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 9 and Plaintiff New York Marine and  
 General Insurance Company

10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 Travelers Commercial Insurance  
 14 Company, a Connecticut Corporation,  
 15 Plaintiff,

16 v.

17 New York Marine and General  
 Insurance Company, a Delaware  
 18 Corporation,  
 19 Defendant.

Case No. 2:21-cv-5832-GW (PDx)  
 Consolidated for Pre-Trial Purposes  
 with 2:22-CV-04685-GW (PDx)

**JOINT SCHEDULING REPORT**

Hon. George H. Wu

20 New York Marine and General  
 21 Insurance Company, a Delaware  
 corporation  
 22 Counter-Claimant

23 v.

24 Travelers Commercial Insurance  
 25 Company, a Connecticut corporation,  
 26 Counter-Defendant

1 Pursuant to the Court’s October 21, 2022, Order on Travelers’ Motion to  
2 Consolidate, Plaintiff and Counterdefendant Travelers Commercial Insurance  
3 Company (“Travelers”), Defendant, Counterclaimant, and Plaintiff New York Marine  
4 and General Insurance Company’s (“New York Marine”), and Defendant Amber  
5 Heard have met and conferred with regard to scheduling for this matter and by and  
6 through their undersigned counsel, and hereby submit this Joint Scheduling Report.

7 **A. Ms. Heard’s Position**

8 Ms. Heard respectfully submits that it is premature to enter a scheduling order  
9 for two reasons. First, there is no diversity of citizenship. Ms. Heard was not a  
10 resident of the United States when New York Marine filed its lawsuit and is not now  
11 a resident of the United States. Therefore, this Court lacks jurisdiction. *See, e.g.,*  
12 *Louisiana Mun. Police Emps. Ret. Sys. v. Wynn*, 829 F.3d 1048, 1056 (9th Cir. 2016)  
13 (“Because the defendant is a United States citizen, but has no domicile in any State,  
14 she is ‘stateless’ for purposes of 28 U.S.C. § 1332(a)(3). Such ‘stateless’ status  
15 destroys complete diversity under § 1332(a)(3).” (cleaned up, quoting *Newman–*  
16 *Green, Inc. v. Alfonso–Larrain*, 490 U.S. 826, 829 (1989)).

17 Second, this litigation should not go forward at this time. The continued  
18 prosecution of these actions is prejudicial to Ms. Heard’s defense in the *Depp v. Heard*  
19 lawsuit, which is currently pending on appeal. Ms. Heard understands that Travelers  
20 does not oppose the request for a stay of the consolidated action and that New York  
21 Marine does not oppose a stay as to three of its four causes of action. However, Ms.  
22 Heard understands that New York Marine opposes a stay as to its first cause of action  
23 and as to the claims at issue in the *Travelers* lawsuit. Therefore, as she has advised  
24 the other parties, Ms. Heard will file a motion to stay or dismiss these actions pursuant  
25 to *Montrose Chemical Corp. v. Superior Court*, 6 Cal. 4th 287, 301 (1993), and its  
26 progeny. In addition, Ms. Heard intends to move for judgment on the pleadings as to  
27 each of New York Marine’s causes of action against her. New York Marine’s first,  
28 second, and fourth causes of action, which address New York Marine’s duty to

1 indemnify a judgment in the *Depp* lawsuit, are not ripe unless and until there is a final  
2 judgment in the *Depp* lawsuit. Given the appeal, there is no such final judgment. New  
3 York Marine’s third cause of action addressing New York Marine’s duty to defend  
4 Ms. Heard in the *Depp* lawsuit, fails as a matter of law because the statute relied on,  
5 California Insurance Code section 533, does not excuse an insurer of its duty to  
6 defend.

7         Despite the above, New York Marine will not agree to postpone depositions of  
8 Ms. Heard’s former defense counsel in the *Depp* lawsuit noticed for mid-November  
9 in the *Travelers* lawsuit. Ms. Heard believes that discovery should not proceed  
10 pending this Court’s determination on the jurisdictional issue and as to whether the  
11 consolidated actions should go forward given the appropriateness of dismiss or stay  
12 under *Montrose*. If necessary, Ms. Heard may move for a protective order regarding  
13 these depositions.

14         **B. New York Marine’s Position**

15         Personal Jurisdiction Over Ms. Heard: New York Marine has received no  
16 evidence establishing that Heard was not a resident of the United States at the time  
17 New York Marine filed its complaint against Heard.

18         Ms. Heard’s Request to Stay this Insurance Litigation: New York Marine  
19 understands that Heard intends to file a motion to stay and will not oppose a stay as  
20 to the Second, Third, and Fourth causes of action. However, New York Marine’s First  
21 cause of action is ripe as there is an existing judgment against Heard and New York  
22 Marine is seeking declaratory relief as to its rights and duties regarding that judgment  
23 if the judgment is affirmed or otherwise not disturbed on appeal.

24         Temporary Halt to Scheduled Depositions: On September 23, 2022, Counsel  
25 for all Parties agreed to continue previously scheduled depositions provided that the  
26 depositions were moved “to a date certain” and those depositions were set for mid-  
27 November based on the agreed availability of the deponents and counsel for all  
28 Parties. At no point during the rescheduling of those depositions was there any

1 indication that jurisdictional questions would be raised. Accordingly, New York  
2 Marine believes it is appropriate for the depositions scheduled in mid-November to  
3 proceed as currently scheduled.

4 **C. Travelers' Position**

5 Personal Jurisdiction Over Ms. Heard: This issue just arose. Travelers does not  
6 have adequate information to take a position.

7 Ms. Heard's Request to Stay this Insurance Litigation: Ms. Heard asserts that  
8 she will be prejudiced by this consolidated insurance litigation proceeding while the  
9 *Depp* lawsuit is active. Travelers will not oppose her request for a stay on that basis.

10 Travelers understands that New York Marine will argue that it should be able  
11 to proceed with part of its case. Travelers strongly opposes a *partial* stay of the  
12 insurance litigation, which allows New York Marine to move forward, in part, as it  
13 wishes. This would be prejudicial to Travelers and Ms. Heard and it would be highly  
14 inefficient. It likely will drive the parties into discovery disputes which can be  
15 avoided by a complete stay. If the Court stays the insurance litigation while the *Depp*  
16 lawsuit is pending, it should stay all of it.

17 Temporary Halt to Scheduled Depositions: Ms. Heard has asked that the  
18 parties agree to postpone two scheduled depositions until the Court has ruled on  
19 Ms. Heard's request for a stay. Travelers has no objection to this. (New York Marine  
20 objects.)

21 **D. Request for Postponement and Agreed Modified Pre-Trial Dates**

22 Ms. Heard requests that the Court adjourn its hearing set for November 3, 2022,  
23 to December 1, 2022, or another date convenient for the Court.

24 If the Court determines that it is appropriate to enter a scheduling order, the  
25 parties agree the to the following pretrial timeline:

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Date	Event
7/31/2023	Deadline to hold private mediation

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<b>Date</b>	<b>Event</b>
8/10/2023	Deadline to notify court of result of mediation in joint report regarding settlement
8/14/2023	Post-Mediation Status Conference
8/24/2023	Non-Expert Discovery Cut-Off
9/18/2023	Expert Disclosure (Initial)
10/2/2023	Expert Disclosure (Rebuttal)
10/16/2023	Expert Discovery Cut-Off
11/6/2023	Last day to file all motions (including discovery motions)
12/14/2023	Pre-Trial Conference

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Dated: October 31, 2022

CATES PETERSON, LLP

By:           /s/ Mark D. Peterson            
Mark D. Peterson  
Attorneys for Plaintiff and Counterdefendant  
Travelers Commercial Insurance Company

Dated: October 31, 2022

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

By:           /s/ James P. Wagoner            
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Lejf E. Knutson  
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Graham A. Van Leuven  
Attorneys for Defendant, Counterclaimant, and  
Plaintiff New York Marine and General  
Insurance Company

DATED: October 31, 2022

PASICH LLP

By:           /s/ Kayla Robinson            
Kirk Pasich  
Kayla Robinson  
Attorneys for Defendant Amber Heard

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**PROOF OF SERVICE**

**Travelers Commercial Insurance Company v. New York Marine and General Insurance Company**

**STATE OF CALIFORNIA, COUNTY OF FRESNO**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Fresno, State of California. My business address is 7647 North Fresno Street, Fresno, CA 93720.

On October 31, 2022, I served true copies of the following document(s) described as **JOINT SCHEDULING REPORT** on the interested parties in this action as follows:

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Kathleen O. Peterson	Kayla M. Robinson
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*Attorneys for Plaintiff Travelers Commercial Insurance Company*

**BY CME/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 31, 2022, at Fresno, California.

/s/ Marisela Taylor  
Marisela Taylor