

1 **VENABLE LLP**
Michael J. O'Connor (SBN 90017)
2 Email: MJO'Connor@Venable.com
Sarah L. Cronin (SBN 252624)
3 Email: SLCronin@Venable.com
Sarah E. Diamond (SBN 281162)
4 Email: SEDiamond@Venable.com
2049 Century Park East, Suite 2300
5 Los Angeles, CA 90067
Telephone: (310) 229-9900
6 Facsimile: (310) 229-9901

7 *Attorneys for Non-Party*
8 *Warner Bros. Entertainment Inc.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 AMBER LAURA HEARD,
12
13 Petitioner,

14 vs.

15 THE MANDEL COMPANY, INC., d/b/a
16 THE MANAGEMENT GROUP, a California
17 Corporation,

18 Respondent.
19

California Case No.: 19STCP04763

Assigned for all purposes to
Hon. Stephanie M. Bowick, Dept. 19

Case No.: CL-2019-002911
(Action Pending Outside California)

**NON-PARTY WARNER BROS.
ENTERTAINMENT INC.'S REPLY
IN SUPPORT OF MOTION TO
QUASH PLAINTIFF'S DEPOSITION
SUBPOENA FOR PERSONAL
APPEARANCE AND PRODUCTION
OF DOCUMENTS AND/OR
PROTECTIVE ORDER**

*[Filed concurrently with Supplemental
Declaration of Michael J. O'Connor]*

Hearing Date: March 3, 2022
Time: 10:00 a.m.
Dept.: 19

Res ID: 482784271483

22 JOHN C. DEPP, II,
23 Plaintiff and Petitioner,

24 vs.
25

26 AMBER LAURA HEARD,
27 Defendant and Respondent.
28

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310.229.9900

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION 1

II. WBEI’S MOTION TO QUASH AND/OR FOR A PROTECTIVE ORDER TO PREVENT AN UNCESSARY DEPOSITION SHOULD BE GRANTED.....2

 A. WBEI Has Sent The Parties A Proposed Declaration That They Can Stipulate To Use At Trial In Lieu Of Deposition Testimony2

 B. Plaintiff Does Not Dispute That Defendant Offered To Withdraw Her Damages Claim Based On *Aquaman 2*.....4

 C. WBEI Should Not Have To Sit For An Unnecessary Deposition Touching On Sensitive Business Information Directed to Withdrawn Claims.5

 D. There Is No Basis For Sanctions Against WBEI For Bringing This Motion, Which Has Been Brought In Good Faith And Should Be Granted6

III. CONCLUSION.....7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Cases

City of Los Angeles v. Superior Ct.,
9 Cal. App. 5th 272 (2017)4

Deyo v. Kilbourne,
84 Cal. App. 3d 771 (1978)6

Garcia v. McCutchen,
16 Cal. 4th 469 (1997)6

Laguna Auto Body v. Farmers Ins. Exchange,
231 Cal.App.3d 481 (1991)5, 6

SCC Acquisitions, Inc. v. Superior Ct.,
243 Cal. App. 4th 741 (2015)5

Statutes

Cal. Civ. Pro. Code § 2017.0104

Other Authorities

Va. Sup. Ct. R. 1:19 (2021)3

1 **I. INTRODUCTION**

2 Plaintiff John C. Depp’s (“Plaintiff”) opposition papers do not accurately portray the facts
3 or the law. While replete with baseless and incendiary accusations – meant to create the false
4 impression of an attempt by WBEI to evade the judicial process – they fail to rebut the critical
5 fact that Defendant Amber Laura Heard (“Defendant”) has attempted to withdraw the very claim
6 that provided Plaintiff’s grounds for seeking WBEI’s deposition in the first place. With the
7 purpose of the deposition obviated, it would be a needless and wasteful burden on the time and
8 resources of all parties involved to proceed. To that end, at the Court’s suggestion, WBEI
9 recently sent the parties a draft declaration setting forth the material and undisputed facts that
10 precipitated the withdrawal of Defendant’s claim, which the parties can stipulate is admissible
11 evidence for purposes of their upcoming trial. *See* Supplemental Declaration of Michael J.
12 O’Connor (“Suppl. O’Connor Decl.”), Ex. 1. While WBEI is hopeful that this will finally lead to
13 a resolution, the parties have not yet reached an agreement. WBEI respectfully submits that if
14 Plaintiff and Defendant fail to proactively collaborate on a stipulation that would ultimately
15 conserve everyone’s resources, WBEI should be shielded from any further abuse of the subpoena
16 process by a protective order.

