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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE MUTUAL ASSISTANCE OF LOCAL COURT OF WETZLAR, GERMANY, Case No. 1:17-mc-00078-SKO

Petitioner,

ORDER APPOINTING ASSISTANT UNITED STATES ATTORNEY EDWARD BAKER AS COMMISSIONER AND COMPELLING DISCOVERY FROM JEFF ELDON WARINNER

(Doc. 4)

I. BACKGROUND

Before the Court is an application (the “Application”) filed by the United States of America (the “Government”) on December 13, 2017, for an *ex parte* order appointing Assistant United States Attorney Edward A. Baker as a Commissioner pursuant to 28 U.S.C. § 1782.¹ (Doc. 1; *see also* Doc. 4.) For the reasons set forth below, the Government’s request is GRANTED.

II. DISCUSSION

In its Application, the Government indicates that it seeks to assist a German court, pursuant to the Hague Convention, in securing evidence from Jeff Eldon Warinner, a U.S. citizen residing in this district, in a matter related to the custody of Mr. Warinner’s minor child. (*See*

¹ The Application filed on January 8, 2018 (Doc. 4), is the operative pleading in this case. While the January 8, 2018, Application and the originally filed December 13, 2017, Application are identical, information which was unredacted in the exhibits accompanying the December 13, 2017, Application has been redacted in the exhibits accompanying the January 8, 2018, Application, in accordance with the Court’s order entered on January 5, 2018 (Doc. 3).

1 Doc. 4, Ex. A.) The request from the German court seeks an answer from Mr. Warinner to the
2 following questions:

- 3 (1) Does the father live separate and apart from the mother?
- 4 (2) Is the father permanently living in the United States of
America? If so, since when?
- 5 (3) When exactly did the father last take care of [the child]?
- 6 (4) Can the mother contact the father? If so, by which means
exactly?
- 7 (5) Do [the child's] parents communicate with each other?
- 8 (6) When exactly were [the child's] parents last in touch with
each other?
- 9 (7) Have [the child's] parents exercised joint custody of [the
child] since their separation? If so, how exactly?
- 10 (8) Have there been any problems with the mother when they
were exercising joint custody of [the child]? If so, please
elaborate on these problems.
- 11 (9) Is the father willing to exercise joint custody with the
mother?
- 12 (10) Does the father consent to the mother's petition to award
13 sole custody of [the child] to her?

14 (Doc. 4, Ex. A at 2-6.)

15 The Government attempted to obtain Mr. Warinner's compliance with the German court's
16 request prior to filing the Application, by mailing letters to his last known address on July 25,
17 2017, and October 27, 2017. (*See* Doc. 4, Exs. B, C). Mr. Warriner failed to respond. (*Id.*) As a
18 threshold matter, the Government's letters of request satisfy the Hague Convention's requirement
19 that such letters specify the authority requesting assistance, the authority seeking to provide
20 assistance, the nature of the underlying proceeding, and the evidence sought. *See* Convention on
21 the Taking of Evidence Abroad in Civil or Commercial Matters, Ch. 1, Art. 3, Oct. 7, 1972, 23
22 U.S.T. 2555, T.I.A.S. No. 7444, 1972 WL 122493.

23 Under 28 U.S.C. § 1782, a district court may order a person residing in or found within its
24 jurisdiction to give testimony or produce documents for use in a proceeding in a foreign or
25 international tribunal. *See Intel. Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247
26 (2004). The district court may, in its discretion, grant a request under § 1782(a) where the person
27 from whom discovery is sought resides or is found within the territorial district of the district court
28 to which the application is made, the discovery is to be used in a proceeding before a foreign

1 tribunal, and a foreign or international tribunal or any interested person is making the application.
2 *Schmitz v. Bernstein Liebhard & Lifshitz, LLP.*, 376 F.3d 79, 81 (2d Cir. 2004). Specifically, in
3 exercising its discretion, the district court should consider the following factors: (1) whether “the
4 person from whom discovery is sought is a participant in the foreign proceeding,” (2) “the nature
5 of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of
6 the foreign government or the court or agency abroad to U.S. federal-court judicial assistance,” (3)
7 whether the discovery request is “an attempt to circumvent foreign proof-gathering restrictions or
8 other policies of a foreign country or the United States,” and (4) whether the discovery requested
9 is “unduly intrusive or burdensome.” *Intel. Corp.*, 542 U.S. at 247, 261-63. Additionally, the
10 district court should consider the twin aims of the statute to assist foreign courts and litigants, and
11 to encourage foreign jurisdictions to provide reciprocal assistance to American courts. *Schmitz*,
12 376 F.3d at 81. The Court notes that there is no requirement that the information sought be
13 discoverable under the law governing the foreign proceeding, or that U.S. law would allow
14 discovery in an analogous domestic proceeding. *Intel. Corp.*, 542 U.S. at 247, 261-63.

15 Here, the Government has met the requirements of § 1782. Mr. Warinner resides in
16 Fresno, California, which is within this district. (Docs. 4 at 2; 4-1, ¶ 1; 4, Ex. B at 1.) The
17 discovery requested—namely, answers to interrogatories—is for use in a child custody proceeding
18 in the Local Court of Wetzlar, Germany, which qualifies as a foreign tribunal. (Docs. 4 at 1; 4-1,
19 ¶ 2; *see also generally* Doc. 4, Ex. A.) The request for assistance in conducting discovery came
20 from the foreign tribunal, and the foreign tribunal has sent a letter of request pursuant to the Hague
21 Convention. (*See* Doc. 4, Ex. A.)

22 Further, the Court finds, in its discretion, that good cause exists to authorize the requested
23 discovery and appoint Assistant United States Attorney Edward A. Baker as a Commissioner to
24 obtain such discovery from Mr. Warinner. Section 1782 provides that the district court “may
25 direct that the testimony or statement be given, or the document or other thing be produced, before
26 a person appointed by the court. By virtue of his appointment, the person appointed has power to
27 administer any necessary oath and take the testimony or statement.” 28 U.S.C. § 1728(a).

1 Mr. Warinner is a party to the German child custody proceeding—he is the child’s father.
2 (See Doc. 4, Ex. A.) The request came directly from the Local Court of Wetzlar, Germany, which
3 demonstrates that the German court is receptive to the discovery sought. There is no indication
4 that the request is an attempt to circumvent any foreign restrictions related to the discoverability of
5 the requested information. Finally, the requested information is not unduly burdensome or
6 intrusive. The Local Court of Wetzlar, Germany generally seeks answers concerning whether Mr.
7 Warinner currently has a relationship with the child or the child’s mother.

8 **III. CONCLUSION AND ORDER**

9 Accordingly, IT IS HEREBY ORDERED that, pursuant to 28 U.S.C. § 1728, Assistant
10 United States Attorney Edward A. Baker is appointed as Commissioner, and is authorized to issue
11 subpoenas reasonably necessary to compel Jeff Eldon Warinner to respond to interrogatories for
12 use in a judicial proceeding in the Local Court of Wetzlar, Germany.

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14 IT IS SO ORDERED.

15 Dated: January 17, 2018

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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