

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

John C. Depp, II,

Plaintiff,

v.

Amber Laura Heard,

Defendant.

Civil Action No.: CL-2019-0002911

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS IN RESPONSE TO DEFENDANT'S FOURTH,
FIFTH, SIXTH AND SEVENTH REQUESTS FOR PRODUCTION OF DOCUMENTS**

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As this Court will recall, Ms. Heard brings this motion for a second time after the parties were directed to adequately meet and confer following a hearing on August 21, 2020. While Ms. Heard's renewed motion is a narrowed motion that addresses discovery requests on which the parties are still unable to reach agreement, Mr. Depp maintains the requests in dispute remain improper in their present form, as they are overbroad, intrusive, and pointlessly harassing. The Court should deny Ms. Heard's motion for the reasons set forth below.

A. Requests for Audio and Video Recordings/Transcripts of Ms. Heard

On **Requests for Production ("RFP") Nos. 1 and 2**, seeking recordings, Mr. Depp agreed during the parties' meet and confer telephone conference to review and produce responsive documents, while appropriately reserving the right to withhold privileged materials. At this time, Mr. Depp can confirm 12 recordings and transcripts (to the extent they exist) have been produced in discovery. Mr. Depp will produce additional responsive recordings on or before September 30, 2020, and will not withhold recordings based on any privilege objection.

B. Requests for Communications from Adam R. Waldman, Esq.

Fourth RFP Nos. 3 and 6 and Fifth RFP Nos. 14 and 15 represent blanket demands for all statements and communications by Mr. Waldman, one of Mr. Depp's attorneys, with any other person, including any member of the press and owner of a social media account, "relating in any manner" to Ms. Heard. Despite Ms. Heard's agreement to "limit and narrow" the discovery requests, the proposed "narrowed" requests are still unreasonably overbroad, because they are not limited by subject matters and implicate the work-product doctrine. Further, these requests seek private communications by Mr. Waldman that may be protected for other reasons; by way of example, the requests potentially implicate communications with his wife, subject to the marital privilege. Moreover, the discovery sought is irrelevant to the claims in Mr. Depp's

Complaint or Ms. Heard's defenses thereto. The Court may limit discovery if it is unduly burdensome "taking into account the needs of the case." *See* Va. Sup. Ct. R. 4:1(b)(1). Mr. Waldman's communications and statements about Ms. Heard or the case are not central to the needs of the case as pleaded, to warrant the burden on Plaintiff of producing such discovery.

To the extent Ms. Heard asserts these RFPs are relevant to her Counterclaim filed in August 2020 (despite the discovery being propounded prior to the filing of the Counterclaim), since Mr. Depp has filed a Demurrer and Plea in Bar, should she prevail, Ms. Heard's Counterclaim will likely not be at issue until late October 2020. As such, Mr. Depp maintains the discovery relating to Mr. Waldman is premature, and respectfully requests the Court suspend discovery relating to the Counterclaim until it is at issue. *See* Va. Sup. Ct. R. 4:1(d)(2).

C. Financial Information Related to Damages and Defendant's Motives

As stated on the meet and confer call with counsel, Mr. Depp has been working diligently to collect and produce documents responsive to Ms. Heard's damages requests. These and other financial documents will be produced in advance of the hearing scheduled for this Motion.

The RFP requests cited by Ms. Heard purport to seek financial information in part to rebut Mr. Depp's statement in his May, 2019 declaration that Ms. Heard's domestic abuse accusation was financially motivated. The basis of Ms. Heard's requests is that she sought less money in the divorce than she was entitled under California's community property rules so her accusation could not have been financially motivated.¹ Ms. Heard's motives are at best a tangential issue in the case, and they certainly are not substantive enough to justify her effort to embark on an unfettered foray into every aspect of Mr. Depp's personal finances, irrespective of

¹ Generally, in a community property state, marital property refers to all of the property acquired by either or both spouses during the marriage while separate property refers to any property the spouses acquired before the marriage and any gifts or inheritances acquired by either spouse at any time. *See, e.g.*, Cal. Fam. Code §§ 751, 770.

whether such finances are relevant to the damages in this case. Moreover, Ms. Heard was obviously a party to the divorce proceeding and was represented by counsel. As such, all the documents she seeks are in her possession, custody, or control. Ms. Heard also states she is seeking all of Mr. Depp's financial documents to rebut Mr. Depp's business manager, Mr. Edward White's declaration in the UK case, *i.e.* a declaration in a different case in a different country, which is not at issue in this litigation. Nevertheless, while Mr. Depp maintains these requests are overbroad, Mr. Depp will produce documents sufficient to show his income during his marriage to Ms. Heard and documents relevant to the damages issue.

Fourth RFP No. 14, Mr. Depp stands on his objections as stated in his response to this RFP requesting Mr. Depp's tax returns from 2010 to the present. Under Virginia law, income tax returns are subject to a "qualified privilege." *See Cont'l Fed. Sav. Bank v. Cooper*, 17 Va. Cir. 355 (1989). "This 'qualified privilege' requires a two-step approach, the burden initially being placed on the party seeking disclosure to prove the relevance of the information sought. Once this is shown, the opponent must demonstrate alternative sources where the requested information could be obtained." *Id.* Ms. Heard claims that Mr. Depp's tax returns are "needed to rebut his financial motive theory and Mr. White's testimony." *See* Heard Brief at 5, fn. 1. Ms. Heard has not shown why Mr. Depp's tax returns are relevant to rebut Mr. White's declaration which is not at issue in this litigation. Additionally, the requested information can be obtained from sources other than tax returns, such as documents demonstrating Mr. Depp's damages and loss of income from diminished professional prospects attributable to her defamatory statements. Moreover, Ms. Heard' request is overbroad. Ms. Heard and Mr. Depp were married for just 15 months. Only tax returns for those two years could possibly be relevant, and even then, only

partially relevant as certain income accrued during those two years would be marital property while other income would be separate property with no way to discern which is which.

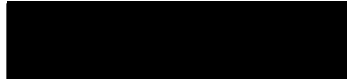
Sixth RFP Nos. 1-6, and 8 illustrate the harassing nature of Ms. Heard's discovery and an improper attempt by Ms. Heard to re-litigate her 2016 divorce from Mr. Depp. While, Mr. Depp's financial condition is not at issue in this case, to the extent there are documents that are relevant to Mr. Depp's damages claim, including documents sufficient to show his income during his marriage to Ms. Heard, Mr. Depp will produce. **RFP No. 8**, requesting all documents between Mr. Depp's divorce attorneys and any third parties, is not relevant to the claims or defenses in this case, is overbroad, and implicates the work-product doctrine.

Seventh RFP Nos. 1, 3, and 5-7. Mr. Depp intends to produce responsive documents (to the extent they exist) to **RFP Nos. 1, 3 and 5.** **RFP Nos. 6 and 7** seek documents relating to Mr. Depp's meeting with his business manager, Mr. Edward White, on April 21, 2016. These requests seek privileged communications, especially to the extent they seek communications between Mr. White and Mr. Depp's other agents or attorneys, and implicate the work-product doctrine. Further, these requests represent an overbroad and harassing intrusion into the totality of Mr. Depp's finances.

D. Other Requests

Mr. Depp agrees to produce non-privileged documents in response to Ms. Heard's *revised Fifth RFP No. 1*, and the *revised Sixth RFP Nos. 9, 10, and 12*.

Respectfully submitted,



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Dated: September 11, 2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September 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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