

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
CIVIL PROCESSING

2022 MAR 22 A 11:33

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Civil Action No.: CL-2019-0002911

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 1 TO EXCLUDE  
EVIDENCE AND ARGUMENT REGARDING JUDGMENT IN THE UNITED  
KINGDOM**

Plaintiff and Counterclaim Defendant John C. Depp, II (“Mr. Depp”) requests that the Court exclude evidence and argument regarding the November 2, 2020 Judgment (“UK Judgment”) of the High Court of Justice, Queen’s Bench Division in the case entitled *John C. Depp, II v. News Group Limited*, Case No. QB-2018-006323 (“UK Action”) as follows:

**INTRODUCTION AND SUMMARY OF RELEVANT FACTS AND ISSUES**

As the Court is aware, Mr. Depp previously engaged in litigation in the United Kingdom against a tabloid (*The Sun*), which involved the allegations of abuse between Mr. Depp and Ms. Heard. That particular case resulted in the UK Judgment in favor of *The Sun*. As the Court is also aware, the UK Judgment was rendered in a *different* court, in a *different* country, in an action between *different* parties, with *different* rules of discovery, and *different* rules of evidence. On this basis, among others, this Court overruled Ms. Heard’s Supplemental Plea in Bar by Letter Opinion and Order on August 17, 2022, determining that the UK Judgment has no preclusive effect here. In so ruling, the Court found that the “*Supplemental Plea in Bar was misguided and only thinly supported by preexisting law,*” “*the procedural and substantive laws regarding libel claims in the UK are vastly different than the laws in Virginia,*” that Mr. Depp’s “*defamation claim in the UK was based on completely different statements than the present case,*” and that “*[t]o enforce the UK defamation judgment in this case would go against public policy.*” (emphasis added). In short, the UK Judgment has no weight in this action. It represents findings made without personal knowledge of the underlying facts, based on evidence that would not even be admissible in this action, in the context of different legal issues. As such, it is irrelevant, hearsay, and, above all else, would be unfairly prejudicial to allow Ms. Heard to present a finding by a UK court that her claim that Mr. Depp was a “wifebeater” was substantially true to a jury.

Ms. Heard and her counsel have, nonetheless, repeatedly telegraphed their intent of broadcasting the UK Judgment to the jury. For instance, Ms. Heard's attorney has referenced or used the UK Judgment repeatedly at deposition. It is anticipated that Ms. Heard will attempt to put the UK Judgment front and center at trial. She should be precluded from doing so.

### ARGUMENT

#### **I. The UK Judgment Is Legally Irrelevant And Has No Evidentiary Value**

The contents of the UK Judgment have no legal or factual value. In Virginia, the term "relevant evidence" is limited to "evidence having any tendency to make the existence of any fact in issue more probable or less probable than it would be without the evidence." Va. R. Sup. Ct. 2:401. Only "relevant evidence" is admissible. "Evidence that is not relevant is not admissible." Va. R. S. Ct. 2:402(a). The UK Judgment does not meet the threshold standard of relevance, and ought to be excluded in its entirety.

As noted above, this Court has already determined in its August 17, 2021 Letter Opinion and Order that the UK Judgment has no binding effect in this action, and that the factual issues in this case will be tried to a jury. As such, the *legal* impact of the UK Judgment on this case is nonexistent.

Similarly, the UK Judgment is lacking in *any* evidentiary factual value. It does not contain competent or admissible testimony in any form. To state the obvious, the UK Court did *not* have firsthand personal knowledge of the relationship between Mr. Depp and Ms. Heard. In fact, the UK Judgment merely constitutes the conclusions drawn by a single judge in the UK, based on evidence presented over the course of the trial of the UK Action, under different rules of evidence, applying different law. The jury is well capable of drawing its own conclusions about the evidence

that is presented to it, and the conclusions drawn by the UK Court simply have no evidentiary value, and are irrelevant.

## **II. The UK Judgment Constitutes Mere Unsworn Hearsay**

Furthermore, if offered in evidence in this action, the contents of the UK Judgment would be mere hearsay, not within any exception – a statement of the opinion of a single court in a foreign jurisdiction. In fact, the UK Judgment contains *multiple* levels of hearsay, as it recites out-of-court statements of witnesses that testified or submitted witness statements in the UK Action, often and in violation of Virginia evidentiary rules, concerning hearsay statements relayed to them by others. Virginia law is clear that hearsay is not admissible. *See*, Va. R. S. Ct. 2:802 (“Hearsay is not admissible except as provided by these Rules, of the Rules of the Supreme Court of Virginia, or by Virginia statutes or case law”). If offered for the truth of its contents, the UK Judgment, and the multiple levels of hearsay therein, are inadmissible hearsay that does not fall within any exception, pure and simple.

## **III. Any (Nonexistent) Probative Value Of The UK Judgment Is Substantially Outweighed By The Danger Of Unfair Prejudice To Mr. Depp, And The Likelihood Of Misleading Or Confusing The Jury.**

Above all else, to allow Ms. Heard to present evidence to the jury of the UK Judgment, which essentially adjudged Mr. Depp a “wifebeater” would be enormously and unfairly prejudicial to Mr. Depp; and that prejudice would overwhelmingly outweigh any minimal or nonexistent probative value of the UK Judgment. Moreover, the potential for the UK Judgment to confuse or mislead the jury is obvious and unavoidable. Va. R. S. Ct. 2:401; 2:402. The jury may, understandably, afford great weight to a judicial determination, given the fact that the average juror will not understand the legal nuances that make this attribution unwarranted.

As the Court and Ms. Heard's counsel already know, the findings of the UK Court reflected in the UK Judgment are in no way binding in this proceeding. Rather, the jury is entitled (indeed, *required*) to make its own factual determinations, based solely on the evidence that offered and admitted in this proceeding, in accordance with this Court's rulings as to the admissibility of evidence and instructions under Virginia law. To allow Ms. Heard to present evidence and argument to the jury about the conclusions drawn by a Court in a prior proceeding involving different parties, different evidence, and laws, would have an obvious tendency to confuse or mislead the jury, swaying them to make findings consistent with those already made, without regard to the numerous differences between the two actions. Even though the UK Judgment has no legal impact or evidentiary value in this action, a jury will certainly be tempted to accord weight to findings of an official, albeit foreign, tribunal. The potential for undue prejudice to Mr. Depp if such evidence is admitted is beyond serious dispute. This Motion *in Limine* (No. 1) should, accordingly, be granted.

**IV. To The Extent The Court Is Inclined To Permit Any Reference To The UK Judgment, It Should Not Be Allowed During The Liability Phase**

To the extent that the Court is inclined to deny this Motion *in Limine* (No. 1) and allow any reference to the UK Judgment by Ms. Heard, the Court should grant Mr. Depp's concurrent request in Motion *in Limine* (No. 2) to bifurcate the damages phase of trial, and to preclude the introduction of any reference to the UK Judgment prior to the damages phase of trial.

**CONCLUSION**

The Motion *in Limine* (No. 1) should be granted, and the Court should enter an *in limine* Order precluding Ms. Heard from presenting evidence or argument to the jury regarding the UK Judgment or the UK Court's findings in the UK Action, or otherwise mentioning the UK Judgment or findings and conclusions contained therein.

Respectfully submitted,

*Ben G. Chew* (AC)

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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March 18<sup>22</sup>, 2022

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

ORDER

Upon consideration of Plaintiff's Motion *in limine* No. 1 to exclude evidence and argument regarding judgment in the United Kingdom ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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**SEEN AND OBJECTED TO:**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the <sup>22<sup>nd</sup></sup> 18<sup>th</sup> day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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Adam S. Nadelhaft (VSB No. 91717)  
Clarissa K. Pintado (VSB No. 86882)  
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(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF'S JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 2 TO BIFURCATE THE  
TRIAL AS TO LIABILITY AND DAMAGES**

Plaintiff and Counterclaim Defendant John C. Depp, II, by and through his undersigned counsel, hereby moves this Honorable Court for an Order bifurcating the trial as to the issues of liability and damages, pursuant to the Court's inherent authority and Virginia Code Section 8.01-272.

### INTRODUCTION

This is a case about allegations of abuse. It is also a case about claimed damage to reputation with respect to two high-profile individuals (Mr. Depp and Ms. Heard), *both* of whom have periodically experienced significant negative press coverage. It has the potential to be a complete circus, particularly where evidence of damage to *both* parties' reputation must be introduced to the jury, as the parties' reputations are both at issue due to the fact a portion of Ms. Heard's counterclaim for defamation remains at issue in this case. If the jury is exposed to the many ugly things that has ever been said about the parties before it makes its determination as to liability, there exists a strong risk that the jury's decision may be improperly influenced by the inflammatory things that have been said about Mr. Depp and Ms. Heard. To minimize the risk of such prejudice, and to also serve the interest of judicial efficiency in connection with what is now a seven-week jury trial, the Court should enter an Order bifurcating the trial into phases, with liability decided first followed by a subsequent phase on damages after the requisite factual determinations have been made.

The divorce, this action, and Mr. Depp's defamation suit in the UK against a tabloid (the "UK Action") have been widely publicized in the press and media. Both Mr. Depp and Ms. Heard are public figures and actors. As such, the press coverage relating to the parties and their involvement in these proceedings has been persistent and highly salacious. Of course, it is a standard jury instruction that the jury is to avoid reviewing press coverage, social media, or other discussion of the case. But here, when the parties are presenting evidence of their respective damages claims, evidence related to the coverage of this litigation and the UK Action is inevitable, since such press coverage is potentially relevant to whether and to what extent the parties have sustained damage to their reputations.

Presenting such evidence to the jury prior to the determination of liability would raise a severe risk of improperly swaying the jury, leading to a decision on liability that is rooted, not in the fact, but on the inflammatory press coverage concerning Mr. Depp and Ms. Heard. Moreover, because Mr. Depp's and Ms. Heard's defamation claims against each other are essentially mirror images, presumably only one party will prevail and need to actually establish the extent of their damages. In the interest of avoiding wasting the Court's, the jury's and the parties' time and resources presenting evidence on damages which may be moot, the Court should delay a trial of the damages until it has been determined which party's damages are to be assessed, if any. Indeed, on this basis, the Court has already scheduled a separate, tentative trial to assess entitlement to attorney's fees under Virginia's anti-SLAPP statute. The prevailing party's damages trial could efficiently be encompassed within this proceeding, which is scheduled to proceed in the summer to the extent necessary. The interests of avoiding jury confusion and prejudice, as well as judicial economy, are best served by bifurcating the trial into a first phase on liability (*i.e.*, as to the truth or falsity of the parties' respective allegedly defamatory statements), and a subsequent phase on damages. The Court should therefore enter an Order bifurcating the trial into liability and damages phases

### ARGUMENT

#### **I. The Court Has Discretion To Bifurcate The Trial**

Virginia Code Section 8.01-272 states (with emphasis added):

In any civil action, a party may plead as many matters, whether of law or fact, as he shall think necessary. A party may join a claim in tort with one in contract provided that all claims so joined arise out of the same transaction or occurrence. The court, in its discretion, may order a separate trial for any claim. Any counterclaim shall be governed by the Rules of the Supreme Court of Virginia.

The standards applied to determinations regarding the consolidation or separation of trials are equally applicable to questions involving the bifurcation. *See Allstate Ins. Co. v. Wade*, 265 Va. 383, 393 (2003). A decision to bifurcate claims in separate trials is a matter left to the trial

court's discretion. *Id.* at 392. In making this decision, a trial court must be cautious to insure that bifurcating a trial does not prejudice the substantial rights of any party, and the court must also consider any resulting unnecessary delay, expense, or use of judicial resources. *See id.*

The Supreme Court of Virginia has expressed approval of bifurcating liability and damages in scenarios where potential prejudice arises, explaining that “a defendant may be subject to potential prejudice by the possibility that in a jury trial the jury could conflate the differing elements of damages from each claim in rendering a single verdict.” *Centra Health, Inc. v. Mullins*, 277 Va. 59, 78 (2009). The Court further explained that “a defendant can obviate this potential for prejudice by requesting that the trial be bifurcated into separate proceedings to determine liability and damages . . . [and in certain cases] . . . bifurcation is the most practical means to assure that each party receives a fair opportunity to present their case to the jury without prejudice to the other.” *Id.*

## **II. Bifurcation Is Necessary To Minimize Unfair Prejudice**

The question of damages in this action is at least partly dependent on the extent to which Mr. Depp and Ms. Heard's reputations as public figures and actors have been impacted by the allegations underlying each party's claims. As such, the determination of damages is inextricably interwoven with highly salacious press coverage relating to this case, and the UK Action, as well as past press coverage, such that a simultaneous trial of both liability and damages would severely prejudice the parties by unfairly tainting the jury with evidence of damaging aspects of their reputations. Inflammatory evidence that is irrelevant to the issue of liability, but relevant to the issue of damages, would be presented to the jury and needlessly destroy each party's “fair opportunity to present their case to the jury without prejudice to the other.” *Centra Health*, 277 Va. 78. If such evidence were permitted to be introduced to the jury before the jury deliberates on the issue of liability, the prejudicial effect to the parties of the comingling of the evidence would be undeniable.

Indeed, Virginia's Model Jury Instructions recognize that jurors should avoid information about their case, including from social media and news coverage:

Until this case is submitted to you for your deliberations, you should not decide any issue in the case, and you should not discuss the case with anyone or remain within hearing of anyone who is discussing it. This *includes discussing the case in person, in writing, by phone or electronic means, via text messaging, e-mail, Facebook, Twitter, blogging or any Internet chat room, web site, social media, or other means.* There will be occasional recesses during the trial. During the recesses, you should not discuss the case with your fellow jurors or go to the scene or make any independent investigation *or receive any information about the case from radio, television, or the newspapers.*

Yet in this case, where two public figures' reputations are at issue, it is inevitable that the jury will consider, at least at the damages phase, precisely the type of information about these litigations that they would otherwise be instructed to avoid to prevent it from improperly influencing them. To prevent that issue, an easy solution is readily available: bifurcation of liability and damages into two separate trials, particularly because two jury trials have already been scheduled by the Court in this matter.

