

VIRGINIA:

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IN THE CIRCUIT COURT OF FAIRFAX COUNTY 18 AUG 21 AM 10:11

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

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JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Civil Action No.: CL-2019-0002911

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HIS  
MOTION FOR CONTINUANCE**

Benjamin G. Chew (VSB #29113)  
 Andrew C. Crawford (VSB #89093)  
 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, has moved this Honorable Court for a short continuance of the trial date from January 11, 2021 until sometime between March and June 2021. In further support thereof, Mr. Depp states as follows:

**1. Good Cause Exists for the Short Continuance Requested**

The decision to grant a continuance is within the sound direction of the Court. *See Haugen v. Shenandoah Valley Dep't of Soc. Servs.*, 274 Va. 27, 34 (2007). The Court should grant such motion where refusal to do so “seriously imperils the just determination of the cause,” *Mills v. Mills*, 232 Va. 94, 96 (1986), or when good cause exists. *See* Fairfax Circuit Court Practice Manual, Section F. Applying this authority, the Court should grant Plaintiff’s motion.

**2. An Irreconcilable Conflict Has Arisen Concerning the Current Trial Date**

**A. Warner Bros. Just Set the Shooting of Fantastic Beasts**

When the Court set the current trial date in this case, Mr. Depp understood that Warner Bros. planned to shoot “Fantastic Beasts 3” in London long before January 11, 2021. COVID-19 disrupted the studio’s plans, causing repeated postponements. With conditions in London having improved somewhat, Warner Bros. has now set a shooting schedule that conflicts with the trial date in this case.

Just the day before yesterday, on August 19, 2020, Glenn A. Eckerle, Senior Vice President of Legal Affairs at Warner Bros. Pictures, sent Mr. Depp’s manager Edward White a letter, stating in pertinent part as follows:

The theatrical motion picture presently entitled “Fantastic Beasts 3” (the “Picture”) is being produced by Number Three Films Limited (“Company”) for distribution by Warner Bros. Pictures.

Pursuant to the Agreements between Company and LRD Productions, Inc. (“Lender”) f/s/o Johnny Depp (“Artist”) is currently scheduled to render services on the Picture in London *on an exclusive basis commencing in early October, 2020 and running through and including the middle of February, 2021.*

Letter from Glenn A. Eckerle to Edward White (August 19, 2020) (emphasis added). *See Exhibit A.* Thus, the schedule for shooting of “Fantastic Beasts 3” – which Warner Bros. just set to commence in early October 2020 and continue through mid-February 2021 – conflicts with the trial date in this case – currently set to commence on January 11, 2021 and run through January 28, 2021.

**B. Mr. Depp Has No Control Over the Schedule**

Pursuant to his contracts with the studio, Warner Bros., *not* Mr. Depp, determines when shooting of “Fantastic Beasts” begins and ends. Indeed, production of the film is a huge enterprise, with 750 people working on the production. Accordingly, Mr. Depp would face potential liability for breach of contract should he fail to comply with the schedule contractually dictated by Warner Bros. Though Mr. Depp is eager to proceed to trial, he faces an untenable situation over which he has no control. Good cause therefore exists to continue the trial date.

**3. Developments in This Case Also Warrant a Continuance**

As the Court recalls, on March 27, 2020, Chief Judge White issued his Letter Opinion, denying Ms. Heard’s Plea in Bar and overruling her Demurrer as to all except one of the statements at issue in Mr. Depp’s Complaint. In normal times, Ms. Heard would have had to file her Answer and any Counterclaims by no later than April 17, 2020. Instead, while otherwise engaging in aggressive motions practice, Ms. Heard took advantage of the COVID Emergency Orders issued by the Supreme Court of Virginia, extending the deadlines for her to respond to the Complaint, waiting until last week (August 10), to not only file her Answer, but also to assert three-count Counterclaims seeking \$100,000,000 in damages. While Count One of the Counterclaims for declaratory judgment is merely the flip side of Mr. Depp’s affirmative claims for defamation, and therefore superfluous and subject to demurrer, Counts Two for alleged defamation and Three for alleged Virginia statutory violation raise causes of action entirely

different legally, temporally, and in terms of subject matter, than those raised in Mr. Depp's Complaint. As such they raise new facts and legal theories which vastly expand the scope of necessary discovery with only limited time remaining before the end of the current discovery deadline.<sup>1</sup>

Responding to the Counterclaims will almost certainly require oversize briefing and a briefing schedule, meaning that the parties like would not be at issue until October. Moreover, even prior to the filing of the Counterclaims, the parties contemplated taking in excess of fifty (50) depositions, many in California. Ms. Heard's counsel stated that she seeks five full days for Mr. Depp's deposition, which he opposes, requiring him to file a forthcoming motion. Ms. Heard also seeks to take the deposition of Adam R. Waldman, one of Mr. Depp's attorneys in this action, which Mr. Depp believes is highly improper and will require this Court's resolution. Ms. Heard's latest team of California counsel has challenged Mr. Depp's subpoenas to witnesses there, in some cases seeking to relitigate matters previously decided by Judge Bowick. Taking necessary discovery on the Counterclaims vastly expands the remaining tasks.

