VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

PLAINTIFF JOHN C. DEPP, II'S OPPOSITION TO DEFENDANT'S MOTION FOR SANCTIONS AND MOTIONS IN LIMINE

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I. The Motion Is Procedurally Improper and Unfairly Limits Depp to a Single Five-Page Opposition to Respond to Four Separate And Discrete Motions

Ms. Heard's combining ***four*** distinct motions—***each of which seeks to impose a separate, severe limitation on Plaintiff's case in chief***—into one is an act of gamesmanship. Depp should not be limited to a single five-page opposition to respond to Ms. Heard's requests for four substantial limitations on discovery and evidence at trial. Ms. Heard's filing directly violates the Fairfax Procedures, which explicitly state: "Counsel of record in a given case ***may not place more than one Two-Week Motion on the Docket on any Friday.***" Circuit Court Practice Manual Section 1.07 (emphasis added). The Court should deny Ms. Heard's motion on that basis alone.

II. Heard's Request for Draconian Sanctions Is Unjustified

Defendant cites no legal authority or violation of any Court Order that would support her improper request for draconian sanctions, asking the Court to limit Mr. Depp's evidence of damages to a response to an interrogatory served ***eight months before the close of fact discovery.*** Indeed, Mr. Depp is acting in good faith, and takes his discovery obligations seriously, having already produced more than 18,000 pages of responsive documents. In accordance with this Court's Orders, Depp supplemented various discovery responses, including Interrogatory No. 16 regarding damages, and yesterday made a further production of documents created by his manager and accountants at Edward White & Co. based on reviewing an enormous volume of financial documents from his three loan-out companies. EWC 1-EWC 52.

With respect to Interrogatory No. 16, Mr. Depp timely supplemented his response as ordered[1]. Sanctions under Rule 4:12(b) are only appropriate "If a party... ***fails*** to obey an order

[1] Ms. Heard also makes vague assertions that other responses are inadequate, for instance asserting that Depp "failed to fully respond to Int. No. 1," but Depp supplemented that response

to provide or permit discovery" following a motion to compel. *See, e.g., Khakee v. Rodenberger*, No. 0990-18-4, 2019 WL 1522963, at *3 (Va. Ct. App. Apr. 9, 2019). Thus, sanctions are inappropriate where as here, Mr. Depp timely supplemented.

As to RFP Nos. 11 and 12, Mr. Depp has produced any and all responsive documents. He anticipates that additional responsive documents will be obtained in third party discovery, but cannot produce documents that he has not yet obtained (nor was he required to do so by the Court's Order).[2] Such documents would be in the possession of the studios such as Disney, which indicated within days of Ms. Heard's Op-Ed that it was dropping Depp from its *Pirates of the Caribbean* franchise. Documents reflecting Disney's internal casting decisions must be obtained from Disney,[3] and the third party discovery necessary to fully develop these facts, partly due to delays caused by COVID-19, is still pending. As Ms. Heard knows, documents relevant to Depp's finances are maintained by his business managers, a third party, to which Heard served a third-party subpoena. Additional documents are being produced pursuant to that subpoena ***on a timeline that was negotiated and agreed*** by the parties' respective California counsel, including Mr. Depp's production yesterday. EWC 1 – EWC 52.

In short, Depp has not violated this Court's Order. If the Court were to find that there are still deficiencies in his supplemental responses, Mr. Depp would be more than willing to correct them, and Ms. Heard's request for draconian sanctions is inappropriate. In considering sanctions, Virginia courts consider the proximity of the trial date (*see, e.g., Lents v. Vetter*, 80 Va. Cir. 268 (2010)); prior discovery violations (*see id.*; *see also Landrum v. Chippenham and Johnston-*

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with the information known to him. Heard also complains that Depp did not withdraw his objections in his supplemental responses, but the Court's Order did not direct Depp to do so.

[2] Of course, in any litigation, it is always possible that a document or bucket of relevant documents might exist that has been overlooked; but any documents late-discovered will promptly be produced.

[3] Recognizing this reality, Heard has issued repeated subpoenas to Disney.

Willis Hospitals, 282 Va. 346 (2011); whether the sanction is "too harsh" (*see Lents*, 80 Va. Cir. 268); and whether a lesser sanction would remedy the problem given the specific circumstances of the case. *See Am. Safety Cas. Ins. Co. v. C.G. Mitchell Const., Inc.*, 268 Va. 340, 352 (2004). ***None*** of these factors support imposition of any sanctions here much less the draconian sanctions requested by Ms. Heard. Depp is acting in good faith; third party discovery is ongoing; and the trial is eight months away.

