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CLERK OF CIRCUIT COURT
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff and Counter-defendant,

v.

AMBER LAURA HEARD,

Defendant and Counter-plaintiff.

Civil Action No.: CL-2019-0002911

DEFENDANT AMBER LAURA HEARD'S OPPOSITION TO PLAINTIFF'S REQUEST FOR ATTORNEYS' FEES

On March 31, the Court granted Defendant Amber Laura Heard's motion for reconsideration of the Court's Order awarding Plaintiff the full amount of the attorneys' fees he requested for Defendant's Motion to Compel and Plaintiff's Motion for Protective Order and to Quash the Deposition of Adam Waldman, heard on January 8, 2021. The Court ordered Plaintiff to file a new declaration setting forth information about the requested fee information more specifically.

Surprisingly, Plaintiff's new declaration does not provide the level of detail setting out the time expended on each aspect of the motions, including the unsuccessful parts, and instead *increases* his fee request from $21,972.50 to $27,107.20. Plaintiff seeks fees for the exact same number of hours he sought in his first, inadequate fees declaration, but states the difference is explained because he is seeking higher hourly rates for the hours expended than he sought in his first declaration.

Plaintiff's position is both unreasonable and incredible. As the Court is aware, Plaintiff prevailed on (1) his opposition to Defendant's motion to compel Mr. Waldman's deposition; and

(2) his motion to quash Mr. Waldman's deposition, both on the basis that Mr. Waldman had not been served with a deposition subpoena. 1/14/21 Order. Plaintiff lost, however, his primary argument included in his own combined motion and his opposition to the motion to compel, in which Plaintiff attempted to shield Mr. Waldman from deposition on the basis that he is Plaintiff's attorney. *See id.* In fact, the Court explicitly ruled that if Mr. Waldman were properly served, he could be deposed. *Id.* Thus, to the extent Plaintiff is entitled to fees at all, it is only for prevailing on the argument that Mr. Waldman needed to be served with a subpoena, not that he was immune from being deposed.

But in his first declaration, Plaintiff makes explicit that he was seeking fees for "prosecuting Mr. Depp's Motion to Quash *or for a Protective Order*[.]" 1/25/21 Chew Declaration ¶ 5 (emphasis added). Plaintiff's counsel stated that he was seeking time relating to the "prosecution of Plaintiff's Motion," which was the combined motion to quash and a motion for a protective order. *Id.* ¶ 6. And while Plaintiff tried to sound reasonable by enumerating time he was not claiming, he never stated that he had somehow separated the time spent on the motion to quash from the time spent on the motion for protective order, which he lost. *Id.*

Now, in his second fees declaration, Plaintiff states through his counsel that he is seeking fees for the exact same number of hours he sought in his first declaration, but that these hours do not include any time spent on the motion for protective order. 4/7/21 Chew Declaration ¶ 4. This assertion is simply not reliable. Plaintiff's counsel briefed the motion to quash and the motion for protective order in the same brief. *See* 12/23 Br. attached as **Exhibit A**. Of the 4.5 pages in that brief, approximately 4 full pages were devoted to Plaintiff's losing argument that Mr. Waldman should not be deposed simply because he is Mr. Depp's attorney. *See id.* Only half a page was devoted to the motion to quash argument on which Plaintiff prevailed. *Id.* at 2.

That argument cites no law and one Virginia Supreme Court Rule. *Id.* Yet, incredibly, Plaintiff asks the Court to believe that 11.5 hours were spent on *just* the motion to quash portion of his motion and brief. *See* 4/7 Chew Declaration at 3. This includes 5.0 hours by Mr. Chew on the motion and "[a]uxiliary papers," and 6.50 hours by Ms. Vasquez, including 4 hours to "Draft Motion to Quash Portion of Brief" and 2.50 hours to "Revise Motion to Quash Portion of Brief." *Id.* All despite the fact that this portion of the brief was only half a page and approximately 184 words. *Id.*

