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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

Civil Action No.: CL-2019-0002911

PLAINTIFF JOHN C. DEPP, II'S MEMORANDUM OF LAW IN RESPONSE & OPPOSITION TO DEFENDANT AMBER LAURA HEARD'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS, INTERROGATORY RESPONSES & ENFORCE THIS COURT'S OCTOBER 18, 2019 ORDER

Benjamin G. Chew (VSB #29113)
Elliot J. Weingarten (*pro hac vice*)
BROWN RUDNICK LLP
601 Thirteenth Street NW, Suite 600
Washington, DC 20005
Phone: (202) 536-1785
Fax: (617) 289-0717
bchew@brownrudnick.com
eweingarten@brownrudnick.com

Adam R. Waldman (*pro hac vice*)
THE ENDEAVOR GROUP LAW FIRM, P.C.
5163 Tilden Street, NW
Washington, DC 20016
Phone: (202) 715-0966
Fax: (202) 715-0964
awaldman@theendevorgroup.com

Camille M. Vasquez (*pro hac vice*)
BROWN RUDNICK LLP
2211 Michelson Drive
Irvine, CA 92612
Telephone: (949) 752-7100
Facsimile: (949) 252-1514
cvasquez@brownrudnick.com

Counsel for Plaintiff John C. Depp, II

Plaintiff John C. Depp, II ("Mr. Depp"), files this Memorandum in Opposition to Defendant Amber Laura Heard's ("Ms. Heard") Motion to Compel Production of Documents, Interrogatory Responses & Enforce This Court's October 18, 2019 Order ("Motion" or "Mot."):

INTRODUCTION

The Motion, which was filed without an adequate meet and confer, is entirely unnecessary and improper. The majority of the issues raised by the Motion could and should have been resolved informally. Many of the documents sought by Ms. Heard are already available to her, and Mr. Depp is ready, willing, and intends to produce such documents without the need for motion practice. Ms. Heard's shoot-from-the-hip approach to this Motion is perfectly illustrated by the fact that she seeks an Order compelling production of trial bundles from Mr. Depp's UK defamation case against NGN (the "UK Trial Bundles"), which were *not prepared and did not exist until the last few weeks*, and which consist largely of documents that have already been produced in this action. As Ms. Heard would know if she had adequately met and conferred, Mr. Depp stands ready and willing to re-produce these documents in this action, without any need for intervention by the Court. The Motion seeks materials that Ms. Heard either has access to (or that Mr. Depp is already willing to produce), or materials that she is not entitled to or that simply do not exist. The Motion should be denied.

ARGUMENT

A. Mr. Depp's Forthcoming Productions Moots Most of the Motion

As Mr. Depp has no objection to producing the recently prepared UK Trial Bundles (including the text messages referenced in the Motion), and fully intends to do so. Mot. at 1-2. However, Mr. Depp is prohibited by U.K. law from using the Trial Bundles for any other purpose while the trial is pending. The UK trial begins on July 7, 2020 and is expected to

conclude on July 24, 2020. Mr. Depp will produce the UK Trial Bundles within ten (10) business days of the conclusion of the UK trial. It is worth noting, however, that the vast majority of the materials comprising the UK Trial Bundles have already been produced to Ms. Heard in this action. Moreover, Ms. Heard almost certainly already has access to all materials in the UK Trial Bundles, as she has apparently been coordinating with, and providing confidential information produced in this action to, NGN's counsel in the UK action.¹

Similarly, although Ms. Heard undoubtedly has access to the divorce files from *her own* divorce proceedings from Mr. Depp (the "Divorce Files"), Mr. Depp will produce the Divorce Files to Ms. Heard on or before July 10, 2020. The Divorce Files include a number of the "leaked" items Ms. Heard seeks by her Motion, *see* Mot. at 3, including, *inter alia*, the audio recording of a 911 call apparently made on May 21, 2016 and the video of the deposition of Raquel Pennington taken in connection with Mr. Depp's and Ms. Heard's divorce proceedings. Mr. Depp will also produce the remainder of the purportedly "leaked" materials Ms. Heard identifies in her Motion.² *See* Mot. at 3.

