

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY



FILED
CIVIL PROCESSING

2022 JAN -6 A 11: 55


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

JOHN T. FREY
CLERK OF DISTRICT COURT
FAIRFAX COUNTY, VA

Civil Action No.: CL-2019-0002911

**DEFENDANT AND COUNTERCLAIM PLAINTIFF
AMBER LAURA HEARD'S EMERGENCY MOTION FOR PROTECTIVE ORDER TO
PROTECT ALL INDIVIDUALS ATTENDING THE DEPOSITION OF AMBER HEARD**

COMES NOW Defendant and Counterclaim-Plaintiff Amber Laura Heard ("Ms. 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 the attached Protective Order (**Att. 1**) to ensure sufficient protection for all individuals attending the deposition of Ms. Heard. Alternatively, Ms. Heard moves the Court to permit the deposition to be taken by Zoom (**Att. 10**). The grounds for this Motion are set forth below.

Ms. Heard must unfortunately bring this Emergency Motion because Mr. Depp 1) refuses to honor his earlier agreement, in writing, to ensure the same safety and health protocols will be in place that Ms. Heard implemented for the deposition of Mr. Depp; 2) demands Ms. Heard violate  law by not wearing a mask while being deposed; and 3) refuses to require all persons present wear K95 or KN95 masks consistent with CDC guidelines to protect against the Omicron variant.

1. On November 29, 2021, Ms. Heard began communications with Mr. Depp respecting the safety and health protections and protocols for Ms. Heard's deposition and

followed up on December 3 regarding these procedures. *Att. 2*, at 27-38. Mr. Depp responded on December 3 that he appreciated the precautions taken by Ms. Heard for Mr. Depp's deposition, and agreed to "arrange for the same type of protective shielding" and to "make sure that both the court reporter and videographer are at least double vaccinated." *Id.* at 26-27.

2. On December 4, 2021, Ms. Heard then provided a detailed description of the protections provided for Mr. Depp's deposition, and Mr. Depp responded by "agree[ing] to the same safeguards Ms. Heard did, as you listed below, which I had frankly forgotten." *Id.*, at 19-25. Ms. Heard agreed to the deposition in person based on these precautions being met.

3. Mr. Depp did not follow up further respecting these agreements. On December 29, 2021, Ms. Heard requested her deposition be taken by Zoom due to the newfound and alarming spread of the Omicron variant. Mr. Depp immediately refused. *Id.* at 15-18. Given Mr. Depp's refusal to permit the deposition to be taken by Zoom, Ms. Heard then followed up by seeking the status of Mr. Depp's progress with complying with the previously agreed upon safety and health precautions for the deposition, including: providing a contact at the local police department, facilitating private and safe building ingress and egress, providing safety measures inside the building to ensure the public could not access the deposition area, ensuring cleaning measures for the building, restroom and deposition areas, lunch arrangements (to avoid having to leave the building), arrangements with the court reporter for plexiglass barriers, and assurances all persons physically present are fully vaccinated and received a booster. *Id.* at 8-14. Ms. Heard then requested, in light of the Omicron variant, deposition attendees wear N95 or KN95 masks.

4. Mr. Depp declined to substantively respond, and instead expressed hostility and threatened to file a calendar control notice for an emergency motion. *Id.*, at 7. Mr. Depp further

again claimed he had “confirmed in writing that we will take all appropriate measures to ensure the safety of Ms. Heard” and all other individuals, but he refused to specify what those measures would be or confirm that he would abide by his earlier agreement. *Id.* at 1-2.

5. Then on December 31, 2021, Mr. Depp again “AGREED to the safety protocols you requested specifically in relation to the Omicron variant,” and “would be happy to sign a Consent Order to that effect.” **Att. 3**, at 5-6. Ms. Heard prepared and sent a Consent Order reflecting the safety and health protocols earlier agreed to, along with the additional safety protocol sought both by Ms. Heard and her counsel- that all individuals physically present at the deposition wear N95 or KN95 masks based on the latest CDC guidance that only these masks are sufficient to protect against the Omicron variant, followed by the EDVA. (**Att. 4**). **Att. 2**, at 5-6; **Att. 3**, at 4-5.

6. This reasonable and straightforward request for all physically present individuals to wear N95 or KN95 masks then led to the increased hostility from Mr. Depp on December 31, 2021, along with backtracking from the protocols and procedures Mr. Depp had repeatedly agreed to in writing weeks before. Mr. Depp’s counsel refused to wear masks themselves for the deposition and refused to agree to ensure the court reporter and videographer had received COVID-19 shots.¹ **Att. 3**, at 3. Ms. Heard then followed up on January 3-4, 2022 regarding the status of Mr. Depp’s review of the Consent Order. *Id.*, at 1-2.

