

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

John C. Depp, II,

Plaintiff,

v.

Amber Laura Heard,

Defendant.

Case No. CL2019-02911

MOTION FILED
2020 JUN 12 PM 3:30
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

**DEFENDANT AMBER LAURA HEARD'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS, INTERROGATORY RESPONSES &
ENFORCE THIS COURT'S OCTOBER 18, 2019 ORDER**

COMES NOW Defendant Amber Laura Heard, by counsel, in accordance with Rule 4:12 of the Rules of the Supreme Court of Virginia, and moves this Court for entry of an Order: (i) compelling Plaintiff John C. Depp II to produce documents from his related UK litigation in response to Defendant's First, Second and Third Set of Requests for Production of Documents; (ii) requiring Plaintiff to fully respond to Defendant's Interrogatory Nos. 9, 10, 11, 14 and 16; (iii) enforcing this Court's October 18, 2019 Order requiring production of documents in response to Defendant's First Requests for Production Nos. 4-5, 15, 17-21 and 30-44; and (iv) requiring Plaintiff to correct his production errors and failure to provide basic ESI metadata. In support of this motion, Defendant states as follows:

1. Counsel for Defendant hereby certifies, pursuant to Rule 4:12(a)(2), that they have in good faith conferred with counsel for Plaintiff in an effort to obtain the requested responses without judicial intervention.

2. The grounds for Defendant's Motion are summarized here and addressed more fully in Defendant's accompanying Memorandum in Support, which is incorporated by reference.

Discovery Produced in the Related UK Litigation Against NGN

3. Mr. Depp has failed to produce highly relevant (and damaging) documents in this action that he was forced to produce in the UK defamation case he brought against NGN, the parent company of newspaper *The Sun* (the “NGN case”), where Mr. Depp alleges *The Sun* defamed him by claiming he was physically violent toward Ms. Heard. The trial bundles in the NGN case are central to the issues in dispute in this action because the NGN case centers on a core issue in this action, namely, Mr. Depp’s violent conduct toward Ms. Heard, and these documents have already been reviewed and produced in the NGN litigation and can be re-produced with zero burden.

4. The trial bundles in the NGN case are responsive to numerous requests issued to Plaintiff in Defendant’s First, Second and Third Requests for Production of Documents. *See, e.g.*, Def.’s First RFP Nos. 3-7, 15, 30-41, 43-44 (examples of numerous requests directed at discovering evidence related to Mr. Depp’s violence toward Ms. Heard and related substance abuse); Def.’s Second RFP Nos. 2-10, and 22 (same); Def.’s Third RFP No. 4 (same); Def.’s Mem. in Supp. at Exs. 1-3.

Leaked Materials

5. Mr. Depp has repeatedly leaked relevant documents to the press instead of producing them to Ms. Heard. These leaked material include numerous Declarations explicitly requested by Ms. Heard, *see, e.g.*, Def.’s First RFP 1, and medical records that should have been (but were not) produced by Mr. Depp on or before November 15, 2019 pursuant to this Court’s October 18, 2019 Order. *See* Def.’s First RFP 43 (requesting “All DOCUMENTS and COMMUNICATIONS pertaining to the ‘3 surgeries to reconstruct my finger,’ as referenced in paragraph 12 of YOUR DECLARATION”); Def.’s First RFP 44 (requesting “All DOCUMENTS and COMMUNICATIONS pertaining to YOUR trip to the ‘emergency room,’ as referenced in paragraph 13 of YOUR DECLARATION”); Def.’s Mem. in Supp. at Ex. 4 (October 18, 2019

Order granting Ms. Heard's prior Motion to Compel and ordering production of certain non-privileged documents, including documents responsive to RFPs 43-44, by November 15, 2019).

6. By way of example, on April 6, 2020, a Twitter user posted a video with a title containing the claim, "NEW EVIDENCE!!"¹ that includes an unproduced "November 2019" Declaration related to Mr. Depp's finger injury and medical records from Gold Coast University Hospital in Australia regarding Mr. Depp's finger injury, which are responsive to both RFPs 43 and 44 and should have been (but were not) produced on or before November 15, 2019 in compliance with this Court's Order, Ex. 4.

Plaintiff's Deficient Responses to Defendant's Interrogatory Nos. 9-11, 14 and 16

7. Interrogatory No. 9 requests the identity of and information relating to services sought and received from each of Mr. Depp's mental and/or physical health care providers since 2010. *See* Def.'s Mem. in Supp. at Ex. 5.

8. Interrogatory No. 10 requests information related to each prescription drug that Mr. Depp has been prescribed since 2010 and the providers that prescribed such medications. *Id.*

9. Interrogatory No. 11 requests that Mr. Depp identify whether he was under the influence of alcohol, medication, or drugs at the time of each instance of physical violence or abuse alleged in Ms. Heard's Declaration and to provide related information (such as the substance(s) consumed, the amount consumed and its effects). *Id.*

10. Interrogatory No. 14 seeks information of instances where persons other than Ms. Heard accused Plaintiff of acts of physical violence, abuse, or destruction of property, and requests details related thereto, including whether Plaintiff was under the influence of alcohol, medication or illegal drugs at the time. *Id.*

¹ *See* <https://twitter.com/ThatBrianFella/status/1247305967374606337>.