B. Mr. Depp's Interrogatory Responses are Not Deficient

Ms. Heard's Interrogatory Nos. 9 and 10 seek information that goes far beyond the bounds of reasonable discovery in this action, namely information on *every* prescription drug prescribed to Mr. Depp and every medical service sought by Mr. Depp since 2010, *whether or not such treatments have any relation to this action*, and including patently irrelevant details

¹ Ms. Heard apparently shared, in violation of the Protective Order, confidential materials produced by Mr. Depp in this action with counsel for NGN in the UK action. NGN's counsel subsequently read these materials, which Mr. Depp had designated as confidential, aloud in open court in the UK action.

² Neither Mr. Depp nor his agents have leaked any materials properly designated as confidential under the operative Protective Order in this action. Ms. Heard, on the other hand, has apparently shared, in violation of the Protective Order, confidential materials produced by Mr. Depp in this action with counsel for NGN in the UK action.

such as the name and address of every pharmacist. This represents an outrageously overbroad and intrusive fishing expedition by Ms. Heard. Mr. Depp has already provided substantial discovery properly responsive to Interrogatory Nos. 9 and 10, including materials documenting Mr. Depp's treatment for substance use. And Mr. Depp—unlike Ms. Heard—has signed a HIPPA waiver, which allows Ms. Heard to obtain documentation from Mr. Depp's healthcare providers. Ms. Heard is not entitled to every single datum of Mr. Depp's medical history over the last ten (10) years and has provided no explanation as to why this information is needed.

Interrogatory No. 11 is inflammatory and is impermissibly premised upon Ms. Heard's disputed version of events. It asks whether “[f]or each instance of physical violence or abuse” by Mr. Depp, Mr. Depp was under the influence of drugs or alcohol. Since Mr. Depp vehemently denies that such instances occurred, the Interrogatory is incoherent and unanswerable in its present form. If Ms. Heard is dissatisfied with this response, then she must reframe the question. Mr. Depp's response to Interrogatory No. 11 is perfectly appropriate, based on the manner in which it is currently phrased.³

Mr. Depp is prepared to supplement his response to Interrogatory No. 14.

Finally, Interrogatory No. 16, requesting facts and computations of Mr. Depp's monetary damages, prematurely seeks information in fact discovery which will be the subject of expert disclosure. *See* Rule 4:1.

C. Mr. Depp Has Complied With the Court's Order Compelling Production

Ms. Heard's contention that Mr. Depp has failed to produce the documents the Court ordered him to produce rests on the flawed assumption that the materials Ms. Heard identifies exist and are within Mr. Depp's possession, custody, or control.

³ It is worth noting that all of Ms. Heard's interrogatories contain numerous subparts, in violation of Rule 4:8(g), which limits the parties to no more than thirty interrogatories, “including all parts and subparts.” Interrogatories 9, 10, 11, and 14 collectively contain at least twenty subparts.

Ms. Heard acknowledges that Mr. Depp has produced communications with Dr. Kipper concerning his finger injury, but claims, *without any basis whatsoever*, that information that “appear to relate to highly relevant events” has been redacted and “go beyond redactions permitted by the Protective Order.” Mot. at 4. Setting aside the fact that Ms. Heard cannot view the redacted material and can only speculate that it is “highly relevant” and “beyond the redactions permitted by the Protective Order,” Ms. Heard has, *at most*, identified a dispute over the scope of the Protective Order, not a failure by Mr. Depp to produce materials ordered by the Court.

With respect to Ms. Heard’s contention that Mr. Depp has “[f]ailed to produce any documents relating to his arrests,” Mot. at 5, Mr. Depp does not have any such documents in his possession, custody, or control. Mr. Depp is willing to execute a release to obtain any police records if Ms. Heard provides him with one. *See* Mot. at 5.

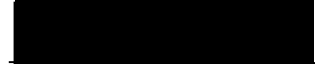
Finally, with respect to Ms. Heard’s claimed deficiency in Mr. Depp’s production of agreements with his former partners, Mr. Depp has produced all such agreements. Mr. Depp does not have “final executed versions” of the two agreements already produced. *See id.* The supposed agreement with Ms. Paradis that Ms. Heard has apparently identified from “[n]ews reports from June 2012” does not exist. *See id.* With respect to Ms. Heard’s cryptic reference to an “email produced by Mr. Depp . . . indicat[ing] that he entered into a settlement agreement with his former partner and a third individual in October 2015,” the Motion is the first time Ms. Heard has brought this email to the attention of Mr. Depp and his counsel. If Ms. Heard’s counsel identifies the Bates number for this email, Mr. Depp and his counsel will (re)investigate whether the agreement supposedly referenced therein exists and promptly produce if any such agreement is located.

D. Alleged Production Errors

Mr. Depp has made a good faith effort to collect and produce all available metadata associated with the documents he has produced in this action. To the extent that errors have occurred in the course of Mr. Depp's voluminous document productions to-date, Mr. Depp's counsel is available and willing to assist Ms. Heard's counsel in resolving any such issues. Like many of the other issues raised in Ms. Heard's Motion, the errors Ms. Heard has identified could, in all likelihood, have been resolved without motion practice if Ms. Heard's counsel had clearly communicated the specific errors to Mr. Depp's counsel and facilitated an investigation into the source of any errors. Simply complaining that "[h]undreds of documents," among the thousands Mr. Depp has produced to-date, show a conversion error and that certain documents "contain no or limited metadata" is not productive or sufficient to provide Mr. Depp's counsel with the information necessary to investigate and resolve any such issues. If Ms. Heard's counsel supplies more specific information about the errors, such as Bates numbers for specific documents and the metadata that appears to be missing, Mr. Depp's counsel will, in good faith, attempt to investigate and resolve any errors on the production-side of the equation.

Finally, because Mr. Depp has at all times acted in good faith and in accordance with his discovery obligations, and because the Motion is unnecessary and could have been resolved informally, Ms. Heard's request for sanctions should be denied.

Respectfully submitted,



Benjamin G. Chew (VSB #29113)
Elliot J. Weingarten (*pro hac vice*)
BROWN RUDNICK LLP
601 Thirteenth Street NW, Suite 600
Washington, DC 20005
Phone: (202) 536-1785
Fax: (617) 289-0717
bchew@brownrudnick.com
eweingarten@brownrudnick.com

Camille M. Vasquez (*pro hac vice*)
BROWN RUDNICK LLP
2211 Michelson Drive
Irvine, CA 92612
Telephone: (949) 752-7100
Facsimile: (949) 252-1514
cvasquez@brownrudnick.com

Counsel for Plaintiff John C. Depp, II

Adam R. Waldman (*pro hac vice*)
THE ENDEAVOR GROUP LAW FIRM, P.C.
5163 Tilden Street, NW
Washington, DC 20016
Phone: (202) 715-0966
Fax: (202) 715-0964
awaldman@theendevorgroup.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July 2020, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

J. Benjamin Rottenborn (VSB No. 84796)
Joshua R. Treece (VSB No. 79149)
WOODS ROGERS PLC
10 S. Jefferson Street, Suite 1400
P.O. Box 14125
Roanoke, Virginia 24011
Telephone: (540) 983-7540
brottenborn@woodsrogers.com
jtreece@woodsrogers.com

Elaine Charlson Bredehoft (VSB No. 23766)
Carla D. Brown (VSB No. 44803)
Adam S. Nadelhaft (VSB No. 91717)
David E. Murphy (VSB No. 90938)
CHARLSON BREDEHOFT COHEN & BROWN, P.C.
11260 Roger Bacon Dr., Suite 201
Reston, VA 20190
Phone: 703-318-6800
Fax: 703-318-6808
ebredehoft@cbcblaw.com
cbrown@cbcblaw.com
anahelhaft@cbcblaw.com
dmurphy@cbcblaw.com

Counsel for Defendant Amber Laura Heard


Benjamin G. Chew VSB #29113