

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

In the Matter of:

JOHN C. DEPP, II,

Petitioner,

v.

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

Respondents,

For an Order to compel response to out-of-
 state subpoenas served in the action entitled
John C. Depp, II v. Amber Laura Heard, No.
 CL2019-0002911 in the Circuit Court of
 Fairfax County in the Commonwealth of
 Virginia.

Index No. 154545/2021

Part 37

Hon. Arthur F. Engoron

Motion Sequence No. 001

**AFFIRMATION OF JESSICA N.
 MEYERS IN FURTHER SUPPORT OF
 PETITION TO COMPEL RESPONSE TO
 OUT-OF-STATE SUBPOENAS**

Jessica N. Meyers, an attorney at law admitted to practice before the courts of the State of New York, hereby affirms the following to be true under penalties of perjury pursuant to CPLR § 2106:

1. I am an associate at the law firm Brown Rudnick, LLP, with offices at 7 Times Square, New York, New York, 10036, and counsel for the Petitioner John C. Depp, II in the Virginia Action.¹ I am admitted *pro hac vice* in the Virginia Action and I, as well as my colleagues at Brown Rudnick, remain in good standing before the Virginia Court. I submit this Affirmation,

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Affirmation of Jessica N. Meyers in Support of Petition to Compel Response to Out-of-State Subpoenas, dated May 10, 2021 [[NYSCEF No. 3](#)].

with exhibits, in further support of Mr. Depp's Petition to Compel Responses to Out-of-State Subpoenas [NYSCEF Nos. 1-37].

2. On March 10, 2021, in the midst of discussions with ACLU Counsel concerning the Subpoenas, I emailed ACLU Counsel requesting a meet and confer to discuss the Subpoenas to the ACLU Foundation and outstanding items with respect to the Subpoenas to Mr. Wizner. In that e-mail, I stated that, if the parties could first agree to dates for the production of documents pursuant to the Subpoenas to Mr. Wizner and the ACLU Foundation, we could hold off on scheduling any depositions until after we had an opportunity to review the produced materials. A true and correct copy of my March 10, 2021 email is annexed hereto as Exhibit 1.

3. I attended a meet and confer with ACLU Counsel on March 16, 2021, where I previewed that we would be serving Subpoenas on Mr. Romero and inquired whether ACLU Counsel would accept service. On this meet and confer, I reiterated that we believed it made sense to hold off on scheduling depositions of the ACLU Witnesses, including the deposition of Mr. Romero pursuant to forthcoming Subpoenas, until after we received documents productions from the ACLU Witnesses pursuant to the Subpoenas. I also stated that we anticipated taking the depositions of the ACLU Witnesses remotely. In the context of these discussions concerning deposition logistics, I believe I relayed that: (a) in our view, Mr. Wizner appeared to be an acceptable ACLU corporate representative for the topics in the Subpoena *ad testificandum* to the ACLU Foundation concerning the conception of the Op-Ed and Ms. Heard's role as an ambassador for the ACLU; (b) in our view, that Mr. Romero appeared to be an acceptable ACLU corporate representative for the donation-related topics in the Subpoena *ad testificandum* to the ACLU Foundation; and (c) if Mr. Wizner and Mr. Romero could, collectively, cover all topics in the Subpoena *ad testificandum* to the ACLU Foundation, we likely would not need to depose an

additional ALCU representative, but that we would reserve our final determination until after the document productions from the ACLU Witnesses were received. It is possible that this discussion, or a portion thereof, occurred during the parties' subsequent meet and confer on April 5, 2021, but my recollection is that I relayed this information to ACLU Counsel on March 16th.

4. On March 26, 2021, I received an e-mail from ACLU Counsel stating that they had requested that we "explain if there were any particular documents or information you believe were missing from productions made by the parties" related to Ms. Heard's donations to the ACLU and requesting that we be prepared to address this question on our next meet and confer. I responded that same day stating that I believed we had already articulated to ACLU Counsel that, in our view, relevant information was missing from Ms. Heard's document productions related to her donations to the ACLU, but that we would be prepared to discuss in further detail the types of information we believe is missing on our upcoming April 5th meet and confer. A true and correct copy of these emails is annexed hereto as Exhibit 2.

5. I attended a meet and confer with ALCU Counsel on April 5, 2021 and, as stated in my March 26, 2021 email, I was prepared to discuss the types of information that, in our view, was missing from Ms. Heard's production of documents related to her donations to the ALCU. On this call I pointed out, I believe for the second time, that Ms. Heard had produced an undated form purporting to pledge \$3.5 million to the ACLU which was unaccompanied by any cover letter or transmittal email that might indicate when the form was executed and transmitted to the ACLU. I believe I also identified other information that Mr. Depp had not received or, presumably, could not receive from Ms. Heard, such as discussions internal to the ACLU as to how to credit donations towards Ms. Heard's pledge.

6. Also on the April 5th meet and confer, counsel discussed the parties' dispute over the confidential treatment of any documents produced by the ACLU Witnesses. In explaining Mr. Depp's position with respect to the ACLU Witnesses' request that non-confidential documents be restricted to use in the Virginia Action, I stated that Mr. Depp would not agree to an added confidentiality provision that would foreclose him from adducing non-confidential evidence produced by the ACLU Witnesses in other, related proceedings.

7. On May 12, 2021, Chief Judge Elect Penny S. Azcarate, who was recently assigned to preside over the Virginia Action, entered an order on Mr. Depp's motion to compel, which found that, by asserting defense of counsel as an affirmative defense, Ms. Heard waived her attorney-client privilege with respect to the Op-Ed and so, her communications on the subject with, among others, the ACLU are not privileged. A true and correct copy of Judge Azcarate's May 12th order is annexed hereto as Exhibit 3.

8. On May 27, 2021, I received an email from ACLU Counsel attaching a draft stipulation that described the dates and amounts of donations to the ACLU by Ms. Heard or others on her behalf and inquiring whether Mr. Depp would be willing to stipulate to these facts. After considering the proposed stipulation, I responded to ACLU Counsel on June 1, 2021, informing them that Mr. Depp was not willing to enter into the proposed stipulation in lieu of the discovery sought from the ALCU Witnesses pursuant to the Subpoenas and explaining the reasons why the stipulation was unacceptable. A true and correct copy of these emails is annexed hereto as Exhibit 4.

Dated: New York, New York
June 8, 2021

/s/ Jessica N. Meyers
Jessica N. Meyers

CERTIFICATION OF COMPLIANCE

In accordance with Section 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court, I certify that this foregoing Memorandum of Law contains 1,092 words, exclusive of the caption, table of contents, table of authorities, the cover page and the signature block, based on a Word Count check performed by our word processing system.

Dated: June 8, 2021

/s/ Jessica N. Meyers
Jessica N. Meyers