

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

John C. Depp, II,)
)
 Plaintiff,)
)
 v.)
)
 Amber Laura Heard,)
)
 Defendant.)

Civil Action No.: CL-2019-0002911

FILED
 2020 AUG 14 PM 1:22
 JOHN T. FREY
 CLERK, CIRCUIT COURT
 FAIRFAX, VA

**PLAINTIFF JOHN C. DEPP, II'S MEMORANDUM OF LAW IN RESPONSE &
 OPPOSITION TO DEFENDANT AMBER LAURA HEARD'S MOTION TO COMPEL
 RESPONSES TO DEFENDANT'S FOURTH AND FIFTH REQUESTS FOR
 PRODUCTION OF DOCUMENTS**

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Counsel for Plaintiff John C. Depp, II

Defendant's filing of the present motion is deeply troubling. Ms. Heard's counsel certified that she had met and conferred prior to filing the motion. *That is categorically false.* On Wednesday, August 5, 2020, at 2:42 p.m., Ms. Heard first requested a meet and confer. **Exhibit A.** Counsel for Mr. Depp responded *seven minutes later*, indicating that he was not available for a substantive discussion in the next two days, but would be available to discuss the week beginning August 10. *See id.*

Rather than scheduling a meet and confer call, Ms. Heard filed her motion on August 7, and thereafter refused Mr. Depp's *repeated* requests that she withdraw her Motion to allow the prerequisite meet and confer, *see Exhibit B*, which Ms. Heard's counsel refused to do. As such, Ms. Heard compounded her violation of the duty to meet and confer. Va. S. Ct. R. 4:12(a)(2). Ms. Heard's false certification and violation of the Court's Rules are especially egregious in light of her gratuitous prosecution of two overlapping motions to compel on July 10 and July 27, 2020.¹

The Court should *summarily deny* Defendant's Motion for lack of a prior meet and confer, and direct the parties to further discuss the remaining issues. To do otherwise would reward Ms. Heard for willfully filing a false certification and violating the Rules of this Court. To the extent the Court is inclined to address the substance of Defendant's motion, it should deny the motion.

I. Ms. Heard's Arbitrary Deadline Is Unwarranted and Unreasonable

Ms. Heard, whose document production is incomplete, falsely alleges that Mr. Depp is planning to dump documents immediately before depositions, and requests that Mr. Depp be

¹ Despite Ms. Heard's blatant violation of the Rules, Mr. Depp's counsel agreed to an after-the-fact meet and confer call with Ms. Heard's counsel as to her improperly filed motion on Wednesday, August 12, 2020. The parties reached tentative agreement on a number of issues (mooting much of the motion), and there is a possibility of further agreement after further discussion.

ordered to produce all documents within five days, or else be barred from using such documents at depositions or at trial. This request is unreasonable and arbitrary, and Ms. Heard's baseless assertions of bad faith are wholly inappropriate, as Mr. Depp has not engaged in *any* conduct that would warrant sanctions, much less the draconian remedy proposed by Ms. Heard. *See* Va. S. Ct. R. 4:12(d)

Moreover, the timetable Ms. Heard proposes is not remotely feasible and bears no relationship to the realities of this case. Ms. Heard's requests are wide-ranging, seeking information from all aspects of Mr. Depp's finances, personal life and relationships, and medical history, over a period of many years. This implicates an enormous volume of documents--*literally hundreds of thousands of pages*--that must be searched and reviewed for responsive materials, and further reviewed for privilege. Given the sheer volume of documents implicated by Ms. Heard's scorched-earth discovery, Mr. Depp could not possibly make a complete production of all documents needed for depositions and trial within five days. Nor would such a deadline make any sense, since discovery is far from complete: Ms. Heard has served additional document demands on Mr. Depp, and Mr. Depp is serving his own additional discovery. The current discovery cutoff is in December, so document productions by both parties will continue for months, especially in light of Ms. Heard's belated filing on Monday, August 10, of her three-count \$100 million Counterclaim on matters unrelated to Mr. Depp's case-in-chief, which improperly exploited the Virginia Supreme Court's Emergency COVID Orders.²

² By Letter Opinion of March 27, 2020, the Court overruled Defendant's Demurrer as to all but one of the four statements at issue in Mr. Depp's Complaint, and denied Defendant's Plea in Bar regarding the statute of limitations. But for the emergency COVID Orders issued by the Supreme Court of Virginia, Ms. Heard's Answer and Counterclaims would have been due on or before April 17, 2020. Instead of timely filing, Ms. Heard chose to sandbag Mr. Depp and the Court by belatedly filing a \$100 million Counterclaim only four months before the current trial date.

