

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
DEC 22 2021
JOHN T. FREY
Clerk of the Circuit Court
of Fairfax County, VA

JOHN C. DEPP, II,

Plaintiff and Counterclaim-Defendant,

v.

AMBER LAURA HEARD,

Defendant and Counterclaim-Plaintiff.

Civil Action No.: CL-2019-0002911

**DEFENDANT AND COUNTERCLAIM-PLAINTIFF AMBER LAURA HEARD'S
MEMORANDUM SUPPORTING MOTION TO COMPEL PLAINTIFF AND
COUNTERCLAIM-DEFENDANT JOHN C. DEPP, II'S PRODUCTION OF HIS
ORIGINAL DEVICES AND OPERATING SYSTEM DRIVES AND CLOUD BACKUPS
OF THESE ORIGINAL DEVICES AS REQUESTED IN DEFENDANT AND
COUNTERCLAIM-PLAINTIFF'S 14TH, 15TH, AND 16TH
REQUESTS FOR PRODUCTION OF DOCUMENTS**

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Previously the Court granted and denied in part cross-motions to compel forensic discovery of the party's devices. The Court denied Ms. Heard's motion "at this time" because it was "overbroad and there is no specificity," and "[t]here still has to be a nexus shown." **Att. 1**, at 68:12-20. The Court granted in part Mr. Depp's motion and Ordered targeted forensic discovery of Ms. Heard's devices. **Att. 2**. Ms. Heard immediately embraced the Court's ruling and served discovery seeking specific and targeted Inventory of Mr. Depp's Devices. *Compare Att. 3*, RFPs 4-12 *with Att. 2*. This Inventory included only the devices and cloud accounts Mr. Depp certified were in his custody and bore relevant ESI (**Att. 4**), yet Mr. Depp refused to produce. **Att. 3**. Ms. Heard then requested multimedia for Ms. Heard, Mr. Depp, and property damage during the specific periods the parties accuse each other of abuse (**Att. 5**) and Mr. Depp's finger injury (**Att. 6**, RFPs 28-36). Mr. Depp agreed to limited production, and refused forensic imaging. **Atts. 5-6**. So Ms. Heard prepared a Consent Order nearly identical to Mr. Depp's Order, but he refused to agree and has not produced any responsive data. **Atts. 2, 7**.

As supported by expert testimony (**Att. 8**), Ms. Heard requires this Inventory and forensic imaging of Mr. Depp's relevant multimedia to test for authenticity, manipulation and deletion, since much of the multimedia produced by Mr. Depp lacks "Creation Date" metadata (no information to support when it was created), reflects it was created *after* Mr. Depp filed this lawsuit, and/or was manipulated immediately before its production to Ms. Heard. Only forensic imaging will reveal when the data was created, if it was manipulated or edited, or deleted.

I. MR. DEPP'S METADATA REVEALS MANIPULATION AND ALTERATION

Mr. Depp's production raises serious authenticity and manipulation concerns, as most of the metadata does not contain any "Creation Date," the items that do contain "Creation Date" metadata mostly reflect dates *after this lawsuit was filed*, and the metadata reveals the items were "Modified" days before their production in this case. As previously argued by Mr. Depp, it is

“imperative that [Ms. Heard] be afforded the opportunity to examine this evidence to analyze whether, when, and by what means [Mr. Depp] has manipulated it.” **Att. 23**, at 1. Only then can Ms. Heard’s expert analyze these documents and data “for potential manipulations.” **Att. 8**, ¶13.

Audio Recordings: Over a year ago, the Court Ordered Mr. Depp to produce all audio and video recordings that include Ms. Heard. **Att. 9**. The UK Court also Ordered Mr. Depp to produce all recordings containing Ms. Heard’s voice. **Att. 10**. In response, Mr. Depp produced multiple partial audio recordings that begin and end in the middle of a sentence- DEPP9046, 9047, 8259, 8260, 8297, and 8298, **Att. 11-16**- and include recordings relied upon by Mr. Depp in Declarations he submitted in this case. **Att. 22**, ¶8. Mr. Depp cannot explain why he only produced partial recordings, and in fact, testified that he provided his counsel with full, un-edited copies of all recordings and deleted nothing. **Att. 20**, at 972:20-973:6, 973:20-974:6, 981:13-17, 982:5-20, 983:17-18, 987:21-22. So where are the full recordings? Moreover, the metadata from DEPP9046-9047 indicates the recordings were created in September 2015 and then modified in June 2016, and again one day before their production, but Mr. Depp only produced the modified version. **Att. 8**, ¶12. This raises significant concerns of manipulation, alteration, and deletion.