Similarly, in response to Defendant's motion to compel, Plaintiff made two arguments in opposition: that Mr. Waldman had not been properly served, which was the Court's basis for denying the motion to compel; and that Mr. Waldman could not properly be deposed, an argument the Court rejected. Like Plaintiff's combined motion to quash and motion for protective order, Plaintiff's brief spent portions of three pages making substantive arguments that the Court rejected. *See* 12/2920 Br. at 1, 3, 4.[1]

Simply put, under Virginia law, the Court need not and should not credit Plaintiff's dubious, unreasonable, and unreliable assertions. *See Chawla v. BurgerBusters, Inc* , 255 Va. 616, 623 (1998) (stating that the party seeking fees bears the burden of showing reasonableness); *Auto. Fin. Corp. v. EEE Auto Sales, Inc.*, 2011 WL 3422648, at *2 (E.D. Va. 2011) ("When analyzing lodestar figures, [p]roper documentation is ... key, and fee claimants must therefore submit documentation reflecting reliable contemporaneous recordation of time spent on legal tasks that are described with reasonable particularity.") (quotations omitted).

[1] Even the challenge to the method of service appears to be fueled by a desire to prevent Mr. Waldman's deposition. Defendant has made multiple attempts to serve Mr. Waldman in D.C. in compliance with D.C. laws on service, but Plaintiff has filed a Motion to Quash there and continues to resist all efforts to serve and depose Mr. Waldman.

Not only does Plaintiff seek excessive and unreasonable fees for the time spent on his motion to quash argument, but it is not believable that Plaintiff's counsel would have generated separate time entries for the time spent on parts of two different briefs and motion papers the Court rejected and the other parts the Court accepted. And Plaintiff's time entries are of little help: the descriptions are identical and generic and appear to have been generated for this declaration only (*e.g* "Draft Motion to Quash Portion of Brief" is an odd time entry to write before one knows that fees will only be awarded for that portion), and the time entries are all (except one) in full hour or .5 hour increments, which casts doubt on their accuracy.

In short, Plaintiff told the Court in his first declaration that he was seeking fees for everything at issue on January 8, and now, in response to Defendant's opposition and the Court's Order after reconsideration, he has changed his story and sought a higher amount of fees for the same number of hours while glibly suggesting that he is not seeking fees for issues on which he lost. As even a cursory comparison of Plaintiff's time records to the actual record in this case demonstrates, Plaintiff's requested figures are unreasonable and unreliable.[2]

At bottom, all Defendant seeks is that the Court treat Plaintiff's fee request like it treated Defendant's fee request when she prevailed on her motion for sanctions against Adam Waldman. On November 23, 2020, the Court awarded Defendant attorneys' fees for prevailing on this motion, but the Court reduced those fees by half (from $5,290 to $2,950 – a fraction of the amount the Court awarded Mr. Depp, and at vastly lower hourly rates). *See* November 23, 2020

[2] Yet another example of the unreliability of Plaintiff's time records is Mr. Chew's statement that he spent 1 hour reviewing "Heard Opposition to Motion to Quash." 4/7 Declaration at 3. But Defendant filed a combined response to the Motion to Quash and Motion for Protective Order. *See* Def's 1/4/21 Br. And she addressed the motion to quash arguments in approximately 1.5 pages. It is not believable that Plaintiff's counsel would have separately entered time for reviewing different portions of the same brief, and equally unbelievable that it took him an hour to read 1.5 pages.

Order. In opposing the fees request in that instance, Plaintiff argued that Defendant was not entitled to all the fees she requested because she had sought two forms of relief in her motion for sanctions (revocation of Mr. Waldman's *pro hac vice* status and a gag order) and the Court had only decided to revoke Mr. Waldman's admission. *See* Pl's November 9 Opp. (arguing that fees should be reduced because "[t]he Court denied half of Defendant's motion.") The Court did exactly as Plaintiff asked – awarding only half the fees requested – despite the fact that Defendant prevailed on the only motion at issue that day (unlike here), and despite the fact that Defendant sought a vastly lower amount of fees ($5,290 instead of $27,107.20) at vastly lower hourly rates (ranging from $295 to $320). It would be unjust and inconsistent to award Plaintiff the full amount requested after having denied Defendant fees at a much lower level for a motion that, very plainly, she won.