II. Fourth Requests for Production (“RFPs”)

Plaintiff believes that some of the document demands identified in the Fourth RFPs have been resolved informally *e.g.* **RFP No. 8**, as to which Mr. Depp intends to produce responsive documents (to the extent they exist). On **RFP Nos. 1 and 2**, seeking recordings, Mr. Depp agreed to produce non-privileged documents, while appropriately reserving the right to withhold privileged materials.³

RFP Nos. 3 and 6 represent blanket demands for all statements and communications by Mr. Waldman, one of Mr. Depp’s attorneys, with any other person “relating in any manner” to Ms. Heard. These requests improperly seek privileged communications, especially to the extent they seek communications between Mr. Waldman and Mr. Depp’s other agents or attorneys, and implicate the work-product doctrine. Further, these requests seek private communications by Mr. Waldman that may be protected for other reasons, including the marital privilege. Even more fundamentally, these seek documents *belonging to Mr. Waldman* (not to Mr. Depp), including all of Mr. Waldman’s *personal communications*.

RFP No. 10 seeks all documents or communications *on any topic whatsoever* between Mr. Depp and dozens of other persons. On its face, it is overbroad and improper, because it is not limited by subject matter. Mr. Depp stands prepared to discuss this request further if Ms. Heard proposes reasonable limitations as to scope.

RFP No. 14 seeks ten years of Mr. Depp’s tax returns, and represents an overbroad and harassing intrusion into the totality of Mr. Depp’s finances. Ms. Heard may be entitled to seek discovery into Mr. Depp’s damages--*i.e.*, loss of income from diminished professional prospects

³ Recording a person without knowledge or consent may technically constitute a crime in California and other locations, and to the extent that the existence of those recordings could implicate the Fifth Amendment privilege against self-incrimination, such privilege could be appropriately asserted.

attributable to her defamatory statements--but that does *not* mean that she is entitled to inquire into every aspect of his finances, assets, liabilities, and every single source of income over a ten-year period. That information is private, and irrelevant to the damages issue.

III. Fifth Requests for Production

The Fifth RFPs show the harassing nature of Ms. Heard's discovery, which exceeds all reasonable bounds for a dispute regarding what did or did not happen between two people during a brief relationship and marriage over a few years. Nevertheless, counsel reached agreement during the parties' belated meet and confer on RFP Nos. 2, 3, 4, 5, 6, and 11. Although Ms. Heard incorrectly asserts Mr. Depp's responses were untimely, her RFPs were served after 5 p.m. on July 10, 2020, and Mr. Depp timely served responses on August 3, 2020. *See* Virginia Rules of Court, Rule 1:7(b)(2).

RFP No 1 requests *all* phone records and text messages of Mr. Depp, with *any person* and *on any topic*, from *January 2012 to present*, and is facially overbroad and improper. However, at the parties' belated meet and confer, counsel for Ms. Heard offered to propose a narrowed version, which Mr. Depp will review when received.

RFP Nos. 8 and 9 seek documents related to pre- and post-nuptial agreements with Ms. Heard. Mr. Depp is willing to produce non-privileged documents, if any.

RFP No. 10 is a blanket request for all wills of Mr. Depp during the marriage with Ms. Heard. Mr. Depp's estate planning is not at issue, and this request is improper and intrusive. However, if Ms. Heard will narrow the scope of this request to documents sufficient to show any intended bequests to Ms. Heard, a compromise may be possible.

RFP Nos. 12 and 13 seek all documents and communications related to a hotel at which Mr. Depp stayed *in 1994*, 15 years before Mr. Depp and Ms. Heard even met, based on claims

that Mr. Depp damaged the room. These requests are overly broad and irrelevant. The subject matter of this action is the relationship between Depp and Heard, not whether a hotel room may have been damaged *26 years ago*.

