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AMBER LAURA HEARD

11
12 COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14 AMBER LAURA HEARD,

15 Petitioner,

16 vs.

17 THE MANDEL COMPANY, INC.,
18 d/b/a THE MANAGEMENT GROUP, a
California Corporation,

19 Respondent.

20 JOHN C. DEPP, II,

21 Plaintiff,

22 vs.

23 AMBER LAURA HEARD,

24 Defendant.

Case No.

**PETITIONER AMBER LAURA HEARD'S
PETITION AND MEMORANDUM TO
ENFORCE SUBPOENA PURSUANT TO CODE
OF CIVIL PROCEDURE § 2029.600**

Filed by Petitioner/Defendant Who Is A Party to The
Out-of-State Case

Fairfax County Circuit Court, Virginia
Case No.: CL-2019-0002911

Hon. Bruce D. White Presiding

1 **Table of Contents**

2 **Page**

3 I. INTRODUCTION..... 6

4 II. SUMMARY OF RELEVANT FACTS..... 7

5 A. Depp Sues TMG and TMG Counter-Sues 7

6 B. Depp Files The Underlying Lawsuit in the Commonwealth of Virginia..... 8

7 C. Subpoena for Production of Business Records to TMG 8

8 D. The Presiding Judge Grants a Motion to Compel Discovery, Confirming the

9 Relevance of the Documents Sought from TMG..... 10

10 III. THE PETITION SHOULD BE GRANTED..... 10

11 A. Legal Standard..... 10

12 B. TMG’s Use of the Protective Order as a Shield is Unjustified 11

13 C. TMG’s Claim of Burden is Without Merit..... 13

14 D. TMG’s Remaining Boilerplate Objections are Without Merit..... 14

15 1. Relevance: Ms. Heard’s Requests Are Directly Related to the Claims

16 Asserted by Depp 14

17 2. Vagueness: TMG’s Objections that the Requests are Vague and Ambiguous

18 are Invalid..... 16

19 3. Privilege: TMG Fails to Establish Preliminary Facts Supporting Any

20 Assertion of Privilege..... 17

21 4. Other Sources: TMG is the Only Party That Can Identify Many of the

22 Documents Sought 18

23 5. Non-Compliance with California Law 19

24 IV. CONCLUSION 19

25

26

27

28

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

American Federation of State, County and Municipal Employees v. Metropolitan Water Dist. of Southern California,
126 Cal.App.4th 247 (2005).....14

Anti-Defamation League of B’Nai Brith v. Super. Ct.,
67 Cal. App. 4th 1072 (1998).....11

Bank of Am. v. Superior Ct.
212 Cal.App.4th 107617

Cembrook v. Sup. Ct.,
56 Cal.2d 423,428 (1961).....16

Collinson & Kaplan v. Harunian,
21 Cal.App.4th 1611 (1994).....17

Colonial Life & Accident Ins. Co. v. Super. Ct.,
31 Cal. 3d 785 (1982).....11

Columbia Broadcasting System, Inc. v. Sup. Ct.,
263 Cal.App.2d 12 (1968).....13

Constand v. Cosby,
232 F.R.D. 494 (E.D. Pa. 2006) . Request nos. 2-5 and 26.....16

Coy v. Super. Ct.,
58 Cal. 2d 210 (1962).....11

Depp, et al. v. The Mandel Company, et al.,
case no. BC646882.....7

Deyo v. Kilbourne,
84 Cal.App.3d 771 (1978).....16

Gonzalez v. Super. Ct.,
33 Cal. App. 4th 1539 (1995).....15

Hall v. Lashbrook,
No. 14 Civ. 2687, 2018 WL 6830326 (N.D. Ill. Dec. 28, 2018).....16

HLC Props., Ltd v. Superior Ct.
35 Cal.4th 54 (2005).....17

1	<i>Hosp. v. Superior Ct.</i> ,	
2	143 Cal.App.4th 1558	17
3	<i>Howard v. Commonwealth</i> ,	
4	No. 0793-14-1, 2015 WL 1993341 (Va. Ct. App. May 5, 2015).....	16
5	<i>Longmire v. Ala. State Univ.</i> ,	
6	151 F.R.D. 414 (M.D. Ala. 1992)	16
7	<i>Manzetti v. Sup.Ct. (Fitzgerald)</i> ,	
8	21 Cal.App.4th 373 (1993).....	17
9	<i>Mead Reinsurance Co. v. Sup. Ct.</i> ,	
10	188 Cal.App.3d 313 (1986).....	13
11	<i>People v. Earp</i> ,	
12	20 Cal.4th 826 (1999).....	16
13	<i>Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants</i> ,	
14	148 Cal. App. 4th 390 (2007).....	15
15	<i>Standon Co., Inc. v. Sup.Ct. (Kim)</i> ,	
16	225 Cal.App.3d 898 (1990).....	17
17	<i>State v. Woodson</i> ,	
18	551 A.2d 1187 (R.I. 1988)	16
19	<i>West Pico Furn. Co. v. Sup. Ct.</i> ,	
20	56 Cal.2d 407 (1961).....	13
21	Statutes	
22	Cal. Civ. Proc. Code § 1985.3(a)(2).....	19
23	Cal. Civ. Proc. Code § 2017.010.....	11
24	Cal. Civ. Proc. Code § 2017.020.....	14
25	Cal. Civ. Proc. Code § 2025.480(e)	15
26	Cal. Civ. Proc. Code § 2031.240(a)	17
27	Cal. Code Civ. Proc. § 2025.480(j).....	13
28	California’s Interstate and International Depositions and Discovery Act (Cal. Civ. Proc. Code § 2029.600).....	6, 10
	Civil Discovery Act.....	15
	Evid. Code § 780, subd. (f)	16