### **III. Bifurcation Serves The Interests Of Judicial Economy**

This is a six-week jury trial and is already quite unwieldy. Bifurcation will streamline and simplify the case. Among other reasons, it will likely obviate the need to present both sides' damages analyses to the Court, since only presumably only one party will prevail at the liability phase. Bifurcating the trial into damages and liability phases can thus be expected to shorten and streamline trial, and avoid needless expense for the parties and needless consumption of time for the jury.

### **CONCLUSION**

For the foregoing reasons, the Court should grant the Motion and bifurcate the trial as to the issues of liability and damages.

Respectfully submitted,

*Ben G. Chew* 

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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

<sup>22</sup>  
Dated: March 18, 2022



VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 2 to bifurcate the trial as to liability and damages ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup> 18th day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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Clarissa K. Pintado (VSB No. 86882)  
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*Counsel for Defendant Amber Laura Heard*

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VIRGINIA:

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JOHN C. DEPP, II,

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Civil Action No.: CL-2019-0002911

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Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 3 TO EXCLUDE  
EVIDENCE AND ARGUMENT REGARDING WHETHER LOS ANGELES POLICE  
DEPARTMENT FOLLOWED PROCEDURE**

Plaintiff and Counterclaim Defendant John C. Depp, II (“Mr. Depp”) requests that the Court exclude anticipated evidence and argument by Ms. Heard regarding whether four Los Angeles Police Department (“LAPD”) officers followed procedures in responding to calls related to Mr. Depp and Ms. Heard on May 21, 2016, for the reasons set forth below:

### INTRODUCTION AND SUMMARY OF FACTS AND ISSUES

On May 21, 2016, two separate pairs of police officers responded to a call at certain penthouses in Los Angeles where Mr. Depp and Ms. Heard maintained a residence, following an episode of purported violence during which Ms. Heard contends she sustained visible injuries to her face after Mr. Depp allegedly threw a phone at her, and further contends that Mr. Depp caused extensive property damage to the penthouses, complete with broken picture frames and furniture, spilled wine, and shattered glass. Mr. Depp denies doing any such thing, and the officers in question – LAPD Officers Melissa Saenz, Tyler Hadden, Christopher Diener, and William Gatlin – all came to the penthouses, saw no injuries, saw no property damage, and left. As such, the officers are *percipient witnesses* to a *lack* of injuries and property damage – that is the essence of their testimony. They are not, of course, parties to this action, and no claim has been asserted based on any allegation of misconduct by the LAPD.

Ms. Heard, unfortunately, appears determined to engage in an attack on these officers, arguing that they somehow failed to follow proper police procedures. She has retained an expert on that topic (Adam Bercovici) and has deposed the corporate designee of the LAPD on four separate occasions on multiple topics (and deposing *multiple* corporate designees – Maria Sadanaga, Armand Lemoyne, Roberto Lopez, Peter Kouvelis). Given her scorched earth approach to this topic, it is readily apparent that Ms. Heard intends to spend time at trial arguing to the jury that the police officers who arrived at the parties’ residence failed to follow procedures. Mr. Depp

has his own expert who will testify (if the Court allows Ms. Heard to go down this rabbit hole) that the police officers did, in fact, correctly follow LAPD policies and procedures, such as policies and procedures related to responding to domestic violence calls.

But – setting aside the fact that Ms. Heard’s arguments in that respect appear to be meritless, and that the LAPD officers acted correctly under the circumstances, since there was no evidence of any violence – *none of that even matters*. The police officers are relevant *as percipient witnesses*. Their testimony in this case relates merely to what they perceived when they went to the penthouses and observed no sign of domestic violence. As such, whether or not they followed procedures is simply irrelevant. This is not an action against the LAPD. The officers are not parties. Their conduct is not at issue. Their abidance by procedures is not at issue. The only thing at issue is what they *saw* – and what they did not see.

Ms. Heard should not be allowed to consume time at trial by exploring this patently irrelevant topic. The Court should enter an *in limine* Order precluding evidence of whether or not the LAPD officers followed procedures, including the following:

- The deposition testimony of Maria Sadanaga;
- The deposition testimony of Armand LeMoyné;
- The deposition testimony of Robert Lopez;
- The deposition testimony of Peter Kouvelis; and
- Expert testimony of Adam Bercovici

## ARGUMENT

### **I. Whether The LAPD Officers Followed Procedure Is Irrelevant**

Ms. Heard’s anticipated evidence regarding LAPD policies and procedures is a pointless rabbit hole that has nothing to do with the issues in this action. If this were an action against the

LAPD or the officers involved, then perhaps it might make sense to explore whether the officers followed procedure. But the officers' sole involvement in this case was to respond to a call at Mr. Depp's penthouse, where they met with Ms. Heard, observed no injuries (despite her claiming later to have had visible injuries), saw no property damage (despite her claiming later that they observed extensive property damage), and then left.

Of course, only relevant evidence is admissible. Va. R. S. Ct. 2:401; 2:402. What the police officers saw on a night when Ms. Heard contends that she was a victim of domestic violence is obviously relevant. But whether or not the police officers followed procedure has no tendency to prove or disprove any material fact. Ms. Heard's exploration of that issue is a complete sideshow. Ms. Heard is entitled to question and challenge the officers' perceptions. She should not be allowed to consume time by exploring policies and procedures of a police department in California that have nothing to do with any issue in this case.

**II. Any Probative Value Of Evidence As To Whether The LAPD Followed Procedures Is Substantially Outweighed By The Undue Consumption Of Time, And Likelihood Of Confusing Or Misleading the Jury**

It makes no sense to turn a portion of this case into a trial within a trial on whether the LAPD officers correctly followed LAPD procedures. The conduct of the LAPD officers is simply not at issue. The only relevant question is whether they witnessed evidence of domestic violence or not. Wading into the LAPD's policies and procedures is a pointless exercise that would distract the jury from the actual issues and unduly consume time. Accordingly, the evidence in question should be excluded. Va. R. S. Ct. 2:403.



CONCLUSION

The Motion should be granted, and the Court should enter an *in limine* Order precluding Ms. Heard from presenting evidence or argument to the jury regarding whether or not the LAPD followed policies or procedures on May 21, 2016.

Respectfully submitted,

 (AC)

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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

*22*  
Dated: March 18, 2022

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 3 to exclude evidence and argument regarding whether the Los Angeles police department followed procedure ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>18<sup>th</sup></sup> day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
CIVIL PROCESSING

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

2022 MAR 22 A 11:34

W. T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Civil Action No.: CL-2019-000291

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 4 TO EXCLUDE  
EVIDENCE AND ARGUMENT REGARDING LITIGATION-RELATED CONDUCT  
AND RUSSIAN CONNECTIONS OF ADAM WALDMAN**

Plaintiff and Counterclaim Defendant John C. Depp, II (“Mr. Depp”) requests that the Court exclude anticipated evidence and argument by Ms. Heard regarding purported bad acts by Mr. Depp’s former attorney Adam Waldman (“Mr. Waldman”) for the reasons stated below:

**INTRODUCTION AND SUMMARY OF FACTS AND ISSUES**

Based on Ms. Heard’s conduct of this action to date, it is anticipated that she will attempt to distract and confuse the jury with irrelevant and salacious allegations against Mr. Waldman, in an effort to taint Mr. Depp with Mr. Waldman’s supposed misdeeds. For instance, Ms. Heard has (inaccurately) accused Mr. Waldman of pressuring witnesses to give testimony, and, based on her efforts to explore the issue at deposition, can also be expected to attempt to inform the jury of the revocation of Mr. Waldman’s *pro hac vice* status in this case as a result of technical violations of the operative Protective Order in this case (never mind that Ms. Heard has repeatedly violated the Protective Order, including, upon entry of Ms. Heard’s current lead counsel into this case, turning over Mr. Depp’s document productions to a third party tabloid).

But Mr. Waldman’s conduct, right or wrong, is irrelevant to the issues in this case, and allowing Ms. Heard to spend time attacking the conduct of one of Mr. Depp’s attorneys would obviously have a wildly prejudicial impact on Mr. Depp. Mr. Waldman is not a percipient witness to the Depp-Heard relationship, and he is not a party to this action. The only conceivable reason to introduce any evidence about Mr. Waldman at trial is that certain of his alleged statements in 2020 about the Mr. Depp and Ms. Heard form the basis of Ms. Heard’s pending Counterclaim against Mr. Depp. To the extent that the Counterclaim survives to trial, it is conceivable that Ms. Heard would be entitled to introduce evidence designed to establish that in 2020 at the time of the Counterclaim Statements Mr. Waldman was acting with actual malice or at Mr. Depp’s direction.



But Ms. Heard should be stopped there, and should not be allowed to turn this case into a circus by trying to place before the jury evidenced of Mr. Waldman's conduct more generally.

At minimum, the Court should enter an *in limine* Order precluding Ms. Heard from introducing evidence or argument regarding (1) the revocation of Mr. Waldman's *pro hac vice* status; and (2) any conduct by Mr. Waldman in connection with the litigation of this action while he was of record.

### ARGUMENT

#### **I. Mr. Waldman's *Pro Hac Vice* And Litigation Conduct Is Irrelevant**

As the court well knows, only relevant evidence is admissible, meaning evidence "having any tendency to make the existence of any fact in issue more probable or less probable than it would be without the evidence." Va. R. S. Ct. 2:401; 2:402. The revocation of Mr. Waldman's *pro hac vice* is completely irrelevant; Mr. Waldman's compliance or lack thereof with the particular terms of the Protective Order in this case has no bearing on whether or not Ms. Heard is a victim of abuse. And the same holds true for Mr. Waldman's litigation-related conduct in general. As such, any evidence of that nature should be excluded for failing to meet the threshold test of admissibility in Virginia.

#### **II. Any Probative Value Is Substantially Outweighed By Unfair Prejudice, Undue Consumption Of Time, And Likelihood Of Confusing Or Misleading the Jury**

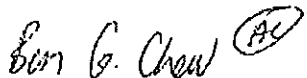
Moreover, to allow Ms. Heard to go down the rabbit hole of Mr. Waldman's supposed misdeeds would be to turn the trial into a circus, putting litigation conduct and discovery disputes at issue, and forcing the parties to spend time explaining to the jury the incremental litigation steps that led up to the actual trial. For instance, if Ms. Heard is allowed to disclose to the jury the revocation of Mr. Waldman's *pro hac vice* status, Mr. Depp would then be compelled to address with the jury the reasons and context for that occurrence, including the reasons for the Protective

Order, the nature of any violations, and the corresponding violations by Ms. Heard. All of that would take up time inappropriately, when the real issues in this case have absolutely nothing to do with the conduct of this litigation. The potential for unfair prejudice to Mr. Depp and jury confusion is obvious, as Ms. Heard obviously intends to use her attacks against Mr. Waldman to tarnish Mr. Depp's image with the jury. Va. R. S. Ct. 2:403.

### CONCLUSION

The Motion should be granted, and the Court should enter an *in limine* Order precluding Ms. Heard from presenting evidence or argument to the jury regarding Mr. Waldman's litigation-related conduct.

Respectfully submitted,



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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March 18, 2022

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 4 to exclude evidence and argument regarding litigation-related conduct and Russian connections of Adam Waldman ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup> 18th day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

Elaine Charlson Bredehoft (VSB No. 23766)  
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Clarissa K. Pintado (VSB No. 86882)  
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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
CIVIL PROCESSING  
2022 MAR 22 A 11:34

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 5 TO EXCLUDE  
TESTIMONY REGARDING MR. DEPP'S PRIOR ARRESTS AND  
INCIDENTS OF VIOLENCE**



Plaintiff John C. Depp, II, by counsel, and, for the reasons set forth fully below, moves this Court to exclude any testimony referencing or introducing evidence surrounding incidents of alleged violence towards men by Plaintiff and Plaintiff's prior arrests.

### INTRODUCTION

As the Court well knows, this action revolves around allegations by Ms. Heard that Mr. Depp physically abused her (allegations that Mr. Depp denies and intends to disprove at trial). It is anticipated that Ms. Heard will seek to improperly influence the jury by attempting to introduce evidence of alleged violence in the past by Mr. Depp towards other men as well as unrelated arrests. Any such evidence is far afield to whether Mr. Depp abused his wife, Ms. Heard, and thus is both irrelevant and unfairly prejudicial to Mr. Depp. Moreover, Ms. Heard likely intends to use Mr. Depp's prior arrests and allegations of minor violence involving paparazzi and other men as improper character evidence, to suggest that Mr. Depp is somehow of a violent character. No such evidence should be permitted.

### ARGUMENT

#### **I. Testimony Concerning Mr. Depp's Arrest Record Should Be Excluded Because It Is Unrelated to Ms. Heard's Claims And Too Remote To Be Anything But Prejudicial To Mr. Depp.**

Ms. Heard should be precluded from introducing any evidence of Mr. Depp's arrest records because it will serve no purpose, other than to prejudice him in front of the jury, since no charges relate to this case. Pursuant to Va. Sup. Ct. R. 2:609, "a party in a civil case [who] has previously been convicted of a felony, or a misdemeanor involving moral turpitude, and the number of such convictions may be elicited during examination of the party or accused." Here, however, Mr. Depp has *not* been convicted of any felony or misdemeanor involving moral turpitude. The rule goes on to say that "the name or nature of any crime of which the party or accused was convicted, except for perjury, may not be shown, nor may the details of prior

convictions be elicited, unless offered to rebut other evidence concerning prior convictions.” Va. Sup. Ct. R. 2:609; *see also Payne v. Carroll*, 250 Va. 336, 340 (1995) (applying similar rule from the criminal code and noting that such limitations should apply to parties of civil cases). Because Mr. Depp’s arrest record shares no similarities with the instant matter, Ms. Heard cannot possibly be offering evidence of his arrest record to rebut prior convictions.

Even if Ms. Heard were to properly introduce evidence of Mr. Depp’s prior arrests, she must be able to show that Mr. Depp’s “prior or subsequent acts were both strikingly similar to the indicted offense and particularly distinctive or idiosyncratic.” *Hylton v. Hamilton*, 68 Va. Cir. 305 (2005). Ms. Heard simply cannot make this showing. Mr. Depp’s arrest records are in no way similar to Ms. Heard’s claims. The arrests—for which no charges were ever pursued— included property damage, a verbal altercation with a man while abroad, and a physical altercation with a man while abroad. The most recent of these arrests was over two decades ago. There is no fair deduction that can be made from these remote, unrelated, low-level incidents in assessing whether Mr. Depp engaged in domestic violence over twenty years later. In fact, in *Hylton*, the court held that the crime at issue and the arrest record, although substantially closer in similarity to the alleged crimes here, were found to have significant differences and precluded its introduction to the jury on the grounds that it was prejudicial.