RFP Nos. 14 and 15 seek “all communications by Mr. Depp, Mr. Waldman, or anyone acting on Mr. Depp’s behalf” to any “member of the press” owner of a social media account, or “member of social media.” These requests have *no limitation whatsoever as to subject matter*, and are unlimited as to time. As such, these requests are absurdly overbroad, and amount to a blanket request for *every communication with any of the billions of people* who have a Facebook, Instagram, Twitter, or similar account, on *any topic*, and at *any time*. However, Mr. Depp would consider, and further respond to, a more narrow request, reserving the right to assert any and all appropriate objections.

Respectfully submitted,



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Counsel for Plaintiff John C. Depp, II

Dated: August 14, 2020

EXHIBIT A

Chew, Benjamin G.

From: Chew, Benjamin G.
Sent: Wednesday, August 05, 2020 2:49 PM
To: Adam Nadelhaft
Cc: Rottenborn, Ben; Elaine Bredehoft; Treece, Joshua; David Murphy; Vasquez, Camille M.
Subject: Re: Depp v. Heard: Mr. Depp's Responses to Ms. Heard's 4th & 5th RFPs

Adam,

We are happy to discuss next week, but I am booked for the next two days.

Also, the first order of business is doing a proposed Order on Ms. Heard's most recent motion to compel, which I thought you all were drafting for our review.

Please confer with Ben R and advise.

Best regards,

Ben

Sent from my iPhone

On Aug 5, 2020, at 2:42 PM, Adam Nadelhaft <anadelhaft@cbcblaw.com> wrote:

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

Ben- I write regarding Mr. Depp's responses to Ms. Heard's 4th and 5th Requests for Production. As described below, there are a multitude of problems with Mr. Depp's responses. We would like to schedule a meet and confer on Thursday or Friday of this week. Please let us know your availability.

Before I discuss the particular requests, there are overarching issues that need to be addressed:

- First, for many of the requests, Mr. Depp states that he will produce documents on a rolling basis, but does not say when the full production will be complete. There is no justification for Mr. Depp not producing documents with his responses. These documents have been in his possession for literally years. Ms. Heard will agree to rolling production, as long as **all production is completed by August 21, 2020**. If you are unwilling to agree to this, please let us know why and what date you propose for the end date of production of these documents.

- Second, Mr. Depp continuously includes General Objections in his responses. These are inappropriate, and create confusion as to what Mr. Depp is objecting to. Any objections to Ms. Heard's Requests should be included in each Request. Please let us know if you will withdraw these objections and if not, upon which you are relying and for which specific requests. If you are not producing responsive documents as result of these objections, please also let us know specifically which ones.
- Third, Mr. Depp produced his responses to Ms. Depp's 5th Requests for Production on August 3, three days late. Because Mr. Depp's responses are late, all of his objections to the 5th Requests for Production are waived. Please produce all responsive documents ASAP.
- Fourth, Mr. Depp refuses to produce documents from all of his agents, and states that he will produce documents from a limited number of custodians to be negotiated in good faith. Mr. Depp is not a multi-national corporation. He should be producing from documents from all of his agents, including his attorneys. If you have any authority for your position, please provide to us immediately.
- Finally, Mr. Depp objects to producing information that refer to the time, place and circumstances referenced in the pleadings, and requests that a relevant time period be negotiated. Obviously, the time period from everything referenced in the pleadings is relevant. If there is a specific request you believe should be "negotiated," please state your position and rationale.

4th Requests for Production

- **Requests 1 and 2 for the 50-51 audio and video recordings that include Ms. Heard, and transcripts of those recordings.** Mr. Depp states he will produce all non-privileged documents. But nothing in these requests should be privileged. Therefore, everything should be produced.
- **Request 3 for all communications between Mr. Waldman and any person or entity referring to or relating in any manner to Ms. Heard, and Request 6 for all statements made by Mr. Waldman.** Mr. Depp objects as to privilege and says that a subpoena should be issued to Mr. Waldman, and

refuses to produce any documents. Given that this request would be for all external communications about Mr. Heard, presumably on behalf of Mr. Depp, there is no privilege that should attach. Mr. Depp should produce all the responsive documents.