1
2
3
4
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6
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Evid. Code § 95318

Deadline

1 Petitioner Amber Laura Heard (Defendant in the out-of-state action) submits this
2 memorandum of law in support of her Petition to Enforce Subpoena Pursuant to CCP Section
3 2090.600, and respectfully requests the assigned Court to schedule a hearing date for this Petition
4 at its earliest convenience:

5 **I. INTRODUCTION**

6 Petitioner Amber L. Heard is the defendant in *Depp v. Heard*, case no. CL-2019-0002911,
7 a lawsuit pending in the Commonwealth of Virginia (the “Underlying Lawsuit”). Ms. Heard
8 petitions this Court for an order under California’s Interstate and International Depositions and
9 Discovery Act (Cal. Civ. Proc. Code § 2029.600) compelling non-party The Mandel Company, Inc.
10 d/b/a The Management Group (“TMG”) to comply with the Subpoena for Production of Business
11 Records in Action Pending Outside California (“Subpoena”)¹ and produce non-privileged
12 documents responsive to the requests therein, as well as a privilege log.

13 In December 2018, Ms. Heard published an Op-Ed in *The Washington Post* calling for
14 “changes to laws and rules and social norms” so that “women who come forward to talk about
15 violence” towards them “receive more support.” (Schwartz Decl., Ex. 1.) Proving her point, several
16 months later Ms. Heard’s ex-husband, John C. Depp, II, filed the Underlying Lawsuit, suing Ms.
17 Heard for defamation in Fairfax Circuit Court, Virginia, claiming more than \$50 million in damages.
18 Specifically, Mr. Depp claims Ms. Heard’s Op-Ed—which does not mention Mr. Depp’s name—
19 somehow “revived” allegations of domestic abuse Ms. Heard made against him in 2016. (Schwartz
20 Decl., Ex. 2 at ¶ 72.) If this case proceeds to trial, key issues will be whether Mr. Heard’s statements
21 implicate Mr. Depp, and, if so, whether they are true.

22 TMG was Mr. Depp’s longstanding business management firm from 1999 until they parted
23 ways in 2016 amid a bitter dispute. As such, TMG is in possession of extensive records of Mr.
24 Depp’s business dealings—as well as his personal life. Of particular relevance here, by its own
25 account, TMG was aware that Mr. Depp had violently abused Ms. Heard and that he had pressured

26 _____
27 ¹ The Subpoena is attached to the accompanying Declaration of Richard A. Schwartz (“Schwartz
28 Decl.”) as Exhibit 5.

1 his employees to make false public statements denying this fact. (Schwartz Decl., Ex. 3 at ¶ 110.)
2 TMG also paid millions of dollars to various members of Mr. Depp’s staff, many of whom will be
3 witnesses in the Underlying Lawsuit, as well as millions of dollars to “bail [Mr. Depp] out of
4 numerous legal crises” and “mak[e] a series of hush money settlements.” (Schwartz Decl., Ex. 3 at
5 ¶¶ 8, 11.)

6 These records, and other documents sought by the Subpoena, thus go to key issues in dispute
7 in the Underlying Lawsuit, not to mention Mr. Depp’s—and his witnesses’—credibility. And the
8 presiding judge in the Underlying Lawsuit agrees. On October 18, 2019, Chief Judge Bruce D.
9 White granted in full Ms. Heard’s motion to compel, ordering Mr. Depp to produce documents from
10 his files relating (*inter alia*) to his acts of violence, payments to witnesses, and abuse of drugs and
11 alcohol. (Schwartz Decl., Ex. 11 at 3-5, Ex. 12.)

12 TMG objects to the Subpoena on the basis of the protective orders entered in a now-closed
13 case, *Depp, et al. v. The Mandel Company, et al.*, case no. BC646882 (the “TMG Lawsuit”), even
14 though those orders explicitly permit discovery material from that case to be produced in response
15 to a subpoena such as the one at issue here. TMG also asserts plainly improper boilerplate objections
16 that compliance with the Subpoena is overly burdensome, even though Petitioner offered to relieve
17 TMG’s purported burden of \$5,575 in costs by self-collecting and copying the requested files.
18 TMG’s baseless and boilerplate objections must be rejected.

19 For these reasons, as set forth more fully below, Ms. Heard respectfully requests that this
20 Court enter an order compelling TMG to produce the documents requested in the Subpoena.

21 **II. SUMMARY OF RELEVANT FACTS**

22 **A. DEPP SUES TMG AND TMG COUNTER-SUES**

23 Following a 17-year relationship, in January 2017 Mr. Depp sued TMG for fraud, seeking
24 \$25,000,000.00 in damages. TMG filed a cross-complaint in which it alleged that Mr. Depp had no
25 “impulse control” and identified several examples of Mr. Depp’s “habitual lying to the public and
26 to public authorities, and his efforts to strong arm others to lie on his behalf, when confronted in any
27 way regarding his outrageous conduct or when called upon to accept responsibility for his own
28 behavior and actions.” (Schwartz Decl., Ex. 3 at ¶ 112.) TMG alleged that Mr. Depp repeatedly

1 coerced individuals to lie to protect him. For example, when text messages were published showing
2 that Mr. Depp’s longtime assistant apologized to Ms. Heard for Mr. Depp’s “disgusting” behavior,
3 Mr. Depp pressured the assistant to falsely and publicly accuse Ms. Heard of “manufacturing” those
4 messages. According to TMG, Mr. Depp “knew full well that the text messages were genuine, but
5 pressured and berated his assistant to falsely challenge the texts publicly.” (*Id.*) TMG also alleged
6 that its principal, Joel Mandel, “was informed well after the fact through communications with
7 various house staff and security that Depp had been extremely volatile and had sometimes ‘gotten
8 physical’ with Heard” and that “Depp had violently kicked Heard during an incident that took place
9 in or around 2014.” (*Id.* at ¶ 109.) In short, the TMG Lawsuit, which was eventually dismissed in
10 August 2018, involved allegations and evidence of Mr. Depp’s abuse of Ms. Heard, as well as
11 information about individuals with knowledge of that abuse and Mr. Depp’s efforts to cover it up.

12 **B. DEPP FILES THE UNDERLYING LAWSUIT IN THE COMMONWEALTH OF VIRGINIA**

13 On December 18, 2018, *The Washington Post* published an Op-Ed by Ms. Heard in which
14 she discussed how she “was exposed to abuse at a very young age”, and how she “felt the full force
15 of our culture’s wrath for women who speak out.” (*See* Schwartz Decl., ¶ 2, Ex. 1.) On March 1,
16 2019—more than six months after Mr. Depp and TMG resolved the TMG Lawsuit—Mr. Depp filed
17 a defamation complaint in the Fairfax County Circuit Court in Virginia seeking \$50,000,000.00 in
18 damages. (*See* Schwartz Decl., ¶ 3, Ex. 2.) The Complaint alleges that the Op-Ed somehow
19 “revived” Ms. Heard’s 2016 claims that Mr. Depp abused her. (*Id.* ¶ 72.) The Complaint further
20 alleges that Mr. Depp has amassed numerous witnesses who will supposedly testify that Ms. Heard
21 fabricated her account of Mr. Depp’s abuse. (*Id.* ¶¶ 32–61.) However, as TMG explained in its
22 own cross-complaint against Mr. Depp, Mr. Depp “strong arm[s] others to lie on his behalf” and
23 “spent millions” to pay “hush money settlements.” (*See* Schwartz Decl., ¶ 4, Ex. 3 at ¶¶ 112, 52.)

24 Fact discovery in Mr. Depp’s case against Ms. Heard is scheduled to conclude in a little over
25 60 days on January 3, 2019, and trial is scheduled to begin on February 3, 2020.

26 **C. SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS TO TMG**

27 On August 16, 2019, Ms. Heard served Mr. Depp’s counsel with a Notice to Consumer or
28 Employee and Objection. (*See* Schwartz Decl., Ex. 4.) Eleven days later, on August 27, 2019, Ms.

1 Heard served on TMG a Subpoena for Production of Business Records in Action Pending Outside
2 California seeking relevant documents to the underlying litigation. (*See* Schwartz Decl., Ex. 4.)
3 The Subpoena commanded TMG to produce documents responsive to the attached requests for
4 production by September 16, 2019. In summary, the Subpoena requested documents relating to:

- 5 • Deposition transcripts from the TMG Lawsuit [request no. 1];
- 6 • Payments on Mr. Depp's behalf to conceal acts of violence [request nos. 2-5];
- 7 • Evidence of payments to Mr. Depp's doctors, security and lawyers [request nos. 6-
8 8];
- 9 • Payments to witnesses who observed Mr. Depp's violence and/or helped cover it up
10 [request nos. 9-24].
- 11 • Evidence of Mr. Depp's drug and alcohol abuse [request no. 25]; and
- 12 • Incidents of violence by Mr. Depp [request no. 26].

13 On September 10, 2019, TMG served objections to the Subpoena. (*See* Schwartz Decl., Ex.
14 6.) Copying and pasting almost each and every objection for each request, TMG asserted boilerplate
15 objections that the Subpoena's requests²: (1) are vague and ambiguous; (2) are overbroad and
16 unduly burdensome; (3) seek irrelevant evidence; (4) seek confidential and/or privileged
17 information; and/or (5) seek information available from other sources. (*Id.*) Mr. Depp did not object
18 to the subpoena, nor did he file any motion to quash before (or after) September 16, 2019, the date
19 for production specified on the Subpoena. (*See* Schwartz Decl., Ex. 6.)