**II. Testimony Regarding Prior Violence by Mr. Depp Should be Excluded Because it is Unrelated to the Claims in this Action.**

Ms. Heard will seek to proffer evidence that portrays Mr. Depp as a violent man to improperly bolster her domestic violence case, even though any such incidents have never been adjudicated and all incidents involve physical altercations with men. It is well established in Virginia that evidence of specific acts of misconduct committed by a witness is not admissible in Virginia to impeach the witness’ credibility. *Daugherty v. Commonwealth*, No. 0962-11-2, 2012

WL 1499356, at \*4 (Va. Ct. App. May 1, 2012); *see also Clark v. Commonwealth*, 202 Va. 787, 789–90 (1961). Ms. Heard’s case centers around whether Mr. Depp abused *her*, not on whether he is a violent individual generally. Evidence of such irrelevant, unrelated matters should be excluded. *See, Clark*, 202 Va. at 790.

**III. Any Probative Value of Testimony Regarding Prior Arrests and Misconduct Is Substantially Outweighed by the Danger of Unfair Prejudice and the Likelihood of Misleading the Jury.**

Finally, testimony regarding prior arrests and incidents of misconduct also should be excluded because the probative value of such testimony, if any, is substantially outweighed by the danger of unfair prejudice to Mr. Depp and the likelihood that it will mislead the jury. As discussed above, such evidence is completely unrelated to the claims at issue in this case and should not be used to evaluate whether Mr. Depp abused Ms. Heard.

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that this Court grant the Motion and exclude any testimony regarding prior arrests and incidents of unrelated violence.

Respectfully submitted,



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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March 18, 2022

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 5 to exclude testimony regarding Mr. Depp's prior arrests and incidents of violence ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

---

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup> 18th day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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Ben G. Chew (AC)  
Benjamin G. Chew



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
CIVIL PROCESSING

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

2022 MAR 22 A 11:35

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Civil Action No.: CL-2019-000291K

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 6  
TO EXCLUDE EVIDENCE OF NEGATIVE SOCIAL MEDIA TRAFFIC AND  
PURPORTED "RUSSIAN" "BOT" CAMPAIGN REGARDING MS. HEARD**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, and, for the reasons set forth fully below, moves this Court to exclude any testimony referencing evidence of a claim that has been thrown out in demurrer.

### INTRODUCTION

Among the more preposterous claims asserted by Ms. Heard in her Counterclaim was the wild theory that she was the victim of a campaign of negative social media attention supposedly orchestrated by Mr. Depp to smear her through an army of “bots” posting negatively about her. That conspiracy theory was reflected in Ms. Heard’s Third Claim in her Counterclaim, for alleged violation of the Virginia Computer Crimes Act (“VCCA”). Specifically, Ms. Heard alleged in her Counterclaim that Mr. Depp “initiated, coordinated, overseen and/or supported and amplified two change.org petitions” to tarnish job opportunities from Ms. Heard, and “created, coordinated, controlled, and/or manipulated social media accounts created specifically for the purpose of targeting Ms. Heard.” (*See* Counterclaim ¶¶ 6, 8.) Ms. Heard also alleged that this campaign had some sort of Russian connection, apparently because Mr. Depp’s former counsel of record Adam Waldman is known to have also represented a high-profile Russian businessman. Ms. Heard’s attempt to state such a claim was perhaps based on the premise that the jury will be predisposed to be hostile to Mr. Waldman and, by extension, Mr. Depp, based on headlines in recent years – from Russia’s recent invasion of the Ukraine to Russia’s alleged involvement in interfering with the 2016 election.

In addition to being entirely implausible, the purported “bot” campaign and Mr. Waldman’s Russian client are legally irrelevant. *By Letter Opinion dated January 4, 2021, the Court, former Chief Judge Bruce White presiding, dismissed Ms. Heard’s claim for violation of the VCCA in its entirety, eliminating the purported “bot” campaign as an issue in this case.*

Undeterred by the fact that those claims are no longer part of the case, Ms. Heard persists in trying

to insert them as an issue. For instance, in her Responses to Mr. Depp's Fifth Interrogatories, which were served March 18, 2022, Ms. Heard included the following allegation: "I have been the subject of over one million negative tweets and posts arising after the defamatory statements that are part of an organized campaign by Mr. Depp that is triggered by statements in the press by or about me. In addition, the orchestrated bot campaign was specifically used to generate signatories to a 'Remove Amber Heard from Aquaman 2' petition."

Ms. Heard should be precluded from offering any evidence at trial regarding the claims that were tossed out by the court, including the purported Russian "bot" campaign against her. The jury should not be allowed to hear any reference to Ms. Heard's ludicrous conspiracy theory about a supposed social media campaign against her or any supposed Russian involvement in the same, as it has no probative or evidentiary value, and will only mislead the jury into believing that it is part of the case. Ms. Heard cannot simply ignore the fact that that portion of her Counterclaim was dismissed.

### ARGUMENT

The surviving portion of Ms. Heard's Counterclaim is based solely on three allegedly defamatory statements about her by Adam Waldman to the UK publication *The Daily Mail*. To the extent that Ms. Heard seeks to show damages, she must be held to only those damages that result from those three Counterclaim Statements. She should not be allowed to covertly sneak her dismissed claims under the VCCA back into this case, in a transparent effort to slime Mr. Depp before the jury by blaming him for every nasty post about her on social media in recent years. Much less should she be allowed to suggest that Mr. Depp is responsible for a Russian conspiracy of "bots" based on dismissed claims. Her bizarre conspiracy theory that Mr. Depp is behind an army of "bots" is neither supported by any evidence, nor relevant to the claims and defenses in this action as framed by the pleadings. Even if Mr. Depp were responsible for every

unpleasant post about Ms. Heard on social media – which is obviously not the case – that would be a separate tort for which Ms. Heard has no viable claim pending, and would not be relevant to the damages she claims to have suffered from the three surviving Counterclaim Statements by Adam Waldman. Va. R. S. Ct. 2:402.

Yet Ms. Heard has refused to let go of this theory and has signaled that she intends to keep pursuing it; for instance, she has engaged Kathryn Arnold as an expert, whose testimony about damages in this case will include the purported “bot” campaign (claiming that “tweet patterns” about Ms. Heard are “an orchestrated ‘bot’ campaign by Mr. Depp and his representatives that is triggered by statements in the press by or about Ms. Heard” and that the “bot campaign was specifically used to generate signatories to a ‘Remove Amber Heard from Aquaman 2’ Petition.”) (Ms. Heard’s Supplemental Disclosure of Expert Witnesses, p. 31). She continues to cite the “bot” campaign in her interrogatory responses

All references to these dismissed claims should be barred because of the high likelihood that such references would unfairly prejudice Mr. Depp and unreasonably consume time, and because these allegations are irrelevant to the issues. Ms. Heard’s allegations were properly excluded on demurrer for being insufficient to support any claims, so she should not be allowed to revive these allegations at trial by relitigating *dismissed claims* before the jury. *See Johnson v. O’Brien*, No. 7:09-CV-00165, 2011 WL 5402105, at \*2 (W.D. Va. Nov. 4, 2011) (“The Court will not allow the Plaintiff to use this trial as a vehicle to continue the prosecution of his previously dismissed claims”); *See Hinkle v. City of Clarksburg, W.Va.*, 81 F.3d 416, 425-26 (4th Cir. 1996) (no error where speculative evidence was excluded by the lower court).

In short, Ms. Heard's allegations of a Russian "Bot" campaign are a complete sideshow that are irrelevant, unfairly prejudicial, and would waste the Court and the jury's time, with a very real risk of confusing and misleading the jury.

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully request that this Court grant its motion *in limine* and exclude any testimony referencing an alleged bot campaign or Mr. Waldman's Russian client, which has already been thrown out by this Court.

Respectfully submitted,



---

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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

22  
Dated: March 18, 2022

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 6 to exclude evidence of negative social media traffic and purported "Russian bot" campaign regarding Ms. Heard ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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CERTIFICATE OF SERVICE

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
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W  
JIM T. FREY  
CIRCUIT COURT  
FAIRFAX, VA

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 7 REGARDING PRIOR DEPOSITIONS OF TRACEY JACOBS**

Plaintiff and Counterclaim Defendant John C. Depp, II, by Counsel, hereby moves the Court to enter an *in limine* Order precluding Defendant and Counterclaim Plaintiff Amber Laura Heard from introducing testimony from the depositions of Tracey Jacobs that were taken in **other, unrelated litigations in a different jurisdiction and between different parties, years ago.** Virginia Supreme Court Rule 4:7(a)(7) clearly bars the use of such depositions, as the prior cases in which the depositions were taken did not involve the same subject matter as the present litigation and did not involve the same parties as the present litigation. Mr. Depp states as follows:

On January 18, 2021, Ms. Heard deposed Mr. Depp's former talent agent, Tracey Jacobs, in connection with this case. Ms. Heard has submitted extensive designations from Ms. Jacobs' deposition for use at trial. If Ms. Heard had wished to further depose Ms. Jacobs, Ms. Heard could have done so. Ms. Jacobs was deposed pursuant to a third-party subpoena in California, which presumptively limits a deposition to seven hours, but allows for further time beyond that limit where appropriate. Cal. Code of Civil Procedure ("CCP") § 2025.290(a). Moreover, Ms. Jacobs

was only questioned for about four hours on the record – meaning that Ms. Heard’s counsel could have kept questioning Ms. Jacobs for a further three hours, but chose not to do so.

Astoundingly, Ms. Heard’s deposition designations for trial now include significant designations from two prior depositions of Ms. Jacobs taken in connection with two separate lawsuits. These include Ms. Jacobs’ deposition of May 13, 2018 in the case *Depp, et al. v. Bloom, et al.*, in the Superior Court of the State of California, as well as Ms. Jacobs’ deposition of May 30, 2018 in the case *Depp, et al. v. The Mandel Company*, also in the Superior Court of the State of California:

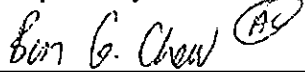
1. *John C. Depp, II and Edward L. White v. The Mandel Company, et al.*, Case No. BC646882 in the Superior Court of the State of California for the County of Los Angeles, involved allegations by Mr. Depp against his former managers for negligence, breach of fiduciary duty, and other claims, stemming in part from the managers’ spending millions of dollars without his permission. Ms. Heard was not a party to the lawsuit, which had nothing to do with her. Ms. Heard was not even mentioned in Mr. Depp’s Complaint.
2. *John C. Depp, II, et al. v. Bloom Hergott Diemer Rosenthal Laviolette Feldman Schenkman & Goodman, LLP, Jacob A. Bloom, and DOES 1-30*, Case No. BC680066 in the Superior Court of the State of California for the County of Los Angeles involved allegations by Mr. Depp against his former attorney for breach of fiduciary duty, malpractice, and violations of certain California Code provisions. Ms. Heard was not a party to the lawsuit, and, once again, was not even mentioned in Mr. Depp’s Complaint.

The Virginia Supreme Court Rules and case law are very clear on this. For example, in *Burns v. Gagnon*, the Virginia Supreme Court recognized that under Rule 4:7, a deposition taken in a prior action was admissible if: “(1) he was more than ‘100 miles from the place of [the] trial

or hearing, or [was] out of this Commonwealth’; (2) it was taken in a previous ‘action involving the same subject matter’ as the present action; and (3) the present action is ‘between the same parties’ as the previous action.” *See Burns v. Gagnon*, 283 Va. 657, 680 (2012). While Ms. Jacobs is more than 100 miles from Commonwealth (residing in California), the second two prongs of the analysis are obviously not satisfied. The *Mandel Company* and *Bloom* cases do not involve the same subject matter as the present action, which involves allegations of abuse between Mr. Depp and Ms. Heard, and Ms. Heard was not a party to either of the prior lawsuits. Ms. Heard had an opportunity to depose Ms. Jacobs and did so. She used a mere four hours, and never sought to bring her back for further deposition. She has no reason to seek to use other depositions, and in any event, has no basis to do so.

For these reasons, Ms. Jacobs’ two prior depositions that were taken in connection with separate actions and separate parties should be excluded.<sup>1</sup>

Respectfully submitted,

 (AS)

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---

<sup>1</sup> Moreover, Ms. Heard has already requested that the Court allow her to designate portions of these two deposition transcripts, which the Court explicitly denied. *See Exhibit I*, excerpt of June 25, 2021 Hearing Transcript at 55 (Ms. Bredehoff stating “So my understanding is, with respect to our request to designate portions of the [Jacobs] transcripts and to preclude certain objections, those are both denied...” and the Court replying “Right”); *see also* Ms. Heard’s June 9, 2021 Motion (requesting “to be able to designate portions of those two [Jacobs] depositions for trial”) and the Court’s June 29, 2021 Order denying Ms. Heard’s Motion. In reliance on the Court’s prior ruling, as well as the very clear case law above, Mr. Depp did not submit objections or counter-designations to the two Jacobs transcripts. If the Court decides that such deposition transcripts can properly be utilized at trial (which it should not), Plaintiff requests an opportunity to submit objections and counter-designations.

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Dated: March <sup>22</sup>18, 2022

# Exhibit 1



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# Transcript of Motions Hearing

**Date:** June 25, 2021  
**Case:** Depp, II -v- Heard

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V I R G I N I A:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

-----x

JOHN C. DEPP, II,

Plaintiff,

v.

Case No. CL2019-0002911

AMBER LAURA HEARD,

Defendant.

-----x

Hearing on Motions

Before the HONORABLE PENNEY AZCARATE, Judge

Conducted Virtually

Friday, June 25, 2021

11:33 a.m. EST

Job No.: 382713

Pages: 1 - 59

Transcribed by: Bobbi J. Fisher, RPR

1 Hearing on Motions before the HONORABLE PENNEY  
2 AZCARATE, Judge, conducted virtually.

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5 Pursuant to Docketing, before Merinda Evans,

6 Digital Court Reporter.

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A P P E A R A N C E S

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ON BEHALF OF THE DEFENDANT MS. HEARD:

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I N D E X

PAGE

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<del>Further Argument by Ms. Bredehoft</del>	<del>44</del>
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E X H I B I T S

(None.)

1 and I just want to make sure. So my understanding  
2 is, with respect to our request to designate  
3 portions of the transcripts and to preclude certain  
4 objections, those are both denied -- I guess you're  
5 just not -- I don't know how to characterize those  
6 because neither of those are part of the motion to  
7 compel, they're requesting relief.

8 THE COURT: Right.

9 MS. BREDEHOFT: So are they just not  
10 being ruled on at this time?

11 THE COURT: No, they're denied as relief  
12 for the motion to compel. All right? I can see  
13 that it might become of issue later on when we get  
14 closer to trial, and I understand that. But right  
15 now, no, I'm denying the motion to compel outright.  
16 So whatever you need to do as an attorney for that  
17 case -- if you need to do other routes to get  
18 authentication, you need to go those routes.  
19 That's what I'm saying.

20 I mean, I can see that all these  
21 depositions are going to come back up to play, I'm  
22 sure, when we get close to trial, and what's going

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 7 to exclude prior depositions of Tracey Jacobs ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup>~~18th~~ day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

Elaine Charlson Bredehoft (VSB No. 23766)  
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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY CIVIL PROCESSING

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-000291

FILED  
2022 MAR 22 A 11:35  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 8 REGARDING  
REFERENCES TO OTHER LITIGATIONS INVOLVING MR. DEPP**

Plaintiff and Counterclaim Defendant John C. Depp, II, by Counsel, hereby moves the Court to enter an *in limine* Order precluding Defendant and Counterclaim Plaintiff Amber Laura Heard from referencing or introducing evidence of other litigations (“Other Litigation”) involving Mr. Depp. Mr. Depp’s prior lawsuits are completely irrelevant to the case at hand, have limited or no probative value, would be highly unfairly prejudicial, and constitute an improper attempt to use character evidence. Mr. Depp states as follows:

**SUMMARY OF BACKGROUND AND ISSUES**

Ms. Heard has sought extensive discovery throughout the course of this proceeding relating to other litigations involving Mr. Depp (both in her documents requests as well as by deposing many of the key parties in the lawsuits). Those litigations include:

- a. *John C. Depp, II and Edward L. White v. The Mandel Company, et al.*, Case No. BC646882 (“*Mandel* Action”) in the Superior Court of the State of California for the County of Los Angeles. This case involved allegations by Mr. Depp against his former managers of seventeen years for negligence, breach of fiduciary duty, and other claims, stemming in part from the managers’ spending millions of dollars without his permission. The case was fiercely litigated and involved complex legal and factual disputes related to the management of Mr. Depp’s finances over a period of nearly two decades, as well as complicated alleged ethical violations by Mr. Depp’s business managers. The case settled in July 2018.
- b. *John C. Depp, II, et al. v. Bloom Hergott Diemer Rosenthal Laviolette Feldman Schenkman & Goodman, LLP, Jacob A. Bloom, and DOES 1-30*, Case No. BC680066 in the Superior Court of the State of California for the County of Los Angeles. This case involved allegations by Mr. Depp against his former

entertainment attorney of seventeen years, for breach of fiduciary duty, malpractice, and violations of certain California Code provisions. Among other things, Mr. Depp argued that the “handshake” contingency fee contract pursuant to which Mr. Bloom collected more than \$30 million in fees was invalid under California law. The court agreed, granting Mr. Depp’s motion for judgment on the pleadings, but the issues in that case were quite extensive, and related to the totality of Bloom Hergott’s representation of Mr. Depp. The case settled in October 2019.

- c. *Greg “Rocky” Brooks v. John C. Depp, II, et al*, Case No. BC713123 in the Superior Court of the State of California for the County of Los Angeles. This case involves allegations by Mr. Brooks that Mr. Depp punched him in the ribs while on set of the film *Labyrinth*. Mr. Brooks does not claim to have suffered any actual injuries, and Mr. Depp vehemently denies his claims, which are also refuted by other eyewitnesses.
- d. *Eugene Arreola and Miguel Sanchez v. John C. Depp, II, et al*, Case No. BC704539 in the Superior Court of the State of California for the County of Los Angeles. This case involved a claim by two of Mr. Depp’s former bodyguards who brought suit alleging that Mr. Depp (and others) failed to comply with various provisions of the California Labor Code by failing to pay overtime, provide meal and rest breaks, provide accurate wage statements, and provide wages upon termination. They also alleged wrongful termination and unlawful business practices. The case settled.

### ARGUMENT

Ms. Heard’s anticipated references to the Other Litigations should be excluded from trial for several reasons.

## **I. Mr. Depp's Prior Litigations Are Not Relevant**

First, the Other Litigations are *totally irrelevant* to the claims and issues in the present action and should be excluded on that basis alone. *See* Va. Sup. Ct. R. 2:402. Indeed, it is obvious that evidence of a party's prior lawsuits will generally be irrelevant and inadmissible, since that has no reasonable tendency to make a material fact more or less likely to be true. The present defamation action involves allegations of abuse between Mr. Depp and Ms. Heard. That is the core of the case. *Not* malfeasance by Mr. Depp's business managers or former attorneys. *Not* California labor law violations. *Not* an alleged incident on a movie set after Mr. Depp and Ms. Heard were already divorced. Nothing about those former lawsuits is at issue in this action.

Ms. Heard may attempt to argue that news coverage of Mr. Depp's Other Litigation could have been damaging to his reputation and goes to damages, but that argument is a red herring. Ms. Heard has accused Mr. Depp of being a wifebeater. That is an allegation of a wholly different kind than any allegations that were made by any of the parties to the Other Litigation. Suing one's former business managers or attorneys for malpractice is a completely different type of litigation, and generates a completely different type of publicity. Ms. Heard should not be allowed to turn this trial into a circus by exploring the Other Litigations – she should be required to keep her focus squarely on the narrow issues in this case.

## **II. Evidence Of Other Litigation Is More Prejudicial Than Probative**

To the extent these litigations have any relevance to the present action, the probative value of such testimony/evidence is substantially outweighed by the danger of unfair prejudice to Mr. Depp, confusing or misleading the jury, and undue consumption of time. *See* Va. Sup. Ct. R. 2:403. Ms. Heard has referenced these other litigations throughout the present action in an effort to show Mr. Depp's purported litigious nature. Evidence of other lawsuits is regularly excluded

as more prejudicial than probative. *See, e.g., John Wiley & Sons, Inc. v. Book Dog Books, LLC*, No. 13CV816, 2017 WL 10844685, at \*1 (S.D.N.Y. Dec. 8, 2017) (granting motion *in limine* relating to other lawsuits and noting “Evidence of a party’s lawsuits or generally litigious nature is regularly excluded as more prejudicial than probative”). Moreover, to present evidence to the jury regarding such cases would turn this trial into a case within a case within a case, as Mr. Depp would need to provide contrary evidence of the meritorious nature of his claims.

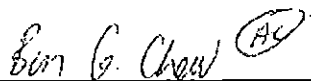
### **III. The Other Litigation Should Be Excluded As Improper Character Evidence**

Third, references to the Brooks case in particular would also be highly prejudicial as improper character evidence. That case involves an allegation that Mr. Depp punched a film production member – an allegation Mr. Depp strongly denies and which will be disproven at trial. Evidence of that unproven and contradicted allegation would nonetheless have a tendency to sway the jury and unfairly prejudice Mr. Depp, by suggesting to the jury that he is somehow of a violent nature. *See* Va. Sup. Ct. R. 2:404 (“Evidence of a person’s character or character trait is not admissible for the purpose of proving action in conformity therewith on a particular occasion”).

### **CONCLUSION**

The Motion should be granted and the Court should enter an *in limine* Order precluding Ms. Heard from seeking to distract and confuse the jury by turning this case into a trial within a trial within a trial about Mr. Depp’s former litigations.

Respectfully submitted,

 (AC)

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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March 18, 2022

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 8 to exclude references to other litigations involving Mr. Depp ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*



**WE ASK FOR THIS:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>18<sup>th</sup></sup>~~18<sup>th</sup>~~ day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
CIVIL PROCESSING  
2022 MAR 22 A 11:36  
JULIE T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 9 TO EXCLUDE  
REFERENCES TO MR. DEPP'S SPENDING HABITS AND LOANS**

Plaintiff and Counterclaim Defendant John C. Depp, II, by Counsel, hereby moves the Court to enter an Order, *in Limine*, precluding Defendant and Counterclaim Plaintiff Amber Laura Heard from referencing or introducing evidence of Mr. Depp's spending habits and loans, and states as follows:

Ms. Heard has sought extensive discovery into Mr. Depp's finances, spending habits, and loans. For example, Ms. Heard recently deposed Mr. Depp's former manager in this matter on January 26, 2022. In that deposition, she examined aspects of a Cross-Complaint filed by Mr. Mandel's company against Mr. Depp which alleged that:

- a. "Depp lived an ultra-extravagant lifestyle that often knowingly cost Depp in excess of \$2 million per month to maintain";
- b. "Mr. Depp spent in excess of \$75 million to acquire, improve, and furnish 14 residences";
- c. Mr. Depp spent "over 18 million to acquire and renovate a 150-foot luxury yacht";
- d. "He spent \$30,000 per month on expensive wines that he had flown to him around the world";
- e. "Depp paid over \$3 million to blast from a specially-made cannon the ashes of author Hunter Thompson";
- f. "Depp also spent wildly on expensive collectibles";
- g. "Depp's constant use of private planes amounted to an additional 200,000 a month in expenses."

The list of this type of pointless financial discovery goes on and on and on. Ms. Heard also asked about loans that Mr. Depp purportedly received to avert this "crisis" caused by Mr. Depp's

spending. And these are all included in Ms. Heard's deposition designations, signaling that she plans to use them at trial.

This type of evidence should unquestionably be excluded. Evidence of Mr. Depp's spending habits or any loans he received is **totally irrelevant** to this case. *See* Va. Sup. Ct. R. 2:402. Whether or not Mr. Depp "lived an ultra-extravagant lifestyle" has no reasonable tendency to make any material fact more or less likely in the jury's assessment of the allegations in this case that Mr. Depp abused Ms. Heard. Conversely, such evidence is potentially extremely prejudicial, and the danger of unfair prejudice substantially outweighs any non-existent probative value. *See* Va. Sup. Ct. R. 2:403. This is a clear attempt by Ms. Heard to introduce evidence that has a high likelihood of turning the jury against Mr. Depp for reasons that are totally unrelated to the merits of the case.

Mr. Depp is not seeking to exclude with this Motion all evidence that establishes his overall income, which is the only aspect of Mr. Depp's finances that is relevant to this case as it speaks (somewhat) to damages. But evidence of his spending habits is both irrelevant and highly unfairly prejudicial.

For these reasons, all references, testimony, and evidence relating to Mr. Depp's spending habits and loans should be excluded.

Respectfully submitted,



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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March <sup>22</sup>18, 2022

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 9 to exclude references to Mr. Depp's spending habits and loans ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*



**WE ASK FOR THIS:**

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CERTIFICATE OF SERVICE

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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
CIVIL PROCESSING  
2022 MAR 22 A 11:36  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 10  
TO EXCLUDE ALL REFERENCES TO AND EVIDENCE REGARDING  
MARILYN MANSON**

Plaintiff and Counterclaim Defendant John C. Depp, II (“Mr. Depp”), by counsel, and, for the reasons set forth below, moves this Court to exclude any references to and evidence regarding Marilyn Manson.

### INTRODUCTION

Ms. Heard’s approach to this trial reflects a blatant intention to smear Mr. Depp under a guilt by association theory – implying that Mr. Depp had a friendship with Marilyn Manson, who is the subject of very public allegations of abuse that are regularly making headlines. For instance, Ms. Heard’s discovery responses shamelessly imply that Mr. Depp was somehow influenced to abuse her by Marilyn Manson. There is no reason for Ms. Heard to lob such ridiculous allegations into the case, except to try to smear Mr. Depp by association, under the apparent theory that being acquainted with Marilyn Manson makes it likelier that the jury will accept her false allegations that Mr. Depp is an abuser. But there is no allegation that Mr. Manson has any knowledge of or was involved in any abuse. Ms. Heard’s attempt to insert Marilyn Manson into this case lacks foundation and is wholly speculative and constitutes improper character evidence. Moreover, the nonexistence relevance of such evidence is clearly outweighed by its prejudicial impact. The Court should enter an *in limine* Order precluding Ms. Heard from making any reference to Marilyn Manson.

### ARGUMENT

Ms. Heard’s attempt to insert Marilyn Manson into this case is indefensible.

*First*, to the extent that evidence of such an acquaintance between Mr. Depp and Marilyn Manson is offered to suggest that Mr. Depp was somehow inspired or otherwise influenced by Mr. Manson to commit abuse, it is both preposterous and entirely lacking in foundation. Va. R. S. Ct. 2:602. Such nonsensical speculation has an obvious tendency to confuse the jury, and lacks any valid basis.


*Second*, Ms. Heard’s transparent attempt to smear Mr. Depp with an association with Mr. Manson is substantially more prejudicial than it is probative. The probative value is nonexistent – how does Mr. Depp’s acquaintance with Marilyn Manson make it likelier that Mr. Depp committed abuse? But given the highly negative press coverage and allegations of serious abuse made against Mr. Manson, the prejudicial effect of presenting evidence of such an acquaintance to the jury could well be enormous. Ms. Heard’s intention is no doubt to raise in the jury’s mind – or perhaps even to explicitly argue – that “birds of a feather flock together,” and that if Mr. Manson is accused of abuse, it makes it likelier that Mr. Depp committed abuse as well. The seriously prejudicial nature of such evidence is clear and substantially outweighs by the danger of unfair prejudice to Mr. Depp and the likelihood that it will mislead the jury. *See Morris v. Commonwealth*, 13 Va. App. 134, 140 (1991) (standing alone, evidence of association with others engaged in wrongful conduct produces an impermissible inference of “guilt by association”).

*Third*, Ms. Heard’s anticipated evidence amounts to nothing more than an attempt to insert improper character evidence about Mr. Depp, by arguing that his alleged affiliation with Mr. Manson somehow reflects on his character and makes him likelier to be an abuser. Again, the utterly useless nature of the anticipated evidence to be offered by Ms. Heard is clear, and warrants exclusion. Va. R. S. Ct. 2:804.

### **CONCLUSION**

For the foregoing reasons, Mr. Depp respectfully requests that this Court exclude references to and evidence regarding Marilyn Manson.

Respectfully submitted,

*Ben G. Chew* 

---

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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March <sup>22</sup>18, 2022

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 10 to exclude references to and evidence regarding Marilyn Manson ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*



**WE ASK FOR THIS:**

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup> 18th day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
CIVIL PROCESSING  
2022 MAR 22 A 11:36  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**DEFENDANT'S MOTION *IN LIMINE* NO. 11**  
**TO EXCLUDE DEPOSITION TESTIMONY OF JACOB BLOOM**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, and, for the reasons set forth fully below, moves this Court to exclude the deposition testimony of Jacob Bloom.

### ARGUMENT

Ms. Heard's counsel has conducted discovery in an abusive manner and should be precluded from introducing certain utterly irrelevant and harassing evidence at discovery. Ms. Heard's counsel deposed Mr. Depp's former attorney of seventeen years, Jacob Bloom, who is elderly and appeared not to be able to remember anything of significance. Bafflingly, even though Mr. Bloom's testimony was essentially a string of responses to the effect of "I don't know," Ms. Heard's counsel has designated his deposition testimony for trial. But Mr. Bloom's responses establish (1) that he has nothing relevant to say, (2) that he lacks competence to provide testimony on the issues involved, and (3) the blatantly harassing conduct of Ms. Heard in this action. The deposition testimony should be excluded.

At the outset, the transcript makes clear that Mr. Bloom's lacked the ability at his deposition to testify in a competent manner, to recollect or communicate events, or provide substantive answers to questions asked of him. The parties were well aware that Mr. Bloom had been diagnosed with dementia. Nevertheless, Ms. Heard insisted on taking Mr. Bloom's deposition to discuss events that were beyond Mr. Bloom's capacity to recall. It is clear from Mr. Bloom's testimony that he was unable to recall many of the questions posed to him. In fact, throughout the deposition Mr. Bloom had the assistance of his attorney to guide him in understanding the question and provide an intelligible response. Throughout the deposition, Ms. Heard's counsel harassed Mr. Bloom with the same question repeatedly in attempts to deceive Mr. Bloom.

Q: When did you first meet Mr. Depp?

A: I don't know when. I can't remember.

**Exhibit 1, Bloom Depo. Tr. 9:15-16**

Q: [] Does that help refresh your recollection of when you began representation of Mr. Depp?

A: No, it doesn't—it doesn't recall—I don't recall. And I say it strongly to you, I don't recall the particular cause of action, et cetera.

Q: Do you recall beginning representing Mr. Depp in 1999?

Mr. Chew: Objection; asked and answered--

A: I don't recall.

Mr. Chew: Several times.

Q: I'm sorry, what is your answer, Mr. Bloom?

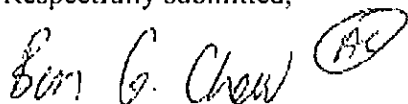
A: I don't know. It's all confusing to me.

**Exhibit 1, Bloom Depo. Tr. 55:8-21**

Moreover, the substance of Mr. Bloom's deposition sought testimony regarding Mr. Depp's previous litigations, which are completely immaterial to this action. Even if that were not the case, Mr. Bloom did not recall much of the work he did for Mr. Depp many years ago. Ms. Heard should be precluded from exploiting Mr. Bloom further at trial where he does not have any knowledge of her allegations against Mr. Depp, which is the only pertinent issue in this case. *See* Exhibit 1, Bloom Depo. Tr. 66:9-12.

For the foregoing reasons, Plaintiff respectfully request that this Court grant its motion *in limine* and exclude Mr. Bloom's deposition testimony in its entirety.

Respectfully submitted,

 AC

---

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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March <sup>22</sup>~~18~~, 2022

# Exhibit 1





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**CONFIDENTIAL**

# **Transcript of Jacob Bloom, Esq.**

**Date:** March 2, 2022  
**Case:** Depp, II -v- Heard

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VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

----- x  
JOHN C. DEPP, II, :  
Plaintiff, : Case No.  
v. : CL-2019-0002911  
AMBER LAURA HEARD, :  
Defendant. :  
----- x

Videotaped Deposition of JACOB BLOOM, ESQ.  
Conducted Remotely via Zoom  
Wednesday, March 2, 2022  
12:34 p.m.

Job No.: 436014  
Pages: 1 - 75  
Reported By: AMY L. STRYKER, CCR

CONFIDENTIAL  
Transcript of Jacob Bloom, Esq.  
Conducted on March 2, 2022

9

1	Q What was your specialty while you were	12:37:54
2	practicing law?	12:37:56
3	A I was an entertainment lawyer.	12:37:57
4	Q And was that in Los Angeles, California?	12:38:01
5	A Yes.	12:38:04
6	Q And can you please describe examples of	12:38:04
7	clients that you had over the years in the	12:38:10
8	entertainment industry. And we're going to label	12:38:12
9	this confidential so that it is under seal.	12:38:15
10	MR. SINGER: I'm going to object. It's	12:38:20
11	immaterial who Mr. Bloom's clients are. He	12:38:21
12	represented Mr. Depp. He's represented many other	12:38:26
13	people in the industry. Let's just get into the	12:38:28
14	issues that relate to this case.	12:38:30
15	Q When did you first meet Mr. Depp?	12:38:32
16	A I don't know when. I can't remember.	12:38:34
17	Q You performed services for Mr. Depp over a	12:38:41
18	period of time; is that correct?	12:38:48
19	A Yeah.	12:38:51
20	MR. CHEW: And, Mr. Bloom, obviously	12:38:51
21	that's -- that's fine to answer in a generic way.	12:38:52
22	I am going to be instructing you on behalf of your	12:38:57

CONFIDENTIAL  
Transcript of Jacob Bloom, Esq.  
Conducted on March 2, 2022

55

1	Cross-Complaint against Mr. Depp?	13:24:06
2	A No, I don't remember.	13:24:08
3	Q Okay. I'm going to ask you to turn to	13:24:11
4	paragraph 10. And it says there: Beginning in	13:24:16
5	1999, Bloom Hergott or its predecessors provided	13:24:22
6	entertainment-related legal services to	13:24:25
7	Cross-Defendants.	13:24:28
8	Does that help refresh your recollection	13:24:31
9	of when you began representation of Mr. Depp?	13:24:33
10	A No, it doesn't -- it doesn't recall -- I	13:24:37
11	don't recall. And I say it strongly to you, I	13:24:43
12	don't recall the particular cause of action,	13:24:50
13	et cetera.	13:24:56
14	Q Do you recall beginning representing	13:24:59
15	Mr. Depp in 1999?	13:25:03
16	MR. CHEW: Objection; asked and	13:25:07
17	answered --	13:25:08
18	THE WITNESS: I don't recall.	13:25:08
19	MR. CHEW: -- several times.	13:25:09
20	Q I'm sorry, what is your answer, Mr. Bloom?	13:25:14
21	A I don't know. It's all confusing to me.	13:25:15
22	Q Now, you also alleged in paragraph 11,	13:25:20

1	A No.	13:35:50
2	Q Do you have any knowledge of any domestic	13:35:51
3	violence by Mr. Depp against Ms. Heard?	13:36:03
4	MR. CHEW: Objection --	13:36:07
5	THE WITNESS: No.	13:36:08
6	MR. CHEW: -- argumentative, leading,	13:36:10
7	assumes facts contrary to the record.	13:36:11
8	THE WITNESS: No.	13:36:14
9	Q Do you have any knowledge of any	13:36:16
10	allegations by Mr. Depp of domestic abuse by	13:36:17
11	Ms. Heard?	13:36:21
12	A No.	13:36:23
13	Q Now, it says, further along, Kindly let me	13:36:23
14	know at your earliest convenience if you and your	13:36:41
15	client are agreeable to doing so, as well as which	13:36:44
16	judicial officers are acceptable. Upon hearing	13:36:47
17	from you, I will have my assistants obtain rates	13:36:50
18	and availabilities, and it's in the context of	13:36:53
19	proposing private retired judicial officers.	13:36:56
20	Do you have a recollection of responding	13:36:59
21	to this and indicating whether you had any	13:37:01
22	objection to these judicial officers or someone	13:37:05

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 11 to exclude deposition testimony of Jacob Bloom ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup>~~18th~~ day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
CIVIL PROCESSING  
2022 MAR 22 A 11:37  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 12 TO EXCLUDE EXPERT  
TESTIMONY OF ADAM BERCOVICI**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, hereby moves the Court to exclude the testimony of one of the Defendant's designated experts, Adam Bercovici, for the reasons set forth fully below. Plaintiff expressly reserves the right to move to exclude Mr. Bercovici on any other and further basis not mentioned herein after the deposition of Mr. Bercovici, which is currently set for March 18, 2022.

### INTRODUCTION

Mr. Bercovici's anticipated testimony is utterly without foundation, irrelevant, and could only serve to confuse or mislead the jury. In this action, Mr. Depp alleges that Ms. Heard defamed him by authoring an Op-Ed in the *Washington Post* accusing Mr. Depp of physical abuse. After one incident of purported abuse, on May 21, 2016, two sets of LAPD officers responded to the Eastern Columbia Building where Mr. Depp and Ms. Heard lived. Mr. Bercovici intends to testify that these two sets of LAPD officers failed to follow correct policies, procedures, and best practices in their response to the call that night. *See* Ms. Heard's Third Supplemental and Rebuttal Disclosure of Expert Witnesses, Exhibit A at 110-126. However, whether these LAPD officers followed the correct policies and procedures is wholly irrelevant to this case. These officers are not parties to this action and this action is not a trial against the LAPD.

Perhaps even more egregiously, in what appears to have become a pattern for Ms. Heard, Ms. Heard attempts to offer expert testimony that certain conduct has occurred – namely that Mr. Depp allegedly physically abused Ms. Heard. Mr. Bercovici opines that property damage and domestic violence occurred on May 21, 2016 based on cherry-picked evidence that unilaterally supports Ms. Heard's position, while ignoring contradictory evidence in the record. Mr. Bercovici has no valid basis whatsoever to render such opinions. Mr. Bercovici's testimony is irrelevant to the issue in this case, lacks foundation, and invades the province of the jury. Furthermore, its

minimal or nonexistent probative value is clearly outweighed by the unfair prejudice it would cause Mr. Depp, and would be certain to confuse or mislead the jury. His testimony should be excluded in its entirety.

### ARGUMENT

**I. Mr. Bercovici's Testimony Regarding Whether the LAPD Followed Policy and Procedure Is Irrelevant to the Issues in the Case.**

Mr. Bercovici's opinion regarding whether the two sets of LAPD officers who responded to a call for service on May 21, 2016 at the Eastern Columbia Building is wholly irrelevant to the case and, on that basis alone, can and should be excluded. *See* Va. Sup. Ct. R. 2:402. Ms. Heard has designated Mr. Bercovici to render an opinion "that, in fact, Officer Saenz and Hadden did not follow policies, procedures or best practices and were derelict in their duties to conduct a thorough, complete, and comprehensive field investigation at their assigned call at 849 S. Broadway, Los Angeles, CA on May 21, 2016." Ex. A at 111-112. Further, "Mr. Bercovici will rebut Ms. Frost's opinion<sup>1</sup> that Officers Diener and Gatlin followed policies, procedures or best practices regarding their dispatch and arrival to 849 South Broadway, Los Angeles, CA on May 21, 2016, and opine that they too were derelict in their duties when they failed to conduct a thorough, complete, and comprehensive field investigation and a report that was required, but not performed." Ex. A at 112.

However, the issue of whether these LAPD officers followed policy and procedure bears no relevance to this case. The only relevance of the LAPD officers to this case is as percipient fact witnesses. Their testimony as fact witnesses requires no expertise that warrants expert testimony and the issue of whether they followed the correct procedure is not at issue in this case nor does it relate

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<sup>1</sup> If the Court decides to exclude the testimony of Mr. Bercovici in its entirety on the basis of relevance then Ms. Frost – Mr. Depp's retained expert in police policy and procedure – may also be unnecessary to this case.

to any claims in this case. Accordingly, Mr. Bercovici's opinion should be excluded as irrelevant.

See Va. Sup. Ct. R. 2:402 ("Evidence that is not relevant is not admissible.").

**II. Any Probative Value of Mr. Bercovici's Testimony Is Substantially Outweighed by the Danger of Unfair Prejudice and the Likelihood of Misleading and Confusing the Jury.**

Mr. Bercovici's opinions also should be excluded because the probative value of his testimony, *if any*, is substantially outweighed by the danger of unfair prejudice to Mr. Depp and the likelihood that it will mislead the jury. Va. Sup. Ct. R. 2:403. As noted above, Mr. Bercovici is proposing to offer irrelevant testimony about whether the two sets of LAPD officers followed policy and procedure on the night of May 21, 2016. Because this issue bears no relevance to the case, Mr. Bercovici's testimony will likely mislead and confuse the jury by introducing irrelevant evidence that may muddy the waters. Accordingly, because Mr. Bercovici's opinions are irrelevant to the claims of this case, unfairly prejudicial, and likely to mislead the jury, they should be excluded,

**III. Mr. Bercovici's Opinion Invades the Province of the Jury.**

While "expert testimony cannot be excluded on the ground that it invades the jury's decision-making role on ultimate issues . . . [t]hat does not mean, however, that experts can be used for matters of common knowledge." *Rhodes v. Lance, Inc.*, 55 Va. Cir. 253 (2001). "The common-knowledge bar rests not on the ground that the expert testimony touches on the core issue of the case (it may or may not do so), but rather that expertise is simply unneeded." *Id.* (granting plaintiff's motion *in limine* to exclude the "[expert's] conclusion that the defendant had the green light" because that is "an inference a layman is equally competent to reach without the unhelpful imprimatur of an expert"). Further, Rule 2:702(b) prohibits expert testimony "that is speculative or which opines on the credibility of another witness." Va. Sup. Ct. R. 2:702(b).

Here, Mr. Bercovici intends to offer testimony that: “based on photos and evidence in the record, that the first set of officers had probable cause to conclude that *a domestic violence crime had been perpetrated upon Ms. Heard on May 21, 2016*, and a thorough, complete and comprehensive investigation and a report was required, but not performed.” Ex. A at 113 (emphasis added); “*Officers Saenz and Hadden ignored evidence* and failed to reasonably determine (or document their reasonable determination) that there was probable cause to conclude that a domestic violence crime had been perpetrated upon Ms. Heard on May 21, 2016 and that a further investigation was required and appropriate.” Ex. A at 118 (emphasis added); “It is clear from the depositions of Ms. Heard, Ms. Pennington, Mr. Drew, and the supporting metadata from the photographs that were taken shortly after the first set of officers left, that *a domestic violence crime had be perpetrated upon Ms. Heard and the evidence was present when the first set of officers were on the scene.*” Ex. A at 119 (emphasis added).

This opinion not only lacks a valid basis, but it invades the province of the jury because the jury is equally competent to determine the issue of whether Mr. Depp abused Ms. Heard “without the unhelpful imprimatur of an expert.” *Rhodes*, 55 Va. Cir. 253. Further, by basing his opinion on the assumption that Ms. Heard’s allegations of abuse against Mr. Depp are accurate and truthful, and that, for example, Mr. Drew’s version of the events that took place on May 21, 2016 is accurate, Mr. Bercovici is necessarily rendering an opinion as to the credibility of numerous other witnesses that dispute Ms. Heard’s account, including, most notably, LAPD Officers Hadden, Saenz, Gatlin, and Diener, Mr. Depp, and Mr. Alejandro Romero among many others. The jury does not require his assistance in assessing the credibility of witnesses with respect to the ultimate issue of whether Mr. Depp physically abused Ms. Heard. Jurors are capable of

assessing the credibility of the witnesses themselves. Rule 2:702(b) requires the exclusion of Mr. Bercovici's opinions.

### CONCLUSION

For the foregoing reasons, Mr. Depp respectfully request that this Court grant his motion *in limine* and exclude Mr. Bercovici's testimony in its entirety.

Respectfully submitted,

 *Ben G. Chew* <sup>AC</sup>

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<sup>22</sup>  
Dated: March 18, 2022



# EXHIBIT A

held/gripped within the palm of Plaintiff's hand while Plaintiff's hand impacted a solid surface with force would likely explain both the palmar orientation of Plaintiff's avulsion injury with amputation, as well as the ulnar abrasion and bruising found in the photographic evidence. Dr. Moore will opine based upon the available evidence that Plaintiff's (current) description of alleged mechanism of injury—a description that has changed and evolved over time—does not fit the photographic, medical, radiographic or testimonial evidence.

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**Expertise and Qualifications**

Mr. Bercovici's C.V. is attached as **Att. 12**. Mr. Bercovici spent 30 years with the Los Angeles Police Department ("LAPD"), retiring in 2012 at the rank of lieutenant. Mr. Bercovici is a law enforcement veteran with over two decades of police supervisory and management experience. He has extensive experience as a field supervisor, uniformed watch commander, both as a Sergeant II and Lieutenant I, along with his multiple assignments as an Officer-in-Charge, Lieutenant II, of specialized detective units.

Since his retirement in 2012, Mr. Bercovici has been a consultant and police and security best practices expert. His prior areas of retained expertise have included patrol and investigation best practices, criminal investigation reviews and matters relating to law enforcement/LAPD policies, procedures, best practices, and the legal and constitutional requirements of law enforcement officers. Mr. Bercovici has been retained over fifty times and has provided deposition and court testimony in both civil and criminal cases.

During his tenure with the LAPD, domestic violence service calls were, by far, one of the most common calls for service—at times accounting for as much as 90% of the calls for service under his command. Mr. Bercovici has decades of experience with domestic violence calls for service, including managing and supervising patrol officers' investigations of domestic violence calls for service, and is intimately familiar with LAPD policies, procedures, best practices and legal obligations of law enforcement related to domestic violence calls for service. He is trained and experienced with issues surrounding domestic violence, including: the cycle of violence; patterns of manipulation, intimidation, and control by abusers; patterns of fear, denial and false hope on the part of victims; the propensity of victims to intentionally or unwittingly protect their abuser from law enforcement action based on love, fear, trauma or hope; the propensity of family and friends to unwittingly enable the cycle of violence to support the victim's actual or perceived desire to protect the abuser from arrest and the criminal justice system, a desire to protect the victim from reliving the trauma through a law enforcement investigation, or a concern that law enforcement intervention will later escalate the frequency or severity of abuse; and the typical reluctance of victims to engage with law enforcement, particularly when officers are summonsed to the scene by persons other than the victim and/or shortly after a traumatic experience.

**Subject Matter of Mr. Bercovici's Rebuttal Opinion**

Mr. Bercovici will provide a rebuttal opinion to Plaintiff's Expert Rachael Frost and her contention that two sets of LAPD officers followed policy, procedure and best practices based on California state law regarding their dispatch and arrival to 849 S. Broadway, Los Angeles, CA on May 21, 2016. The materials Mr. Bercovici reviewed is attached as **Att. 13**.

### Summary of Mr. Bercovici's Rebuttal Opinion

Mr. Bercovici is expected to rebut Ms. Frost's opinion by drawing on his experience and expertise as a Los Angeles Police Department supervisor and manager, supervising police officers, sergeants and detectives handling domestic violence calls for service, and by drawing on his experience and expertise with related issues, including the cycle of violence, and the propensity and tendency of victims and their respective friends and family to be less-than-forthcoming during domestic violence call for services—particularly when the call for service originates from a source other than the victim.

Domestic violence calls for service are, by far, one of the most common service calls received by the LAPD. Thus, LAPD officers are expected to be well-versed with behavioral patterns surrounding domestic violence and anticipate (even expect) that victims and their respective family and friends may be less-than-forthcoming. This is the reason the LAPD has policies and procedures specifically directed to domestic violence calls for service, and stresses the importance of a thorough, complete, and comprehensive field investigation—despite any reluctance by victims to seek medical attention or file a report, and despite any reluctance by victims or witnesses to volunteer information or otherwise cooperate. Pursuant to LAPD policy, every time officers respond to a domestic violence call, officers have the obligation to document whether a crime has occurred or whether it is an incident without probable cause to conclude a crime occurred. In either case, a report must be completed. *See also* Detective Marie Sadanaga, LAPD Domestic Violence Coordinator, Dep. at 24:14-22.

Mr. Bercovici will rebut Ms. Frost's opinion to show that, in fact, Officer Saenz and Hadden did not follow policies, procedures or best practices and were derelict in their duties to conduct a thorough, complete, and comprehensive field investigation at their assigned call at 849

S. Broadway, Los Angeles, CA on May 21, 2016. He will offer his opinion, based on photos and evidence in the record, that the first set of officers had probable cause to conclude that a domestic violence crime had been perpetrated upon Ms. Heard on May 21, 2016, and a thorough, complete and comprehensive investigation and a report was required, but not performed.

Mr. Bercovici will rebut Ms. Frost's opinion that Officers Diener and Gatlin followed policies, procedures or best practices regarding their dispatch and arrival to 849 South Broadway, Los Angeles, CA on May 21, 2016, and opine that they too were derelict in their duties when they failed to conduct a thorough, complete, and comprehensive field investigation and a report that was required, but not performed.

**Officer Saenz and Hadden's Initial Response Prior to Arrival on Scene Evidences**  
**Substandard Performance:** Ms. Frost's opinion begins with her overview of the officer's initial response to the call for service at 849 South Broadway. Her overview of the officers' initial response is an early introduction into her lack of familiarity with LAPD protocol and procedure, including when entering a multi-story building. While running the location for contacts is important, letting the RTO (dispatcher) know that they are Code-6 ( at scene) and will be in fact in a penthouse location is also an important officer-safety detail that was not completed. These types of minor but important tasks would have been the responsibility of Officer Saenz on the initial call because she was the senior, P-3 training officer for Officer Hadden, who was a P-1 probationer, that just started and only had one to three weeks' experience in the field. Hadden 3/11/21 Dep. at 12:13-19; 54:6-9, 13-15; 58:5-11. In fact, Officer Hadden testified that he was only "begin[ning] to understand [LAPD policies and procedures] and comprehend them." Hadden 3/11/21 Dep. at 62:1-18. This type of omission by Officer Saenz is an early indication of her substandard performance.

**Lack of Contact Information for Reporting Party does not Justify Officers Saenz's and Hadden's Abdication of Responsibility:** Ms. Frost states that Officers Saenz and Hadden did not have an identifiable contact. In a city as large and as complex as Los Angeles this is common, and in patrol work is often the norm. Ms. Frost's experience as field officer is less than five years in a much smaller agency and she is apparently unfamiliar with the expectations of an LAPD Area Command. The fact that there is an anonymous contact or that the call is from a second party is not a reason for Los Angeles police officer to abdicate their responsibility to handle each call thoroughly and competently for service they are assigned, yet they failed to do so.

**Officers Saenz and Hadden Failed to Properly Handle the Call and Failed to Conduct a Thorough, Complete, and Documented Field Investigation and Report Once They Arrived on Scene:** Ms. Frost opines that the officers properly handled the call. They did not. The officers first contacted Joshua Drew. According to Mr. Drew's testimony, he greeted both of the officers upon arrival. Drew Dep. 65:2-8. Mr. Drew then:

walked them through PH 3 to show them the damage, show them the broken glass. [The officers] had already walked through the hallway, over the gigantic wine stain throughout the entire hallway.... [He] [s]howed them the dent in the door shaped like the bottom of a wine bottle in PH 1. [He] [t]ook [Officers Saenz and Hadden] into PH 5 to see broken picture frames, smashed glass, Raquel's jewelry and things like that strewn about the apartment.

Drew Dep. 65:7-20; *see also* Drew Dep. at 115:25-116:25. Mr. Drew testified that Officers Saenz's and Hadden's "communication to [him] throughout ... [involved Mr. Drew] just pointing things out to them and them responding in the affirmative or speaking to each other and say, 'Yes, there's broken glass. That looks like something that's been shoved. It looks like something has transpired here.'" Drew Dep. at 221:1-6. Officer Hadden then stated to Mr. Drew: "You've walked us around.

There's damage in the apartments. She has marks on her face. If she wants to file a report, we will go pick him up." Drew Dep. at 222:7-12.

Although the first set of officers were only on the scene for fifteen minutes, they were nonetheless presented with sufficient evidence during their abbreviated visit to conclude that a crime had, in fact, occurred, but failed to properly investigate, document their investigation or prepare a crime (or even incident) report so that a detective could follow up and appropriately pursue the matter further. They likewise failed to provide Ms. Heard with the Domestic Violence/Victim Identification Notification Everyday Pamphlet. *See* Detective Marie Sadanaga, LAPD Domestic Violence Coordinator, Dep. at 94:2-9, 17-19, 95:18-96:14.

The LAPD's document production in this case includes guidance on domestic violence case preparation. F1332.1-F1332.4. Appropriate case preparation required the officers to, among other things:

- Note the complainant's emotional and physical condition.
- Ensure all evidence is gathered and preserved, e.g., bloodied clothing, damaged phones/property.
- Ensure photographs are taken of injuries or lack of injury to complainant and accused, both the day of and a day or two after the incident.
- Ensure photographs are taken of scene and damaged property, e.g. broken furniture, holes in walls, damaged phones, phone cords pulled from the wall, evidence of alcohol consumption, general disarray.
- Canvass location and interview all witnesses, including children, "fresh complaint" witnesses, neighbors, and local law enforcement. Parental consent to interview a minor is not required for a criminal investigation within the City.
- Gather and review all documents related to the incident, including but not limited to DFARs, FIs, sergeant's logs, arrest reports, dispatch records and any audio/video recordings.

F1332.1-F1332.2. *See also* Detective Marie Sadanaga, LAPD Domestic Violence Coordinator, Dep. at 28:1-20.

Officers Saenz and Hadden failed to appropriately complete these tasks. They did not seek or obtain building security footage, they did not gather and preserve evidence, they did not take photographs of injuries (or any purported lack of injuries to complainant) either the day of or a day or two after. They did not take photographs of the scene, damaged property or general disarray. They did not interview all witnesses, and failed, as Ms. Frost recognizes, to separately interview Raquel Pennington. They did not appropriately document and report the complainant's physical and emotional condition. And, they did not complete the required report. *See also* Detective Marie Sadanaga, LAPD Domestic Violence Coordinator, Dep. at 24:14-22, 28:1-20.

Instead, Mr. Drew, Ms. Pennington and Ms. Heard were left to contemporaneously document matters that should have been documented by Officers Saenz and Hadden and included in a crime report. Mr. Drew, Ms. Pennington and Ms. Heard have all presented contemporaneous evidence of Ms. Heard's injuries to her face, property damage and general disarray. Drew Dep. Ex. 13-15. And both Ms. Pennington and Mr. Drew prepared contemporaneous reports of what transpired. Drew Dep. Ex. 16.

Ms. Frost cites Ms. Heard's indication that she did not want to give a statement on the advice of counsel and notes the absence of a detailed witness statement by Mr. Drew, noting that Ms. Pennington was not even separately interviewed for a statement, to improperly excuse the officers from fulfilling their duties. Ms. Frost even shapes her "Step-by-[Step] Procedure" to accommodate and excuse the officers' performance deficiencies. Ms. Frost, for example, expressly requires "witness statements," for steps "xxv-xxvii" of her "Procedure to Respond to a Call for Domestic Violence." According to Ms. Frost, officers should not even "Consider writing an Incident report to document the call for service" *unless* there is a witness statement, despite non-testimonial evidence of a crime or the fact that the officers are responding to a domestic



violence call for service. Ms. Frost is plainly mistaken and misapprehends the duty and obligations of LAPD officers responding to a domestic violence calls for service under both LAPD policy and California State Law. Hadden Dep. at 174:5-12 (recognizing that if he perceives injuries, he has an obligation to prepare a report); Detective Marie Sadanaga, LAPD Domestic Violence Coordinator, Dep. at 35:10-13, 36:12-18, 85:13-86:16 (recognizing domestic violence incident reports are required by state law for every domestic violence incident the LAPD responds to, even if no crime is committed and no crime report prepared). Manual Section 03.01.00J-12 states: "*Officers who are responsible for the investigation for a domestic violence incident [even] where the corpus delicti of a specific crime is not present shall complete an Investigative Report.*" These reports are then submitted to the watch commander. It is important to understand that in the policy language of the LAPD the term *shall* is a directive, essentially a direct order to implement a task in this case, to take a report. Yet in Ms. Frost item twenty-six the term *consider* is in line with the term *may*, which allows for discretion on the part of the officer, and is contrary to LAPD policy and procedure and California state law.

Ms. Frost further cites that Ms. Heard declined medical treatment in an effort to ignore Officers Saenz's and Hadden's failure to conduct a thorough, complete, and documented field investigation. When Officer Saenz first encountered Ms. Heard, she was "crying, red-eyed and was not making eye contact" with Officer Saenz. Saenz Dep. 146:10-13. Officer Hadden likewise noted that Ms. Heard "has marks on her face." Drew Dep. at 222:7-12; Hadden Dep. at 197:18-198:1 (recognizing he witnessed "redness," but claiming, despite contemporaneous photographs of injury, that it was consistent with crying). Officer Hadden testified that the "little time he dealt with [Ms. Heard]," she was "unresponsive and crying," Hadden Dep. at 299:9-12, and she "was uncooperative because she was emotional, she was crying, she wasn't sure whether she wanted to

file a report or not, and ... then she said she did not want to.” Hadden Dep. at 231:18-22, 232:5-6. Ms. Heard’s appearance, emotional state, and reported behaviors are consistent with typical behavioral patterns exhibited by domestic violence victims, and in no way excuse Officers Saenz’s and Hadden’s failure to conduct a thorough, complete, and documented field investigation and report. *See also* Detective Marie Sadanaga, LAPD Domestic Violence Coordinator, Dep. at 15:2-6, 11-21.

As noted above, Officers Saenz and Hadden were on scene for fifteen minutes or less, and conducted a haphazard and cursory investigation, failed to document available evidence or prepare a report. It is my opinion that Officer Saenz’s and Hadden’s deficient conduct in responding their assigned radio call at 849 S. Broadway, Los Angeles, CA on May 21, 2016 was a violation of established policy, including Manual Section 03.01.00J, and California Penal Code 13700.

Within the LAPD there is an accepted standard of performance, and the agency provides training and policy to reinforce those standards. Whether these are applied at calls for service is the responsibility of each officer, but there is expectation that the senior officer at scene has the greater responsibility. Officer Saenz, either by willful omission or incompetence, rushed through the call for service and failed to follow established policy.

**Officers Saenz And Hadden Had Probable Cause to Conclude That A Domestic Violence Crime Had Been Perpetrated Upon Ms. Heard On May 21, 2016.** Officers Saenz and Hadden ignored evidence and failed to reasonably determine (or document their reasonable determination) that there was probable cause to conclude that a domestic violence crime had been perpetrated upon Ms. Heard on May 21, 2016 and that a further investigation was required and appropriate. Contemporaneous evidence, including photographs of Ms. Heard’s injury to her face, property damage and general disarray, and even explicit statements by Officer Hadden to Mr.

Drew demonstrate that there was probable cause to conclude that a crime was committed. As Mr.

Drew testified:

[When he] was outside the door with the male officer [Hadden]... [Mr. Drew] was asking what, if anything, could be done.... And [Officer Hadden's] comment to [Mr. Drew] specifically was there's damage in these apartments. Her face is red. If she wants to file a report, we have enough here to go pick [Ms. Heard's husband] up.

Drew Dep. 65:7-20; Drew Dep. at 222:7-12; *See also* Detective Marie Sadanaga, LAPD Domestic Violence Coordinator, Dep. at 97:3-8, 98:2-15, 98:21-22, Ex. 26 (recognizing that Ms. Heard's contemporaneous photo evidenced an injury to her right cheek and a further investigation should have been conducted).

Contrary to Ms. Frost's opinion, the evidence supports a conclusion that Officers Saenz and Hadden, in fact, had probable cause to conclude that a domestic violence crime had been perpetrated upon Ms. Heard on May 21, 2016. It is clear from the depositions of Ms. Heard, Ms. Pennington, Mr. Drew, and the supporting metadata from the photographs that were taken shortly after the first set of officers left, that a domestic violence crime had be perpetrated upon Ms. Heard and the evidence was present when the first set of officers were on the scene.

Even if the officers could not appreciate that probable cause to conclude a crime occurred was present (and it was), they were mandated to make a domestic violence incident report. Manual Section 03.01-00J-12. They failed to do so and violated not only the department policy but California Penal Code Section 13700. *"A report must be completed on all incidents which meet the criteria of domestic violence as defined in Penal Code Section 13700 whether a specific crime has been identified. The unwillingness of the victim of domestic violence to sign a report does not exempt officers from the requirement to complete a report of the incident."*

**Officers Diener and Gatlin Failed to Properly Handle their Call and Likewise Failed to Conduct a Thorough, Complete, and Documented Field Investigation and Report Once They Arrived on Scene:** In her report, Ms. Frost incorrectly concludes that Officers Diener and Gatlin did not have an independent responsibility to fully investigate upon their arrival on the scene. They did. Pursuant to LAPD policy and practice, each call needs to be handled, investigated, and closed out as its own separate call. This is especially true in the case of domestic violence calls where victim and witness cooperation can be fluid. Officers Diener and Gatlin were even less detailed in their approach to the call than Officers Saenz and Hadden, and that is well documented in their BWV. They merely ask Ms. Heard if she is okay, but did not take the time to inspect thoroughly Ms. Heard, even though they both admit later that the lighting was dim. Further, they were even unclear as to which person was Ms. Heard. This is clearly a failure on the part of this second set of officers to independently conduct a thorough, complete, and documented field investigation and report. Moreover, it is apparent that one or both of these officers are not properly trained on domestic violence and related behavioral patterns and tendencies. Indeed, years later in his deposition, Officer Diener could not articulate what the cycle of violence is and how it applies to the handling of a domestic violence call.

In Mr. Bercovici's opinion Officers Saenz, Hadden, Diener and Gatlin all failed to follow LAPD policies and procedures and California state law, and their conduct in responding to the domestic violence radio calls at 849 S. Broadway, Los Angeles, CA on May 21, 2016 constitutes neglect of duty by failing to take the minimum steps to ensure that the calls were properly responded to, investigated and reported. Further, Ms. Frost's opinion is fundamentally flawed because she lacks the experience of an LAPD supervisor charged with supervising and managing

officers in their daily work to ensure their adherence to established department policy and applicable law.

All of these opinions are provided to within a reasonable degree of probability or certainty in this field of police and security best practices.

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#### **Expertise and Qualifications**

Dr. Jacobs C.V. is attached as **Att. 14**, which details Dr. Jacobs' professional experience and all articles and testimony completed over the last ten years. Dr. Jacobs is an expert in the fields of economics, finance, econometrics, and statistics. Dr. Jacobs is employed as a Managing Director for Berkeley Research Group in Dallas, Texas. Dr. Jacobs has also employed such analysis in government, teaching, strategy consulting, and investment analysis. Dr. Jacobs has taught on the faculty of M.I.T., Harvard, and the University of Texas at Austin, and given advanced seminars at over a dozen additional universities. Dr. Jacobs's opinions are offered to a reasonable degree of economics, finance, econometrics, and statistics probability and/or certainty.

#### **Summary of Engagement**

In particular as it relates to this case, Dr. Jacobs analyzed Mr. Depp's Q scores and the opinions of Mr. Bania as disclosed in Plaintiff's Supplemental Designation/Identification of Expert Witnesses. Dr. Jacobs has been asked to respond to Mr. Bania's opinions. In addition,

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 12 to exclude expert testimony of Adam Bercovici ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

---

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup> 18th day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
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CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 13**  
**TO EXCLUDE THE TESTIMONY OF ELLEN BARKIN**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, and, for the reasons set forth fully below, moves this Court to exclude the testimony of Ellen Barkin.

### INTRODUCTION

As part of this action, Ms. Heard claims that Mr. Depp physically abused her. The deposition of third-party witness Ellen Barkin was taken on November 22, 2019, and Ms. Heard has designated portions of Ms. Barkin's deposition transcript as evidence in this action. Ms. Barkin testified that she and Mr. Depp were in a brief intimate relationship approximately three decades ago. She testified that although Mr. Depp was allegedly "verbally abusive" to others (but not to Ms. Barkin), she never witnessed him physically attack anyone, and that he was never physically abusive towards Ms. Barkin. Nonetheless, Ms. Barkin further testified that "there is always an air of violence around [Mr. Depp]" (whatever that means). Barkin Dep. at 28:24-25. She further testified that she once witnessed Mr. Depp "toss" a bottle across a room, and that the bottle did not appear to be aimed at anyone and did not hit anyone. Barkin Dep. at 26:11-25; 27:15-19.

Ms. Barkin's testimony should be excluded because (1) her testimony regarding her relationship from three decades ago in which she plainly admits Mr. Depp did not abuse her is irrelevant to Ms. Heard's claims of abuse in this action; (2) to the extent it is offered to show that Mr. Depp has some sort of predisposition to violence, it does not support that theory and in any event it is improper character and reputation evidence that Ms. Heard only seeks to introduce to establish propensity, in violation of Va. R. Sup. Ct. 2:404; and (3) it is extremely remote, and any probative value is slight, such that it would be unduly prejudicial to Mr. Depp for such evidence to be presented to the jury. Therefore, Ms. Barkin's testimony should be excluded in its entirety.

## ARGUMENT

### **I. Ms. Barkin's Testimony is Irrelevant.**

Irrelevant evidence is inadmissible. Va. R. Sup. Ct. 2:402. Evidence is only relevant where it has a tendency to make the existence of any fact in issue more probable or less probable than it would be without the evidence. Va. R. Sup. Ct. 2:401. Here, Ms. Barkin plainly admits that, during her relationship with Mr. Depp, he was never verbally or physically abusive towards her. Barkin Dep. at 39:8-15; 29:16-17. Ms. Barkin's further testimony is irrelevant because it is vague to the point of incomprehensibility—she testifies that Mr. Depp had “an air of violence” around him despite never witnessing him be violent with anyone other than in one isolated instance where Mr. Depp “tossed” a bottle that was neither aimed at anyone, nor hit anyone. Barkin Dep. at 26:11-25; 27:15-19. Ms. Barkin's testimony does not make the existence of any fact at issue in this case more or less likely to be true—it is irrelevant, and vague to the point of being nonsensical. It should be excluded.

### **II. Ms. Barkin's Testimony is Improper Character Evidence.**

Evidence of a person's character or character trait is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except in limited circumstances inapplicable here. Va. R. Sup. Ct. 2:404. Ms. Barkin's testimony that Mr. Depp “had an air of violence” around him—in addition to being vague and ambiguous—is improper character evidence that is inadmissible and must be excluded.

Ms. Barkin's testimony that Mr. Depp tossed a bottle is also inadmissible. It is well established in Virginia that evidence of specific acts of misconduct committed by a witness are not admissible to impeach the witness' credibility despite any bearing on veracity. *Daugherty v. Commonwealth*, No. 0962-11-2, 2012 WL 1499356, at \*4 (Va. Ct. App. May 1, 2012); *see also Clark v. Commonwealth*, 202 Va. 787, 789–90 (1961).

Ms. Heard's case centers around whether Mr. Depp abused *her*, and Ms. Barkin's vague and inapposite testimony has no bearing on that point. Any inferences made from irrelevant scenarios are impermissible. If the jury hears such evidence of unadjudicated misconduct, it will unjustly turn the jury's attention to collateral matters. *See Clark*, 202 Va. at 790.

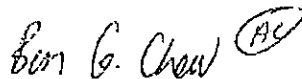
**III. Any Probative Value of Ms. Barkin's Testimony Is Substantially Outweighed by the Danger of Unfair Prejudice and the Likelihood of Misleading the Jury.**

Finally, Ms. Barkin's testimony also should be excluded because the probative value of such testimony, if any, is substantially outweighed by the danger of unfair prejudice to Mr. Depp and the likelihood that it will mislead the jury. As relayed above, such evidence is completely unrelated to the claims at issue in this case and should not be used to evaluate whether Mr. Depp abused Ms. Heard.

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that this Court grant their motion *in limine* and exclude Ms. Barkin's testimony.

Respectfully submitted,



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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March ~~18~~<sup>22</sup>, 2022

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 13 to exclude testimony of Ellen Barkin ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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**SEEN AND OBJECTED TO:**



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the <sup>22nd</sup> ~~18th~~ day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 14 TO EXCLUDE EXPERT  
TESTIMONY OF DOCTOR DAVID R. SPIEGEL**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, hereby moves the Court to exclude the testimony of Dr. David R. Spiegel, for the reasons set forth fully below.

### INTRODUCTION

Ms. Heard designation of Dr. Spiegel to opine on Mr. Depp's mental condition – without ever examining him – is an affront to two Orders of this Court. The Court has denied Ms. Heard's request for an IME of Mr. Depp not once, but twice, specifically concluding that Mr. Depp's mental condition is not at issue (unlike Ms. Heard's), and that the parties are not similarly situated. Moreover, Dr. Spiegel's anticipated testimony is utterly without foundation, irrelevant, and could only serve to confuse or mislead the jury with scientifically-useless testimony. Ms. Heard has nonetheless designated Dr. Spiegel as an expert witness *to testify about Mr. Depp's mental health* even though Dr. Spiegel *has never met* Mr. Depp, nor conducted *any* sort of examination or personal evaluation of Mr. Depp. *See* Ms. Heard's Third Supplemental and Rebuttal Disclosure of Expert Witnesses, attached as Exhibit A, at 74-91. Dr. Spiegel opines as to alleged conduct – that Mr. Depp allegedly abused Ms. Heard – based on cherry-picked evidence. *Shamelessly, Dr. Spiegel actually claims to have identified a mental decline in Mr. Depp by comparing his performance at deposition with his performance as an actor in the Pirates of the Caribbean franchise.*<sup>1</sup> That is outrageous. Dr. Spiegel has no valid basis to render such opinions, which are irrelevant, lack foundation, and invade the province of the jury. Their nonexistent probative value is outweighed by their prejudicial effect.

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<sup>1</sup> “[Mr. Depp] really was relatively disorganized in terms of trying to convey things in terms of what he wanted to say. And really, what I’m comparing that to is the gentleman that I – I have to admit, I’ve seen all – not all his movies. I’ve seen a lot of the pirate movies. And so I’ve seen him communicate thoughts. I’ve seen him communicate words. And the gentleman I saw in the deposition, the video, was not that person that I saw. Knowing that he obviously could do this at one time, that wasn’t the same person. That wasn’t the same cognitive set that I saw.” (Spiegel Dep. at 56:12-57:2).

## ARGUMENT

### **I. Dr. Spiegel's Testimony Regarding Mr. Depp's Mental Health Is Irrelevant**

Dr. Spiegel's opinion regarding Mr. Depp's mental health is irrelevant to the case and, on that basis alone, should be excluded. *See* Va. Sup. Ct. R. 2:402. Indeed, *twice*, the Court has denied Ms. Heard's request for an IME of Mr. Depp, finding that Mr. Depp has not put his mental health at issue in this case. *See* November 19, 2019 Order (denying Ms. Heard's request for an IME); *see also* October 8, 2021 Hr'g Tr. at 30:19-31:1 (where the Court found that "the plaintiff has not put his mental condition into controversy unlike the defendant who intends to use expert testimony to discuss lingering issues of IPV and PTSD in relation to her defense and counterclaim").

Ignoring the Court's clear ruling on this issue, Ms. Heard has designated Dr. Spiegel to testify: (1) about "the medical and psychological impact on Mr. Depp based on the evidence of Mr. Depp's alcohol and drug use since the 1980s" (Ex. A at 75); (2) that, based on Dr. Spiegel's review of Mr. Depp during his deposition, "Mr. Depp demonstrated impaired attention, difficulty with word-finding retrieval, demonstrated impaired cognitive memory and processing speed, difficulty in his ability to focus on the topic at hand, disorganized thoughts, difficulty recalling details of events and difficulty with impulse control and demonstrated erratic behavior." (Ex. A at 77); (3) that "Mr. Depp has engaged in conduct indicative of or consistent with these risk factors" of an IPV perpetrator (Ex. A at 80); (4) "that Mr. Depp has a 'frail temperament' that results in lack of behavioral control and impulsivity" (Ex. A at 81); (5) and that "Mr. Depp has engaged in behavior and conduct indicative of and consistent with all these symptoms of Narcissistic Personality Disorder which is another risk factor for IPV" (Ex. A at 85). Mr. Depp's mental condition is not at issue, so Dr. Spiegel's opinions should be excluded as irrelevant. *See* Va. Sup. Ct. R. 2:402 ("Evidence that is not relevant is not admissible").

## II. Dr. Spiegel's Testimony Lacks Foundation, Violates Professional/Ethical Standards.

Moreover, Dr. Spiegel's opinion lacks any valid basis or proper foundation, because it is not based on any investigation from which his conclusions could legitimately be drawn, and is instead based on only cherry-picked evidence, which is contradicted by other record evidence (*i.e.*, compare Ms. Heard's images of purported injuries and property damage on the night of May 21, 2016 and Ms. Heard's testimony that the LAPD officers walked across broken glass and observed property damage with sworn testimony of those same LAPD officers that they did not observe any injuries to her face or any property damage) and *an interview with Ms. Heard* (Ex. A at 75).

Perhaps even more egregiously than his reliance solely on cherry-picked evidence from one side, *Dr. Spiegel is seeking to opine about Mr. Depp's mental condition despite the fact that he has never even met Mr. Depp nor conducted any mental examination or testing of Mr. Depp.* The notion that a valid opinion about Mr. Depp's mental condition can be properly based on merely reviewing a deposition and scant, illegible mental health records is not only preposterous on its face, but inconsistent with professional standards of psychiatrists. In rendering an opinion about cognitive defects and psychiatric diagnoses in Mr. Depp without conducting a personal evaluation, Dr. Spiegel has failed to abide by the practices accepted by the relevant professional organizations that dictate standards of care with regard to forensic practice. *See* Mr. Depp's Designation of Opposing Expert Witnesses, attached as Exhibit B, at 34-35. Mr. Depp's retained forensic psychiatrist, Dr. Richard Shaw, has opined that, based on the Goldwater Rule, psychiatrists should not render professional opinions about the mental state of individuals they have not personally and thoroughly evaluated. Ex. B at 34. Further, the American Psychiatric Association (APA) Ethics Committee asserted that while it is reasonable for psychiatrists to share their expertise about psychiatric issues in general, *it is unethical to offer a professional opinion about an individual*

*without conducting a psychiatric evaluation.* Ex. B at 38. Further, Dr. Spiegel’s response that his “opinions, which are not diagnoses, but observed behaviors and statements from Mr. Depp that are consistent with IPV and narcissism, do not run afoul of the Goldwater Rule” (Ex. A at 90) ignores the APA Ethics Committee’s clarification in 2017 that the rule applied to all professional opinions offered by a psychiatrist, not merely those limited to affirming the presence or absence of a psychiatric diagnosis. Ex. B at 38. Indeed, *Dr. Spiegel even conceded in his deposition that in rendering this opinion of Mr. Depp, he had violated the Goldwater Rule.* See Spiegel Dep. 302:5-7 (“But certainly based on what is being said, I am saying something that the Goldwater, okay, does not agree with”). His opinions lack foundation and *egregiously* violate best practices.

### **III. Dr. Spiegel’s Testimony Invades the Province of the Jury.**

While “expert testimony cannot be excluded solely on the ground that it invades the jury’s decision-making role on ultimate issues . . . [t]hat does not mean, however, that experts can be used for matters of common knowledge.” *Rhodes v. Lance, Inc.*, 55 Va. Cir. 253 (2001). “The common-knowledge bar rests not on the ground that the expert testimony touches on the core issue of the case (it may or may not do so), but rather that expertise is simply unneeded.” *Id.* (granting plaintiff’s motion *in limine* to exclude the “[expert’s] conclusion that the defendant had the green light” because that is “an inference a layman is equally competent to reach without the unhelpful imprimatur of an expert”). Further, Rule 2:702(b) prohibits expert testimony “that is speculative or which opines on the credibility of another witness.” Va. Sup. Ct. R. 2:702(b).

Astonishingly, Dr. Spiegel actually seeks to opine that “Mr. Depp has slapped, hit, shoved Ms. Heard on a regular basis, and has also head-butted her, grabbed her hair and punched her, dragged her across the room, kicked her, thrown objects at her, strangled her, and suffocated her.” Ex. A at 87. *Dr. Spiegel stated at his deposition that he intends to opine that Mr. Depp has*

*committed acts of intimate partner violence (“IPV”) to a degree of medical certainty.* See Spiegel Dep. 184:4-6 (“Q. But it’s your opinion that Mr. Depp has committed IPV, to a degree of medical certainty? A. Correct.”). This opinion not only lacks a valid basis and exceeds what a psychiatrist can opine to, it invades the province of the jury because the jury is equally competent to determine the issue of whether Mr. Depp abused Ms. Heard “without the unhelpful imprimatur of an expert.” *Rhodes*, 55 Va. Cir. 253. Further, by basing his opinion on the assumption that Ms. Heard’s allegations of abuse against Mr. Depp are accurate and truthful, Dr. Spiegel is necessarily rendering an opinion as to the credibility of numerous other witnesses that dispute Ms. Heard’s account. The jury does not require his assistance in assessing the credibility of witnesses with respect to the ultimate issue of whether Mr. Depp physically abused Ms. Heard and can assess the credibility of the witnesses themselves. Rule 2:702(b) requires the exclusion of Dr. Spiegel.

**IV. Any Probative Value of Dr. Spiegel’s Testimony Is Substantially Outweighed by the Danger of Unfair Prejudice and the Likelihood of Misleading the Jury.**

Finally, Dr. Spiegel’s opinions also should be excluded because the probative value of his testimony, *if any*, is substantially outweighed by the danger of unfair prejudice to Mr. Depp and the likelihood that it will mislead the jury. Va. Sup. Ct. R. 2:403. As noted above, Dr. Spiegel is proposing to offer damaging testimony about the character and mental condition of Mr. Depp without conducting *any* evaluation based on principles that have been endorsed by the APA, American Psychological Association, American Medical Association, American Academy of Psychiatry and the Law, and the American Board of Forensic Psychology. Ex. B at 46. “The Goldwater Rule was established specifically to discourage testimony of this nature recognizing that when a psychiatrist provides opinions about mental status and psychiatric diagnoses, he/she carries an authority that bears significant weight in both legal proceedings and with the general public.” Ex. B at 46. Such testimony should be excluded as unfairly prejudicial and misleading.



Respectfully submitted,

*Ben. G. Chew* 

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*Counsel for Plaintiff and  
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Dated: March 18, 2022

# Exhibit A

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**Expertise and Qualifications**

Dr. Spiegel's C.V. is attached as **Att. 7**. Dr. Spiegel is a Professor of Psychiatry and Behavioral Sciences at Eastern Virginia Medical School, which he joined in 2001 after almost a decade in private practice. Dr. Spiegel obtained his medical degree from SUNY-Health Science Center at Brooklyn, and then completed his psychiatry residency at Dartmouth-Hitchcock and Hershey-Penn State. Dr. Spiegel is a clinical supervisor for psychiatry residents and psychology interns and presents to community mental health professionals. Dr. Spiegel's inpatient and outpatient practices involve new and follow-up comprehensive evaluations, which include history, mental status examination, diagnoses, and treatment planning, and encompasses about 85-90% of Dr. Spiegel's daily workload. Throughout his career, Dr. Spiegel has diagnosed, treated and provided therapy to patients suffering from varying degrees of alcohol and substance abuse, as well as to both victims and perpetrators of intimate partner violence ("IPV").

Dr. Spiegel has testified as an expert in the Commonwealth of Virginia, as well as Maryland and South Carolina on a range of topics in psychiatry and behavioral sciences. He has written and lectured extensively on the effects of alcohol and drugs (both legal and illegal) on the human brain and the person's interactions with others (both short-term and long-term), the causes and effects of intimate partner abuse, and other psychiatric issues.

In conjunction with the rendering of his opinion in this litigation, Dr. Spiegel reviewed and relied upon the relevant pleadings, videos, audios, pictures, text messages, emails, medical records, and other documents produced in discovery, testimony from the UK, depositions, see

Att. 8 (“data reviewed” or the “record evidence”), and an interview with Ms. Heard. Dr. Spiegel twice requested an assessment of Mr. Depp, but Mr. Depp declined.

Dr. Spiegel will testify as an expert in the fields of Psychiatry and Behavioral Sciences. Dr. Spiegel bases his opinions, to within a reasonable degree of medical and professional probability and/or certainty in the fields of psychiatry and behavioral sciences, upon his background, experience, knowledge, a review of the materials provided to him, and other information available to him, including the sources cited in this Designation.

Dr. Spiegel has been engaged to analyze and opine on the impact of alcohol and substance abuse, including the combination of drugs taken by Mr. Depp, and the potential impact of sustained use of these substances on memory, cognition, and how this may impact Mr. Depp. Dr. Spiegel has also been asked to analyze the risk factors associated with perpetrators of Intimate Partner Violence (“IPV”), and in his evaluation of the record evidence, whether Mr. Depp has exhibited conduct or behaviors indicative or consistent with any of these risk factors. Dr. Spiegel will also testify relating to specific drugs and alcohol and their medical and psychiatric effects and impacts, the diagnoses and treatment of patients with alcohol and drug/substance use disorder, evidence of medical and psychiatric consequences of prolonged substance abuse, characteristics and behaviors consistent with prolonged substance abuse and IPV, and medical and psychological characteristics and explanations of behaviors demonstrated by the record evidence, Dr. Spiegel will also testify as set forth below.

**I. The Impact of Alcohol and Drug Use/Abuse Over Limited and Prolonged Periods of Time.**

Dr. Spiegel is expected to testify about the medical and psychological impact on Mr. Depp based on the evidence of Mr. Depp’s alcohol and drug use since the 1980s. Dr. Spiegel is expected to testify that the record evidence demonstrates that Mr. Depp has a history of using or

overusing alcohol and controlled drugs, including cocaine, ecstasy (MDMA), magic mushrooms and cannabis as well as certain prescribed drugs (notably Oxycodone, Roxicodone or Roxies, Xanax and Adderall). Dr. Spiegel is also expected to testify that regularly associating with others who extoll the virtues of drugs is an indicator of a drug problem, and in this case, Mr. Depp regularly associated with such people, including Hunter S. Thompson, Keith Richards, and Marilyn Manson, who extolled the virtues of drugs and alcohol. Friends and associates of Depp have remarked publicly that hanging out with Mr. Depp means surrounding one's self with drugs and alcohol. Dr. Spiegel will also testify about record evidence, including but not limited to, Dr. Kipper attempting to treat Mr. Depp for years for "polysubstance abuse" (the abuse or dependence to many substances), text messages where Mr. Depp is seeking cocaine and ecstasy, text messages where Mr. Depp requests more of his prescribed medications, purporting to lose or be confused by the location of the doses prescribed, text messages to his nurse that he was "high as a muthafucka" when he made the film, Black Mass, articles where Mr. Depp admits that he spends much more than \$30,000 a month on wine, deposition and trial testimony of Mr. Depp's drug and alcohol abuse, and notes from Mr. Depp's own doctors and nurses, including Dr. Kipper's analysis that Mr. Depp "is uncomfortable, is pessimistic that he will ever be able to stop doing drugs, actually romanticizes the entire drug culture and has no accountability for his behaviors." Based on this evidence, Dr. Spiegel is expected to testify that Mr. Depp's conduct is indicative of and consistent with displaying a long-term, alcohol and drug addiction and has abused drugs and alcohol, which is considered a significant risk factor and consistent with perpetrators of IPV, as further discussed below.

Dr. Spiegel is also expected to testify that hundreds of studies show a significant link between substance abuse and memory loss, which, as a result, affects cognitive functions such as

learning, language and comprehension. The record evidence shows that Mr. Depp has experienced blackouts, periods of significant confusion, thinking people are present who are not, imagining entire conversations or fights with people not present, and the like. When a person experiences a blackout during alcohol or drug use, for example, it prevents the brain from completing the process of forming memories. Persistent drug use can cause not only issues with recalling recent events but also long-term memory loss. Drug and alcohol use affects the hippocampus which is essentially the brain's memory-storage system. Someone who becomes heavily dependent on drugs, including alcohol, will start to see long-lasting effects to their memory and brain function. They may begin to struggle with learning new things and have trouble recalling details such as birthdays and other important dates. Dr. