

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff and Counter-defendant,

v.

AMBER LAURA HEARD,

Defendant and Counter-plaintiff.

Civil Action No.: CL-2019-0002911

FILED [REDACTED]  
COURT SERVICES  
2021 FEB - 11 A 11: 26  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**DEFENDANT AMBER LAURA HEARD'S OPPOSITION  
TO PLAINTIFF'S ATTORNEY'S FEES DECLARATION**

Defendant Amber Laura Heard files this memorandum in opposition to the declaration of Plaintiff's counsel respecting attorney's fees for the motion to compel and motion for protective order and to quash the deposition of Adam Waldman that the Court heard on January 8. While Defendant acknowledges that the Court awarded reasonable attorney's fees related to the motion to compel and motion to quash (but not the motion for protective order), the amount requested is far greater than what is reasonable because Plaintiff (1) seeks fees for relief the Court denied him; (2) failed to itemize any of his requested fees such that the Court would be able to evaluate and determine what is reasonable and necessary; and (3) took evasive action that led to the filing of the motion by withholding Mr. Waldman's address, despite his *pro hac vice* application that was filed with the Court listing what appeared to be an incorrect address.

First, Plaintiff received only half the relief he requested in his motions. Although the Court granted Plaintiff's motion to quash because it found he had not been properly served, the Court denied Plaintiff's motion for a protective order that Mr. Waldman could not be deposed in this matter simply by virtue of the fact that he is Plaintiff's attorney. *See* January 14, 2021

Order. A large portion of Plaintiff's opposition to the motion to compel, and his brief in support of the motion to quash or for a protective order, was based on his belief that Mr. Waldman could not and should not be deposed because he is counsel to Mr. Depp. The Court disagreed, finding Mr. Waldman could be deposed if he were properly served. *See id.* For that reason, the Court denied Plaintiff's motion for protective order. *Id.* This makes sense, of course, because among other reasons, Mr. Waldman made three defamatory statements against Ms. Heard that are imputed to Mr. Depp. Thus, it is not reasonable to award attorney's fees for portions of the motion practice that were denied.

In fact, the Court's January 14 Order on this matter explicitly states that Plaintiff may be reimbursed for "his reasonable attorney's fees expended in responding to Defendant's motion and in preparing Plaintiff's Motion to Quash." It does not award fees for the arguments made in support of a protective order shielding Mr. Waldman altogether from deposition. But Mr. Chew's declaration in support of attorney's fees does not differentiate between time seeking to respond to Defendant's motion to compel, time spent seeking an order quashing Mr. Waldman's deposition (notice of which was disputed), and time spent preparing a motion for protective order that would shield Mr. Waldman from deposition altogether. For this reason, the fees sought are not reasonable, and the Court should reduce the requested attorney's fees on this basis alone, and since there was no itemization or detail provided to ascertain the amount expended, much less provide a basis to evaluate the reasonableness, should deny Plaintiff's request.<sup>1</sup>

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<sup>1</sup> Just two months ago the Court granted Defendant's motion for sanctions against Mr. Waldman and stripped him of his *pro hac vice* admission yet reduced a much lower requested amount of attorney's fees by Defendant. *See* November 23, 2020 Order (denying Defendant's request for \$5,900 in attorney's fees and awarding \$2,950 instead). This may be, in part, because the Court awarded only some of the relief requested, and Plaintiff argued in opposition to Defendant's attorney's fees declaration that the fees should be reduced on that basis. If that reasoning applied to Defendant's fees application then, it applies equally now.

Second, Plaintiff's failure to itemize any of his fees prevents him from making the required showing that his fees were reasonable. *See Chawla v. BurgerBusters, Inc.*, 255 Va. 616, 623 (1998) (stating that the party seeking fees bears the burden of showing reasonableness). Plaintiff's failure to itemize his attorney's fees prevents him from demonstrating, or the Court from assessing, that his fees were reasonable. *Alaragy v. Dengler*, 65 Va. Cir. 112, (Fairfax Cty. 2004) (in awarding the plaintiff attorney's fees it was entitled to by contract, the court instructed the plaintiff "to produce an affidavit of reasonable attorney's fees, properly itemized, showing the number of hours and counsel's hourly rate"); *Auto. Fin. Corp. v. EEE Auto Sales, Inc.*, 2011 WL 3422648, at \*2 (E.D. Va. 2011) ("When analyzing lodestar figures, [p]roper documentation is ... key, and fee claimants must therefore submit documentation reflecting reliable contemporaneous recordation of time spent on legal tasks that are described with reasonable particularity.") (quotations omitted). Plaintiff's failure to itemize his counsel's time is particularly notable here, where all of the meeting and conferring, and much of the briefing, centered around Plaintiff's argument that Mr. Waldman could not be deposed at all, an argument the Court rejected. The Court therefore is left without sufficient information to determine the reasonableness of fees incurred on those portions of this issue to which Plaintiff is even arguably entitled to fees. This also places Defendant at a significant disadvantage, in being unable to argue whether any time entry, or the rates expended on that particular time entry, are reasonable, since there is no itemization from which to review and analyze. The same disadvantage remains for the Court in determining a "reasonable" amount for the relief requested.

The Court should further deny or reduce the attorney's fees because this issue could have been avoided if Mr. Waldman had responded to counsel's email asking him whether email service of the subpoena was sufficient and, if he contended it was not, providing an appropriate

service address. On September 10, 2019, Mr. Waldman's *pro hac vice* application noted a law firm address in Washington, D.C. During the summer of 2020, however, numerous courtesy copies of filings that were served at that address by counsel for Defendant were returned as undeliverable. For this reason, when counsel served a deposition notice on Mr. Waldman by email in August 2020 (the parties having previously agreed in writing that email service of case documents was sufficient), she specifically requested that if Plaintiff took the position that the Notice of Deposition was insufficient, to please let her know and to provide an address where Mr. Waldman could be served. Although Mr. Chew responded that he believed the service was insufficient, Mr. Waldman never responded, and Plaintiff's counsel did not provide an updated address for service on Mr. Waldman. Had they done so, this motions practice could have been avoided.<sup>2</sup> Their failure to provide a proper address for service (or confirm that this was the proper address even though mail was being returned) played a significant part in the motions practice that led to the Court's ruling.

### CONCLUSION

For these reasons, any attorney's fees awarded to Plaintiff should be denied, or significantly reduced. Not only did Plaintiff not prevail on his request for a protective order, but his own conduct in refusing to cooperate with Defendant, who was trying to serve a deposition notice as efficiently and professionally as possible, led to the inevitable motions practice, when no alternative was provided. Defendant suggests Plaintiff's request should be denied because of the failure to provide sufficient detail for the Court to determine what work was performed, and

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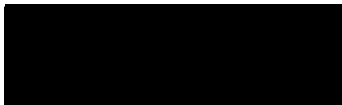
<sup>2</sup> In fact, counsel for Mr. Depp has finally confirmed the DC address listed on the pleadings is in fact the correct address for serving Mr. Waldman, so that Ms. Heard can serve the subpoena. There is no reason this could not have been confirmed five months ago to avoid this dispute.

whether that work was reasonably expended, and at a minimum, should be substantially reduced in light of all of the relevant issues and arguments.

Dated this 1<sup>st</sup> day of February, 2021.

Respectfully submitted,

Amber L. Heard



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**CERTIFICATE OF SERVICE**

I certify that on this 1<sup>st</sup> day of February, 2021, a copy of the foregoing shall be served by via email, pursuant to the Agreed Order dated August 16, 2019, as follows:

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