VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

John C. Depp, II,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No.: CL-2019-0002911**
	)	
Amber Laura Heard,	)	
	)	
Defendant.	)	
	)	

PRAECIPE

Plaintiff John C. Depp, II, by and through his undersigned counsel, hereby submits a true and correct copy of the Decision and Order issued by the Honorable Arthur F. Engoran, J.S.C. in the Supreme Court of the State of New York, New York Country, dated July 22, 2021, granting Mr. Depp's petition to compel as to all of his subpoenas *duces tecum* to the American Civil Liberties Union (the "ACLU"), and its employees Benjamin Wizner and Anthony Romero, except as to documents relating to Defendant Heard's role as "brand ambassador" for the ACLU. *See* **Exhibit A**.

Respectfully submitted,

[redacted]

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Dated: July 30, 2021

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **IAS MOTION 37EFM**

Justice

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JOHN DEPP II,

Petitioner,

- v -

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

Respondents.

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INDEX NO. 154545/2021

MOTION DATE 05/10/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to COMPEL.

Upon the foregoing documents, it is hereby ordered that the petition is granted in part and denied in part.

Petitioner, John Depp II, commenced this special proceeding to enforce a series of out-of-state subpoenas issued by petitioner's New York counsel, pursuant to CPLR 3119, to respondents, the American Civil Liberties Union Foundation ("the ACLU") and its employees, Benjamin Wizner and Anthony Romero. Petitioner asserts that compliance with the subpoenas is material and necessary to the prosecution of a defamation action currently pending in the Circuit Court of Fairfax County in the Commonwealth of Virginia ("the Virginia Action"). Petitioner commenced the Virginia Action on March 1, 2019 for defamation based on statements his ex-wife, Amber Laura Heard, made in an opinion piece published in the *Washington Post* on December 18, 2018, which implied that petitioner had committed domestic abuse against Ms. Heard during their marriage ("the Op-Ed"). It is undisputed that the ACLU suggested Ms. Heard write, and assisted her in submitting, the Op-Ed to the *Washington Post*. (NYSCEF Doc. No. 20.)

In a related legal proceeding in the United Kingdom ("the UK Action"), Ms. Heard claimed that she donated her entire $7 million divorce settlement to the ACLU and non-party Children's Hospital of Los Angeles and thus she had no financial motive to falsely claim that Mr. Depp had abused her during their marriage. Petitioner now seeks discovery from the ACLU and its employees to confirm whether Ms. Heard has in fact donated the entire $7 million settlement to charity.

The Court of Appeals addressed the requirements for enforcement of non-party subpoenas in Kapon v Koch, holding:

> We conclude that the subpoenaing party must first sufficiently state the "circumstances or reasons" underlying the subpoena (either on the

> 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.

[redacted]

7/22/2021
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[X]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July 2021, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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