20 On September 24, 2019, counsel for Ms. Heard contacted counsel for TMG to discuss
21 TMG's objections. (*See* Schwartz Decl., ¶ 8, Ex. 7.) TMG's counsel, Michael Kump, stated that
22 TMG's primary objection was that it would be burdensome for TMG to produce the documents
23 requested. (*Id.*) On October 2, 2019, counsel for Ms. Heard, TMG, and Mr. Depp conducted a
24 telephonic meet-and-confer conference to further discuss TMG's objections. (*See* Schwartz Decl.,
25 ¶ 9, Ex. 8.) During the meet and confer, TMG stated that it would not produce documents because

26 _____
27 ² TMG did not assert the attorney/client privilege objection in response to request no. 1.
28 Otherwise, the responses were identical.

1 it claimed (1) it was not permitted to produce documents produced in the TMG Lawsuit as they are
2 subject to a protective order, and (2) producing the documents requested would be unduly
3 burdensome, because although TMG has a hard drive from the TMG litigation that contains a
4 database all of the responsive documents, it would cost TMG \$5,575 to access it. (*Id.*) Ms. Heard’s
5 counsel pointed out that the protective orders explicitly allow discovery material to be produced in
6 response to a subpoena, and offered to relieve TMG’s purported burden by collecting and copying
7 the documents from the hard drive—which would cost TMG nothing at all. (*Id.*) Nonetheless,
8 TMG continued to (nonsensically) reiterate its reliance on the protective order and refused to further
9 discuss ways to minimize any burden on TMG. (*Id.*) Despite Ms. Heard’s good faith efforts and
10 Mr. Depp’s counsel’s insistence that “Mr. Depp does not have a dog in this fight”, TMG has
11 steadfastly refused to produce any documents responsive to the Subpoena, necessitating this
12 petition. (*Id.*)

13 **D. THE PRESIDING JUDGE GRANTS A MOTION TO COMPEL DISCOVERY, CONFIRMING**
14 **THE RELEVANCE OF THE DOCUMENTS SOUGHT FROM TMG.**

15 On September 27, 2019, Ms. Heard filed in the Underlying Lawsuit a motion to compel
16 Mr. Depp to produce certain categories of documents, including (*inter alia*) documents relating to
17 Mr. Depp’s abuse of drugs and alcohol; payments Mr. Depp or those acting on his behalf to key
18 witnesses relating to substance abuse, destruction of property, violence, or abuse, as well as
19 payments to hotels and other lodgings for property damage he caused; and documents that relate to
20 Mr. Depp’s other romantic partners that involve violence, abuse, fights, or destruction of property.
21 ([Schwartz Decl., Ex 11 at 2–4].) On October 18, 2019, Chief Judge White rejected the arguments
22 of Mr. Depp’s counsel that these categories of documents were not relevant to the claims or defenses
23 in the Underlying Lawsuit and granted Ms. Heard’s motion in full. (*See* Schwartz Decl., Exs. 12,
24 13 at 26:12-27:3.)

25 **III. THE PETITION SHOULD BE GRANTED**

26 **A. LEGAL STANDARD**

27 A petition for enforcement of subpoena that relates to out-of-state proceedings is governed
28 by Code of Civil Procedure § 2029.600 of the Interstate and International Depositions and Discovery

1 Act, which authorizes petitions to compel production of documents called for in a subpoena, and
2 otherwise applies California’s discovery rules and principles to subpoenas issued in actions pending
3 outside of California.

4 Of course, the scope of discovery encompasses not only relevant material, but also any
5 discovery reasonably calculated to lead to admissible evidence. *See* Cal. Civ. Proc. Code §
6 2017.010; *Anti-Defamation League of B’Nai Brith v. Super. Ct.*, 67 Cal. App. 4th 1072, 1095 (1998)
7 (“[D]iscovery is permitted as long as there is a reasonable prospect that it might lead to admissible
8 evidence.”). Any doubt regarding whether requested information falls within the scope of discovery
9 should be resolved in favor of permitting discovery. *See Colonial Life & Accident Ins. Co. v. Super.*
10 *Ct.*, 31 Cal. 3d 785, 790 (1982). The standard is the same whether discovery is propounded on
11 parties or third parties: it need only “appear[] reasonably calculated to lead to the discovery of
12 admissible evidence.” Cal. Civ. Proc. Code § 2017.010.

13 The burden is on the responding party to justify any objection or failure to respond. *See Coy*
14 *v. Super. Ct.*, 58 Cal. 2d 210, 220-21 (1962).