For these reasons, as well as those reasons cited in Defendant's opposition to Plaintiff's first fees declaration and motion for reconsideration, Defendant requests that the Court either significantly reduce or deny Plaintiff's fees, because Plaintiff's counsel has not complied with the Court's directives and the entries are unreliable and unreasonable.

Dated this 14th day of April 2021.

Respectfully submitted,

Amber L. Heard

[redacted]

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Counsel to Defendant and Counter-Plaintiff Amber Laura Heard

CERTIFICATE OF SERVICE

I certify that on this 14th day of April, 2021, a copy of the foregoing shall be served by via email, pursuant to the Agreed Order dated August 16, 2019, as follows:

Benjamin G. Chew, Esq.
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Counsel for Plaintiff and Counter-Defendant John C. Depp, II

[redacted]

J. Benjamin Rottenborn (VSB No. 84796)

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

John C. Depp, II
Plaintiff
vs.

Action No. CL 2019 0002911

Previous Chancery No. CH

Amber Laura Heard
Defendant

SERVE:

FRIDAY MOTIONS DAY – PRAECIPE/NOTICE

Moving Party: ☑ Plaintiff ☐ Defendant ☐ Other

Title of Motion: Motion to Quash or for a Protective Order ☑ Attached ☐ Previously Filed

DATE TO BE HEARD January 8, 2021 (directly related to Defendant's Motion to Compel noticed for same date) **Time Estimate** (combined no more than 30 minutes): 30 minutes (total)

Time to be Heard: ☐ 9:00 a m **with** a Judge ☐ 9 00 a.m. **without** a Judge

☑ 10 00 a m (Civil Action Cases) Does this motion require 2 weeks notice? ☑ Yes ☐ No

☐ 11:30 a m. (DOMESTIC/Family Law Cases) Does this motion require 2 weeks notice? ☐ Yes ☐ No

Case continued from _____ (Date) **continued to:** _____ (Date)

Moving party will use ***Court Call*** **telephonic appearance:** ☐ Yes ☑ No

Judge Chief Judge White **must** hear this motion because (check one reason below):

☐ The matter is on the docket for presentation of an order reflecting a specific ruling previously made by that Judge
☑ This Judge has been assigned to this entire case by the Chief Judge; or,
☐ The Judge has advised counsel that all future motions, or this specific motion, should be placed on this Judge's Docket; or,
☐ This matter concerns a demurrer filed in a case where that Judge previously granted a demurrer in favor of demurrant.

PRAECIPE by Benjamin G. Chew (Printed Attorney Name/ Moving Party Name) Brown Rudnick LLP (Firm Name)

601 13th Street, NW, Suite 600, Washington, D.C. 20005
Address

202-536-1785 (Tel No) 617-289-0717 (Fax No) 29113 (VSB No) BChew@brownrudnick com (E-Mail Address)

CERTIFICATIONS

I certify that I have in good faith conferred or attempted to confer with other affected parties in an effort to resolve the subject of the motion without Court action, pursuant to Rule 4:15(b) of the Rules of the Supreme Court of Virginia, and, I have read, and complied with, each of the Instructions for Moving Party on the reverse side of this form.

[redacted] f Record

CERTIFICATE OF SERVICE

I certify on the 23rd day of December, 2020, a true copy of the foregoing Praecipe was

☐ mailed ☐ faxed ☑ delivered to all counsel of record pursuant to the provisions of Rule 4 15(e) of the Rules of the Supreme Court of Virginia

[redacted] ecord

CCR-E-10 (Jan 2018)

INSTRUCTIONS FOR MOVING PARTY

DATE/TIME: All motions should be noticed for the 10.00 a m. Civil Action Docket or the 11.30 a m. Domestic/Family Law Docket (All Divorce cases, adoptions and Juvenile & Domestic Relations Court Appeals) unless the moving party believes the motion will be uncontested All motions believed to be uncontested should be noticed for 9 00 a m All motions noticed for 9 00 a m. should be set without a judge, unless evidence will be required (e g., *Ex Parte* Proof, Infant Settlements, Fiduciary Matters), or if it is necessary for the order to be entered that morning rather than in chambers at a later time **A minimum of two weeks' notice is required for all motions for Summary Judgment, Demurrers, Pleas in Bar, motions pertaining to discovery disputes and other motions for which any party desires to file a memorandum.** A memorandum of points and authorities of five pages or less must accompany any of these pleadings and any other motion placed on the Two Week Docket If either party believes it necessary to file a memorandum exceeding five double-spaced pages, then the parties must utilize the Briefing Schedule procedure: contact opposing counsel or the opposing party and by agreement conduct a telephone conference call with the Calendar Control Judge, (703) 246-2221; or, if agreement is not possible, give advance notice of an appearance before the Calendar Control Judge to establish a Briefing Schedule

Each side should bring a draft proposed order to Court on the day of the hearing, as the ruling must be reduced to an order that day, absent leave of Court. Cases may only be removed from the docket by the Court or by counsel for the moving party or the moving party One Week Motions may be removed from the docket up until 4.00 p m. on the Thursday preceding the hearing date, by contacting the Motions Clerk: (703) 246-4355 Two Week Motions may not be continued or removed from the docket after 4.00 p m. on the Friday preceding the hearing date, without leave granted by the Judge assigned to hear the motion, for good cause shown

If a hearing on any motion must take longer than thirty (30) minutes, the moving and responding parties, or their counsel, should appear before the Calendar Control Judge to request a hearing for a day other than a Friday. See, "Motions Requiring More than 30 Minutes" in "Friday Motions Docket Procedures" on the Court's website at https //www fairfaxcounty gov/circuit/sites/circuit/files/assets/documents/pdf/civil-friday-motions-docket-procedures pdf

MOTIONS TO RECONSIDER: Do not set a Motion to Reconsider for a hearing. (See Friday Motions Docket Procedures, available from the Clerk's Office, the Bar Association office or on the Court's website at the address above

CERTIFICATIONS OF MOVING PARTY/COUNSEL Rule 4·15 (b) of the Rules of the Supreme Court of Virginia provides in pertinent part that "Absent leave of court, and except as provided in paragraph (c) of this Rule, reasonable notice shall be in writing and served at least seven days before the hearing Counsel of record shall make a reasonable effort to confer before giving notice of a motion to resolve the subject of the motion **and to determine a mutually agreeable hearing date and time.**"

CERTIFICATE OF SERVICE· Pursuant to Rule 4·15 (e), a motions pleading shall be deemed served when it is actually received by, or in the office of, counsel of record through delivery, mailing, or facsimile transmission; not when it is mailed or sent

INFORMATION FOR MOVING PARTY

COURTCALL TELEPHONIC APPEARANCE In most cases, Virginia attorneys may appear by phone in lieu of appearing in Court for the hearing. To set up a telephonic appearance, you must call (888) 882-6878. For information, please visit the Court's website at https //www fairfaxcounty gov/circuit/services/courtcall The Clerk's Office prefers that you notify it that you have set up a telephonic appearance by calling (703) 246-2880 no later than 4·00 p m on Thursday prior to the hearing date. The Court encourages use of this procedure, and either party may appear by phone
NOTE: Telephonic appearance is only for members of the Virginia State Bar and licensed attorneys allowed to practice *pro hac vice* in the Fairfax County Circuit Court (with a member of the Virginia State Bar present over the phone or in person)