- **Request 8 for all communications of any nature between Mr. Depp, Mr. Waldman or any representative of Mr. Depp, and any individual or representative of the Eastern Columbia Building from May 21, 2016 through the present.** Mr. Depp refuses to produce any documents in response to this Request. Given the date limitation of the Request, combined with the fact that there are genuine issues relating to the gathering of the information, the videotapes, the declarations, and the subsequent testimony of these witnesses, all of the material sought is relevant to this matter and should be produced.
- **Request 10 for all documents between or among Mr. Depp or any representative of Mr. Depp, and Christi Dembrowski, Ben King, Kevin Murphy, Jerry Judge, Nathan Holmes, Malcolm Connelly, Steven Deuters, any other security for Mr. Depp, house personnel, housekeeping, and personal assistant staff, during the following date periods: January 1 - March 30, 2013; June 27-July 7, 2013; May 1-May 31, 2014; August 1-September 15, 2014; December 1, 2014-January 3, 2015; January 20 - February 12, 2015; March 1-March 30, 2015; July 15-August 5, 2015; November 20, 2015-December 31, 2015; April 15, 2016-April 30, 2016; May 3, 2016-May 21, 2016; May 22, 2016 through present.** Mr. Depp refuses to produce any documents in response to this Request. Given the date limitations of the Request, and the extremely relevant time periods, all of the material sought is relevant to this matter and should be produced.
- **Request 14 related to Mr. Depp's tax returns:** Mr. Depp refuses to produce this information. Given Mr. Depp's claim for \$50 million in damages, his claim that Ms. Heard has damaged his career, and caused him to lose his income, Ms. Heard has a right to Mr. Depp's tax returns to

determine Mr. Depp's earnings over a period of time, and any losses and the time period of such losses. There is nothing else that would provide this information as succinctly, and it is clearly relevant.

5th Requests for Production

- **Request 1 for telephone records and all text messages for the period January 2012-present.** Mr. Depp refuses to produce any information in response to this Request. While Mr. Depp has waived any objection to scope, Mr. Depp can also not explain how his text messages and phone calls would not be relevant to this matter. The evidence produced in the UK proceedings relied extensively on text messages, on both sides. In addition, Mr. Depp relied on Ms. Heard's telephone records in these same time periods, and both sides contend they made calls during these time periods. The telephone records are clearly relevant for a multitude of reasons and should be produced.
- **Requests 2 and 3 for all photographs taken of the rented home in Australia during the period March 1, 2015-March 15, 2015 and all communications with the homeowner, the lease agreement, the full address, and all payments made to pay for the rent, as well as any damages, by whom paid, the amounts, any receipts and proof of payments, and dates, and communications with the owner.** Mr. Depp is only agreeing to produce photos of the property damage and payment for the property damage. That is not sufficient to respond to this Request. Mr. Depp should produce the other items requested. Communications with the homeowner, for instance, would give more insight into what happened at the rented home in Australia. In addition, in the UK proceedings, Mr. Depp produced only selective pictures of the residence and damage (or lack thereof) and clearly withheld relevant photos. There is no reason to withhold any of the photos or communications.
- **Request 5 for Mr. Depp and Ms. Heard's shared notebook/diary, unredacted.** Mr. Depp agrees to produce non-privileged materials. Nothing in a shared notebook with Ms. Heard should be

privileged. Mr. Depp provided in the UK proceedings only partial entries, and redacted portions that were clearly relevant.

- **Request 6 for all documents reflecting all efforts by Mr. Depp, or on his behalf, to preserve all video footage from Eastern Columbia Building during the week of May 21, 2016-May 28, 2016.** Mr. Depp refuses to produce any documents, claiming they are not relevant and privileged. It is clear that Mr. Depp did not produce all of the video footage, and instead produced only clips that he determined were helpful to his case. The full video footage should be produced, and if this is not available, Ms. Heard is entitled to all of the communications relating to the video footage, efforts to preserve, and if not fully preserved, why they were not.
- **Requests 8 and 9 for all communications and drafts relating in any manner to any pre-nuptial and post-nuptial agreement between Mr. Depp and Ms. Heard.** Mr. Depp refuses to produce any documents. Any communications or drafts exchanged between the parties are clearly not privileged and should be produced. Moreover, any privileged documents should be logged at a minimum.
- **Request 10 for copies of all Wills of Mr. Depp during the period of the marriage with Ms. Heard.** Mr. Depp refuses to produce any documents. These are clearly relevant because Mr. Depp has contended that Mr. Heard engaged in a hoax and fraud to build an insurance policy or dossier. What Mr. Depp intended to leave to Ms. Heard under his Wills would clearly be likely to lead to the discovery of admissible evidence.
- **Request 11: All records of the Hicksville trip, including but not limited to, the reservations, pictures and descriptions of accommodations, any pictures of damage to property, all receipts, records of payment and communications relating to the stay, all monies paid, and the reasons for such payments.** Mr. Depp refuses to produce any documents. These relate

to one of the incidents in which Mr. Depp engaged in violence with Ms. Heard and created significant property damage. They are clearly relevant.

- **Requests 12 and 13 for copies of all communications with the hotel in NYC, believed to be the Mark Hotel, in which Mr. Depp stayed with Ms. Kate Moss, including documents and communications relating to the reservations, property damage, receipts, records of payments, and the criminal charges and resolution, and communications with third-parties about the incident.** Mr. Depp refuses to produce any documents. These are clearly relevant to demonstrate the extent of the property damage caused by Mr. Depp, and his propensity for understating the damage he has caused, or take responsibility for his actions.
- **Requests 14 and 15 related to communications by Mr. Depp, Mr. Waldman, or anyone on Mr. Depp's behalf, to any member of the press, any twitter account or other social media.** Mr. Depp refuses to produce any documents. Mr. Depp's, and his agents', abuse of Ms. Heard, this time through the media, is critical to demonstrate Mr. Depp's improper character assassination of Ms. Heard.

We look forward to discussing these issues as soon as possible, so that we may move to compel in the event we cannot fully resolve these.

Adam

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EXHIBIT B

Chew, Benjamin G.

From: Chew, Benjamin G.
Sent: Monday, August 10, 2020 11:18 AM
To: 'Elaine Bredehoft'
Cc: Treece, Joshua; Vasquez, Camille M.; Crawford, Andrew C.; Adam Nadelhaft; David Murphy; Ben Rottenborn
Subject: Depp v. Heard: CV2019-2911 - Defendants' Motion to Compel 4th and 5th RFPs

Good morning, Elaine,

We request that you *immediately* withdraw Ms. Heard's instant motion to compel, filed Friday afternoon without notice, which Ms. Heard purported to set for hearing on August 21, 2020.

As you know, there was no meet and confer as to 4th and 5th RFP's at issue in the motion, and no call made to us to ascertain our availability that day.

Indeed, Adam Nadelhaft of your firm contacted me about having meet and confer on the 4th and 5th RFP's today, and I apprised him that we would be available to meet and confer this Wednesday (day after tomorrow) at his convenience. All of this is reflected in emails on which you were copied.

Thus, the certification that you signed representing that you in good faith had conferred or attempted to confer with Mr. Depp's counsel in an effort to resolve the subject of Ms. Heard's motion is demonstrably false. To the extent you do not immediately withdraw the motion, and notify us of same, Mr. Depp will move to strike Ms. Heard's filing and seek sanction, including reimbursement of Mr. Depp's fees and costs in having to respond to Ms. Heard's improperly noticed motion.

We look forward to your prompt response.

Very truly yours,

Ben

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Please consider the environment before printing this e-mail

From: Elaine Bredehoft [<mailto:ebredehoft@charlsonbredehoft.com>]
Sent: Friday, August 07, 2020 3:18 PM
To: Balland, Andrew; Chew, Benjamin G.

Cc: Treece, Joshua; Vasquez, Camille M.; Crawford, Andrew C.; Adam Nadelhaft; David Murphy; Ben Rottenborn
Subject: Depp v. Heard: CV2019-2911 - Defendants' Motion to Compel 4th and 5th RFPs

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

Andrew: Attached please find Defendant Amber Laura Heard's Motion to Compel the Fourth and Fifth Sets of Requests for Production of Documents to Plaintiff Mr. Depp, along with the Praecipe and Motion. We have set this down for August 21, 2020, the Court's last available date in August, at 10:00 a.m. (and based on your earlier emails, your last day!).

Please let me know if you need anything further. Have a great weekend! Elaine

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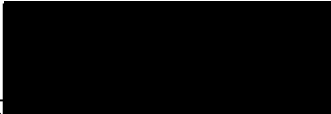
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August 2020, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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