11. Interrogatory No. 16 seeks facts and computations of monetary damages sought by Plaintiff. *Id.*

12. Mr. Depp has failed to adequately respond to Interrogatory Nos. 9-11, 14 or 16.

This Court's Prior Order Compelling Production

13. In addition to Mr. Depp's non-compliance noted in ¶¶ 5 and 6 above, Mr. Depp's production of documents and communications with Dr. Kipper contain redactions that appear to relate to highly relevant events, including notes about the finger injury (First RFP 38), that go beyond redactions permitted by the Protective Order. *See* Def's Mem in Supp. at Ex. 6.

14. Mr. Depp has failed to produce any documents relating to his arrests, including in France, nor has he submitted a release to obtain his records from the Vancouver Police. *See* First RFP 41.

15. Mr. Depp has likewise failed to produce all agreements with his former partners. *See* First RFP 42

16. All of these documents should have been produced, as ordered, by November 15, 2019. *See* Def.'s Mem. in Supp. at Ex. 4.

Production Errors & Failure to Provide Basic ESI Metadata

17. Mr. Depp's productions have been plagued with errors that make it impossible for Ms. Heard to view the contents of many documents.

18. Hundreds of documents contain only "Empty File – Conversion Error" or are completely blank.

19. Nearly all documents contain no or limited metadata—contrary to standard practice and prior representations between the parties concerning ESI²—making it difficult if not

² Plaintiff's original ESI proposal to Defendant and representative correspondence related to attempts to finalize an ESI protocol are attached to Defendant's Memo in Support as Exhibit 7.

impossible to determine when documents were created or modified and prejudice Ms. Heard's ability to analyze evidence and confront witnesses if this deficient behavior is not corrected.

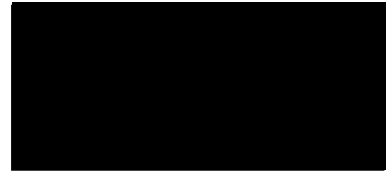
20. Ms. Heard has asked repeatedly for Mr. Depp to correct these errors and address these concerns, to no avail. *See, e.g.*, Def.'s Mem in Supp. at Ex. 8.

WHEREFORE, Defendant respectfully requests that the Court enter an Order compelling Mr. Depp to: (1) produce all documents he produced in the NGN case, (2) produce all documents he and his counsel have leaked to the press and/or social media users, including but not limited to those documents outlined in this Motion and Section B of Ms. Heard's Memorandum in Support, (3) fully and completely respond to Defendant's Interrogatory Nos. 9, 10, 11, 14 and 16, (4) produce all remaining outstanding documents that should have been produced pursuant to this Court's October 18 Order, and (5) supplement all prior productions in this case with proper metadata and correct all conversion file errors, and deliver such responses and documents no later than July 3, 2020. Ms. Heard also respectfully requests that the Court direct Mr. Depp and his counsel to cease leaking discovery material to the press (especially without, or in advance of, it being produced in this case), find Mr. Depp to be in contempt of the Court's October 18 Order, award Ms. Heard her reasonable attorneys' fees and expenses, and grant any additional relief the Court deems just and proper.

Dated this 12th day of June 2020

Respectfully submitted,

Amber L. Heard



By Counsel: _____

J. Benjamin Rottenborn (VSB #84796)

Joshua R. Treece (VSB #79149)

WOODS ROGERS PLC

10 S. Jefferson Street, Suite 1400

P.O. Box 14125

Roanoke, Virginia 24011

(540) 983-7540

brotenborn@woodsrogers.com

jtreece@woodsrogers.com

Counsel to Defendant Amber Laura Heard

CERTIFICATE OF SERVICE

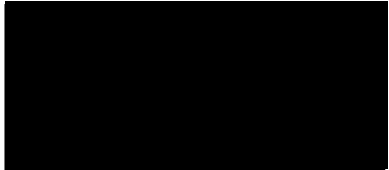
I certify that on this 12th day of June 2020, a copy of the foregoing shall be served by first class mail, postage prepaid, and by email, upon:

Benjamin G. Chew, Esq.
Andrew C. Crawford, Esq.
BROWN RUDNICK LLP
601 Thirteenth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 536-1700
Facsimile: (202) 536-1701
bchew@brownrudnick.com
acrawford@brownrudnick.com

Adam R. Waldman, Esq.
THE ENDEAVOR LAW FIRM, P.C.
1775 Pennsylvania Avenue, N.W., Suite 350
Washington, DC 20006
awaldman@theendeavorgroup.com

Counsel for Plaintiff John C. Depp, II

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



J. Benjamin Rottenborn
Joshua Treece
WOODS ROGERS PLC
10 S. Jefferson Street
Suite 1400
Roanoke, VA 24011
Telephone: (540) 983-7540
Facsimile: (540) 983-7711
brottenborn@woodsrogers.com
jtreece@woodsrogers.com