III. The Court Should Deny Heard's Motions *in limine*

A. Heard's Motions *in limine* Are Premature

Heard's attempt to exclude evidence damaging to her case is premature. Most evidentiary rulings, particularly with respect to relevancy or hearsay, must await the presentation of evidence in a trial context. *See Harward v. Commonwealth*, 5 Va. App. 468, 474 (1988) ("Evidentiary rulings or relevance and materiality issues usually can only be made at trial."); *Magnum v. Inova Loudoun Hosp.*, 102 Va. Cir. 20, *2 (2019). The Court recently continued the trial date to May 17, 2021, and the Court appeared to approve setting a date in early May 2021 to address motions *in limine*.[4] Heard's motions seek rulings approximately ***eight months*** before the trial date on the admissibility of (a) Heard's arrest and jailing in Washington State for assaulting her then-partner, (b) evidence concerning Heard's ***repeated*** (and apparently false) representations that she donated her $7 million divorce settlement from Depp to charity, and (c) alleged "hearsay" statements by Heard's mother. The course of discovery on Depp's case-in-chief for defamation (and Heard's Counterclaims, should the Court overrule Depp's Demurrer) will provide the context for the Court's eventual adjudication of the admissibility of this evidence, whether at trial or on motions

[4] On September 14, 2020, at Calendar Control, undersigned counsel requested that the Court please consider setting aside a day shortly prior to the May 17, 2021 trial for argument of both parties' motions *in limine*, to which Defendant's counsel and the Court appeared to be amenable. Mr. Depp submits that this would be more efficient than considering them *seriatim*.

in limine properly presented on the eve of trial. Without this context, Heard's evidentiary arguments cannot be adjudicated properly. *See Intelligent Verification Sys., LLC v. Microsoft Corp.*, No. 2:12-cv-525, 2015 WL 1518099, at *9-10 (E.D. Va. Mar. 31, 2015) (denying motion *in limine* as premature, as the admissibility of the evidence will "depend on their proffered purpose and factual context" at trial).

B. Heard's Motions *in limine* Are Without Merit

Heard's motions also fail on the merits. *First*, discovery regarding Ms. Heard's prior arrest and charges for assault of her former romantic partner is plainly relevant to Depp's claim that Heard fabricated her claims of abuse, and that ***she*** was the true abuser. Heard's indignation at Depp's efforts to take such discovery is surprising, given that ***Heard sought and successfully argued she is entitled to discovery into Depp's prior arrests,*** none of which involved domestic abuse, as Ms. Heard is the only woman ever to have made such false claims. Moreover, Heard has now filed a $100 million defamation counterclaim against Depp, and has put her own reputation at issue. If Mr. Depp's prior arrests on unrelated alleged are relevant, Ms. Heard's for assault of her former partner are far more so.

Second, discovery into whether Heard did, in fact, as she publicly claims, donate her $7 million divorce settlement to charity, is relevant to Ms. Heard's motive in making the domestic abuse allegations against Depp. Defendant proclaimed to the world that "money played no role" in her divorce with Mr. Depp, promising that all settlement proceeds would be donated to charity, particularly to vulnerable and abused populations. Mr. Depp should be able to show that Ms. Heard's false abuse claims were to leverage a larger settlement, that she did not donate the entirety of the proceeds. In connection with a third-party subpoena pending before the Hon. Stephanie M. Bowick of California, that court has already tentatively agreed with Depp that

Heard put her donations at issue, and that the truth of Heard's claims to have donated the settlement proceeds is relevant and discoverable. This evidence is ***directly*** relevant to Heard's motives, and the motion is nothing more than a blatant attempt by Heard to end run a well warranted adverse ruling in California.

Finally, Heard's assertion that certain statements in the declaration of Howell "regarding the Defendant's deceased mother" must be excluded as hearsay for which "none of Virginia's exceptions to the hearsay rule apply" flies in the face of the basic tenets of Virginia hearsay law and underscores the premature nature of Heard's motion *in limine*. It is axiomatic that an out-of-court statement "is not hearsay at all" if it is not offered into evidence for its truth. *See, e.g.*, *Bennett v. Commonwealth*, 69 Va. App. 475, 489 (2018); *see also* Rule 2:801(c). Ms. Heard should not, before Depp has even sought to introduce these statements into evidence, be allowed to exclude these statements on hearsay grounds. *See Intelligent Verification*, 2015 WL 1518099 at *10 ("whether the [statements] constitute hearsay will depend on their proffered purpose and factual context"). As for Heard's claim that Howell's declaration has not been produced, Depp has now produced it; in any event, Heard—who has issued her own subpoena to Howell—attached a copy of the declaration to her Motion, is clearly in possession of the same, and has suffered no prejudice.

Conclusion

Based on the aforesaid, the Court should deny Defendant's improper multiple motions.

Respectfully submitted,

[redacted]

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Dated: September 18, 2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of September 2020, I caused true and correct copies of the foregoing Opposition to be served via email (per written agreement between the Parties) on the following:

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