Photographs: Mr. Depp’s produced photographs evidence the same issues. For example, Mr. Depp’s Declaration relies on photographs of supposed scratches and bruises caused by Ms. Heard. **Att. 22**, ¶¶10-11; **Att. 19** at 1, 6. For one picture, the metadata has a Create and Modified Date of 7/24/2019, and the other picture has no Create Date and a Modified Date of 7/4/2020, which makes no sense if Ms. Heard supposedly caused these marks. *Id.* Similarly, DEPP7303 is another picture of Mr. Depp on a stretcher with a bloody finger and a mark on his face he claims Ms. Heard caused. **Att. 17**. But the limited metadata reveals the “Creation,” “Modified,” “Received,” and “Sent” Dates are July 22, 2019, despite Mr. Depp claiming this picture was

taken in March 2015. **Att. 8, ¶10.** There are the same issues with other photographs of claimed injuries, such as DEPP9916 which has no “Creation” or “Modified” Date metadata and lists the “Sent” and “Modified” Dates as July 3, 2020. **Att. 18; Att. 8, ¶11; see also Att. 19.**¹

II. MS. HEARD SEEKS TARGETED MULTIMEDIA FROM MR. DEPP’S DEVICES

Ms. Heard seeks targeted production of specific multimedia during the time periods of the parties’ allegations of abuse and property damage against each other, and only from Devices which Mr. Depp previously identified under oath are in his custody and contain relevant ESI.

Compare Att. 4 with Atts. 5-6. These Requests are consistent with the Court ordering Mr. Depp to produce native files with metadata of all “photographs reflecting injuries and audio and video recordings of Mr. Depp and Ms. Heard...previously produced...without metadata.” **Att. 2, ¶ 1.**²

Depp Abuse of Heard Dates: Ms. Heard requested multimedia (and deleted multimedia) containing Ms. Heard, Mr. Depp, or reflecting property damage during the relevant time periods. **Att. 5, RFPs 1-3, 5-7, 9-11.** Mr. Depp objected and only agreed to produce multimedia of Ms. Heard and property damage (RFPs 1-3, 9-11), but refused to produce any of himself (RFPs 5-7).

Depp Alleged Abuse by Heard Dates: Ms. Heard requested multimedia (and deleted multimedia) reflecting Ms. Heard, Mr. Depp, or property damage during the time periods claimed by Mr. Depp. *Id.*, RFPs 17-19, 21-23, 25-27. Mr. Depp objected and only agreed to produce photographs and video recordings of property damage and multimedia of *himself reflecting injuries* (RFPs 17-19, 25-26), along with video and audio recordings of Ms. Heard (RFPs 22-23). But Ms. Heard is entitled to *all* multimedia of Mr. Depp, just as Mr. Depp

¹ Mr. Depp claimed these photographs are not in his possession, yet they list Mr. Depp as the Custodian, meaning they are in his possession. To the extent Mr. Depp claims they came from Mr. Bett, Mr. Bett (represented by Depp’s counsel) did not produce them in response to subpoena. Forensic imaging would also reveal if they were deleted from Mr. Depp’s Devices.

² Mr. Depp states he is unaware of any deleted multimedia but does not state that he searched for responsive deleted multimedia, further supporting an Inventory and forensic imaging. **Atts. 5-6.**

compelled from Ms. Heard. **Att. 2.** Mr. Depp also objected and refused to produce photographs of Ms. Heard (RFP 21) or audio recordings reflecting property damage (RFP 27). **Att. 5.** Mr. Depp also refused to produce multimedia that Mr. Depp contends show injuries or otherwise evidence any alleged abuse of Mr. Depp by Ms. Heard during these dates. *Id.*, RFPs 14-16.

Mr. Depp now argues his false claims Ms. Heard abused him are irrelevant, despite Mr. Depp's repeated allegations *in his own Complaint* that Ms. Heard "violently abused Mr. Depp" and was "documented by...photographs." **Att. 21, Compl.** ¶¶ 3, 6, 24-31, 63, 78(b), 89(b), 100(b)). Mr. Depp repeated these false allegations in his Declaration (**Att. 22, ¶¶ 5, 7-13, 16-17, 39**), relying on the same recordings (**Atts. 11-12**) and photographs (**Atts. 17-19**) for which Ms. Heard seeks an Inventory and forensic imaging. **Att. 22, ¶¶ 8, 10, 11, 12, 16, Exhs. B-D.**

Multimedia of Specific Properties During Specific Dates: Ms. Heard requested multimedia (and deleted multimedia) of specific properties, including the inside, outside, or any portion of them, during the specific timeframes of abuse or property damage occurred at those properties. **Att. 5, RFPs 29, 31, 33, 35, 37, 39, 41, 43, 45.** But Mr. Depp has produced almost nothing, which is astonishing when Mr. Depp caused \$150,000 in damages to the Australia House that his staff attempted to conceal and fix "before anybody sees it." **Att. 25.** Ms. Heard should be allowed to forensically image Mr. Depp's devices to determine if any images exist, including any deleted files.

III. MR. DEPP SHOULD PRODUCE AN INVENTORY AND FORENSIC IMAGING

First, Ms. Heard seeks an "Inventory" of the imaging of Mr. Depp's Devices, defined identically to the Court's November 8 Order. **Att. 3,** at RFPs 4-12; **Att. 2,** at 2, 5-6. Second, Ms. Heard requests forensic imaging of Mr. Depp's Devices for extraction of the photographs, video recordings, or audio recordings (or deleted multimedia) argued in §II above.³ These Requests are

³ **Att. 5,** RFPs 4, 8, 12, 20, 24, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46; **Att. 6,** RFPs 28-36.

consistent with the case law relied on for the prior motions. *Albertson v. Albertson*, 73 Va. Cir. 94, 101 (Fairfax 2007). Yet Mr. Depp refused to produce his Devices for imaging and multimedia extraction despite previously arguing that Inventories and forensic imaging are “vitaly necessary to evaluate the veracity of [Mr. Depp’s] anticipated evidence at trial,” and “Virginia law does not permit [Mr. Depp] to offer alleged evidence of abuse, while depriving [Ms. Heard] of the ability to determine whether her evidence has been modified or manufactured.” **Att. 23**, at 1-4 (Mr. Depp’s purported expert “cannot assess whether the metadata associated with these photographs... have been modified in any way...without obtaining a forensic image”). Mr. Depp’s expert further argued he required imaging of Ms. Heard’s current devices due to imaging technology improving every day, and Mr. Depp being entitled to the best available forensic image today. Mr. Depp also “offered to consider a proposal from Ms. Heard for a reasonably particularized and targeted imaging,” but now refuses after receiving exactly that. **Att. 24**, at 1, 4; **Att. 23**, at 3.

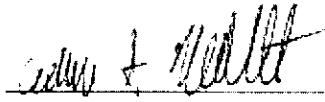
Mr. Depp taunted: “Ms. Heard’s reticence begs the question: if she has not falsified her evidence, then what is she hiding?” **Att. 23**, at 1; *see also Att. 1*, at 37:20-21, 43:5-15 (“if these were authentic, Ms. Heard should have no problem with this at all,” Mr. Depp “just want[s] to know what’s real and what’s fake,” so Ms. Heard should “prove it” and “should want to be able to prove authenticity”). Mr. Depp’s steadfast refusal to produce forensic discovery begs the question- what is he hiding, and why does he not want to prove the authenticity of his documents he claims reveal abuse against him? “[T]his type of analysis can only be accomplished through forensically imaging [Mr. Depp’s] original devices.” **Att. 23**, at 1; **Att. 8**, ¶13.

CONCLUSION

Ms. Heard respectfully requests the Court grant the Motion and enter the proposed order. **Att. 7**.

December 22, 2021

Respectfully submitted,



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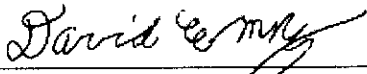
CERTIFICATE OF SERVICE

I certify that on this 22nd day of December, 2021, a copy of the foregoing was served by email, by agreement of the parties, addressed as follows:

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