15 **B. TMG’S USE OF THE PROTECTIVE ORDER AS A SHIELD IS UNJUSTIFIED**

16 TMG claims that the protective orders in the TMG Lawsuit preclude production of
17 documents in TMG’s possession absent a stipulation by Mr. Depp to modify the order. (*See*
18 *Schwartz Decl.*, Ex. 8.) That is incorrect. The paragraph addressing subpoenas in both the original
19 and revised protective orders states:

20 If any person subject to this Stipulation and Protective Order who has
21 custody of any Confidential Materials receives a subpoena or other
22 process (“Subpoena”) from any government or other person or entity
23 demanding production of Confidential Materials, the recipient of the
24 Subpoena shall promptly give notice of the same by electronic mail
25 transmission followed by either express mail or overnight delivery to
26 counsel of record for the Designating Party, and shall furnish such
27 counsel with a copy of the Subpoena. Upon receipt of this notice, the
28 Designating Party may, in its sole discretion and at its own cost, move
to quash or limit the Subpoena, otherwise oppose production of the
Confidential Materials from the subpoenaing person or entity to the
fullest extent available under law. The recipient of the Subpoena may
not produce any Documents, Testimony or Information pursuant to
the Subpoena prior to the date specific for production on the

1 Subpoena.

2 (Schwartz Decl., Exs. 9 at ¶ 13, 10 at ¶ 14.)

3 This provision makes clear that if the *Designating Party* does not move to quash or limit the
4 subpoena before the date for production, the recipient of the subpoena is authorized to produce the
5 discovery materials in question. Mr. Depp has not moved to quash or limit the Subpoena. (Schwartz
6 Decl., ¶ 10.) In fact, Mr. Depp’s counsel has stated that “Mr. Depp does not have a dog in this
7 fight.” (Schwartz Decl., Ex. 7.) TMG’s objection based on any documents designated as
8 confidential by Mr. Depp therefore falls away.

9 Moreover, the protective orders do not restrict a party from producing documents that the
10 party itself designated as confidential. (Schwartz Decl., Exs. 9 at ¶ 13, 10 at ¶ 14.) Thus, assuming
11 some of the documents in TMG’s possession are documents it designated as confidential, that is no
12 reason to refuse production of those documents. (*See* Schwartz Decl., Ex. 8.)

13 TMG next claimed that paragraphs 20 and 21 of the original and revised protective orders
14 (respectively) preclude production. Wrong again. The paragraphs state:

15 This Stipulation and Protective Order shall continue to be binding
16 after the conclusion of this Proceeding and all subsequent proceedings
17 arising from this Proceeding, except that a Party may seek the written
18 permission of the Designating Party or may move the Court for relief
19 from the provisions of this Stipulation and Protective Order. To the
20 extent permitted by law, the Court shall retain jurisdiction to enforce,
21 modify, or reconsider this Stipulation and Protective Order, even after
22 the Proceeding is terminated

23 (Schwartz Decl., Exs. 9 at ¶ 20, 10 at ¶ 21.) TMG argues that because “Depp is unwilling to stipulate
24 to a modification of the orders,” TMG would be in violation of this provision if it were to produce
25 documents in response to the Subpoena. (Schwartz Decl., Ex. 8.)³ On the contrary, this provision
26 governs modification of the protective order itself, not any particular designation of documents
27 under the order or whether those documents can be produced in response to a subpoena. As already

28

3 When TMG asked Mr. Depp’s counsel for such a stipulation during one meet-and-confer, Mr. Depp’s counsel, Mr. Chew, helpfully responded “Why would we agree to anything?” (Schwartz Decl., ¶ 11.)

1 explained, the protective order already provides that a designating party must move to quash should
2 that party seek to avoid producing documents in response to a subpoena. (Schwartz Decl., Exs. 9 at
3 ¶ 13, 10 at ¶ 14.) TMG’s utterly baseless efforts to twist the plain meaning of the protective order
4 to avoid its obligations to respond to the subpoena provides Ms. Heard a basis to recover the
5 attorneys’ fees she has expended in filing this petition pursuant to Cal. Code Civ. Proc. §
6 2025.480(j).

7 Notably, despite multiple pleas from TMG’s counsel, Mr. Depp’s counsel has not once
8 confirmed that it shares TMG’s stated view that TMG is not authorized to produce documents
9 responsive to the subpoena that are subject to the protective order. (Schwartz Decl., ¶ 11.) And Mr.
10 Depp did not move to quash the Subpoena before the date for production specified in the Subpoena.
11 As a result, TMG’s deliberate misreading of the protective orders does not provide any legitimate
12 basis for its refusal to comply with the Subpoena.

13 **C. TMG’S CLAIM OF BURDEN IS WITHOUT MERIT**

14 TMG has also failed to make the requisite showing of oppression to justify its claims of
15 burden. It is black-letter law that it is not enough for a third party to object that a subpoena will
16 require effort. A burden objection will only be valid if the “burden is demonstrated to result in
17 injustice.” *West Pico Furn. Co. v. Sup. Ct.*, 56 Cal.2d 407, 418 (1961). In determining whether the
18 burden is unjust, it must appear that the amount of work required to answer the question is so great,
19 and the utility of the information sought so minimal, that it would defeat the ends of justice to require
20 an answer. *Id.*; *Columbia Broadcasting System, Inc. v. Sup. Ct.*, 263 Cal.App.2d 12, 19 (1968).
21 Bald assertions of burden are never enough—burden objections must be “sustained by evidence
22 showing the quantum of work required.” *West Pico Furn. Co.*, 56 Cal. 2d at 417. When claiming
23 that a request is overly burdensome, the responding party must therefore provide preliminary facts
24 that show, for example, how responsive documents are kept, how many hours would be required to
25 search and produce it, and how much it would cost to do so. *See e.g., Mead Reinsurance Co. v. Sup.*
26 *Ct.*, 188 Cal.App.3d 313 (1986) (objecting party showed that it would require the review of over
27 13,000 claims files requiring five claims adjusters working full time for six weeks).

28 Here, TMG’s feeble efforts to support their claim of burden show precisely the opposite.

1 The only cost TMG has identified is “\$5,575 just to get the database ... back running.” (Schwartz
2 Decl., Ex. 8 [emphasis added].) Such an amount can hardly be considered to “clearly outweigh[]
3 the likelihood that the information sought will lead to the discovery of admissible evidence.” Cal.
4 Civ. Proc. Code § 2017.020 (emphasis added).⁴

5 Further, Ms. Heard does not seek *all* Depp-related documents from TMG. Ms. Heard’s
6 subpoena seeks a narrow subset of documents, including documents that evidence Mr. Depp’s
7 violence, drug and substance abuse, and documents that relate to both the credibility and bias of
8 certain witnesses in the underlying case. Nonetheless, to minimize any burden on TMG, Ms. Heard
9 offered to accept all documents produced (by either party) in the TMG case “in lieu of requiring
10 TMG to expend *any* attorney time finding documents responsive to our subpoena.” (Schwartz Decl.,
11 Ex. 8.) Ms. Heard further offered, at her own expense, to collect the hard drive containing the
12 database of documents and retrieve from it only the documents that were produced by either party
13 to the TMG Lawsuit. (Schwartz Decl., Ex. 8.) Despite these good faith efforts to minimize TMG’s
14 purported burden, TMG refused to even discuss Ms. Heard’s proposals. (*Id.*)

15 Having failed to substantiate its objection, TMG’s objection based on burden should be
16 overruled.

17 **D. TMG’S REMAINING BOILERPLATE OBJECTIONS ARE WITHOUT MERIT**

18 Responses to requests for production must be unequivocal; boilerplate language is ignored.
19 *See American Federation of State, County and Municipal Employees v. Metropolitan Water Dist. of*
20 *Southern California*, 126 Cal.App.4th 247, 268 (2005). Rather than producing documents, TMG
21 listed a series of boilerplate objections, all of which are inapplicable and should be overruled.

22 **1. Relevance: Ms. Heard’s Requests Are Directly Related to the Claims**
23 **Asserted by Depp**

24 TMG objects to Ms. Heard’s requests on the ground that the requests seek information that
25 is not relevant or reasonably calculated to lead to the discovery of admissible evidence. (*See*
26

27 ⁴ That TMG previously “spent over \$1 million” litigating against Mr. Depp (*see* Schwartz Decl.,
28 Ex. 8) is not relevant to Ms. Heard’s Subpoena.

1 Schwartz Decl., Ex. 6.) For discovery purposes, information is “relevant” if it might reasonably
2 assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. *Gonzalez*
3 *v. Super. Ct.*, 33 Cal. App. 4th 1539, 1546 (1995). *Sinaiko Healthcare Consulting, Inc. v. Pacific*
4 *Healthcare Consultants*, 148 Cal. App. 4th 390, 402 (2007) (“The Civil Discovery Act provides
5 litigants with the right to broad discovery... The statutory provisions must be liberally construed in
6 favor of discovery...”). “If the court determines that the... production sought is subject to discovery,
7 it shall order that the answer be given or the production be made.” Cal. Civ. Proc. Code §
8 2025.480(e).

9 Here, the Court in the Underlying Litigation has already held that the categories of
10 documents that Ms. Heard seeks from TMG are relevant or reasonably calculated to lead to the
11 discovery of admissible evidence. (*See* Schwartz Decl., Exs. 12, 13 at 26:12-27:3.) And the Court’s
12 ruling was plainly correct.