17 WBEI is not a party to this litigation, and – simply put – does not have a dog in this fight.
18 Yet Plaintiff’s opposition falsely claims that WBEI has sought to avoid a deposition by making
19 “threats” to say “bad things.” This is a mischaracterization. The reality is that if Plaintiff is
20 allowed to proceed with a deposition of WBEI, its witness will be put in the crossfire of a
21 contentious interpersonal dispute in which it has no involvement. Depositions also take time, cost
22 money, and distract witnesses from their work. When a witness’s testimony would not resolve
23 *any* factual dispute, there is no justification for inflicting this stress and burden upon anyone –
24 especially a non-party.

25 Plaintiff’s Opposition also groundlessly speculates, without any evidence, that WBEI
26 “pressured” or “coerced” Defendant into dropping her damages claim based on *Aquaman 2*. This
27 provocative insinuation is not only insulting, it is untrue, and it has been expressly refuted by
28 Defendant’s own counsel. *See* Suppl. O’Connor Decl., Ex. 2.

1 Finally, Plaintiff's request that WBEI be sanctioned for filing this Motion is absurd.
2 WBEI has already produced documents in response to the Document Subpoena,¹ met and
3 conferred with counsel numerous times, and transparently offered (both before the filing of this
4 motion and after) to provide a sworn declaration setting out the testimony the parties can expect
5 as an alternative to imposing the burden of the deposition process upon all parties involved.
6 When WBEI's extensive informal attempts to resolve this discovery dispute failed, WBEI filed its
7 Motion for the first available hearing date and then readily agreed to Plaintiff's request to
8 stipulate to accelerate the hearing date (giving WBEI *less* time to prepare its reply brief). This is
9 not the conduct of a non-party that has "ignored" a subpoena or who acts as if they are "above the
10 law," as Plaintiff's counsel incorrectly claims in his Opposition. Opp. at 2:11-13. Plaintiff
11 should withdraw his request for sanctions; however, if he does not, that request for sanctions
12 should be rejected by the Court given WBEI's demonstrated good faith in bringing this Motion.

13 For the reasons below, and those set forth in WBEI's Motion, WBEI respectfully requests
14 that the Court grant WBEI's Motion to Quash, or, in the alternative, to issue a protective order
15 protecting WBEI from having to respond further to the Deposition Subpoena.

16 **II. WBEI'S MOTION TO QUASH AND/OR FOR A PROTECTIVE ORDER TO**
17 **PREVENT AN UNCESSARY DEPOSITION SHOULD BE GRANTED**

18 **A. WBEI Has Sent The Parties A Proposed Declaration That They Can Stipulate**
19 **To Use At Trial In Lieu Of Deposition Testimony**

20 At the Court's suggestion during the informal discovery conference held on February 25,
21 2022, WBEI prepared a draft declaration addressing the facts relating to Defendant's damages
22 claim that she has offered to withdraw in lieu of providing the same testimony through a
23 deposition. WBEI has asked that both parties confirm their agreement that they would stipulate
24 to the admissibility of WBEI's declaration as evidence at their upcoming trial in Virginia. *See*
25 O'Connor Suppl. Decl., Ex. 1. The draft declaration states:

26
27 _____
28 ¹ In response to WBEI's Motion, Depp agreed to withdraw his Document Subpoena. *See* Opp. at 12:9-11.

- 1 • Amber Laura Heard (“Ms. Heard”) was cast in both the film *Aquaman* and its
2 sequel, *Aquaman and the Lost Kingdom* (“*Aquaman 2*”), and was paid for her
3 services on both films per the terms of her contract. True and correct copies of
4 Ms. Heard’s “Talent Option” agreement, dated September 21, 2015 (“Option
5 Agreement”), as well as the March 24, 2017 letter exercising the option for
6 *Aquaman* under the Option Agreement and the June 3, 2021 letter exercising the
7 option for *Aquaman 2* under the Option Agreement are attached hereto as Exhibits
8 A, B, and C.
- 9 • Ms. Heard did not suffer any adverse employment action by Warner Bros. in
10 connection with either *Aquaman* or *Aquaman 2* because of any of the allegedly
11 defamatory statements by John C. Depp, II (“Mr. Depp”) or Adam Waldman (“Mr.
12 Waldman”) that are alleged in her Counterclaim (the “Counterclaim Statements”).
13 Ms. Heard’s compensation for *Aquaman* or *Aquaman 2* was not reduced because
14 of the Counterclaim Statements.
- 15 • Ms. Heard filmed *Aquaman 2* between July 15, 2021 and November 16, 2021.
- 16 • Any alleged delay in picking up Ms. Heard’s option for *Aquaman 2* was due to
17 creative issues in casting Ms. Heard in the role of Mera for *Aquaman 2*, which
18 were communicated to Ms. Heard’s agent at the time.
- 19 • Any alleged delay in Warner Bros. picking up Ms. Heard’s option for *Aquaman 2*
20 was not due to Ms. Heard’s dispute with Mr. Depp or to any of the allegations in
21 this lawsuit, specifically including the Counterclaim Statements.
- 22 • Warner Bros. would not have paid Ms. Heard more money on *Aquaman 2*, even if
23 Ms. Heard had had more time to attempt to renegotiate her contract.