7. On January 4, 2022, Mr. Depp sent his redlines to Ms. Heard’s proposed Consent Order, some of which directly contradicted Mr. Depp’s earlier agreements, in writing, including

¹ Included in Ms. Heard’s earlier Consent Order was the requirement to ensure the Court Reporter and Videographer were also vaccinated and boosted and would wear the K95 or KN95 masks. However, counsel for Ms. Heard proactively reached out to Planet Depos because Mr. Depp had not, and secured Planet Depos’ confirmation of all these requirements, so this was removed from the Consent Order.

most alarmingly inserting the condition that “Ms. Heard *shall not wear a mask while being deposed.*” Att. 5, at 2. Mr. Depp further made the following revisions:

- a. Mr. Depp eliminated the earlier agreed obligation to facilitate private access to and from the building where the deposition is occurring and to provide safety and security measures inside the building to ensure the public could not access the deposition area;²
- b. Mr. Depp refused to provide Ms. Heard’s counsel with the name and contact information of the point person at the local police department, despite earlier agreeing to this condition;
- c. Mr. Depp only agreed to contact building management to request appropriate cleaning, but refused to take responsibility to ensure the cleaning would take place as earlier agreed; and
- d. Mr. Depp’s counsel refused to agree to wear N95 or KN95 masks, and only agreed to wear surgical or filtered masks despite the latest CDC guidance being these types of masks are worthless against Omicron and the Eastern District of Virginia now requiring these specific masks to enter the Courthouse (Att. 4).

Att. 5, at 2-3.³

8. Mr. Depp’s attempts to prohibit Ms. Heard from wearing a mask for her deposition, notwithstanding Ms. Heard having every right to wear a mask to protect her own safety and that of her infant child (not to mention others in the room), is even further disturbing because Mr. Depp would cause Ms. Heard to *violate* [REDACTED]

[REDACTED]

² This was combined with including the full address of the location of the deposition, which was not earlier public record (the Notice of Deposition was not filed with the Court). Thus, while broadcasting the location for the Depp fans (and Amber Heard haters) and press, Mr. Depp removed Ms. Heard and her counsels’ safe passage in and out of the building, a condition to which Mr. Depp had earlier agreed, in writing.

³ Mr. Depp also inserted that Ms. Heard would be deposed for “no less than seven hours of testimony each day....” Ms. Heard had agreed to 21 hours total – the same as Mr. Depp (who testified less than 7 hours any day of his deposition)– but if she testified longer the first day, for example, as written, she would automatically exceed the 21 hours because she would still have to testify at least 7 hours each additional day. This also contradicts the earlier agreement.

[REDACTED]
[REDACTED] Att. 6.⁴ Mr. Depp's demand that Ms. Heard not wear a mask is also on the heels of the emergence of [REDACTED]

[REDACTED] Att. 8.

9. The security precautions for private building access, security at the location of the deposition and police contact information that Mr. Depp previously agreed to are critically important to Ms. Heard and her counsel's safety, as she and her counsel have received death threats, and Mr. Depp's fans (who are averse to Ms. Heard) are aware of the details of Ms. Heard's deposition. For example, the Twitter account [REDACTED]

[REDACTED] Att. 9.

10. Ms. Heard therefore respectfully requests the Court enter the attached Protective Order reflecting the reasonable protocols and procedures to ensure sufficient health and safety protection for all individuals attending the deposition, and if not met, the deposition will be taken by Zoom. Att. 1. Alternatively, Ms. Heard asks the Court to simply order the deposition to be taken by Zoom, in light of all the circumstances leading up to this emergency motion, and the existing serious health and safety concerns.⁵ Att. 10.⁶

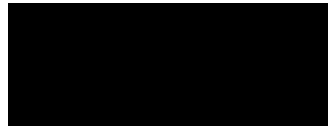
⁴ The United States District Court [REDACTED] due to the spread of the Omicron variant, along with reiterating that Court's mask requirement. Att. 7.

⁵ Ms. Heard took Mr. Depp's deposition continuation (the last 3.5 hours of the 21 hours) on December 14, 2021 by Zoom. All other depositions in this case have been taken by Zoom.

⁶ Ms. Heard opposes any continuance of the deposition. This is the third time her deposition has been scheduled, these dates were negotiated with the assistance of the Conciliator, there are only two months remaining for discovery and more than 30 depositions remain to be taken, and there is no evidence that the Omicron variant will dissipate, or other more deadly strains will not emerge. In fact, [REDACTED] Att. 8. The deposition needs to go forward and be completed now.

January 6, 2022

Respectfully submitted,



Elaine Charlson Bredehoft (VSB #23766)
Adam S. Nadelhaft (VSB #91717)
Clarissa K. Pintado (VSB 86882)
David E. Murphy (VSB #90938)
CHARLSON BREDEHOFT COHEN
BROWN & NADELHAFT, P.C.
11260 Roger Bacon Drive, Suite 201
Reston, VA 20190
(703) 318-6800
ebredehoft@cbcblaw.com
anadelhaft@cbcblaw.com
cpintado@cbcblaw.com
dmurphy@cbcblaw.com

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
brottenborn@woodsrogers.com
jtreece@woodsrogers.com

*Counsel to Defendant and Counterclaim-Plaintiff,
Amber Laura Heard*

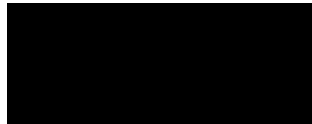
CERTIFICATE OF SERVICE

I certify that on this 6th day of January 2022, a copy of the foregoing was served by email, by agreement of the parties, addressed as follows:

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

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

*Counsel for Plaintiff and Counterclaim-Defendant,
John C. Depp, II*



Eraine Charison Bredenoft