CONCILIATION PROGRAM. The Fairfax Circuit Court strongly encourages use of conciliation procedures to resolve motions The Fairfax Bar Association's Conciliation Program conducts conciliation without charge by experienced litigators, who meet in person or by telephone with all interested parties To request conciliation, fax a Request for Conciliation form to the Fax Hotline, (703) 273-1274; e-mail a request for conciliation to ffxconciliation@aol com; or leave a voice mail message at (703) 627-1228. You will be contacted before the hearing date by a representative of the Conciliation Program.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

JOHN C. DEPP, II *Plaintiff,* v. AMBER LAURA HEARD, *Defendant.*	:	Civil Action No.: CL-2019-0002911

PLAINTIFF'S MOTION TO QUASH OR FOR A PROTECTIVE ORDER

In accordance with Rule 4:1(c) of the Rules of the Supreme Court of Virginia, Plaintiff John C. Depp, II, by and through his undersigned counsel, hereby moves this Honorable Court for a protective order in connection with Defendant Amber Laura Heard's efforts to depose counsel Adam R. Waldman, Esq.

In accordance with Rule 4:1(c), counsel for Plaintiff hereby certifies that they have in good faith conferred with opposing counsel in an effort to resolve this dispute without court action.

A memorandum in support of this motion and proposed Order are filed herewith for the Court's consideration.

Dated: December 23, 2020

Respectfully submitted,

[redacted]

Benjamin G. Chew (VSB #29113)
Camille M. Vasquez (*pro hac vice*)
Andrew C. Crawford (VSB #89093)
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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO QUASH OR FOR A PROTECTIVE ORDER

Plaintiff John C. Depp, II seeks to prevent the improper deposition of his personal attorney (and former attorney of record in this matter), Adam R. Waldman, Esq. Mr. Waldman is not a party to this action. In purporting to seek his deposition, Defendant Amber Laura Heard ("Ms. Heard") has thus far wholly disregarded the rules applicable to third party depositions, ***not even bothering to issue or serve a subpoena.*** Setting aside the lack of valid service pursuant to the Rules, it is a natural and inevitable consequence of Mr. Waldman's role as Mr. Depp's attorney, that all or nearly all of his testimony would be subject to the attorney-client privilege and/or work product doctrine. Indeed, Mr. Waldman was not (and is not alleged to be) a witness to any of the alleged instances of abuse that are at issue in this action. Mr. Waldman did not even meet Mr. Depp until 2016, after any of the alleged abuse took place. Thus, Ms. Heard can only depose Mr. Waldman in connection with events that took place ***during his representation of Mr. Depp***, directly implicating privilege. Critically, Ms. Heard has not demonstrated that there are no other ways to obtain the testimony she seeks through other discovery tools, nor has she demonstrated that Mr. Waldman is in possession of crucial, non-privileged information that

cannot be obtained from any other source. Mr. Depp respectfully requests that the Court put an end to Ms. Heard's improper tactic of seeking to depose his past and present attorneys,[1] and prevent this inappropriate and procedurally defective deposition from proceeding. In accordance with Rule 4:1(c)(1), good cause exists to grant this Motion.

ARGUMENT

1. Ms. Heard Never Served Mr. Waldman with the Requisite Subpoena.

Although Ms. Heard has filed a defective motion to compel Mr. Waldman's deposition, it is undisputed that she never served a third-party deposition subpoena on him; indeed, Ms. Heard never even bothered to ***issue*** such a subpoena. Rather than serving a deposition subpoena on Mr. Waldman as required under the Rules of the Supreme Court of Virginia, on August 14, 2020, Ms. Heard sent by email a deposition notice (with no subpoena) to Mr. Depp's entire legal team. Undersigned counsel responded to Ms. Heard's email, informing her attorneys that none of Mr. Depp's Brown Rudnick attorneys was authorized by Mr. Depp or most significantly, by Mr. Waldman to accept service on behalf of Mr. Waldman, and advised counsel for Ms. Heard that Mr. Waldman must be served with a valid subpoena. *See* **Exhibit A**; Va. Sup. Ct. R. 4:5(a). Nonetheless, Ms. Heard never served (or even attempted to serve) Mr. Waldman with a valid subpoena for his deposition and instead proceeded to file a facially improper motion to compel the deposition, *See* Va. Sup. Ct. R. 4:5(g)(2), to which this motion is directly related.

