

DEFENDANT'S PROPOSED JURY INSTRUCTION A (formerly 1)

Liability Issues

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

With respect to Mr. Depp's claims against Ms. Heard, the issues in this case are:

(1) Did Ms. Heard make any of the following statements:

- a. "Amber Heard: I spoke up against sexual violence—and faced our culture's wrath. This has to change;"
- b. "Then two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out;" and
- c. "I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse"?

These statements will be collectively referred to as the "Complaint Statements" in these instructions.

- (2) Are any of the Complaint Statements about Mr. Depp?
- (3) Are any of the Complaint Statements true?
- (4) Do any of the Complaint Statements have a defamatory implication?
- (5) Was a defamatory implication designed and intended by Ms. Heard?
- (6) Due to the circumstances surrounding the publication of the Complaint Statements, did the Complaint Statements convey a defamatory implication to someone who saw them other than Mr. Depp?
- (7) Is any defamatory implication of the Complaint Statements false?
- (8) Did Ms. Heard make the Complaint Statements with actual malice?
- (9) Is Ms. Heard protected by statutory immunity for the Complaint Statements under Virginia Code § 8.01-223.2?

FILED
JUL 15 2022
JOHN T. FRIZZELL
Clerk of the Circuit Court
of Fairfax County, VA

(10) Did the Complaint Statements tend to so harm the reputation of Mr. Depp as to lower him in the estimation of the community, to deter others from associating or dealing with him, or make him seem repulsive, infamous, or ridiculous?

(11) Was Mr. Depp damaged as a result of any of the Complaint Statements?

(12) If Mr. Depp is entitled to recover, what is the amount of his damages?

On these issues, Mr. Depp has the burden of proof.

Your decisions on these issues must be governed by the instructions that follow.

Sources and Authority: V.M.J.I. No. 37.010 - Liability Issues (public figure/not defamation per se); *Pendleton v. Newsome*, 290 Va. 162, 175 (2015)

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION B (formerly 2)

Liability Issues

With respect to Ms. Heard's claims against Mr. Depp, the issues in this case are:

(1) Did Adam Waldman, while acting as an agent for Mr. Depp, make the following statements:

a. "Amber Heard and her friends in the media use fake sexual violence allegations as both a sword and shield, depending on their needs. They have selected some of her sexual violence hoax 'facts' as the sword, inflicting them on the public and Mr. Depp;"

b. "Quite simply this was an ambush, a hoax. They set Mr. Depp up by calling the cops but the first attempt didn't do the trick. The officers came to the penthouses, thoroughly searched and interviewed, and left after seeing no damage to face or property. So Amber and her friends spilled a little wine and roughed the place up, got their stories straight under the direction of a lawyer and publicist, and then placed a second call to 911;" and

c. "[W]e have reached the beginning of the end of Ms. Heard's abuse hoax against Johnny Depp."

These statements will be collectively referred to as the "Counterclaim Statements" in these instructions.

- (2) Are any of the Counterclaim Statements about Ms. Heard?
- (3) Were the Counterclaim Statements seen by someone other than Ms. Heard?
- (4) Are any of the Counterclaim Statements false?
- (5) Were any of the Counterclaim Statements made with actual malice?
- (6) If Ms. Heard is entitled to recover, what is the amount of Ms. Heard's damages?

On these issues, Ms. Heard has the burden of proof.

Your decisions on these issues must be governed by the instructions that follow.

Sources and Authority: V.M.J.I. No. 37.000 - Liability Issues (public figure/defamation per se)

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION C (formerly 3)

Finding Instruction

You shall only return your verdict for Mr. Depp on his claim for defamation about the following statement if he has proved by the greater weight of the evidence that:

- (1) Ms. Heard made the following statement: "Amber Heard: I spoke up against sexual violence—and faced our culture's wrath. This has to change;" and
- (2) The statement was about Mr. Depp; and
- (3) The statement is false; and
- (4) The statement has a defamatory implication; and
- (5) The defamatory implication was designed and intended by Ms. Heard; and
- (6) Due to the circumstances surrounding the publication of this statement, it conveyed a defamatory implication to someone who saw it other than Mr. Depp; and
- (7) The defamatory implication of the statement is false; and
- (8) The statement tends to so harm the reputation of Mr. Depp as to lower him in the estimation of the community, to deter others from associating or dealing with him, or to make him seem repulsive, infamous, or ridiculous; and
- (9) Mr. Depp sustained actual damage as a result of the statement; and
- (10) Mr. Depp proved by clear and convincing evidence that Ms. Heard made the statement with actual malice; and
- (11) Mr. Depp further proved by clear and convincing evidence that Ms. Heard lost her statutory immunity under Virginia Code § 8.01-223.2.

If Mr. Depp failed to prove any one or more of the eleven elements above, then you shall find your verdict for Ms. Heard with respect to the above statement.

**Sources and Authority: V.M.J.I. No. 37.095 - Finding Instruction (public figure/not
defamation per se)**

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION D (formerly 4)

Finding Instruction

You shall only return your verdict for Mr. Depp on his claim for defamation about the following statement if he has proved by the greater weight of the evidence that:

- (1) Ms. Heard made the following statement: "Then two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out;" and
- (2) The statement was about Mr. Depp; and
- (3) The statement is false; and
- (4) The statement has a defamatory implication; and
- (5) The defamatory implication was designed and intended by Ms. Heard; and
- (6) Due to the circumstances surrounding the publication of this statement, it conveyed a defamatory implication to someone who saw it other than Mr. Depp; and
- (7) The defamatory implication of the statement is false; and
- (8) The statement tends to so harm the reputation of Mr. Depp as to lower him in the estimation of the community, to deter others from associating or dealing with him, or to make him seem repulsive, infamous, or ridiculous; and
- (9) Mr. Depp sustained actual damage as a result of the statement; and
- (10) Mr. Depp proved by clear and convincing evidence that Ms. Heard made the statement with actual malice; and
- (11) Mr. Depp further proved by clear and convincing evidence that Ms. Heard lost her statutory immunity under Virginia Code § 8.01-223.2.

If Mr. Depp failed to prove any one or more of the eleven elements above, then you shall find

your verdict for Ms. Heard with respect to the above statement.

**Sources and Authority: V.M.J.I. No. 37.095 - Finding Instruction (public figure/not
defamation per se)**

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION E (formerly 5)

Finding Instruction

You shall only return your verdict for Mr. Depp on his claim for defamation about the following statement if he has proved by the greater weight of the evidence that:

- (1) Ms. Heard made the following statement: "I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse;" and
- (2) The statement was about Mr. Depp; and
- (3) The statement is false; and
- (4) The statement has a defamatory implication; and
- (5) The defamatory implication was designed and intended by Ms. Heard; and
- (6) Due to the circumstances surrounding the publication of this statement, it conveyed a defamatory implication to someone who saw it other than Mr. Depp; and
- (7) The defamatory implication of the statement is false; and
- (8) The statement tends to so harm the reputation of Mr. Depp as to lower him in the estimation of the community, to deter others from associating or dealing with him, or to make him seem repulsive, infamous, or ridiculous; and
- (9) Mr. Depp sustained actual damage as a result of the statement; and
- (10) Mr. Depp proved by clear and convincing evidence that Ms. Heard made the statement with actual malice; and
- (11) Mr. Depp further proved by clear and convincing evidence that Ms. Heard lost her statutory immunity under Virginia Code § 8.01-223.2.

If Mr. Depp failed to prove any one or more of the eleven elements above, then you shall find your verdict for Ms. Heard with respect to the above statement.

**Sources and Authority: V.M.J.I. No. 37.095 - Finding Instruction (public figure/not
defamation per se)**

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION F (formerly 6)

Finding Instruction

You shall only return your verdict for Ms. Heard on her claim for defamation about the following statement if she has proved by the greater weight of the evidence that:

- (1) Adam Waldman, while acting as an agent for Mr. Depp, made the following statement: "Amber Heard and her friends in the media use fake sexual violence allegations as both a sword and shield, depending on their needs. They have selected some of her sexual violence hoax 'facts' as the sword, inflicting them on the public and Mr. Depp;" and
- (2) The statement is about Ms. Heard; and
- (3) The statement was seen by someone other than Ms. Heard; and
- (4) The statement is false; and
- (5) Ms. Heard further proved by clear and convincing evidence that the statement was made with actual malice.

If Ms. Heard failed to prove any one or more of the five elements above, then you shall find your verdict for Mr. Depp with respect to the above statement.

Sources and Authority: V.M.J.I. No. 37.090 - Finding Instruction (public figure/defamation per se)

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION G (formerly 7)

Finding Instruction

You shall only return your verdict for Ms. Heard on her claim for defamation about the following statement if she has proved by the greater weight of the evidence that:

- (1) Adam Waldman, while acting as an agent for Mr. Depp, made the following statement: "Quite simply this was an ambush, a hoax. They set Mr. Depp up by calling the cops but the first attempt didn't do the trick. The officers came to the penthouses, thoroughly searched and interviewed, and left after seeing no damage to face or property. So Amber and her friends spilled a little wine and roughed the place up, got their stories straight under the direction of a lawyer and publicist, and then placed a second call to 911;" and
- (2) The statement is about Ms. Heard; and
- (3) The statement was seen by someone other than Ms. Heard; and
- (4) The statement is false; and
- (5) Ms. Heard further proved by clear and convincing evidence that the statement was made with actual malice.

If Ms. Heard failed to prove any one or more of the five elements above, then you shall find your verdict for Mr. Depp with respect to the above statement.

Sources and Authority: V.M.J.I. No. 37.090 - Finding Instruction (public figure/defamation per se)

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION H (formerly 8)

Finding Instruction

You shall only return your verdict for Ms. Heard on her claim for defamation about the following statement if she has proved by the greater weight of the evidence that:

- (1) Adam Waldman, while acting as an agent for Mr. Depp, made the following statement: “[W]e have reached the beginning of the end of Ms. Heard’s abuse hoax against Johnny Depp;” and
- (2) The statement is about Ms. Heard; and
- (3) The statement was seen by someone other than Ms. Heard; and
- (4) The statement is false; and
- (5) Ms. Heard further proved by clear and convincing evidence that the statement was made with actual malice.

If Ms. Heard failed to prove any one or more of the five elements above, then you shall find your verdict for Mr. Depp with respect to the above statement.

Sources and Authority: V.M.J.I. No. 37.090 - Finding Instruction (public figure/defamation per se)

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION I (formerly 9)

Impartiality

You have been chosen and sworn as jurors in this case to try the issues of fact presented. You must consider and decide this case fairly and impartially. You are to perform this duty without bias or prejudice as to any party. All persons stand equal before the law and are entitled to the same treatment under the law. Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict, regardless of the consequences.

Sources and Authority: 2 Trial Practice Checklists § 9:63, Impartiality (2d ed).

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION J (formerly 10)

Credibility of Witnesses

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

Sources and Authority: V.M.J.I. No. 2.020 - Credibility of Witnesses

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION K (formerly 11)

Depositions

In considering the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. On the contrary, you are permitted to draw from the facts which you find to have been proven such reasonable inferences as may seem justified in the light of your own experience.

During the trial of this case, certain testimony has been read to you or presented to you by way of video deposition. You should give to this testimony the same consideration as to its weight and credibility, as you give to the testimony of witnesses who testified here in court. You must not discount any testimony merely because it was read to you or shown to you by video recording.

Sources and Authority: 3 Fed. Jury Pract. & Instr. § 105:02 (6th Ed.)

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION L (formerly 12)

Party Bound by His or Her Own Testimony

When one of the parties testifies unequivocally to facts within his or her own knowledge, those statements of fact and the necessary inferences from them are binding upon him or her. He or she cannot rely on other evidence in conflict with his or her own testimony to strengthen his or her case. However, you must consider his or her testimony as a whole, and you must consider a statement made in one part of his or her testimony in the light of any explanation or clarification made elsewhere in his or her testimony.

Sources and Authority: V.M.J.I. No. 2.060 – party bound by his own testimony

Given Agreed ____

Given Over Objection _____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION M (formerly 13)

Circumstantial Evidence

Any fact that may be proved by direct evidence may be proved by circumstantial evidence; that is, you may draw all reasonable and legitimate inferences and deductions from the evidence.

Sources and Authority: V.M.J.I. 2.100 – circumstantial evidence

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION N (formerly 14)

Prior Inconsistent Statement by a Witness

If you believe that a witness other than a party previously made a statement inconsistent with his or her testimony at this trial, the only purpose for which the prior statement may be considered by you is its bearing on the witness' credibility. It is not evidence that what the witness previously said was true.

Sources and Authority: V.M.J.I. No. 2.130 – prior inconsistent statement by witness

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION O (formerly 15)

Prior Inconsistent Statement by Party

If you believe from the evidence that a party previously made a statement inconsistent with his or her testimony at this trial, the previous statement may be considered by you as evidence that what the party previously said was true.

Sources and Authority: V.M.J.I. No. 2.135 - Prior Inconsistent Statement by a Party

Given Agreed____

Given Over Objection ____

Rejected with Objection____

Withdrawn____

DEFENDANT'S PROPOSED JURY INSTRUCTION P (formerly 16)

Rejected and Stricken Evidence

You must not consider any matter that was rejected or stricken by the Court. It is not evidence and should be disregarded.

Sources and Authority: V.M.J.I. No. 2.170 - Rejected and Stricken Evidence

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION Q (formerly 17)

Sympathy, Bias, Guesswork, or Speculation

You must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely upon the evidence and instructions of the court.

Sources and Authority: V.M.J.I. No. 2.220 - Verdict Not to be Based on Sympathy, Bias, Guesswork, or Speculation

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION R (formerly 18)

Greater Weight of the Evidence

The greater weight of all the evidence is sometimes called the preponderance of the evidence. It is that evidence which you find more persuasive, when evaluated against all of the evidence that has been admitted in the case. The testimony of one witness whom you believe can be the greater weight of the evidence.

Sources and Authority: V.M.J.I. No. 3.100 - Standard of Proof: Definition of Greater Weight of the Evidence

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION S (formerly 19)

Clear and Convincing Evidence

When a party has the burden of proving an issue by clear and convincing evidence, he or she must produce evidence that creates in your minds a firm belief or conviction that he or she has proved the issue.

Sources and Authority: V.M.J.I. No. 3.110 - Standard of Proof: Definition of Clear and Convincing Evidence

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION T (formerly 20)

Expert Witnesses

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state their opinions as to relevant and material matters, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

In considering the weight to be given to the testimony of expert witnesses, whose opinions differ, you may consider the ability and character of the witnesses, their actions upon the witness stand, the weight and process of the reasoning by which they support their opinion, their possible bias in favor of the side for which they testify, their relative opportunities for study or observation of the matters about which they testify, and any other matters which serve to illuminate their statements.

Sources and Authority: § 10.17, Virginia Jury Instructions, Herbert & Bacigal.

Given Agreed _ _ _

Given Over Objection _ _ _

Rejected with Objection _ _ _ _

Withdrawn _ _ _ _

DEFENDANT'S PROPOSED JURY INSTRUCTION U (formerly 21)

Weight of Expert Witnesses' Opinions

In considering the weight to be given to the testimony of expert witnesses, you should consider the basis for his or her opinion and the manner by which he or she arrived at it, and the underlying facts and data upon which he or she relied.

Source and Authority: V.M.J.I. No. 2.040 - Expert Witness

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION V (formerly 22)

Expert Witnesses and Reliable Authority

An expert witness was asked whether statements contained in published treatises, periodicals or pamphlets are reliable authority of a type normally relied upon by others in his or her field of expertise. This evidence is permitted to test the knowledge, accuracy and opinions of the expert witness, and if such evidence is established as a reliable authority by expert testimony, it may be considered by you along with the other evidence in the case.

Sources and Authority: Va. Code § 8.01-401.1

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION W (formerly 23)

Defamation

Defamation is publication of an actionable statement with the requisite intent. A statement is only actionable if it is both false and defamatory. To be false, a statement must have a provably false factual connotation and be capable of being proven true or false. True statements are not actionable.

To be defamatory, a statement must be both (1) reasonably interpreted as stating actual facts about Mr. Depp or Ms. Heard and (2) have a defamatory "sting" that damages either party's reputation. That is, the statement must be "of and concerning" Mr. Depp or Ms. Heard, and tend to injure Mr. Depp or Ms. Heard's reputation in the common estimation of mankind, to throw shame, or disgrace upon him or her, or subject him or her to scorn, ridicule, or contempt, or render him or her infamous or odious. However, language that is insulting, offensive, or otherwise inappropriate, but no more than 'rhetorical hyperbole' is not defamatory.

Sources and Authority: *Schaecher v. Bouffault*, 290 Va. 83, 91-92, 98-99, 772 S.E.2d 589, 594, 597-98 (2015); *Jordan v. Kollman*, 269 Va. 569, 575, 612 S.E.2d 203, 206 (2005); *Tharpe v. Saunders*, 285 Va. 476, 483-84, 737 S.E.2d 890, 894 (2013).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION X (formerly 24)

Expressions of Opinion

Pure expressions of opinion are not actionable as defamation because they cannot be shown to be true or false. When a statement is relative in nature and depends largely on a speaker's viewpoint, the statement is an expression of opinion.

When a challenged statement is made up of both opinion parts and also parts which you are able to evaluate for their truth or falsity, then you should consider that mixed challenged statement for its truth or falsity as a whole, just as you will be considering the truth or falsity of challenged statements which do not contain opinion elements. And in your evaluation of a challenged statement containing both factual and opinion components, you must not consider only the factual portions in isolation. Rather, you must consider those factual portions in view of the accompanying opinion and other facts.

Sources and Authority: *Hyland v. Raytheon Technical Services Co., et al.*, 277 Va. 40, 47 (2009), *Raytheon Technical Services Co. v. Hyland*, 273 Va. 292, 303 (2007); *WJLA-TV v. Levin*, 264 Va. 140, 156, (2002); *American Communications Network, Inc. v. Williams*, 264 Va. 336, 340 (2002); *Williams v. Garraghty*, 249 Va. 224, 233, (1995); *Fuste v. Riverside Healthcare Ass'n*, 265 Va. 127, 132, (2003); *Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 7, (1954); *Union of Needletrades v. Jones*, 268 Va. 512, 519, (2004); *Perk v. Vector Resources Group*, 253 Va. 310, 316 (1997).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION Y (formerly 25)

Defamation by Implication

You must decide whether any of the Complaint Statements in the opinion editorial entitled, “*A Transformative Moment For Women*” in the *Washington Post*’s print edition and “*Amber Heard: I spoke up against sexual violence—and faced our culture’s wrath. This has to change*” in the *Washington Post*’s online edition, imply that Ms. Heard was a victim of domestic abuse at the hands of Mr. Depp.

A statement that is not directly defamatory may nonetheless suggest a defamatory meaning in an indirect way, that is, by implication. In determining whether any of the Complaint Statements have a defamatory implication, you must consider the opinion editorial as a whole and the circumstances surrounding its publication. You should consider if these circumstances show that the words used are defamatory and relate to Mr. Depp. However, such circumstances cannot extend the meaning of the words used in the opinion editorial beyond their ordinary and common meaning. The proposed implication must be reasonably drawn from the words actually used.

In addition, Ms. Heard cannot be held liable for a defamatory implication in the opinion editorial unless: (1) she made the Complaint Statements; (2) she designed and intended for the Complaint Statements to imply to others that she was a victim of domestic abuse at the hands of Mr. Depp; (3) the Complaint Statements conveyed that implication to those who read the opinion editorial; and (4) Mr. Depp suffered harm as a result.

Sources and Authorities: *Pendleton v. Newsome*, 290 Va. 162, 171-75 (2015); *Webb v. Virginian-Pilot Media Companies, LLC*, 287 Va. 84, 89–90 (2014); *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1093 (4th Cir. 1993); *White v. Fraternal Order of Police*, 909 F.2d 512, 520 (D.C. Cir.1990); *Baylor v. Comprehensive Pain Mgmt. Ctrs., Inc.*, No. 7:09-CV-00472, 2011 WL 1327396, at *7 (W.D. Va. Apr. 6, 2011); *Carwile v. Richmond*

***Newspapers, Inc.*, 196 Va. 1 (1954); *Fairfax v. CBS Broad. Inc.*, 534 F. Supp. 3d 581, 591 (E.D. Va. 2020), *aff'd sub nom. Fairfax v. CBS Corp.*, 2 F.4th 286 (4th Cir. 2021).**

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION Z (formerly 26)

Falsity

Both parties must prove the falsity of each allegedly defamatory statement and any implication about which he or she complains. No matter how inflammatory or hurtful a statement may be, no matter what Ms. Heard's motive in writing or publishing it, if Mr. Depp fails to prove by a preponderance of the evidence that the alleged implication of the Complaint Statements, if it exists, is false, you must render a verdict for Ms. Heard on Mr. Depp's claims. Likewise, no matter how inflammatory or hurtful the Counterclaim Statements may be, no matter what Mr. Depp's motive in writing or publishing them through Mr. Waldman, if Ms. Heard fails to prove by a preponderance of the evidence that they are false, you must render a verdict for Mr. Depp with respect to Ms. Heard's claims.

Both parties must prove more than literal falsity or a minor error. It is not necessary that the statement or implication be literally true in every detail so long as it is substantially accurate. Substantial truth is an absolute and complete defense to an action for defamation.

You must remember that there is no burden on Ms. Heard to prove the truth of any of the Complaint Statements and there is no burden on Mr. Depp to prove the truth of any of the Counterclaim Statements. Both parties were free to offer proof of truth, but by doing so they did not assume the burden of convincing you of the truth of these statements. The burden remains on Mr. Depp to prove that any implication he complains of in the Complaint Statements is false in an important, material respect. If Mr. Depp has not proved that the implications that he complains of are false in an important, material respect, then you must find for Ms. Heard with respect to Mr. Depp's claims. If you find that the statements are substantially true such that their gist or substance is correct, Mr. Depp has not met his burden

even if you believe the Complaint Statements contain inaccuracies or could have been better prepared. The burden remains on Ms. Heard to prove that the Counterclaim Statements are false in an important, material respect. If Ms. Heard has not proved that the Counterclaim Statements are false in an important, material respect, then you must find for Mr. Depp with respect to Ms. Heard's claims. If you find that the Counterclaim Statements are substantially true such that their gist or substance is correct, Ms. Heard has not met her burden even if you believe the Counterclaim Statements contain inaccuracies or could have been better prepared.

The parties can only recover for provably false statements of fact. If you find that the Complaint Statements are critiques that assert underlying statements of fact, and Mr. Depp does not meet his burden to prove that those underlying statements of fact are materially false, then you must find for Ms. Heard on Mr. Depp's claims even if you disagree with the critique. If you find that the Counterclaim Statements are critiques that assert underlying statements of fact, and Ms. Heard does not meet her burden to prove that those underlying statements of fact are materially false, then you must find for Mr. Depp on Ms. Heard's claims even if you disagree with the critique.

Sources and Authorities: *Jordan v. Kollman*, 269 Va. 569, 576 (2005); *Shenandoah Publishing House, Inc. v. Gunter*, 245 Va. 320, 324-25 (1993); *Air Wisconsin Airlines Corp. v. Hooper*, 134 S. Ct. 852, 861 (2014); *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 768-69 (1986); *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1093 (4th Cir. 1993); *Hatfill v. New York Times Co.*, 488 F. Supp. 2d 522, 532 (E.D. Va. 2007).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION AA (formerly 27)

Actual Malice

Both parties have the burden of proving "actual malice" by clear and convincing evidence. To meet his burden, Mr. Depp must prove by clear and convincing evidence that, at the time the Complaint Statements were published, Ms. Heard made each statement either:

- (1) with knowledge that the statement was false; or
- (2) with serious doubts as to whether that statement was true.

"Knowledge that the statement was false" means Ms. Heard must have had actual knowledge, at the time of publication, that each statement was in fact false. "Serious doubts as to whether the statement was true" means Ms. Heard must have in fact subjectively entertained in her mind serious doubts as to the truth of each statement.

To meet her burden, Ms. Heard must prove by clear and convincing evidence that, at the time the Counterclaim Statements were published, Mr. Depp's made each statement through Mr. Waldman either:

- (1) with knowledge that the statement was false; or
- (2) with serious doubts as to whether that statement was true.

"Knowledge that the statement was false" means Mr. Depp and/or Mr. Waldman must have had actual knowledge, at the time of publication, that each statement was in fact false. "Serious doubts as to whether the statement was true" means Mr. Depp and/or Mr. Waldman must have in fact subjectively entertained in his mind serious doubts as to the truth of each statement.

Actual malice is a subjective analysis that looks to the state of mind of the person who made the statement. If the person who made the statement believed it was substantially accurate at the time of its publication, then it does not give rise to liability for defamation.

Sources and Authorities: *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511 (1984) (“The Court of Appeals was correct in its conclusions (1) that there is a significant difference between proof of actual malice and mere proof of falsity, and (2) that such additional proof is lacking in this case.”); *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Reuber v. Food Chem. News, Inc.*, 925 F.2d 703, 711, 714-15 (4th Cir. 1991) (*en banc*) (reversing jury finding for, *inter alia*, failure to properly instruct jury as to the definition of “actual malice”); *Ryan v. Brooks*, 634 F.2d 726, 734 (4th Cir. 1980) (definition of “actual malice” set forth in *St. Amant* is proper for jury instruction); *Hatfill v. The New York Times Co.*, 532 F.3d 312, 317 (4th Cir. 2008); *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510 (1991); *Bose Corp. v. Consumer Union of U.S., Inc.*, 466 U.S. 485, 512 (1984).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT’S PROPOSED JURY INSTRUCTION BB (formerly 28)

Actual Malice Is Not Ill-Will, Hatred, or Bias

The term “actual malice” should not be confused with the more common meanings of the word “malice,” such as ill-will or hatred. Actual malice is not established merely because an author was motivated by ill-will, prejudice, hostility, hatred, contempt, or even a desire to injure another.

Authors are entitled to publish what they believe to be the truth, regardless of how they may feel about the subject of the publication. Moreover, the fact that an article or statements made may advance a particular viewpoint or advance a partisan cause does not constitute actual malice. The crucial question is whether either party knew that the statements of which he or she complains were false or in fact entertained serious doubts as to whether they were true.

Sources and Authorities: Adapted from Bacigal, Virginia Practice – Jury Instructions § 48:17 (2015) (citing *Garrison v. State of La.*, 379 U.S. 64, (1964) and *Ryan v. Brooks*, 634 F.2d 726 (4th Cir. 1980)); *Reuber v. Food Chem. News, Inc.*, 925 F.2d 703, 715-16 (4th Cir. 1991).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION CC (formerly 29)

Implication and Actual Malice

Mr. Depp claims the opinion editorial, entitled "*A Transformative Moment for Women*" in the print edition, and "*Amber Heard: I spoke up against sexual violence—and faced our culture's wrath*" in the online edition, conveys an implication about him that is false and defamatory. In order to find "actual malice" with respect to that alleged implication, you must find by clear and convincing evidence that Ms. Heard either intended to communicate the defamatory implication or knew of the defamatory implication and was reckless in regard to it.

Sources and Authorities: *Kendall v. Daily News Pub. Co.*, 716 F.3d 82, 89-91 (3d Cir. 2013); *Howard v. Antilla*, 294 F.3d 244, 252-56 (1st Cir. 2002); *Saenz v. Playboy Enters., Inc.*, 841 F.2d 1309, 1319 (7th Cir. 1988); *Newton v. Nat'l Broad. Co.*, 930 F.2d 662, 681-82 (9th Cir. 1990); *Dodds v. Am. Broad. Co.*, 145 F.3d 1053, 1064 (9th Cir. 1998).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT’S PROPOSED JURY INSTRUCTION DD (formerly 30)

Republication

In order to find that Ms. Heard “republished” the original online opinion editorial including the headline through a tweet on December 19, 2018, you must find that she edited and retransmitted the defamatory material or redistributed the material with the goal of reaching a new audience. Stated differently, republication occurs when the speaker has “affirmatively reiterated” the statement. A hyperlink directing readers to a previous article on the same website does not direct the previous article to a new audience. Merely linking to an article does not amount to republication.

Further, if you find a republication occurred on December 19, 2018, then in order to find for Mr. Depp against Ms. Heard you must also find by clear and convincing evidence that Ms. Heard made this republication with actual malice as previously defined.

Sources and Authorities: *Eramo v. Rolling Stone, LLC*, 209 F. Supp. 3d 862 (W. D. Va. 2016); *Lokhova v. Halper*, 995 F.3d 134 (4th Cir. 2021); *Crosswhite v. Reuters News & Media, Inc.*, No. 6:21-CV-00015, 2021 WL 6125750, at *3 (W.D. Va. Dec. 28, 2021); *In re Phila. Newspapers*, 690 F.3d 161, 174 (3rd Cir. 2012); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 777-78 (1984); *Clark v. Viacom Int’l Inc.*, 617 F. App’x 495, 504-05 (6th Cir. 2015); *Fairfax v. CBS Broad. Inc.*, 534 F. Supp. 3d 581, 597, n.11 (E.D. Va. 2020), aff’d sub nom. *Fairfax v. CBS Corp.*, 2 F.4th 286 (4th Cir. 2021).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION EE (formerly 31)

Defamatory Meaning

To be defamatory, an oral or written statement must be more than merely insulting, offensive, unpleasant, or inappropriate. It must have made the person who it is about appear odious, infamous, or ridiculous. A defamatory statement must be a false statement that harms a person's reputation rendering him or her contemptible or ridiculous in the public's estimation, and exposing him or her to public hatred, ridicule, or contempt.

Words alleged to be defamatory are to be taken in their plain and natural meaning, and to be understood as other people would understand them, and according to the sense in which they appear to have been used.

Sources and Authorities: *Schaecher v. Bouffault*, 290 Va. 83, 93-94 (2015); *Yeagle v. Collegiate Times*, 225 Va. 293, 296 (1998); *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092 (4th Cir. 1993); *Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 7 (1954).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION FF (formerly 32)

Defamatory Meaning: Consideration of the Publication as a Whole

In determining whether any of the Complaint Statements are false and defamatory as to Mr. Depp, you must read the statements in the context of the opinion editorial as a whole. This means you may not seize on any one word, phrase, or image, or consider only one particular statement, phrase, or passage in isolation.

In determining whether any of the Counterclaim Statements are false and defamatory as to Ms. Heard, you must read the statements in the context of the articles in which they appeared. This means you may not seize on any one word, phrase, or image, or consider only one particular statement, phrase, or passage in isolation.

Sources and Authority: *Reuber v. Food Chem. News, Inc.*, 899 F.2d 271, 278 (4th Cir. 1990) (trial court properly instructed jury to consider statements in context of "the article as a whole"), *rev'd en banc on other grounds*, 925 F.2d 703 (4th Cir. 1991); *Hyland v. Raytheon Tech. Servs. Co.*, 277 Va. 40, 47-49 (2009); Restatement (Second) of Torts § 613, cmt. d & § 614, cmt. d.

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION GG (formerly 33)

Definition of "Of and Concerning"

Mr. Depp has the burden of proving that the Complaint Statements are "of and concerning" him. To satisfy the "of and concerning" test, Mr. Depp must prove that the statements were intended to refer to him and would be so understood by persons reading or hearing them who knew him. He does not need to prove that he was mentioned by name, but if the statements on their face do not show that they apply to Mr. Depp, then he must prove that factual circumstances contemporaneous with the publication of the opinion editorial connect the words used in the opinion editorial to Mr. Depp.

Ms. Heard has the burden of proving that the Counterclaim Statements are "of and concerning" her. To satisfy the "of and concerning" test, Ms. Heard must prove that the statements were intended to refer to her and would be so understood by persons reading or hearing them who knew her. She does not need to prove that she was mentioned by name, but if the statements on their face do not show that they apply to Ms. Heard, then she must prove that factual circumstances contemporaneous with the publication of the articles in which the statements appeared connect the words used in the articles to Ms. Heard.

Sources and Authorities: *WJLA-TV v. Levin*, 264 Va. 140, 152 (2002); *Gazette, Inc. v. Harris*, 229 Va. 1, 37 (1985).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION HH (formerly 34)

Reasonable Proof

The burden is on the party seeking damages to prove by the greater weight of the evidence each item of damages he or she claims and to prove that each item was caused by defamation. Neither party is required to prove the exact amount of his or her damages, but must show sufficient facts and circumstances to permit you to make a reasonable estimate of each item claimed. If either party fails to do so, then he or she cannot recover for that item.

Damages must be reasonable. If you should find that either party is entitled to a verdict, you should award such damages as will reasonably compensate him or her for any such injury and damage as you find, from a preponderance of the evidence in this case, was sustained as a proximate result of the opposing party's conduct.

You are not permitted to award speculative damages. So, you are not to include in any verdict compensation for any prospective loss which, although possible, is not reasonably certain to occur in the future.

Sources and Authority: V.M.J.I. No. 9.010 - Reasonable Proof; Devitt, Blackmar and Wolff, *Federal Jury Practice and Instructions*, Sec. 85.14 (4th Ed. 1987)

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION II (formerly 35)

Actual Damages

If you find either party liable for defamation, then in determining the amount of damages to which the opposing party is entitled, you may take into consideration all of the circumstances surrounding the defamatory statements, the occasions on which they were made and the extent of their publication, the nature and character of the insult, the probable effect on those who heard the statements, and their probable and natural effect upon the defamed party's personal feelings and upon his or her standing in the community and in business. Your verdict should be for an amount that will fully and fairly compensate him or her for:

- (1) any loss or injury to his or her business;
- (2) any insult to him or her including any pain, embarrassment, humiliation, or mental suffering;
- (3) any injury to his or her reputation; and
- (4) any actual, out-of-pocket losses that were caused by the statements.

Mr. Depp cannot recover damages for any harm that occurred after November 2, 2020.

Ms. Heard can recover damages for any harm that occurred after the Counterclaim Statements were published.

Sources and Authority: V.M.J.I. No. 37.100 Actual Damages

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION JJ (formerly 36)

Punitive Damages

Once you have found by clear and convincing evidence that the Counterclaim Statements were made with knowledge that they were false or so recklessly as to amount to a willful disregard for the truth, that is, with a high degree of awareness that the statements were probably false, then you may award punitive damages to punish Mr. Depp for such actions and to serve as an example to prevent others from making such statements in the future. You must state separately in your verdict any amount you allow as compensatory damages, if any, and the amount you allow as punitive damages.

Sources and Authority: V.M.J.I. No. 37.110 Punitive Damages (defamatory per se)

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION KK (formerly 37)

Punitive Damages

If you find that Mr. Depp is entitled to recover compensatory damages, and if you further find by clear and convincing evidence that Ms. Heard made the Complaint Statements knowing the statements were false or made the statements so recklessly as to amount to a willful disregard for the truth, that is, with a high degree of awareness that the statements were probably false, then you may also award punitive damages to punish Ms. Heard for such actions and to serve as an example to prevent others from making such statements in the future.

If you award punitive damages, you must state separately in your verdict any amount you allow as compensatory damages and the amount you allow as punitive damages.

Sources and Authority: V.M.J.I. No. 37.111 Punitive Damages (not defamatory per se)

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION LL (formerly 38)

Amount Sued for Is Not Evidence

Any amount of damages requested is not evidence in this case; you should not consider it as evidence in arriving at your verdict.

Sources and Authority: V.M.J.I. No. 2.180 – Amount Sued for Is Not Evidence.

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION NN (formerly 39)

Abuse

Abuse may consist of acts of physical violence, but may also consist of, and is not limited to, any of the following:

- a. Angry words; or
- b. Coarse and abusive language; or
- c. Humiliating insults; or
- d. An accumulation of cruel conduct consisting of, but not limited to, (a), (b), or (c); or
- e. placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another; or
- f. destroying a person's personal property; or
- g. disturbing a person's peace, which refers to conduct that, based on the totality of the circumstances, destroys a person's mental or emotional calm. Such conduct includes, but is not limited to, coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:
 - Isolating a person from friends, relatives, or other sources of support; or
 - Depriving a person of basic necessities; or
 - Controlling, regulating, or monitoring a person's movements, communications, daily behavior, finances, economic resources, or access to services.

Sources and Authority: *Sollie v. Sollie*, 202 Va. 855, 860–61, 120 S.E.2d 281, 285 (1961); Cal. Fam. Code §§ 6203; 6320(a), 6320(c) (For purposes of the Domestic Violence Prevention Act, “[a]buse is not limited to the actual infliction of physical injury or assault,” and includes “destroying personal property” and “disturbing the peace” of the victim, by, among other things, using “coercive control”).

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION OO (formerly 40)

Statute of Limitations

It is undisputed that Mr. Depp filed his lawsuit on March 1, 2019. The law requires that civil lawsuits be commenced within certain prescribed periods of time for claims to be actionable. Mr. Depp's claims for defamation are subject to a one year statute of limitations, so Mr. Depp cannot pursue any claim for statements made by Ms. Heard prior to March 1, 2018.

Accordingly, you may not consider any statement by Ms. Heard prior to March 1, 2018 as a basis for a verdict in favor of Mr. Depp, and you must limit your considerations to the Complaint Statements.

Sources and Authorities: Va. Code § 8.01-247.1

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION PP (formerly 41)

Absolute Judicial Immunity

A person making an absolutely privileged statement has complete immunity and cannot be liable for defamation even though the statement is made maliciously and with knowledge that it is false. Words spoken or written in a judicial proceeding that are relevant and pertinent to the matter under inquiry are absolutely privileged from charges of defamation. The reason for the rule of absolute privilege in judicial proceedings is to encourage unrestricted speech in matters before a court.

It is undisputed that Ms. Heard appeared in a judicial proceeding on May 27, 2016 in connection with a Temporary Restraining Order. Statements made during the course of that judicial proceeding are absolutely immune from any claim for defamation and cannot serve as a basis for a verdict in favor of Mr. Depp on any claim for defamation.

Sources and Authorities: *Lindeman v. Lesnick*, 268 Va. 532, 537-38, 604 S.E.2d 55, 58 (2004); *Donohoe Constr. Co. v. Mt. Vernon Assocs.*, 235 Va. 531, 537, 369 S.E.2d 857, 860 (1988); *Watt v. McKelvie*, 219 Va. 645, 651, 248 S.E.2d 826, 829 (1978); *Darnell v. Davis*, 190 Va. 701, 707, 58 S.E.2d 68, 70 (1950). *Bryant-Shannon v. Hampton Roads Cmty. Action Program, Inc.*, 299 Va. 579, 590 (2021).

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION QQ (formerly 42)

First Amendment Protection for Speech about Public Figures

The United States Constitution guarantees that all citizens, including journalists and magazine publishers, shall have the right to report, discuss, and comment on the conduct of public figures. This right of "free speech" is a fundamental right of every citizen in our country. This constitutional right does not depend on the reasons or motives for the publication, the manner or style in which it is published, whether it might result in embarrassment to persons involved, or whether some other person would not have published it or would have published it differently.

The Court has determined as a matter of law that Mr. Depp is a public figure in this case. Therefore, there is no liability for any of the statements at issue unless Mr. Depp proves that one or more of the statements were "of and concerning" him, were false and defamatory, and were published by Ms. Heard either knowing at the time that the specific statement was false, or while having serious doubts that it was true.

Sources and Authorities: *New York Times v. Sullivan*, 376 U.S. 254 (1964); *St. Amant v. Thompson*, 390 U.S. 727 (1968); *Time Inc. v. Pape*, 401 U.S. 279 (1971); *Carr v. Forbers*, 259 F.3d 273 (4th Cir. 2001); *Reuber v. Food Chem. News, Inc.*, 925 F.2d 703 (4th Cir. 1991).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION RR (formerly 43)

Action on the Advice of Counsel

Ms. Heard claims that she is not liable for defamation because she acted on the basis of advice from her attorney.

If before taking any action, Ms. Heard while acting in good faith and for the purpose of securing advice on the lawfulness of her future conduct sought and obtained the advice of an attorney whom she considered to be competent, and made a full and accurate report or disclosure to this attorney of all important and material facts of which she had knowledge or had the means of knowing, and then acted strictly in accordance with the advice her attorney gave following this full report or disclosure, then Ms. Heard would not have acted with actual malice, as that term is used in these instructions, when making the Complaint Statements in the opinion editorial. Whether Ms. Heard acted in good faith for the purpose of truly seeking guidance as to questions about which she was in doubt, and whether she made a full and complete report or disclosure to her attorney, and whether she acted strictly in accordance with the advice received, are all questions for you to determine.

Sources and Authority: 1A Kevin F. O'Malley, Jay E. Grenig & Hon. William C. Lee, *Federal Jury Practice and Instructions* § 17:09 (6th ed., updated through Feb. 2021); *New York Times v. Sullivan*, 376 U.S. 254, 287-88 (1964); *Dongguk Univ. v. Yale Univ.*, 734 F.3d 113, 124 (2d Cir. 2013).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION SS (formerly 44)

Immunity Pursuant to Va. Code § 8.01-223.2

Under certain circumstances, a person has immunity from liability for making statements regarding matters of public concern. The Court has determined that the opinion editorial addresses matters of public concern and that Ms. Heard is immune from liability for defamation arising out of the opinion editorial. You must decide whether Mr. Depp met his burden of proving, by clear and convincing evidence, that Ms. Heard lost this immunity because she made the Complaint Statements with actual or constructive knowledge that they are false or with reckless disregard for whether they are false.

If you find that Ms. Heard lost her immunity, then you must return your verdict in favor of Mr. Depp with respect to the Complaint Statements. If you find that Ms. Heard did not lose her immunity, then you must return your verdict in favor of Ms. Heard with respect to the Complaint Statements.

Sources and Authority: Va. Code § 8.01-223.2; *Alexis v. Kamras*, No. 3:19-CV-00543, 2020 WL 7090120, at *21 (E.D. Va. Dec. 3, 2020)

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION TT (formerly 45)

Definition of Agent and Principal

A principal is a person or legal entity with power or right to control the means and methods of performance by which another person performs the principal's work.

An agent is the person who is subject to the power or right of a principal to control the means and methods of performing the work.

Sources and Authority: VMJI No. 8.000

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION UU (formerly 46)

Agency

If you believe from a preponderance of the evidence that Mr. Depp gave his consent to Adam Waldman to act on his behalf and subject to his control, and that Mr. Waldman consented to so act, then Mr. Waldman was an agent of Mr. Depp.

Sources and Authority: § 13:2. Agency—Test for, Va. Prac. Jury Instruction § 13:2; *Murphy v. Holiday Inns, Inc.*, 216 Va. 490, 492, 219 S.E.2d 874, 876, 81 A.L.R.3d 756 (1975)

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION VV (formerly 47)

Principal's Control over Agent

In determining whether the relationship of principal and agent exists, it is immaterial whether one exercises the power of control over the agent in the performance of his responsibilities. The ordinary test is whether he has the right to exercise such power of control.

Sources and Authority: § 13:5. Power of control, Va. Prac. Jury Instruction § 13:5; *Smith v. Grenadier*, 203 Va. 740, 746, 127 S.E.2d 107, 111 (1962); *Virginia Employment Com'n v. A.I.M. Corp.*, 225 Va. 338, 347, 302 S.E.2d 534, 539 (1983); *Glenmar Cinestate, Inc. v. Farrell*, 223 Va. 728, 734, 292 S.E.2d 366, 369 (1982); *Naccash v. Burger*, 223 Va. 406, 418-419, 290 S.E.2d 825, 832 (1982).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION WW (formerly 48)

Malicious Acts of Agent

The test of the liability of the principal for the wrongful acts of his agent is not whether the wrongful act itself is a transaction within the ordinary course of the business of the principal, or within the scope of the agent's authority, but whether the service itself in which the wrongful act was done was within the ordinary course of the principal's business or within the scope of the agent's authority.

Therefore, even though you may believe from the evidence that the acts of Adam Waldman on the occasions in question was committed by him with anger, malice or vindictiveness, nevertheless, if you further believe from the evidence that his ultimate purpose to be attained by his acts was in the furtherance of his duties and in execution of the business of Mr. Depp entrusted to him, then Mr. Depp is chargeable for his actions.

Sources and Authority: § 13:8. Principal's liability for malicious act of agent, Va. Prac. Jury Instruction § 13:8; *United Broth. of Carpenters and Joiners of America, AFL-CIO v. Humphreys*, 203 Va. 781, 786, 127 S.E.2d 98, 102, 51 L.R.R.M. (BNA) 2678, 45 Lab. Cas. (CCH) P 50617 (1962), certiorari denied 371 U.S. 954, 83 S.Ct. 509 (1963); *Tri-State Coach Corp. v. Walsh*, 188 Va. 299, 304, 49 S.E.2d 363, 366 (1948).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION XX (formerly 49)

Agent's Willful and Malicious Acts

An agent's act may be within the scope of his agency even though the act is willful or malicious.

Sources and Authority: V.M.J.I.: Instruction No. 8.060 - Scope of Employment: Intentional Acts

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION YY (formerly 50)

Burden of Proving Agency

In order to recover in this case, the burden is upon Ms. Heard to prove by a preponderance of the evidence that Mr. Waldman was an agent of Mr. Depp, and that when Mr. Waldman made the Counterclaim Statements, he was performing Mr. Depp's business and acting with the scope of his agency.

Sources and Authority: § 13:9. Burden of proof upon plaintiff to prove agency, Va. Prac. Jury Instruction § 13:9; *Abernathy v. Romaczyk*, 202 Va. 328, 332, 117 S.E.2d 88, 91 (1960); *McNeill v. Spindler*, 191 Va. 685, 694, 62 S.E.2d 13, 17 (1950)

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION ZZ (formerly 51)

Apparent Authority

An act is within the apparent scope of an agent's authority if in view of the character of his actual and known duties, an ordinarily prudent person, having a reasonable knowledge of the usages of the business in which the agent is engaged, would be justified in believing that he is authorized to perform the act in question.

Sources and Authority: § 13:12. Apparent scope of agent's authority, Va. Prac. Jury Instruction § 13:12; *Neff Trailer Sales, Inc. v. Dellinger*, 221 Va. 367, 370, 269 S.E.2d 386, 388 (1980).

Given Agreed ____

Given Over Objection ____

Rejected with Objection ____

Withdrawn ____

DEFENDANT'S PROPOSED JURY INSTRUCTION AAA (formerly 52)

Presumption of Agency

If you believe from the evidence that Mr. Waldman was the agent of Mr. Depp, this establishes a prima facie case that he was acting as the agent of Mr. Depp when making the Counterclaim Statements, and the burden is upon Mr. Depp to prove that Mr. Waldman was not acting within the scope of his agency at the time.

Sources and Authority: § 13:13. Course of agent's employment—Presumption that agent's acts were within scope of employment, Va. Prac. Jury Instruction § 13:13; *Kensington Associates v. West*, 234 Va. 430, 432–435, 362 S.E.2d 900, 901–904 (1987); *United Broth. of Carpenters and Joiners of America, AFL-CIO v. Humphreys*, 203 Va. 781, 787, 127 S.E.2d 98, 102, 51 L.R.R.M. (BNA) 2678, 45 Lab. Cas. (CCH) P 50617 (1962) *United Broth. of Carpenters and Joiners of America, AFL-CIO v. Humphreys*, 203 Va. 781, 787, 127 S.E.2d 98, 102, 51 L.R.R.M. (BNA) 2678, 45 Lab. Cas. (CCH) P 50617 (1962), certiorari denied 371 U.S. 954, 83 S.Ct. 509 (1963); and *Turner v. Burford Buick Corp.*, 201 Va. 693, 698, 112 S.E.2d 911, 915 (1960).

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION BBB (formerly 53)

Multiple Motives

A principal is responsible for his agent's actions if the agent was trying to some extent to serve the principal's business even though the primary motive of the agent was to benefit himself or a third person.

Sources and Authority: V.M.J.I. No. 8.050 - Scope of Employment: Multiple Motives

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION CCC (formerly 54)

Express and Implied Authority

An attorney has the express authority to do everything which the client expressly authorized him to do and the implied authority to do everything necessary or incidental to the purpose for which he was retained.

Source and Authority: V.M.J.I. No.42.020 - Scope of Attorney's Authority

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____

DEFENDANT'S PROPOSED JURY INSTRUCTION DDD (formerly 55)

Apparent Authority of Attorney

So far as third parties are concerned, an attorney and client relationship exists when the client has dealt with the third party or acquiesced in the attorney dealing with the third party in such a way as to cause a person reasonably to believe that an attorney and client relationship exists.

Sources and Authority: V.M.J.I. Instruction No. 42.030 - Attorney and Client Relationship and Third Parties: Apparent Authority

Given Agreed _____

Given Over Objection _____

Rejected with Objection _____

Withdrawn _____