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Newspapers Limited and Dan Wootton

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

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

13 Petitioners,

14 v.

15 LAURA DIVENERE, an individual,
16 MELISSA SAENZ, an individual, and
TYLER HADDEN, an individual,

17 Respondents.

CASE No. 2:20-mc-00027

**DECLARATION OF JEFFREY
SMELE IN SUPPORT OF
PETITIONERS' APPLICATION
FOR ORDER COMPELLING
TESTIMONY OF LAURA
DIVENERE, MELISSA SAENZ
AND TYLER HADDEN IN
FOREIGN PROCEEDING UNDER
28 U.S.C. 1782**

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DECLARATION OF JEFFREY SMELE

I, Jeffrey Smele, declare as follows:

1. I am a solicitor duly admitted to practice in England and Wales. I am a partner with Simons Muirhead & Burton LLP (“SMB”), solicitors acting for Petitioners News Group Newspapers Limited (“News Group”) and Dan Wootton in the proceeding described in Paragraph 3 below as the English Action. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. News Group publishes newspapers including The Sun, and is incorporated under the laws of England and Wales with its registered office at 1 London Bridge Street, London SE1 9GF, United Kingdom. Dan Wootton is a journalist employed by News Group who wrote the articles in question, and is a resident of the United Kingdom.

3. News Group and Mr. Wootton are the defendants in an action currently pending in the Media and Communications List of the Queen's Bench Division of the High Court of England and Wales in London (the “High Court”), captioned *John Christopher Depp II vs. News Group Newspapers Ltd., and Dan Wootton*, Claim No. QB-2018-006323 (the “English Action”). I have been one of Petitioners’ lawyers in the English Action since it was filed in 2018. Claimant John Christopher Depp II (the well-known actor who works professionally as Johnny Depp) seeks damages and an injunction in respect of an article published online on The Sun’s website on April 27, 2018, and an article published in The Sun on April 28, 2018. The trial is scheduled to commence on March 23, 2020 and is anticipated to last for 2 weeks.

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1 4. Mr. Depp also filed a libel action entitled *Depp v. Heard* in the Circuit
2 Court of Fairfax County, State of Virginia, Civil Action no. CL-2019-0002911,
3 against his former wife Ms. Amber Heard in respect of a publication in the
4 Washington Post entitled, “I spoke up against sexual violence — and faced our
5 culture’s wrath. That has to change” (“the Virginia Action”). I am familiar with this
6 action, which is on-going, because it has overlapping issues with the English Action.
7 Attached hereto marked Exhibit 1 is a true and correct copy of a document entitled
8 Declaration of Laura Divenere under the caption of the Virginia Action dated June
9 28, 2019 (“Divenere Declaration”).

10 5. Attached hereto marked Exhibit 3 is a true and correct copy of a letter
11 to SMB dated March 3, 2020, from Mr. Depp’s lawyers in the English Action,
12 Schillings International LLP, (“Schillings”), in which they identify the last known
13 contact details for Officers Saenz and Hadden. It does not provide an address for
14 Ms. Divenere.

15 6. A true and correct copy of the Particulars of Claim filed on behalf of
16 Mr. Depp in the English Action is attached hereto marked Exhibit 4

17 7. A true and correct copy of the Re-Amended Defense filed on behalf of
18 our clients in the English Action is attached hereto marked Exhibit 5 (a 1 page
19 confidential schedule has been omitted).

20 8. A true and correct copy of the Re-Amended Reply served on behalf of
21 Mr. Depp in the English Action is attached hereto marked Exhibit 6 (a 1 page
22 confidential schedule has been omitted).

23 9. A true and correct copy of the Hearsay Notice dated February 20, 2020,
24 served on behalf of Mr. Depp in the English Action is attached hereto marked
25 Exhibit 7. This was the first notice we received that Mr. Depp intended to rely on
26 the Divenere Declaration at trial.

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1 10. A true and correct copy of the Order issued in the English Action dated
2 March 6, 2020, is attached hereto marked Exhibit 8. And a true and correct copy of
3 the Order issued in the English Action dated March 10, 2020, is attached hereto
4 marked Exhibit 9. Both Orders (the “Orders”) were made by Mr. Justice Nicol, a
5 High Court Judge who will also be the Judge at the forthcoming trial.

6 11. I believe that respondents Laura Divenere, Melissa Saenz and Tyler
7 Hadden will each be crucial witnesses for my clients in the English Action. I base
8 this belief on my knowledge of the English Action, including the pleadings and
9 discovery, the witnesses and the evidence produced by each side, including the
10 Divenere Declaration, and on what I have learned from other witnesses. Mr. Depp’s
11 lawyers have given notice that they intend to rely on the Divenere Declaration at
12 trial as hearsay evidence. It contains important allegations that are contrary to
13 Petitioners’ position, as set forth in the Re-Amended Defense and elsewhere. As
14 explained further below, the Orders permit them to challenge Ms. Divenere’s
15 hearsay evidence in the Divenere Declaration by cross-examining her at the trial via
16 video-link. Petitioners wish to cross-examine Ms. Divenere about these allegations
17 but they will only be able to do so if this Court issues an order compelling Ms.
18 Divenere to testify. Taking Ms. Divenere’ deposition would not be as effective as
19 live cross-examination evidence because deposition testimony which is not directly
20 ordered by the English Court is regarded as hearsay under English law and is
21 unlikely to be given the same weight as live evidence at trial.

22 12. Practically, there is also insufficient time now for Petitioners to arrange
23 to take a deposition of Ms. Divenere before the start of the trial on March 23, 2020.
24 This lack of time is due to no fault on the part of Petitioners: Mr. Depp did not serve
25 notice of his intention to rely on the Divenere Declaration as hearsay until February
26 20, 2020. Mr. Justice Nicol gave permission to Petitioners to cross-examine Ms.
27 Divenere at a hearing on February 26, 2020, but the relevant Orders were not

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1 finalized until March 6 and March 10. The Petitioners have acted promptly since the
2 hearing on February 26 in trying to arrange for the voluntary testimony of Ms.
3 Divenere without the need to make this Application, and it only became apparent to
4 Petitioners that the Application would indeed be required on March 10, 2020. With
5 now only a week to go until the start of trial, it will not be possible for Petitioners to
6 depose Ms. Divenere.

7 13. Petitioners are particularly keen to cross-examine Ms. Divenere
8 because they understand that Ms. Divenere was pressured into signing the Divenere
9 Declaration and that, accordingly, it is not a true and accurate account. It is therefore
10 crucial for Petitioners to be able to cross-examine Ms. Divenere at trial so that the
11 Judge can properly evaluate Ms. Divenere’s evidence.

12 14. Based on statements made to me by Ms. Heard’s lawyers, I am
13 informed and believe and thereon allege that in or about early July 2019, Ms.
14 Divenere contacted Ms. Heard and told her that she had been pressured into signing
15 it by Adam Waldman, an attorney representing Mr. Depp in the Virginia Action. At
16 the time, Ms. Divenere was unrepresented by counsel. Shortly before the
17 Declaration was made, on June 22, 2019, Ms. Divenere had forwarded a text from
18 Mr. Waldman, with her comment, “Ugh – Just wanted to let you know.” A true and
19 correct copy of this text which was given to me by Ms. Heard’s lawyers is attached
20 hereto marked Exhibit 10.

21 15. We have also recently obtained from Ms. Heard’s lawyers an audio
22 recording of what purports to be a conversation, and a transcript thereof. A true and
23 correct copy of this recording is attached hereto marked Exhibit 11, and a true and
24 correct copy of the transcript is attached hereto marked Exhibit 12. I have listened to
25 the recording and read the transcript. I am informed and believe and thereon allege
26 that this is a recording of a conversation between Ms. Heard and Ms. Divenere. In
27 the conversation, Ms. Divenere apologizes to Ms. Heard for making the Declaration,
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1 explains that Mr. Waldman had pressured her into doing it, and even asks Ms. Heard
2 to contact her attorneys to “*get me to do a declaration too and question me so that I*
3 *can say something in your favor*”. In this audio recording Ms. Divenere gives a
4 completely different account to the one set out in the Divenere Declaration. For
5 example, she says that in the days following May 21, 2016, she did see Ms. Heard’s
6 face looking “*all swollen and red and she [Ms. Heard] had been crying*” (contrary
7 to ¶5), that she “*never saw Johnny*” and “*didn’t really have any interaction with*
8 *Johnny at all*” (contrary to ¶7), and did not consider that Ms. Heard had been
9 verbally abusive towards Ms. James (contrary to ¶8).

10 16. So far as we are aware, the Divenere Declaration was never filed in the
11 Virginia Action, but shortly after it was signed, it was leaked to The Blast, a
12 celebrity news website, which published an article about the declaration on July 15,
13 2019. A true and correct copy of this article is attached hereto marked Exhibit 13. I
14 am informed and believe and thereon allege that it was leaked by Mr. Depp’s
15 lawyers as part of their campaign to denigrate Ms. Heard in the press. This was the
16 subject of a passage in a Third Witness Statement dated February 19, 2020,
17 submitted to the High Court by my colleague, Louis Charalambous, in which he
18 states at ¶79, “I should add that Mr Waldman’s threat is consistent with other steps
19 Mr Waldman has taken in the US proceedings to provide documents to the media to
20 advance his client’s cause. Mr Waldman obtained a declaration from an individual
21 called Laura Divenere dated 29 June 2019. I exhibit at page 108 of LC 3 a message
22 he sent to Ms Divenere putting pressure on her to cooperate with him by providing a
23 declaration supporting the Claimant’s account. However I have been informed by
24 Amber Heard’s US lawyers that Ms Divenere’s declaration which I exhibit at pages
25 109-111 of LC 3 has not ever been produced or otherwise relied on by the Claimant
26 in the US libel proceedings. Instead it has been deployed in the media: it was
27 attached as a link to an article published by The Blast enclosed hereto at pages 105-

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1 106 of LC 3. It is my firm belief that Mr Waldman must have supplied the
2 declaration to Blast for publication – it is difficult to see how else they could have
3 obtained it.”

4 17. Ms. Divenere is now represented by Lee A. Sherman of Callahan
5 Thompson Sherman & Caudill, LLP, of Irvine, California. We have asked Mr.
6 Sherman if we can interview Ms. Divenere, but he has informed our California
7 counsel that she will not cooperate voluntarily.

8 18. LAPD Officers Melissa Saenz and Tyler Hadden are two of the Police
9 Officers who responded to a 911 call on May 21, 2016 and attended the Eastern
10 Columbia Building that evening. They were deposed in July 2016 in the course of
11 discovery in relation to the divorce proceedings between Mr. Depp and Ms. Heard.
12 Attached hereto marked Exhibits 15 and 16 are true and correct copies of transcripts
13 of the depositions of Officer Melissa Saenz and Officer Tyler Hadden respectively,
14 both taken on 18 July 2016. These depositions were taken during the divorce
15 proceedings between Mr. Depp and Ms. Heard.

16 19. I wrote separate letters to Officers Saenz and Hadden dated March 6,
17 2020, asking them to contact us to arrange for them to testify, but the officers have
18 not responded. Attached hereto marked Exhibits 17 and 18 are true and correct
19 copies of those letters. They were sent to some of the addresses which Mr. Depp’s
20 lawyers in the English Action, Schillings International LLP, (“Schillings”) identified
21 as the last known contact details for these officers in their letter dated March 3, 2020
22 which is attached hereto marked Exhibit 3.

23 20. Mr. Depp has given notice that he intends to rely on the officers’
24 deposition testimony at the trial of the English Action as hearsay evidence. As
25 explained further below, Petitioners have obtained Orders made in the English
26 Action dated March 6 and March 10, 2020, by Mr. Justice Nicol (a High Court
27 Judge who will also be the Judge at the forthcoming trial) permitting them to

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1 challenge this hearsay deposition testimony of Officers Saenz and Hadden by cross-
2 examining them at the trial via video-link. However Petitioners will only be able to
3 cross-examine Officers Saenz and Hadden if this Court issues an order compelling
4 them to testify. To take further depositions from Officers Saenz and Hadden would
5 not be as effective because deposition testimony which is not directly ordered by the
6 English court is regarded as hearsay under English law and is unlikely to be given
7 the same weight as live evidence at trial For the same reasons as set out above in
8 relation to Ms. Divenere, there is also insufficient time for Petitioners to arrange to
9 take a deposition of Officers Saenz and Hadden before the start of the trial on March
10 23, 2020.

11 21. This application is made in accordance with the Orders made in the
12 English Action dated March 6 and 10, 2020, by Mr. Justice Nicol, a High Court
13 Judge, who gave permission for Respondents to give live cross-examination
14 evidence at trial via video link. True and correct copies of those Orders are attached
15 hereto marked Exhibits . These Orders of Mr. Justice Nicol were made following
16 hearings in which Mr. Depp was legally represented (and, in the case of the Order
17 dated March 6, was personally present in Court). Mr. Depp’s attorney made clear
18 that Mr. Depp had no objection to those Orders being made, provided that
19 Petitioners made the necessary arrangements for these individuals to be cross-
20 examined. This is what Petitioners now seek to do.

21 22. I have been working as a solicitor since 2008 and have been present at
22 many trials or hearings at the High Court. Consequently, I am familiar with its rules
23 and practices. The High Court usually finishes the court day by 4:30 or at the latest
24 5:00 pm each day, and rarely agrees to continue beyond that time.

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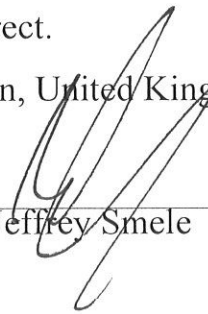
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed March 16, 2020, at London, United Kingdom.



Jeffrey Smele