24 *Id.* At the time this Reply was filed, Plaintiff and Defendant have not yet reached agreement with
25 respect to this proposal. *Id.* ¶ 4.

26 The law is clear that the parties can stipulate to the admissibility of the declaration from
27 WBEI, and the facts set forth therein, for use at their upcoming trial:

28

1 At the final pretrial conference ... the court and counsel of record
2 may consider any of the following: ... (c) **the possibility of**
3 **obtaining stipulations of fact, including, but not limited to, the**
4 **admissibility of documents** ... and (g) such other matters as may
5 aid in the disposition of the action.

6 Va. Sup. Ct. R. 1:19 (2021) (emphasis added). Consequently, WBEI’s offer to set forth in a
7 sworn declaration what it would testify to at deposition directed to Defendant’s withdrawn
8 damages claim should be accepted by the parties to resolve this Motion. This is especially true
9 given that the discovery cut-off is only a week away, and this is the most expedient and least
10 burdensome way to secure this testimony for the upcoming trial.

11 **B. Plaintiff Does Not Dispute That Defendant Offered To Withdraw Her**
12 **Damages Claim Based On *Aquaman 2***

13 If WBEI’s continued efforts to resolve this Motion fail—including through its offer of a
14 sworn declaration—WBEI should be protected from a burdensome deposition premised entirely
15 on undisputed facts directed to a withdrawn claim.

16 When first served with the Deposition Subpoena and Document Subpoena, WBEI
17 produced the contract between WBEI and Defendant, as well as two option letters, for the motion
18 pictures *Aquaman* and *Aquaman 2*, demonstrating that there was no dispute that Defendant was
19 cast in both *Aquaman* and *Aquaman 2* and paid for her services per her contract. O’Connor Decl.,
20 ¶ 6. When Plaintiff’s counsel continued to insist that a deposition of WBEI still go forward,
21 WBEI sent the parties a meet and confer letter, transparently setting out the testimony they could
22 expect and offering to submit a sworn declaration in lieu of deposition testimony. *See id.* ¶ 8; Ex.
23 E. Plaintiff admits in his Opposition that Defendant then did in fact offer to withdraw her
24 damages claim based on *Aquaman 2* (Defendant has not made a damages claim based on
25 *Aquaman*). Opp. at 7. But despite Defendant’s offer to withdraw her damages claim based on
26 *Aquaman 2*, Plaintiff’s counsel still insisted that a deposition of WBEI go forward. In fact,
27 Plaintiff’s counsel never even attempted to work out a stipulation in response to Defendant’s offer
28 to withdraw her damages claim and, instead, continued to pursue a deposition of WBEI. Suppl.
O’Connor Decl., ¶ 5. It was only *after* counsel for WBEI pressed Plaintiff’s side during a meet

1 and confer call as to why it had *never* tried to work out a stipulation with Defendant to withdraw
2 her damages claim that Plaintiff’s counsel responded to Defendant’s offer (with a laundry list of
3 additional demands that Defendant refused to accept). *See id.*

4 While WBEI understands that the parties are continuing to negotiate regarding WBEI’s
5 proffered declaration, in the event that the parties fail to reach agreement, WBEI should be
6 protected from further unnecessary exploitation of the discovery process.

