Applicants
Velvel (Devin) Freedman
Second VDF2
6 December 2019

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Claim No.: CL-2019-000695

IN THE MATTER OF THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT 1975

and

IN THE MATTER OF A CIVIL PROCEEDING PENDING BEFORE THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA ENTITLED AS: -
(1) Ira Kleiman (as the personal representative of the Estate of David Kleiman) and (2) W&K Info Defense Research LLC, Plaintiffs, v Craig Wright, Defendant (Case No.: 9:18-cv-80176-BB)

BETWEEN:

IRA KLEIMAN, as personal representative of the Estate of David Kleiman, and W&K INFO DEFENSE RESEARCH, LLC — **Applicants**

-and-

ANDREW O'HAGAN — **Respondent**

SECOND WITNESS STATEMENT OF VELVEL (DEVIN) FREEDMAN

I, Velvel (Devin) Freedman, of Roche Freedman LLP, 200 South Biscayne Boulevard, Suite 5500, Miami, Florida 33131, United States of America **WILL SAY** as follows:

1. INTRODUCTION

1.1 I am the same Velvel Freedman who made the first witness statement dated 11 November 2019 ("**Freedman 1**") in support of the Application issued of the same date for an order pursuant to s.1 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 (the "**1975 Act**") and Part 34 of the Civil Procedure Rules in pursuance of a request issued by the Southern District of Florida Court by way of a sealed Letter of Request dated 22 July 2019 (the "**Letter of Request**"). The defined terms used in my first witness statement are used herein unless otherwise specified.

1.2 Save where otherwise stated, the facts and matters contained in this witness statement are based upon information provided to me by the Applicants and are true to the best of my

knowledge and belief. Nothing in this witness statement is intended to constitute any waiver of privilege.

1.3 The remainder of this witness statement shall be structured as follows:

(a) Section 2 sets out the background to this witness statement;

(b) Section 3 describes the narrowed scope of the Applicants' requests for testimony and documentary information;

(c) Section 4 explains why the Applicants' requests do not comprise an impermissible interference with journalistic material; and

(d) Section 5 sets out the Applicants' position on why compliance with their requests would not, contrary to what is suggested by the Respondent, be unduly burdensome or impractical for him.

1.4 There is now shown to me marked "**VDF2**" a bundle of copy documents to which I refer in this statement by page numbers in square brackets. In this witness statement I also refer to pages from copy documents included in "**VDF1**", exhibited to Freedman 1.

2. BACKGROUND

(a) <u>The Respondent's Application</u>

2.1 On 14 November 2019, Mr Justice Butcher made an order (the "**Disclosure Order**") requiring the Respondent, by 20 December 2019, to submit to oral examination on the following topics (paragraphs 1 (a) to (d) of the Disclosure Order):

(a) His educational background, employment history, professional qualifications, persona preparation for the deposition (to include any contacts he may have had with the parties, their lawyers, insurers or representatives, but excluding any privileged content of such communications).

(b) The accuracy of the quotes and factual assertions contained within his work The Satoshi Affair.

(c) Statements made, or documents provided, by Craig Wright (and his agents), Ms Lynn Wright, or Ms Ramona Watts that relate to Satoshi Nakamoto, the creation of Bitcoin, David Kleiman, W&K Info Defense Research, the Tulip Trusts, the bitcoin allegedly mined by Craig Wright and/or David Kleiman, and the intellectual property alleged to have been created by Craig Wright and/or David Kleiman.

(d) Statements made, or documents provided, by anyone interviewed in connection with the drafting of The Satoshi Affair that relate to Satoshi Nakamoto, the creation of Bitcoin, David Kleiman, W&K Info Defense Research, the Tulip Trusts, the bitcoin allegedly mined by Craig Wright and/or David Kleiman, and the intellectual property alleged to have been created by Craig Wright and/or David Kleiman.

2.2 In addition, the Disclosure Order required that the Respondent produce the following documents (paragraphs 1 (e) to (g) of the Disclosure Order):

(a) *All video and/or audio recordings of interviews related to Mr O'Hagan's work in writing The Satoshi Affair, including but not limited to, the "many hours of tape" of Craig Wright referenced in The Satoshi Affair.*

(b) *All documents relied on or reviewed in preparing for, and drafting, The Satoshi Affair. This includes contemporaneous notes taken by Mr O'Hagan or others, and any documents or communications reviewed or relied on when preparing the story.*

(c) *All emails between Mr O'Hagan, and either Craig Wright, Ms Ramona Watts, Mr Robert MacGregor, or Mr Stefan Matthews.*

2.3 These categories are referred to in Freedman 1 as the "O'Hagan Deposition" and the "O'Hagan Documents" respectively, and the "O'Hagan Evidence" collectively.

2.4 The Disclosure Order was personally served on the Respondent on Friday 15 November 2019.

2.5 On 22 November 2019, pursuant to paragraph 3 of the Disclosure Order, the Respondent applied to set aside the Disclosure Order, on the basis that:

(a) The Disclosure Order was inconsistent with s.3(1) of the 1975 Act, in that the Respondent could not be compelled to give evidence that reveals source material or other journalistic material on this basis in civil proceedings in England and Wales;

(b) The Disclosure Order was inconsistent with article 10 of Schedule 1 of the Human Rights Act 1998 in that it represents a disproportionate interference with the Respondent's right to freedom of expression and/or was not "*in accordance with the law*";

(c) The Disclosure Order represents an order for general discovery against a mere witness and is an impermissible "*fishing expedition*"; and

(d) The Disclosure Order is oppressive.

2.6 The Respondent's Application is supported by a witness statement of the Respondent, dated the same date ("**O'Hagan 1**").

(b) <u>Developments in the SDF Proceedings</u>

2.7 To assist the Court, I set out here in more detail events in the SDF Proceedings (referred to in paragraph 3.4 of Freedman 1).

(a) The SDF Court issued the Letter of Request on 24 July 2019, and it was provided to the Applicants' English legal representatives on 1 August 2019.

(b) Pursuant to the terms of the Letter of Request, the Applicants prepared three separate applications for an order under CPR 34.17. Those three applications were substantially in final form by 23 August 2019. However, on 27 August 2019, Magistrate Judge Reinhart made a ruling in response to the Applicants' motion to compel Dr Wright to produce a list of the bitcoins he held as of 31 December 2013 [**VDF1/332-360**]. In his order, as a sanction for Dr Wright's repeated failures of compliance, Judge Reinhart made a number of factual findings in the Applicants' favour. (Those findings were the subject of an appeal by Dr Wright dated 25

November 2019 [**VDF2/437**], and thus their application cannot be relied on for purposes of trial until that appeal is resolved.)

(c) Those factual findings prompted the start of settlement discussions shortly thereafter, as noted [**VDF1/266-268**]. While the settlement discussions were ongoing, the Applicants did not seek new disclosure.

(d) But on 30 October 2019, the Applicants were informed by the Respondent that he could not finance the settlement, despite earlier representations to the contrary [**VDF1/416**]. Active litigation resumed, so the Applicants considered it necessary to pursue the disclosure orders pursuant to the Letter of Request.

(e) As the Applicants informed the Court at paragraph 3.4 of Freedman 1, the deadline for disclosure in the SDF Proceedings had been set for 3 January 2020 [**VDF1/266-270**]. The deadline for disclosure has since been revised to 17 January 2020. The order of District Court Judge Bloom states: "***The Court takes this time to also caution the parties that no further extensions of time shall be granted as to the pretrial deadlines in effect***." (emphasis in the original) [**VDF2/2**].

(f) The trial is scheduled to commence on 30 March 2020.

3. THE APPLICANT'S NARROWED CATEGORIES OF REQUESTS

3.1 In view of the limited time now available to secure the evidence sought given the tight timetable in the SDF Proceedings, and having considered the matters raised in O'Hagan 1, the Applicants consider it appropriate and now intend to narrow the scope of their requests sought under the Letter of Request. This approach is a practical one and brings with it no concession as to the validity of any of the points made in O'Hagan 1.

3.2 The Applicants now seek evidence solely in relation to Craig Wright, the defendant in the SDF Proceedings. The Applicants therefore do not seek documentary or testimonial evidence relating to any other sources of *The Satoshi Affair*. Accordingly, in respect of the Disclosure Order, they maintain their requests only in relation to:

(a) Paragraphs 1(a) and (b) in their original form;

(b) Paragraph 1(e), in relation to the video and/or audio recordings of interviews of Dr Wright only; and

(c) Paragraph **1(g) in relation only to emails with Dr Wright.**

3.3 Proposed revisions to paragraph 1 of the Disclosure Order are included as Appendix 1 to this witness statement (the "**Revised Request**").

3.4 Further, to the extent the Court considers appropriate, the Applicants repeat their **alternative** request (paragraph 4.13(a)(iii) of Freedman 1) of a further narrowing of paragraph 1(e) of the Disclosure Order: that the Respondent disclose only those parts of the recordings of the interviews with Dr Wright that relate to:

(a) the creation of Bitcoin and David Kleiman's participation therein [**VDF1/164, 180-181, 186, 192-193**];

(b) the personal and business relationship between Craig Wright and David Kleiman, including W&K Info Defense Research, and how they all conducted their Bitcoin mining activities and intellectual property research and development [**VDF1/121, 181, 185-187, 192**];

(c) the Bitcoin allegedly mined by Craig Wright and David Kleiman [**VDF1/191**];

(d) the Tulip Trusts and any other trusts into which Craig Wright purportedly placed Bitcoin mined by him and Mr David Kleiman [**VDF1/190**]; and

(e) the intellectual property alleged to have been created by Craig Wright and David Kleiman. [**VDF1/186-187**].

3.5 As the Applicants have previously noted (paragraph 4.13(a)(iii) of Freedman 1), this narrower order may be more burdensome for the Respondent, as he will be required to conduct his own search of the recordings.

4. THERE IS NO IMPERMISSIBLE ENCROACHMENT INTO JOURNALISTIC MATERIAL

4.1 The gist of the Respondent's objections (save the objection of onerousness, dealt with separately) is that the Applicants have no right to any of the evidence sought because it is journalistic material and as such receives near-absolute protection. The Respondent does not take adequate account of the fact that different journalistic materials are treated quite differently, receiving more or less protection, and that none are absolutely protected from disclosure (unlike, say communications protected by legal professional privilege).

4.2 In any event, I am aware that journalistic material can receive protection, and have approached this application accordingly.

4.3 *First*, before issuing the application, the Applicants tried, first through Matthew Getz of Boies Schiller Flexner (UK) LLP and then through me, to contact the Respondent, first through his literary agent and second directly, in order to see if the Respondent would assist the Applicants in any way. In particular, and as explained at paragraph 5.1 of Freedman 1:

(a) On 23 July 2018, Mr Getz sent an email to Rogers, Coleridge & White Literary Agents, for the attention of Mr Peter Straus, Mr O'Hagan's agent, as listed on their website. In that email, Mr Getz identified himself and said that he was writing "*because I would like to speak to one of your writers, Andrew O'Hagan, to see if he can help us in a litigation relating to Bitcoin and Craig Wright. In this litigation, my firm represents Ira Kleiman, the brother of the late Dave Kleiman. I would be very grateful if you could put me in contact with Mr O'Hagan. I would be happy to provide you with more details - perhaps we could meet in your office, or if more convenient, have a chat on the phone at a time that suits you.*" [**VDF1/366**]

(b) On 31 July 2018, Mr Getz sent an email directly to Peter Straus along the same lines, expressing his offer to meet up or speak on the phone to provide more details. [**VDF1/367**]

(c) On 5 March 2019 and 5 April 2019, I sent emails to the Respondent. I identified myself as counsel to the Applicants and asked if he could speak with me. It was my

hope that the Respondent would respond and we could work out a method of amicably sharing the information the Applicants sought. [**VDF2/466-467**]

(d) No response was received to any email.

4.4 The Respondent confirms at paragraph 35 of O'Hagan 1 that he was made aware of at least the approaches through his agent, stating that he "*did not give any statements*". That is not the whole story: the Respondent did not even acknowledge these approaches, and neither I nor Mr Getz received a response from the Respondent or his agent (presumably at the Respondent's instruction). Whilst the Respondent was under no duty to respond, the tone and intent of the communications were clearly to invite cordial discussion and attempt to reach a mutually acceptable arrangement. The Respondent ignored this friendly attempt to reach agreement, with the predictable result that the Applicants were forced to turn to the court for assistance pursuing the necessary disclosure.

4.5 *Secondly*, the Applicants expressly disclaimed the intent to seek material about anonymous sources, at paragraph 4.15 of Freedman 1.

4.6 *Thirdly*, the Applicants were careful to request information that did not attract the same protection as other journalistic materials, as explained below.

(c) <u>The Source Requested Does Not Require or Requires Only Minimal Protection</u>

4.7 I understand and understood that journalistic sources have a right to protection from disclosure, and that the strength of this right varies according to the degree to which the source needs protection. Sources who provide information anonymously require the most protection, and indeed I indicated at paragraph 4.15 of Freedman 1 that I was not asking the Respondent to disclose material related to such sources.[1] Conversely, I consider, and considered when I prepared my first witness statement, that those of the Respondent's sources who were most likely to have had relevant discussions with the Respondent – Craig Wright, Stefan Matthews, Robert MacGregor, Ramona Watts and Lynn Wright (see paragraphs 1(c) and 1(g) of the Disclosure Order) – had no expectation of confidentiality and therefore did not need protecting. While I did not explicitly limit the relevant requests[2] to information received from those five individuals, the fact that I expressly disclaimed the desire for anonymous sources meant the request was in practice limited to information received from those individuals. In respect in particular of Dr Wright, who is now the only source of statements from whom the Applicants seek recordings, the evidence is very strong that he had no expectation of confidentiality, as can be seen from the Respondent's own reporting in *The Satoshi Affair*.