2. Ms. Heard Cannot Satisfy the *Shelton* Criteria.

Even ignoring the obvious jurisdictional and procedural flaws in Ms. Heard's attempts to take the deposition of a third party witness who was (but is no longer) an attorney of record in

[1] Ms. Heard has already taken the deposition of Laura Wasser, Esq., Mr. Depp's attorney from his divorce from Ms. Heard in California, during which Ms. Heard improperly sought information protected by the attorney-client privilege and/or work product doctrine.

this action, and has never been served with valid process, Ms. Heard also fails to meet the requirements set forth in *Shelton v. Am. Motors Corp.*, 805 F.2d 1323 (8th Cir.1986), which set forth a test which courts in the Commonwealth have adopted to determine whether it is appropriate to allow the deposition of an opposing party's counsel. *See, e.g.*, *McFarland v. McFarland*, No. 116434 , 1992 WL 884465, at *1 (Va. Cir. Ct. Jan. 29, 1992)[2]; *Navient Sols., LLC v. Law Offices of Jeffrey Lohman, P.C* , No. 1:19-CV-461(LMB)(TCB), 2020 WL 6379233, at *4 (E.D. Va. Sept. 4, 2020); *Moody v City of Newport New, Virginia*, No. 4:14-CV-99, 2016 WL 9000275, at *2 (E.D. Va. Jan. 20, 2016). Under *Shelton*, the party seeking to depose an opposing party's counsel must establish that: "(1) no other means exist to obtain the information than to impose opposing counsel; (2) the information sought is relevant and non-privileged; and (3) the information is crucial to the preparation of the case." 805 F.2d at 1327 (citations omitted). Ms. Heard has failed to demonstrate a single factor, and thus the Court should grant Mr. Depp's motion for a protective order. *See Moody*, 2016 WL 9000275 at *2 (quashing a counsel subpoena where "Defendant provided no facts or statements indicating she attempted to obtain the information from other sources and was unsuccessful in doing so, and thus did not meet the exhaustion requirement with respect to any non-privileged communications of opposing counsel."); *see also McFarland*, 1992 WL 884465 at *1 ("I find that the Defendant has failed to establish that alternate discovery avenues have been exhausted or proven impractical, and that there is a substantial need for the deposition of opposing counsel in this case.").

Indeed, Ms. Heard cannot carry her burden on ***any*** of the *Shelton* factors. Any deposition of Mr. Waldman would necessarily focus on matters that are primarily if not exclusively covered by the attorney-client privilege or work product doctrine, since he was an attorney of record on

[2] Notably, the *McFarland* case also related to a deposition ***subpoena*** to opposing counsel, not merely a notice.

this matter, and remains Mr. Depp's personal attorney. Mr. Depp does not intend to waive, and expressly asserts the attorney-client privilege. *See Moody*, 2016 WL 9000275 at *1, *2 (citation omitted) (denying the counsel deposition where the plaintiff did not waive the attorney-client privilege, thereby substantially limiting any potential information sought at the deposition). To the extent that the information sought by Ms. Heard is not protected by the attorney-client privilege, such as some limited communications with third parties, other means exist (such as third-party discovery) to obtain the discovery sought. *See id* at *1 (noting that certain information was not protected by attorney client privilege but that "the information is obtainable elsewhere and the Defendant must exhaust those sources first"); *McFarland*, 1992 WL 88446 at *1 ("The circumstances of this case suggest a risk of exposure of privileged information if the subpoena is not quashed, despite the existence of apparently viable discovery alternatives."). Nor has Ms. Heard made any showing that there is "crucial" information that is not privileged, and cannot be obtained by any other means, that she can obtain from deposing Mr. Waldman. Ms. Heard cannot satisfy the *Shelton* factors, and should be barred from continuing to seek Mr. Waldman's deposition.

