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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

Civil Action No.: CL-2019-0002911

**PLAINTIFF JOHN C. DEPP, II'S MEMORANDUM IN SUPPORT OF MOTION TO
COMPEL DEFENDANT AMBER LAURA HEARD'S FURTHER RESPONSES
WITHOUT OBJECTIONS AND PRODUCTION OF DOCUMENTS IN RESPONSE TO
FOURTH REQUESTS FOR PRODUCTION**

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In her responses to Mr. Depp's Fourth Requests for Production,¹ Ms. Heard has taken positions that are entirely indefensible, in an improper attempt to stonewall basic discovery. For instance, Ms. Heard asserted blanket objections to requests that merely ask for *communications regarding her own claims to have been violently abused by Mr. Depp—the central issue in this case*. The deficiencies in Ms. Heard's responses include the following: (1) Ms. Heard asserted blanket objections to clearly appropriate requests; (2) she included improper limiting language that will drastically and impermissibly narrow the scope of any production; and (3) she has produced no documents. Mr. Depp respectfully requests that the Court order Ms. Heard to provide supplemental responses without objections; remove her improper limiting language; and immediately produce documents. Mr. Depp also requests that Ms. Heard be sanctioned.

I. Ms. Heard Improperly Limits The Scope Of Documents To Be Produced In Response To RFP Nos. 9, 11-14, 16, 18, 20, 22, 24, 26, 28, and 29-33

In response to Mr. Depp's RFP Nos. 9, 11, 12, 13, 14, 16, 18, 20, 22, 24, 26, 28, 29, 30, 31, 32, and 33, Ms. Heard agreed to produce documents, but improperly limited the scope by stating that she would only "produce non-privileged documents in response to this Request **relevant to the statements at issue.**" (Emphasis added). In meet and confer discussions, Ms. Heard appeared to take the position that she only needs to produce documents that specifically relate to the three alleged statements by Mr. Depp's personal attorney, Adam Waldman, that form the basis of the remaining portion of her surviving Second Counterclaim for defamation. Thus, for example, in response to RFP No. 9, which seeks documents and communications "that evidence or reflect the impact of any and all public statements by Adam Waldman on [Ms. Heard's] reputation and or career," Ms. Heard evidently intends to withhold any documents that do not specifically relate to one of the three statements that survived Mr. Depp's Plea in Bar.

¹ Mr. Depp's Fourth RFPs are attached hereto as Exhibit 1. Ms. Heard's responses to the Fourth RFPs are attached as Exhibit 2. A meet and confer email regarding Ms. Heard's responses is attached as Exhibit 3.

In short, Ms. Heard is attempting to withhold highly relevant documents. For instance, a hypothetical document discussing the truth or falsity of an earlier statement by Mr. Waldman about Ms. Heard, or its effect on Ms. Heard's reputation, might be withheld on the specious grounds that it does not specifically relate to one of the three specific statements that survived Mr. Depp's Plea in Bar. But such a document could nonetheless be highly relevant to issues such as the truth or falsity of Mr. Waldman's later statements. Similarly, such a document could be critically relevant to a damages analysis, to show that any alleged damages to Ms. Heard's reputation were actually attributable to earlier statements that are now time-barred. The scope of discovery in Virginia is broad, and Ms. Heard may not withhold documents relevant to the subject of this action, based on her unilateral determination that they do not specifically relate to one of the three surviving statements in her Counterclaim. Va. R. Sup. Ct. 4:1(a).

II. Improper Limiting Language In Response To RFP Nos. 2, 18, and 19

RFP No. 2 seeks documents reflecting acting projects for which Ms. Heard was rejected, from 2010 to present. This is essential to analyzing Ms. Heard's \$100 million Counterclaim, which is based on Ms. Heard's contention that a handful of tweets by Adam Waldman caused \$100 million in damages to her career. Ms. Heard only agreed to produce documents dated *after April 8, 2020*, apparently based on the date of Mr. Waldman's alleged statements. That is not a reasonable position. To assess Ms. Heard's claimed \$100 million in damages, Mr. Depp must assess Ms. Heard's plausible income and career trajectory over a period of time. The state of Ms. Heard's career prior to April 8, 2020 is relevant to evaluating the impact, if any, of any tweets by Mr. Waldman. If Ms. Heard was frequently rejected for acting jobs prior to April 8, 2020, that would undermine any claim that subsequent rejections are attributable to Mr. Waldman's tweets. Indeed, no damages analysis can be conducted without such information.

RFP No. 18 seeks drafts of Ms. Heard's op-ed in the *Washington Post*, which forms the basis of Mr. Depp's Complaint for defamation. Ms. Heard's response limits the scope of production to "non-privileged" drafts. But Ms. Heard asserted the defense of advice of counsel in her fourth affirmative defense in her Answer ("Defendant relied upon counsel in writing and publishing the Op-Ed..."), which waives the privilege. Having asserted a defense that she relied on counsel in drafting the Op-ed, Ms. Heard cannot withhold drafts of the Op-ed on privilege grounds. *See, e.g., 7600 Limited Partnership v. QuesTech, Inc.*, 41 Va. Cir. 60 (1996).