4.8 In *The Satoshi Affair*, the Respondent repeatedly makes clear that he would not be swayed by offers of financial compensation, the imposition of a non-disclosure agreement ("**NDA**") or any obligation of confidentiality to Dr Wright, and that Dr Wright would have no control or even influence over what the Respondent chose to disclose. This was understood and accepted in plain terms by Dr Wright. Indeed, since it was Dr Wright who approached the Respondent and asked him to write the article on this basis, Dr Wright naturally could not

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[1] I noted that if the Applicants later determined that such would be relevant, I would seek agreement with the Respondent or seek a new Court order.

[2] At paragraphs 4.13(a) and (b) and 4.18(d) of Freedman 1.

have any legitimate expectation of confidence in the information provided. Relevant excerpts are set out here (emphasis in bold):

(a) Dr Wright "*wanted what I wrote to be '**warts and all**'*" [**VDF1/171**]. "***Wright himself never mentioned rights or agreements or privacy …** Early on, MacGregor told me in an email that **he had advised Craig and Ramona to tell me 'everything'**.*" [**VDF1/209**].

(b) Dr Wright and his team – Messrs MacGregor and Matthews and Ms Watts - "*were confident that a supremely important thing was happening and **that the entire process should be witnessed and recorded.***" [**VDF1/170**]

(c) While there was a request for an NDA (from "*the nCrypt men*", not Dr Wright), that was firmly, affirmatively and openly rejected by the Respondent, as set out in these paragraphs from *The Satoshi Affair*

> "*Wright himself never mentioned rights or agreements or privacy – until the very end, when he asked for two particular aspects of his private life not to be discussed – but when I went to Australia at the end of February to talk with Wright's family and friends, the nCrypt men began insisting I sign an NDA.*
>
> *Why they hadn't asked me to sign one at the beginning I'll never know. I had roamed freely for three months, noting and recording, going to meetings and interviewing everyone, and only now did they want me to sign. Early on, MacGregor told me in an email that he had advised Craig and Ramona to tell me 'everything'. He went on to express, on Wright's behalf, worries about how the material would be used. This was especially sensitive, I gathered, because of the government security work Wright had done. I replied that we would be judicious about what was published. MacGregor still wanted to discuss contractual issues, and I replied, on 6 March, that I would have to see proof that Wright was Satoshi, and see it presented before his peers and selected journalists. MacGregor replied that the proof package was in train and that he didn't understand why I wouldn't sign. I replied on 7 March that I couldn't write the story, no matter how good my access, if there wasn't proof that Wright was Satoshi, and I was still waiting for evidence. 'My commitment is clear,' I wrote, 'but the book turns to dust if we do not have unanswerable and generous proof.' **I insisted that I wouldn't sign any document and eventually MacGregor accepted this**. We fell out over it, but I saw their point and I still do. **Despite my refusal they continued, without binding agreements or legal constraints, to provide me with access to every meeting and every aspect of the story**, which was set to change faster and in ways none of us could ever have prepared for. My story and nCrypt's deal seemed to be on the same track, aligned and friendly, but none of us discussed what would happen if the deal came unstuck.*" [**VDF1/209-210**].

The Respondent's reference to being "*judicious*" appears at odds not only with other statements in *The Satoshi Affair* but also with the statement in O'Hagan 1 that he would "*report the story as I found it, even if it did not tell the story which they hoped it would tell*" (paragraph 21, O'Hagan 1).

(d) At some stage, the individuals did not want their real names used, but: "***Our discussion about using real names was inconclusive – during a later meeting at Berners Tavern, Matthews expressed the view that I should put their names in and make a final decision later – but the decision was really made by what the story became***." [**VDF1/224**]

(e) The Respondent described a meeting with Ms Watts and Dr Wright, in which Ms Watts "*tried to strong-arm me. She began to tell me what I should say and what I shouldn't say and how I should hide from MacGregor and Matthews the comments she and Wright had made about them. **'I want to write the truth,' I said… I had been recording this as a documentary from the start, as I'd said I would when we met at Claridge's in December***." [**VDF1/245**]

(f) Finally: "*I reminded them* [Ms Watts and Dr Wright] *that every time I'd tried to walk away from this story – like when they tried to make me sign an NDA – she'd begged me to come back*." [**VDF1/247**] [3]

4.9 I nonetheless understand and understood that even someone such as Dr Wright, who has approached a writer, has been refused his requests for confidentiality, and has accepted that the writer has the absolute right to publish whatever he learns as he sees fit, is nevertheless due some protection. I understand that the protection is assured by ensuring that materials requested are necessary in the interests of justice, which includes seeking justice for a civil litigant in court. Hence, I took care to ensure that the evidence request was narrowly tailored to be directly relevant for the SDF Proceedings, as explained in Freedman 1 and below.

4.10 Furthermore, it is my belief that the rules of discovery applicable in the SDF Proceedings would require Dr Wright to produce these recordings to Applicants if he had possession of them. Thus, the fact that these recordings are now held by the Respondent should not provide them with more protection than they would be entitled to if Dr Wright held them.

4.11 Finally, Dr Wright is protected by a robust confidentiality order which enables even non-parties to designate materials confidential or highly confidential and thereby limit their dissemination. [**VDF1/368**].[4]

(d) <u>The Applicants do not seek disclosure of anonymous sources</u>

4.12 Much of O'Hagan 1 concerns sources who have been promised anonymity or some other form of confidentiality. As noted above and expressly in Freedman 1, the Applicants in their application have not sought any information from such sources, nor have they sought documents which may lead to the revelation of those sources' identity.

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[3] For completeness, the following excerpts show that the same understanding was held by other individuals (Mr MacGregor, Ms Watts and Mr Matthews): (i) Mr MacGregor discussed payment with the Respondent for the article. The Respondent wrote: "*I decided I wouldn't accept any. I would write the story as I had every other story under my name, by observing and interviewing, taking notes and making recordings, and sifting the evidence. **'It should be warts and all**,' MacGregor said. He said it several times, but I was never sure he understood what it meant*." [**VDF1/169**]; (ii) Mr MacGregor "*never, incidentally, used the words 'off the record' with me*" [**VDF1/199**]; (iii) The Respondent described his interactions with Mr Matthews in one instance: "*The Antigua meeting was being arranged when I went out for dinner with Matthews, and **he referred to Ayre freely without ever asking that it be off the record***." [**VDF1/205**]; (iv) Ms Watts sent Mr O'Hagan an email: "'***It was unfair of me to request you not to publish certain things about our situation,' Ramona had written to me in an email. 'As you said, you have a debt to the truth, and that is as it should be***.'" [**VDF1/250**].

[4] While this order does not govern what may be used at trial, Dr Wright will have the ability to seek to prevent these materials from being disclosed publicly at trial if he can show such protection is justified.

4.13 The Respondent wrote in O'Hagan 1 that he interviewed "*dozens of people*" (paragraph 22) and gathered the bulk of the core material on the understanding that he could give valid assurances of protection to certain sources (paragraph 24). Since the Applicants have not sought such materials (since they would disclose the respondent's confidential sources), that means that the bulk of his core material has never been and is not a subject of the Application. This also bears on the Respondent's arguments regarding onerousness, which are addressed below. Inadvertently, the draft order sought from the Court, and the terms of the sealed Disclosure Order, do not expressly limit the source of such information to interviewees that did not provide information in confidence. However, the Order is to be seen in the context of the witness statement, where that point was made clear. It was never the intention of the Applicants to procure confidential source material, as my witness statement made abundantly clear. Further, the Applicants had deliberately structured the dates for compliance so that there was more than sufficient time for the Respondent and the Applicants to refine the scope of the requests if necessary and appropriate in order to exclude such material. The Application Notice was issued on 11 November 2019, with suggested compliance by 20 December 2019, almost six weeks after issue, and long after the time for any application or request by Mr O'Hagan for the Order to be set aside or varied. The Disclosure Order did not require the Respondent to disclose documents immediately.

4.14 Thus, the Revised Request limits further the source evidence sought to that relating to Dr Wright only. In no way does it attempt to reach material provided by sources who have been provided assurances of confidence. So that there can be no doubt about that, a proviso has been added stating "*nothing within this Order shall require Mr O'Hagan to disclose any material which reveals a confidential journalistic source.*"

(e) <u>The Revised Request does not comprise an interference with the Respondent's Rights or create a chilling effect</u>

4.15 I understand that the Respondent is concerned that his rights under article 10 of the European Convention of Human Rights (as embodied in Schedule 1 of the Human Rights Act 1998) are at risk as a result of the Disclosure Order. He states succinctly at paragraph 2 of O'Hagan 1 that such right "*permits me to protect my sources and to protect the confidential information I gathered*".

4.16 As explained above, the Applicants are not seeking disclosure of any of the Respondent's sources, and are seeking only relevant information that was provided to the Respondent by Dr Wright without a reasonable expectation of confidentiality. As such, and whilst recognising this is a matter for the Court, the engagement of the Respondent's article 10 rights appears substantially more limited than is suggested in O'Hagan 1. This issue will of course be developed more fully in submissions.

4.17 In formulating the categories requested, the Applicants weighed up what was truly necessary to seek from a third-party writer, living in another country from the locus of their claim, with the attendant costs and difficulties of doing so. I have no reason to believe the SDF Court did not do the same:[5] Judge Reinhart, who issued the Letter of Request, has been the assigned judge for the SDF Proceedings since early 2018, and has determined a variety of discovery-related issues in this matter. In my view, he has a close understanding of the relevant issues in dispute, the parties' efforts to obtain responsive material through discovery, and the

[5] At **VDF1/281-296**. The motion was unopposed by Dr Wright, the Defendant in the SDF Proceedings. Judge Reinhart issued the Letter of Request upon due consideration of the relevant Motion and supporting material.

content of the categories included in the Motion for a Letter of Request, and he stated the same in the Letter of Request.

4.18 This weighing exercise fell heavily in favour of the Applicants.

4.19 When applying for the Letter of Request from the SDF Court, the Applicants carefully considered the specific topics; the discussion of such topics is included in the Applicants' Motion, at **pages 281 to 296 of VDF1**. In seeking their application before this Court, the Applicants narrowed their requests even further. And now, as noted, the Applicants have narrowed their requests still further in the Revised Requests to ensure they are seeking only the most probative material for the purpose of their claim. This is described further below.

4.20 From the point of view of the Respondent's rights and obligations, he expressly and repeatedly gave no promises of confidentiality to Dr Wright so cannot withhold relevant material responsive to the Revised Request on the basis that he owes an obligation of confidentiality. I note too that Dr Wright provided his information with no expectation of confidence and in a fully informed manner. As the Respondent himself stated: "*I warned them I would report the story as I found it, even if it did not tell the story which they hoped it would tell*." (paragraph 21, O'Hagan 1) Dr Wright knowingly and willingly opened himself up.

4.21 It should also be noted that the Applicants have not simply chosen the easy route of going to a writer for information they could have got elsewhere. In respect of Dr Wright, the Applicants have relentlessly pursued him for discovery, yet he has proved dishonest and evasive to the extent that the SDF Court was required to sanction him for his misbehaviour [**VDF1/306**]. Dr Wright's non-compliance and dishonesty in the SDF Proceedings, and his dubbing *The Satoshi Affair* a "*work of fiction*", necessarily throwing it into doubt, have contributed to the need for the Applicants to approach the Respondent. (As noted, the Applicants also tried to contact the Respondent directly before issuing an application, but he did not respond.)

(f) <u>The evidence sought is relevant and necessary</u>

4.22 The Respondent has contended at paragraphs 33-34 of O'Hagan 1, that the O'Hagan Evidence would not contain any relevant material to the SDF Proceedings, and that the application is a mere fishing expedition. That is not the case.

4.23 It is my understanding, as I explained in Freedman 1 (paragraph 4.12), that the question of relevance is generally one for the court of the requesting country, since that court is much more likely to be aware of the underlying facts, unless it can be shown that that court merely rubber-stamped the letter of request. As I explained in Freedman 1 and as is clear from the Letter of Request, the SDF Court, which had deep knowledge of the SDF Proceedings, gave consideration to the evidence requested and determined that it was relevant. I understand that should be the end of the story. Nonetheless, I explained in Freedman 1 why the evidence is relevant and indeed necessary. I will not repeat those explanations here, save to add the following observations.

4.24 In the SDF Proceedings, the Applicants are attempting to prove that Dr Wright and Mr David Kleiman formed a partnership where they mined a fortune of bitcoin together and created bitcoin related intellectual property together, *i.e.*, they both owned these assets which Dr Wright has taken unlawfully.

4.25 I ask the Court to take into account the context of this claim, and the unique evidential challenges that have faced the Applicants' attempts to receive justice. There are two key witnesses to the relevant facts: Dave Kleiman is dead and Craig Wright has been found to be dishonest and unreliable by the SDF Court. As far as the Applicants are aware, there are no other witnesses who can speak with first-hand knowledge to the critical events underlying the claim. Dr Wright is certainly the only person alive with first-hand knowledge of the intellectual property created, and bitcoin mined, yet he has refused to willingly provide this information in the SDF Proceedings, and has found to have perjured himself and to have wilfully submitted false evidence to the Court. Any pre-litigation admissions made by him are extremely important to the Applicants' ability to prove their claim. Documentary evidence (including recordings) showing what Dr Wright said when he did not consider himself under threat of losing his ill-gotten assets is of acute importance to assist the SDF Court in finding the truth, and achieving a just outcome for the Applicants. And this is no small matter: as noted in paragraph 3.2 of Freedman 1, the Applicants seek the return of assets valued in excess of US$10 billion.

4.26 The Respondent acknowledges that the single objective of *The Satoshi Affair* was to tell the true story of Bitcoin's self-claimed inventor, Craig Wright (paragraph 23, O'Hagan 1). *The Satoshi Affair*, which contains many indications of what actually happened, along with signposts to further evidence as to what happened, is tremendously useful to the Applicants to prove their case. Yet Dr. Wright has called *The Satoshi Affair* a "*work of fiction*", calling its truth into doubt. Furthermore, as a matter of Florida law, *The Satoshi Affair* is inadmissible hearsay for the purposes of the trial. Therefore, confirmation of its accuracy by the Respondent in a sworn deposition or through his source material – especially where it has been challenged by Dr Wright – will be necessary to allow the Applicants to use its contents in court. For example:

(a) In a deposition for the SDF Proceedings, Dr Wright testified that he did not remember if he sent bitcoin to himself or to Dave Kleiman on 12 January 2009, the date of the first bitcoin transactions [**VDF2/195-196**]. Yet in *The Satoshi Affair*, he is quoted as telling the Respondent that bitcoins were sent on that date to "*Hal, Dave, [Wright]*" and another unnamed person [**VDF1/187**] – Dr Wright said in his deposition that this quote was only a "*half-truth version*" [**VDF2/192-193**]. Whether Dr Wright sent the first bitcoin to Dave Kleiman is directly relevant to prove the Applicants' claims that Dave Kleiman participated in the creation of bitcoin, and it is likely that the recordings show further discussion of the first bitcoin circulation.

(b) Dr Wright also testified that he "*did not collaborate with Dave on anything*" [**VDF2/219**]. However, in *The Satoshi Affair*, Dr Wright was quoted as saying that if he had "*come out originally as Satoshi without Dave, [Wright didn't] think it would have gone anywhere*" [**VDF1/182**], and the Respondent wrote: "*Dave Kleiman was to become the most important person in Wright's professional life, the man [Wright] sa[id] helped him do Satoshi's work*." (emphasis added) [**VDF1/181**]. The statements made to the Respondent, along with other statements on that topic that were not selected for publication, are directly relevant to proving that the two men worked together to create bitcoin in partnership.

(c) Dr Wright testified in the SDF Proceedings that there "*was no mining of bitcoin between [Wright] and Dave ever*" [**VDF2/245**] and "*Dave Kleiman was not involved in the Tulip Trust . . . Dave was never a beneficiary of the trust. Dave never put money into the trust. Dave never had any Bitcoin in the trust. Dave never mined any Bitcoin*

that had anything to do with the trust . . . Nothing Dave owned was involved with the trust. Dave had no rights to the trust, no ownership of the trust, no knowledge of the set-up of the trust. [**VDF2/295-296**]. However, in *The Satoshi Affair*, Dr Wright was quoted as telling the Respondent that "*his and Kleiman's mining activity had led to a complicated trust*" [**VDF1/191**]. The statements allegedly made to the Respondent go directly both to whether Dave Kleiman mined bitcoin with Dr Wright, and to Dr Wright's claims regarding bitcoin placed within a trust. Given the summary nature of this description in *The Satoshi Affair*, the Applicants expect that the recordings show further discussion on these issues, later summarised for publication by the Respondent.

4.27 As a general matter, the Respondent's contention that "*there is nothing further to be gained from the study of my archive*" (paragraph 33, O'Hagan 1) appears to be at odds with his statement in *The Satoshi Affair* that there were many things that he would "*choose not to print*", including "*unsubstantiated allegations about the past*", and that he has "*hundreds of hours of tape*". It is unlikely to be the case following an eight-month investigation concerning Dr Wright's claim to be the creator of Bitcoin that all material of relevance, including details provided by Dr Wright of his relationship with Dave Kleiman, is in print.

4.28 Finally, I would state that the Applicants have been assiduous at all times, even before narrowing the Revised Request, to make sure they do not seek more than would be necessary and appropriate. Before issuing their application, the Applicants disclaimed the desire for certain categories that appeared in the Letter of Request. In the application itself, the Applicants also suggested the narrowest possible order to the Court (see 4.13(a)(iii), 4.13(b)(iii), 4.13(c)(v) of Freedman 1).

5. THE DISCLOSURE ORDER IS NOT OPPRESSIVE NOR IMPRACTICAL

5.1 The Respondent states in O'Hagan 1 that his compliance with the Disclosure Order would be oppressive and impractical. The Respondent cites the fact that he is an independent writer, with no employed staff and such an exercise would be unduly burdensome.