13 The requests in the Subpoena are relevant and reasonably calculated to lead to the discovery
14 of admissible evidence because they seek documents that relate directly to Mr. Depp’s allegations,
15 Ms. Heard’s defenses, and the credibility and bias of several witnesses in the underlying case. For
16 example, the deposition transcripts requested in Request No. 1 may shed light on TMG’s allegations
17 that Mr. Depp has strong-armed witnesses to perjure themselves on Mr. Depp’s behalf, as well as
18 other instances of reckless and dishonest behavior. This is plainly relevant to Mr. Depp’s allegations
19 that Ms. Heard fabricated her claims of abuse. Indeed, TMG asserted in its cross-complaint that
20 Mr. Depp spent millions on a series of hush money settlements and that “the details of these
21 payments and settlements will be fully revealed during discovery and trial.” (Schwartz Decl., Ex. 4
22 at ¶ 11.) Request nos. 6-24 seek documents and communications relating to financial payments or
23 gifts made to specific individuals, all of whom are witnesses who observed Mr. Depp’s violence
24 and/or have seen injuries suffered by Ms. Heard at the hands of Mr. Depp. In fact, TMG alleges
25 that Mr. Depp “supported his friends, family and certain employees at a cost of over \$10 million.”
26 (Schwartz Decl., Ex. 4 at ¶ 12.) Mr. Depp’s case against Ms. Heard turns on not only the credibility
27 of the two involved parties, but also those who Mr. Depp claims are witnesses who Mr. Depp claims
28 will “debunk[]” Ms. Heard’s prior allegations of abuse. (Schwartz Decl., Ex. 2 at ¶ 40.) Thus,

1 because the credibility of each witness is relevant, evidence of payments or even attempts to pay a
2 witness may “tend to convince the [fact finder] that the witness’[s] . . . veracity is questionable.”
3 *Howard v. Commonwealth*, No. 0793-14-1, 2015 WL 1993341, at *6 (Va. Ct. App. May 5, 2015)
4 (quoting *Via v. Commonwealth*, 590 S.E.2d 583, 592 (Va. 2004)); *see also* Evid. Code § 780, subd.
5 (f) (evidence that a witness has “a bias, interest, or other motive” is relevant to witness’s credibility);
6 *People v. Earp*, 20 Cal.4th 826, 877 (1999) (evidence of third-party bribery attempt relevant to
7 witness’s credibility).

8 Request no. 25 relates directly to Mr. Depp’s abuse of drugs and alcohol, which is relevant
9 because Mr. Depp’s substance abuse was “very much a part of the setting in which the charged
10 assaults occurred.” *State v. Woodson*, 551 A.2d 1187, 1192 (R.I. 1988); *see also Constand v. Cosby*,
11 232 F.R.D. 494, 497 (E.D. Pa. 2006) (in case involving battery/defamation, holding that “any
12 alleged history of . . . use of prescriptions or controlled substances between plaintiff and defendant
13 is core to this action” and allowing discovery). Request nos. 2-5 and 26 seek evidence that Mr.
14 Depp abused other romantic partners and exhibited violence towards individuals, including Ms.
15 Heard, which TMG specifically alleges in its cross-complaint. (Schwartz Decl., Ex. 3 at ¶ 109.)
16 Mr. Depp’s “abuse of his prior girlfriends” is also “relevant to [his] *modus operandi* of committing
17 violence against women.” *Hall v. Lashbrook*, No. 14 Civ. 2687, 2018 WL 6830326, at *5 (N.D. Ill.
18 Dec. 28, 2018). And because it seems Mr. Depp intends to “offer evidence of his . . . character,”
19 Ms. Heard is entitled to “offer evidence of [his] bad character” in rebuttal. *Longmire v. Ala. State*
20 *Univ.*, 151 F.R.D. 414, 419 (M.D. Ala. 1992).

21 TMG’s boilerplate objection that the requests are neither relevant nor reasonably calculated
22 to lead to the discovery of admissible evidence should therefore be overruled.

23 **2. Vagueness: TMG’s Objections that the Requests are Vague and**
24 **Ambiguous are Invalid**

25 TMG also objects to Petitioner’s requests on the ground that the request is “vague and
26 ambiguous.” (See Schwartz Decl., Ex. 4.) But courts do not sustain vagueness objections where
27 “the nature of the information sought is apparent.” *Deyo v. Kilbourne*, 84 Cal.App.3d 771, 783
28 (1978); *see also Cembrook v. Sup. Ct.*, 56 Cal.2d 423,428 (1961). These types of objections, unless

1 made more specific as to which parts of the request is subject to the objection, may therefore be
2 treated as a sanctionable “‘nuisance’ objection.” *Standon Co., Inc. v. Sup.Ct. (Kim)*, 225 Cal.App.3d
3 898, 903 (1990); *see also Manzetti v. Sup.Ct. (Fitzgerald)*, 21 Cal.App.4th 373, 377 (1993).

4 TMG fails to explain precisely how or what part of any request is vague or ambiguous. In
5 any event, TMG is under a duty to respond to the fullest extent possible. *See* Cal. Civ. Proc. Code
6 § 2031.240(a) (if only part of an item or category demanded is objectionable, the response must
7 contain an agreement to comply with the remainder, or representation of inability to comply).

8 Here, each request clearly states what documents Ms. Heard is seeking. For example, many
9 of these requests make explicit reference to claims alleged by TMG in its litigation with Mr. Depp;
10 for TMG to claim that those requests are unintelligible is beyond justification. (*See* Schwartz Decl.,
11 Ex. 5.) To the extent TMG is merely arguing semantics to avoid providing a substantive response,
12 such conduct is improper and violates TMG’s duty to respond in good faith. *See Collinson & Kaplan*
13 *v. Harunian*, 21 Cal.App.4th 1611, 1617 (1994) (“not only were defendants’ responses evasive, in
14 attempting to avoid discovery, defendants engaged in arguing meaningless semantic differences in
15 violation of their duty to respond in good faith”).