3. <u>No Other Reason Justifies the Deposition of Mr. Depp's Counsel.</u>

Lastly, attorney depositions are strongly disfavored, and Ms. Heard has not offered, and cannot offer, ***any*** reason why the Court should permit Mr. Waldman's deposition to proceed here. "A deposition of opposing counsel ought to be ordered only as a last recourse." *Angelopoulos v. Volvo Penta of the Americas*, L.L.C., 92 Va. Cir. 257 (2015). "The evidence the movant seeks must be crucial to the case and not privileged, and every reasonable alternative method of procuring that evidence must have been tried." *Id.*; *see also, Navient Sols* , 2020 WL 6379233 at *4 ("Depositions of opposing counsel are discouraged, as they disrupt the adversarial

process and lower the standards of the profession.... Thus, a party should not be permitted to take the deposition of another party's counsel except in the most unusual of circumstances.") (citation omitted). The Eastern District of Virginia has recently listed a number of concerns with deposing an opposing party's counsel: 1) chilling the free exchange of information between counsel and client, 2) using such depositions to harass the opposing party; and 3) carrying "the substantial potential of spawning litigation over collateral issues related to assertion of privilege, scope, and relevancy, that only end up imposing additional pretrial delays and costs on both parties and burdens on the courts to resolve work-product and privilege objections." *Navient Sols.*, 2020 WL 6379233 at *4 (citations omitted). All of these concerns militate against allowing Ms. Heard to continue her improper pattern of seeking to explore privileged matters and deposing Mr. Depp's attorneys. In short, good cause exists for the entry of a protective order to relieve Mr. Depp of waiving attorney-client privilege, and to protect Plaintiff "from annoyance, embarrassment, oppression, or undue burden" in accordance with Rule 4:1(c).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant his motion to quash, or, in the alternative, for a protective order, and enter an Order prohibiting Ms. Heard from deposing Mr. Waldman.

Respectfully submitted,

[redacted]

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Dated: December 23, 2020

Exhibit A

From: Chew, Benjamin G.
Sent: Tuesday, August 18, 2020 1:12 PM
To: 'Elaine Bredehoft'
Subject: Mr. Depp's Response re Ms. Heard's Purported Notices of Deposition to Messrs. Bett, Deuters and Adam R. Waldman, Esq.

Dear Elaine,

Per your request, we hereby respond prior to Wednesday (tomorrow).

Sean Bett and Stephen Deuters

As always, Mr. Depp wishes to cooperate, but your Notices are improper for several reasons, and I respectfully recommend that you please confer with your co-counsel Ben Rottenborn Ben R will confirm that when he first raised the subject of these depositions with Camille and me during our telephone conference on June 30, we agreed that new subpoenas to Messrs Bett and Deuters would not be required ***if*** the following conditions were agreed to by Ms Heard, *i.e.*, that

1) the depositions take place at ***a mutually agreed upon*** *date, place, manner, and time*, and that

2) Mr. Deuters' deposition be taken by Zoom or other telephonic/video means so that he would not be required to travel from his native England

You sent us Notices of Deposition Friday that do not meet *any* of the conditions we laid out to Ben R

Your deposition notices to Messrs Bett and Deuters purport to require them to appear in your offices on September 29, and September 30, 2020, and leave the duration of the depositions indefinite (Proceeding beyond one day for either deposition would be unnecessary, and they do not agree to that) Ms Heard unilaterally set dates without *any* consultation as to whether those dates were convenient for either the witnesses or Mr Depp's counsel And they call upon the witnesses to appear at your offices in Reston in the middle of the COVID pandemic, to which they have not agreed, and, in Mr Deuters' case, explicitly disagreed