5.2 The Court is invited to consider the following matters.

5.3 The manner in which the Respondent describes that he would need to "*go back into that archive and dig for material*" (paragraph 32, O'Hagan 1) appears inconsistent with the meticulous and careful record-keeping fashion in which his original investigation was conducted. It would be reasonable to infer that the Respondent archived his material in a logical and easily accessible manner. This is to be expected for a journalist and publication which frequently engages with frank and potentially provocative reporting that may expose them to legal claims, which the Respondent has clearly anticipated (paragraph 30, O'Hagan 1). Moreover, the Applicants have never sought material subject to confidentiality, and that, according to the Respondent, forms the bulk of his core materials. That is, the bulk was never a subject of the Applicants' requests.

5.4 In any event, the documentary evidence sought in the Revised Request only requires the Respondent to produce recordings of interviews with Dr Wright taken in preparation for *The Satoshi Affair*, along with emails to or from him. It would not appear onerous to locate solely recordings with the individual who is the subject of the article.

5.5 Moreover, the Respondent is represented by an able law firm who will be able to assist him. To the extent he is concerned about the costs of using his solicitors, see below. The Applicants have also made clear (at paragraph 5.2(c)(iii) and (d) of Freedman 1) and repeat their offer that they will reimburse the Respondent for costs relating to the copying and transmission of documentary evidence (which includes recordings), and reimbursement for the Respondent's own time in travelling to and attending a deposition – in both instances in respect of compliance with the Disclosure Order in the form of the Revised Request, the Applicants are also willing to offer:

(a) administrative or other assistance in carrying out the search and review exercise if and to the extent the Court considers it appropriate to narrow the topics for the purpose of paragraph 1(e) of the Disclosure Order (see paragraph 3.4 above); and

(b) reimbursement of the Respondent's reasonable legal costs relating to compliance with the Disclosure Order.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Devin Freedman

Name: Devin Freedman
Dated: 06/12/2019

APPENDIX 1

1. Pursuant to section 2(2) of the Evidence (Proceedings in Other Jurisdictions) Act 1975, the Respondent, Mr Andrew O'Hagan, attend before Mr Allen Dyer, who is hereby appointed examiner pursuant to CPR 34.18.1(b), at the offices of the solicitors for the Applicants, for no longer than 7 hours, at a date and time to be agreed by the Applicants and the Respondent but no later than 20 December 2019, to be examined on oath in a manner consistent with the United States Federal Rules of Civil Procedure and on the following topics of questioning:

   (a) His educational background, employment history, professional qualifications, persona preparation for the deposition (to include any contacts he may have had with the parties, their lawyers, insurers or representatives, but excluding any privileged content of such communications).

   (b) The accuracy of the quotes and factual assertions contained within his work *The Satoshi Affair*.

   ~~(c) Statements made, or documents provided, by Craig Wright (and his agents), Ms Lynn Wright, or Ms Ramona Watts that relate to Satoshi Nakamoto, the creation of Bitcoin, David Kleiman, W&K Info Defense Research, the Tulip Trusts, the bitcoin allegedly mined by Craig Wright and/or David Kleiman, and the intellectual property alleged to have been created by Craig Wright and/or David Kleiman.~~

   ~~(d) Statements made, or documents provided, by anyone interviewed in connection with the drafting of *The Satoshi Affair* that relate to Satoshi Nakamoto, the creation of Bitcoin, David Kleiman, W&K Info Defense Research, the Tulip Trusts, the bitcoin allegedly mined by Craig Wright and/or David Kleiman, and the intellectual property alleged to have been created by Craig Wright and/or David Kleiman.~~

   and that Mr O'Hagan produce the following documents:

   (e) All video and/or audio recordings of interviews of Craig Wright~~, Ramona Watts, Robert MacGregor or Stefan Matthews~~ related to Mr O'Hagan's work in writing *The Satoshi Affair*, including but not limited to, the "*many hours of tape*" of Craig Wright referenced in *The Satoshi Affair*.

   ~~(f) All documents provided by Craig Wright, Ramona Watts, Robert MacGregor or Stefan Matthews and relied on or reviewed in preparing for, and drafting, *The Satoshi Affair*. This includes contemporaneous notes taken by Mr O'Hagan or others, and any documents or communications reviewed or relied on when preparing the story.~~

   (g) All emails between Mr O'Hagan, and ~~either~~ Craig Wright~~, Ms Ramona Watts, Mr Robert MacGregor, or Mr Stefan Matthews~~.

   SAVE THAT nothing within this Order shall require Mr O'Hagan to disclose any material which reveals a confidential journalistic source.