7 C. **WBEI Should Not Have To Sit For An Unnecessary Deposition Touching On**
8 **Sensitive Business Information Directed To Withdrawn Claims**

9 WBEI met and conferred with Plaintiff’s counsel on numerous occasions and explained
10 that it made no sense to proceed with a deposition of WBEI when Defendant had already offered
11 to stipulate to withdraw her damages claim based on *Aquaman 2*, because the result would be
12 hours of questioning from counsel for both Plaintiff *and* Defendant in which both parties’ counsel
13 would likely attempt to elicit damaging and irrelevant information about the other for use in a
14 public trial. Plaintiff’s counsel completely mischaracterizes its conversation with counsel for
15 WBEI, claiming that WBEI’s counsel “threatened” to say “bad things” about Plaintiff if the
16 deposition went forward. Opp. at 10:1-5. This could not be further from the truth. WBEI has
17 sought, through extensive meet and confer efforts and its offer to submit a declaration in lieu of
18 testimony, to resolve this matter without acceding to Plaintiff’s attempts to seek irrelevant but
19 highly confidential, sensitive and proprietary business information, that he imagines could be
20 somehow used against Defendant and vice versa. Plaintiff is simply not entitled to this
21 information under the law. *See* Cal. Civ. Pro. Code § 2017.010 (establishing relevancy
22 requirement for discoverable information); *see also City of Los Angeles v. Superior Ct.*, 9 Cal.
23 App. 5th 272, 288 (2017), as modified on denial of reh’g (Mar. 20, 2017) (finding that “numerous
24 provisions in the discovery act that authorize the trial court to limit or restrict discovery that
25 otherwise satisfies section 2017.010’s ‘relevancy requirement.’”). California courts have held
26 that the “discovery’s relevance to the subject matter of the pending dispute and whether the
27 discovery ‘appears reasonably calculated to lead to the discovery of admissible evidence’ is
28 balanced against the corporate right of privacy.” *SCC Acquisitions, Inc. v. Superior Ct.*, 243 Cal.

1 App. 4th 741, 756 (2015) (holding that even though corporations do not have a constitutional
2 right to privacy, “corporations do have a right to privacy.”)

3 WBEI is a neutral non-party with no “side” in this litigation and should not be forced into
4 the position of creating immaterial “sound bites” about confidential aspects of its business.² That
5 is not the purpose of discovery. This is especially true in this highly publicized case, the trial of
6 which is to be to the subject of widespread attention and will be publicly televised. *See* 2/25/22
7 Order, *John C. Depp, II v. Amber Laura Heard*, Circuit Court of Fairfax County Virginia, Case
8 No. CL-2019-002911. The potential harm to WBEI is unjustified and wholly unnecessary.
9 Indeed, the only ostensible purpose for a WBEI deposition has been eliminated. Plaintiff’s
10 counsel’s attempt to malign WBEI for not wanting to unnecessarily be put in the middle of the
11 parties’ dispute is entirely unwarranted, and its arguments should be rejected if WBEI’s continued
12 efforts to resolve this Motion without the Court’s involvement fail.

13 **D. There Is No Basis For Sanctions Against WBEI For Bringing This Motion,**
14 **Which Has Been Brought In Good Faith And Should Be Granted**

15 Plaintiff’s claim for sanctions is supported only by conclusory arguments – not evidence.
16 *See e.g.*, Opp. at 2:12 (incorrectly claiming that WBEI “just ignore[d] a subpoena”), *id.* at 2:13
17 (incorrectly claiming that WBEI has acted as if it is “above the law”). This is a fabricated version
18 of events, and there is no basis for sanctions. Indeed, California courts “have never approved of
19 attorneys who habitually make unnecessary motion for sanctions, greedily seeking the
20 unnecessary involvement of the court in the discovery process.” *Laguna Auto Body v. Farmers*
21 *Ins. Exchange*, 231 Cal.App.3d 481, 487 (1991).

22 There is no dispute that WBEI produced Defendant’s contract and letters exercising her
23 option for *Aquaman* and *Aquaman 2*, demonstrating that Defendant was cast in both films and

24 ² Plaintiff’s position that non-party WBEI’s confidentiality concerns are not legitimate because of
25 the parties’ “Stipulated Amended Protective Order” (“SPO”) entered in the Virginia lawsuit is
26 entirely misplaced. Opp. at 15:1-2. First, the SPO is not designed to protect WBEI’s interests
27 unless the parties themselves agree to designate such information “confidential.” *See* Suppl.
28 O’Connor Decl., Ex. 3, at 3(a)(v). Second, Plaintiff’s counsel has already confirmed before this
Court that the purpose of a WBEI deposition is to use the testimony in trial, which will be open to
the public and even televised. Finally, because WBEI is not a party to the Virginia lawsuit, it will
have no control over how any deposition testimony would be used at the trial.