16 TMG’s boilerplate objection that the requests are vague and ambiguous should be overruled.

17 **3. Privilege: TMG Fails to Establish Preliminary Facts Supporting Any**
18 **Assertion of Privilege**

19 TMG asserts multiple privilege objections against each of Petitioner’s requests. Privilege
20 objections, however, must be supported by preliminary facts that support each element of the
21 privilege. *See HLC Props., Ltd v. Superior Ct.* 35 Cal.4th 54, 59 (2005) (responding party has
22 burden to establish privilege by evidence); *Bank of Am. v. Superior Ct.* 212 Cal.App.4th 1076, 1099
23 (party claiming attorney-client privilege has burden to show preliminary facts); *Carehouse*
24 *onvalescent Hosp. v. Superior Ct.*, 143 Cal.App.4th 1558, 1563 (party claiming work-product
25 protection has burden to show preliminary facts).

26 To be sure, Ms. Heard does not seek any work product or documents that are protected by
27 TMG’s own attorney-client privilege and has offered to work with TMG to address that. (Schwartz
28 Decl., Ex. 8 at 4.) TMG cannot object on the basis of any privilege held by Mr. Depp, as TMG is

1 not the holder of any such privilege and not entitled to assert it. *See* Evid. Code § 953. And Mr.
2 Depp did not object on that basis, despite having notice and an opportunity to do so. Accordingly,
3 TMG’s boilerplate objection that the requests seek privileged information should be overruled to
4 the extent it is not claiming its own attorney-client privilege.

5 **4. Other Sources: TMG is the Only Party That Can Identify Many of the**
6 **Documents Sought**

7 TMG also asserts a blanket objection to all requests on the ground that the documents
8 requested are equally available from Mr. Depp. This is not accurate. For one thing, Mr. Depp’s
9 counsel has not confirmed in writing that Mr. Depp still retains all documents produced by either
10 party in the TMG Lawsuit. For another, as Ms. Heard’s counsel explained, the subpoena to TMG
11 sought different categories of documents from those Ms. Heard requested from Mr. Depp, and for
12 good reason.

13 Even assuming for the sake of argument that that TMG produced *all* responsive documents
14 currently in its possession to Mr. Depp during the TMG Lawsuit, and that Mr. Depp still maintains
15 all those documents, Mr. Depp cannot respond to requests that directly address contentions *TMG*
16 alleged in its cross-claim against Mr. Depp. Specifically, Mr. Depp cannot produce documents
17 supporting *TMG*’s contentions that Mr. Depp “‘spent millions to pay ‘hush money,’” that he “‘spent
18 millions to employ an army of attorney’ to ‘bail him out of numerous legal crises,’” that he “‘spent
19 \$1.2 million to keep a doctor on call,” or that he “‘spent \$1.8 million a year on round-the-clock
20 security.” (Schwartz Decl., Ex. 5.) Given that these are contentions made by TMG, only TMG can
21 identify know which specific documents and communications support their contentions. These are
22 not documents that are available from other sources.

23 Further, the mere fact that these documents *may* be available from Mr. Depp does not relieve
24 TMG of its own independent obligation to comply with the Subpoena. Any argument by TMG
25 essentially boils down to an argument about burden: an argument that Ms. Heard has effectively
26 mooted by offering to accept a full production of all documents produced by TMG to Mr. Depp and
27 picking up the costs.

28 Accordingly, TMG’s boilerplate objection on the ground that documents can be obtained

1 from Mr. Depp should be overruled.

2 **5. Non-Compliance with California Law**

3 Finally, TMG objects on the ground that the subpoena “does not comply with California law,
4 and/or is procedurally invalid.” *See* Schwartz Decl., Ex. 6. TMG provides no explanation for this,
5 and none is apparent.⁵

6 **IV. CONCLUSION**

7 The discovery sought here is focused and highly relevant. The Court in the underlying
8 litigation has confirmed the relevance of the documents sought. For the foregoing reasons,
9 Petitioner requests that this Court grant the petition in full and order TMG to produce all documents
10 responsive to the Subpoena.

11 DATED: October 29, 2019

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22
23 _____
24 ⁵ To the extent that TMG claims that the subpoenas are procedurally invalid because Ms. Heard
25 “asked for financials of third parties without giving any consumer notice”, Schwartz Decl., Ex. 8,
26 this is inaccurate. As the accounting firm for Mr. Depp, Mr. Depp is the consumer at issue, as
27 defined by Cal. Civ. Proc. Code § 1985.3(a)(2). A Notice to Consumer was served on Mr. Depp’s
28 counsel. (Schwartz Decl., Ex. 8.) And no other third parties would be required to be notified. TMG
has never represented that any of the third parties identified in the requests used the services of TMG
or that TMG has acted as an agent or fiduciary of any of those individuals, and in fact expressly
disclaimed that these third parties were TMG’s clients.