Proposed Resolution

In a good-faith attempt to resolve the issue, I will reach out to Messrs Bett and Deuters this week in an attempt to procure potential dates on which they are available for depositions At a minimum, Mr Deuters' deposition will have to be done remotely, and Mr Bett's will likely have to be done in that manner as well, in light of COVID and the expense, inconvenience (possible quarantine), and risk entailed in long-distance air travel I will then get back to you

Documents

No document requests were appended to Ms Heard's Notices of Deposition Ben R advised that the original (now expired and inoperative) subpoenas had been *duces tecum* As reflected in my email to him of August 4, I told Ben R. that we would consider a deadline for responding to those if he would please resend us the original subpoenas He did not send, or resend, us, copies of the original subpoenas Unless Ms Heard sends us those document requests, we will assume that they are not operative, and that Ms Heard seeks only their depositions

Adam R. Waldman, Esq.

As a threshold matter, we are **not** authorized to accept service for Mr Waldman To the extent Ms Heard seeks to pursue this, which, for the reasons set forth below, would be improper, she would have to serve him with a valid subpoena on which we should be contemporaneously copied

Though I appreciate why you, as an experienced, talented advocate, would want to draw attention away from your client's ever-shifting stories about alleged abuse, her admission about striking Mr Depp, and her arrest in Washington state, it is improper for Ms Heard to seek to depose Mr Depp's attorney As you well know, such depositions are rarely allowed, only as a last recourse, and the applicable standard is exceptionally high, requiring that, *inter alia*, that no other means is available to obtain the information sought, that such information be both relevant *and non-privileged*, and that the information sought is crucial to the preparation of the case You know from having attended the entirety of the London trial that Mr Waldman was *not* a fact witness to any alleged abuse or relevant interactions between Ms. Heard and Mr. Depp (Like you, Mr Waldman attended the *Sun* trial as Mr Depp's lawyer, *not* as a witness) Ms Heard could not satisfy *any* of these criteria, and her attempt to depose Mr Waldman would appear to be both a practiced distraction and a transparent attempt to set up a pretextual motion to disqualify him down the line

As politely requested several times, I request that we please set a time next week when we can roll

up our sleeves, agree upon who needs to be deposed, and devise a mutually acceptable deposition schedule. (We also likely will have to discuss a briefing schedule of dispositive mot.ons relating to Ms Heard's recently filed Counterclaim and other matters.) This is the approach we take in every case of substantial size, and it inures to everyone's benefit, as it obviates the time and client expense incurred in running into Court for resolution of what should be unnecessary disputes.

Best regards,

Ben

Benjamin G. Chew
Partner

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From: Elaine Bredehoft [mailto:ebredehoft@charlsonbredehoft.com]
Sent: Friday, August 14, 2020 4:52 PM
To: Chew, Benjamin G.; Vasquez, Camille M.; Crawford, Andrew C.; awaldman@theendeavorgroup.com
Cc: brottenborn@woodsrogers.com; Joshua Treece; Adam Nadelhaft; David Murphy; Leslie Hoff; Michelle Bredehoft; cmariam@grsm.com; John Cogger; Kristin Blocher
Subject: Notices of Deposition

External E-mail. Use caution accessing links or attachments.

All: Attached are Notices of Deposition for Sean Bett, Steven Deuters

and Adam Waldman Please let me know if you have any issues with Mr. Bett and Mr. Deuters appearing in Virginia – we are happy to work with you on the logistics. Also, I am assuming you will accept the Notice of Deposition for Mr. Waldman, since he is counsel of record in the case. However, if for some reason you believe he requires a subpoena, please provide your authority for this, and the address for serving a subpoena. If we do not hear from you by next Wednesday on these three Notices, we will assume they will appear as noticed.

Thank you for your anticipated cooperation. Have a great weekend.
Elaine

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of December 2020, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

Elaine Charlson Bredehoft (VSB No. 23766)
Carla D. Brown (VSB No. 44803)
Adam S. Nadelhaft (VSB No. 91717)
David E. Murphy (VSB No. 90938)
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[redacted]
Benjamin G. Chew