**4. Ms. Heard Would Not Suffer Any Unfair Prejudice from the Short Delay Requested**

To date Ms. Heard has not offered any proffer of prejudice from a continuance of the trial from January, 2021 until sometime between March and June, 2021.<sup>2</sup> Indeed, though she certainly bears no responsibility for Warner Bros.'s shooting schedule, Ms. Heard chose to take advantage of the COVID Orders and to file her Answer and Counterclaims at the last possible

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<sup>1</sup> On or before his August 31 deadline, Mr. Depp anticipates filing a demurrer as to certain counts, including Counts One and Two, of the Counterclaims, and a plea in bar as to Ms. Heard's defamation claim (Count Two), as several of the alleged statements appear to be barred by the one-year statute of limitations.

<sup>2</sup> Ms. Heard's counsel has not stated her position on Mr. Depp's motion, other than to say she is available for hearing on September 11, 2020.

moment. In this context, a short continuance allowing a proper interval to take discovery on her Counterclaims would not entail any prejudice to her, much less unfair prejudice.

### CONCLUSION

Based on the aforesaid, Mr. Depp respectfully requests that the court grant his motion for continuance.

Respectfully submitted,



Benjamin G. Chew (VSB # 29113)  
Andrew C. Crawford (VSB # 89093)  
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@theendeavorgroup.com

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2211 Michelson Drive  
Irvine, CA 92612  
Telephone: (949) 752-7100  
Facsimile: (949) 252-1514  
cvasquez@brownrudnick.com

*Counsel for Plaintiff John C. Depp, II*

Dated: August 21, 2020



WARNER BROS.  
PICTURES

Glenn A. Eckerle  
Senior Vice President, Legal Affairs

August 19, 2020

Edward White  
Edward White & Co., LLP  
Certified Public Accountants  
Warner Center Towers  
21700 Oxnard Street, Suite 400  
Woodland Hills, California 91367

BY EMAIL

Re: "FANTASTIC BEASTS 3" / Johnny Depp / Actor

Dear Edward:

The theatrical motion picture presently entitled "Fantastic Beasts 3" (the "Picture") is being produced by Number Three Films Limited ("Company") for distribution by Warner Bros. Pictures.

Pursuant to the Agreements between Company and LRD Productions, Inc. ("Lender") f/s/o Johnny Depp ("Artist"), Artist is currently scheduled to render services on the Picture in London on an exclusive basis commencing in early October, 2020 and running through and including the middle of February, 2021.

Of course, as is normal for film production, these dates are subject to production exigencies and further scheduling changes, and Company may require Artist's services on the Picture for additional period of time (before and after such time periods) in order for Artist to complete his required services on the Picture.

Very truly yours,

Glenn A. Eckerle

cc: Lawrence Leavitt  
Bryan Lourd  
Sheldon Sroloff  
Jodi Levinson  
Nigel McCorry

(all by email)

A Division of WB Studio Enterprises Inc.  
A Warner Bros. Entertainment Company

4000 Warner Boulevard, Burbank, California 91522  
(818) 954-4911 • Fax: (818) 954-3490 • glenn.eckerle@warnerbros.com

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

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

**ORDER**

Upon consideration of Plaintiff’s Motion for Continuance (“Plaintiff’s Motion”), memorandum in support thereof, Defendant’s response thereto, arguments of counsel, and being fully apprised, it is, this \_\_\_\_ day of September, 2020, hereby ORDERED as follows:

1. Plaintiff’s Motion is granted.
2. Trial of this action, previously scheduled to commence on January 11, 2021, is continued to a date to commence in or about March 2021 but not later than June 2021.

\_\_\_\_\_  
The Honorable Bruce D. White  
CHIEF JUDGE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21st day of August 2020, I caused copies of the foregoing Plaintiff's Motion for Continuance, memorandum in support thereof, proposed Order and Praecipe/Notice form 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 Bredehopt (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  
ebredehopt@cbcblaw.com  
cbrown@cbcblaw.com  
anahelhaft@cbcblaw.com  
dmurphy@cbcblaw.com

*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew