitioners could not obtain Ms. Inglessis’ testimony  
26 without an order under §1782.

27 On the second factor, the High Court has agreed to accept Ms. Inglessis’  
28

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1 testimony via live videolink.

2 On the third factor, no attempt is being made to circumvent any foreign proof-  
3 gathering restrictions.

4 On the fourth factor, the order is not unduly intrusive or burdensome. Ms.  
5 Inglessis’ testimony is of great importance in the English Action because it  
6 corroborates Ms. Heard’s testimony on a key disputed issue of fact, i.e., whether she  
7 was beaten by Mr. Depp on the occasion in question.

8 **B. Judge Wright Issued A Similar Order in Related Case.**

9 On March 16, Petitioners filed an application before this court entitled *News*  
10 *Group Newspapers Limited and Dan Wootton v. Laura Divenere*, Case No. 2:20-  
11 mc-00027-ODW (PJW) (“Divenere Action”), which sought an order under §1782  
12 compelling the live testimony via satellite link in the same English trial of two  
13 police officers and of Laura Divenere, an interior decorator who worked for Ms.  
14 Heard. On March 17, it was found to be related to the instant case. [Request for  
15 Judicial Notice, Exh. 6.] On March 20, Ms. Divenere filed an Opposition. By Order  
16 dated March 27, Judge Wright granted the application and ordered Ms. Divenere  
17 and the 2 officers to testify at the trial of the English action via satellite. [Request for  
18 Judicial Notice, Exh. 7.]

19 **C. No Undue Burden On Or Prejudice To Ms. Inglessis.**

20 The Motion argues that Ms. Inglessis would be placed in danger and that her  
21 professional career might be harmed if she were to testify, but no admissible  
22 evidence has been provided to support either claim.<sup>5</sup> Moreover, while it is perhaps  
23 understandable that for professional reasons, Ms. Inglessis would prefer not to give  
24 evidence in the English Action, she voluntarily signed a declaration about events  
25 which are of great importance in both actions, and therefore has no basis to

26

27 <sup>5</sup> See Objections to Evidence filed concurrently herewith, nos. 1-5.

28

1 complain that it is unfair to require her to testify.

2 **VIII. CONCLUSION.**

3 For the reasons set forth above, Petitioners respectfully request that the Court  
4 denies this Motion.

5

6 DATED: May 29, 2020

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By: 

Alexander Rufus-Isaacs  
Attorneys for Petitioners News Group  
Newspapers Limited and Dan Wootton

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232 N. CANON DRIVE  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 232 N. Canon Drive, Beverly Hills, California 90210.

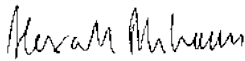
On May 29, 2020, I served true copies of the following document(s) described as **PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO QUASH ORDER COMPELLING RESPONDENT TO PROVIDE TESTIMONY IN FOREIGN PROCEEDING UNDER 28 U.S.C. §1782** on the interested parties

Anya J. Goldstein  
Summa LLP  
800 Wilshire Blvd., Suite 1050  
Los Angeles, CA 90017  
Email: [anya@summallp.com](mailto:anya@summallp.com)

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 29, 2020, at Beverly Hills, California.

  
\_\_\_\_\_  
Alexander Rufus-Isaacs

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