1 paid pursuant to the terms of the contract. O'Connor Decl., ¶ 6. WBEI then sent a meet and
2 confer letter, transparently setting forth the testimony the parties could expect from WBEI and
3 offered to submit a sworn declaration to this effect. O'Connor Decl., ¶ 8; Ex. E. Finally, after
4 multiple attempts to meet and confer with Plaintiff's counsel failed and WBEI filed this Motion
5 for the first available hearing date, WBEI agreed to stipulate to move the hearing on the Motion
6 up four months. *See* Stipulation and [Proposed] Order to Advance and Specially Set Hearing and
7 Briefing Schedule on Non-party Warner Bros. Entertainment Inc.'s Motion to Quash and/or
8 Protective Order, submitted February 24, 2022. Finally, at the Court's suggestion, WBEI even
9 prepared a draft declaration and sent it to the parties' counsel for their review. Suppl. O'Connor
10 Decl., Ex. 1.


11 Sanctions cannot be imposed where there is "a lack of evidence of misconduct or bad
12 faith." *Laguna Auto Body*, 231 Cal. App. 3d at 489 (disapproved of by *Garcia v. McCutchen*, 16
13 Cal. 4th 469 (1997), on other grounds); *see also Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 796-97
14 (1978). Here, Plaintiff has not and cannot demonstrate that WBEI engaged in any misconduct or
15 bad faith. In fact, the evidence shows the exact opposite, WBEI has actively engaged with
16 Plaintiff's counsel in good faith.

17 **III. CONCLUSION**

18 For the foregoing reasons, the Court should grant WBEI's Motion to quash the Subpoena,
19 or, in the alternative, to issue a protective order protecting WBEI from having to appear for
20 deposition, and to deny Plaintiff's baseless request for sanctions.

21 Dated: March 1, 2022

VENABLE LLP

22
23 By: 
24 Michael J. O'Connor
25 Sarah L. Cronin
26 Sarah E. Diamond

27 *Attorneys for Non-Party*
28 *Warner Bros. Entertainment Inc.*

PROOF OF SERVICE

1
2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action; my business address is Venable LLP, 2049 Century Park
East, Suite 2300, Los Angeles, California.

6 On **March 1, 2022**, I served a copy / original of the foregoing document(s)
7 described as **NON-PARTY WARNER BROS. ENTERTAINMENT INC.’S REPLY IN**
8 **SUPPORT OF MOTION TO QUASH PLAINTIFF’S DEPOSITION SUBPOENA FOR**
PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND/OR
PROTECTIVE ORDER on the interested parties in this action addressed as follows:

9 Camille M. Vasquez, Esq.
10 Samuel A. Moniz, Esq.
11 Honieh Udenka, Esq.
12 BROWN RUDNICK LLP
13 2211 Michelson Drive, Seventh Floor
Irvine, CA 92612
14 Phone: (949) 752.7100
Facsimile: (949) 252-1514
CVasquez@brownrudnick.com
SMoniz@brownrudnick.com
HUdenka@brownrudnick.com

Attorneys for Plaintiff JOHN C. DEPP, II

15 Benjamin Chew, Esq.
16 Andrew C. Crawford, Esq.
17 BROWN RUDNICK LLP
18 601 Thirteenth Street, N. W.
Washington, DC 20005
19 Telephone: (202) 536-1700
Facsimile: (202) 536-1701
bchew@brownrudnick.com
acrawford@brownrudnick.com

Attorney for Plaintiff JOHN C. DEPP, II

Craig J. Mariam, Esq.
Michael J. Dailey, Esq.
GORDON REES SCULLY
MANSUKHANI, LLP
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071
Phone: (213) 576-5000
Facsimile: (877) 306-0043
cmariam@grsm.com
mdailey@grsm.com

*Attorneys for Defendant and
Counterclaim Plaintiff AMBER LAURA
HEARD*

Elaine Bredehoft, Esq.
Clarissa Pintado, Esq.
CHARLSON BRENDEHOFT COHEN &
BROWN, P.C.
11260 Roger Bacon Drive, Suite 201
Reston, VA 2019
ebredehoft@charlsonbredehoft.com
cpintado@cbcblaw.com

*Attorneys for Defendant and
Counterclaim Plaintiff AMBER LAURA
HEARD*

22 **BY EMAIL (CCP § 1010.6; CRC Rule 2.251(g)):** I transmitted the above-stated
23 document(s) and a copy of this declaration from my computer (electronic
24 notification address ***KMTjaden@Venable.com*** located at Venable LLP, 2049
25 Century Park East, Suite 2300, Los Angeles, California 90067 to the interested
26 parties in this action whose names and e-mail addresses are listed above. I did not
receive, within a reasonable time after the transmission, any electronic message or
other indication that the transmission was unsuccessful. Service by e-mail or
electronic transmission was agreed upon based on a court order or an agreement of
the parties to accept service.

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **March 1, 2022**, at Los Angeles, California.



Karen M. Tjaden