RFP No. 19 seeks documents and communications regarding the op-ed in *The Washington Post* that forms the basis of Mr. Depp's Complaint in this action. The request clearly seeks directly relevant, discoverable information. Incredibly, Ms. Heard only agreed to produce drafts of the op-ed, but no communications or other documents.

III. Ms. Heard's Document Production Is Long Overdue

Ms. Heard's documents were due on January 19, 2021. Va. R. Sup. Ct. 4:9. No documents have been produced. The parties are in the midst of depositions, and the discovery cutoff is a bare two months away. Immediate production should be ordered.

IV. Ms. Heard Refuses Outright To Produce Any Documents In Response To RFP Nos. 3, 4, 5-8, 10, 15, 17, 19, 21, 23, 25, 27, and 34-42

Ms. Heard's objections to the RFPs set forth below should be overruled:

RFP Nos. 3 and 4 seek documents and contracts reflecting Ms. Heard's compensation from professional projects (i.e., acting jobs). Mr. Depp cannot properly evaluate and present evidence as to whether Ms. Heard's claim to have suffered \$100 million in damages is plausible without taking discovery as to her actual and projected income and career prospects.

RFP Nos. 5, 6, 7, 8, 10 seek documents reflecting the impact of the Depp/Heard relationship, the parties' divorce, the parties' subsequent litigation, and Ms. Heard's public abuse

allegations against Mr. Depp on Ms. Heard's reputation and career. By asserting a \$100 million Counterclaim for defamation, Ms. Heard put her reputation directly at issue. Mr. Depp is entitled to explore the relative impact of each of these events on Ms. Heard's career and reputation. For instance, if documents suggest that Ms. Heard's career was damaged more by the parties' widely publicized litigation than by a few tweets from Mr. Waldman, that fact would be relevant to challenge her claimed damages. Mr. Depp also contends that Ms. Heard manipulated the public and the press to falsely portray herself as a heroic survivor of abuse, in part to burnish her reputation and raise her profile, and is entitled to seek discovery to support that contention.

RFP No. 15 seeks documents related to the domestic violence restraining order sought by Ms. Heard when the parties divorced, *in which Ms. Heard publicly alleged in court filings that she had been abused by Mr. Depp*. While a subset of responsive documents might be privileged, any non-privileged documents that pertain to the restraining order or its contents are directly relevant. To state the obvious, *the truth or falsity of Ms. Heard's abuse allegations are at the heart of this case*. Documents and communications regarding the restraining order are reasonably calculated to lead to admissible evidence on that issue, and cannot be withheld.

RFP No. 17, 21, 23, 25, and 27 seek documents related to any contention that Ms. Heard suffered damages as a result of statements by Mr. Depp and Mr. Waldman that have now been eliminated as part of Ms. Heard's Counterclaim by Mr. Depp's Plea in Bar. However, the information sought by these RFPs remains relevant to a damages analysis. Mr. Depp is entitled to explore how much of Ms. Heard's \$100 million in alleged damages was claimed to be attributable to the five statements that are no longer part of Ms. Heard's Counterclaim. In other words, Mr. Depp is entitled to explore issues such as whether Ms. Heard's claimed damages are attributable, in whole or in part, to earlier statements as to which any claim is time-barred.


RFP No. 34 seeks documents and communications between Ms. Heard and film studios or similar entities regarding the alleged defamatory statements by Mr. Depp and Mr. Waldman in her Counterclaim, as well as the publicity surrounding this action and related litigation involving Mr. Depp. This, again, is relevant to Ms. Heard's alleged damages. Mr. Depp is entitled to explore whether these matters have had any actual impact on Ms. Heard's career, and whether any film studios have raised the drama in her personal life as a problem for her professionally, or cited any statements by Mr. Waldman (or cited this litigation) as a reason not to employ her.

RFP No. 35 seeks communications between Ms. Heard and her girlfriend, Bianca Butti regarding her claims of violent abuse by Mr. Depp. Such communications are relevant *to the central issue in this case*, and not privileged. Ms. Heard's objections are invalid on their face.

RFP No. 36 similarly seeks non-privileged communications between Ms. Heard and other persons regarding her claims of violent abuse against Mr. Depp. Once again, the relevance and appropriateness of this request could not be clearer. *Ms. Heard's claims of violent abuse are the central issue in this case*—any communications regarding her claims of abuse are relevant and discoverable. Quite frankly, any such documents should have been produced years ago. Astoundingly, Ms. Heard served blanket, boilerplate objections and refused to produce anything.

RFP Nos. 37-42 seek documents related to publicity Ms. Heard received from her (false) promise to donate the entirety of her divorce settlement from Mr. Depp to charity; documents sufficient to confirm the dates and amounts of any donations from the settlement proceeds that were actually made; and documents reflecting an anonymous donor who appears to have made donations on Ms. Heard's behalf. Ms. Heard has put these matters at issue, including by testifying that she could not have been financially motivated in accusing Mr. Depp of abuse, because she supposedly had kept none of the settlement proceeds.

Respectfully submitted,


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Dated: February 12, 2021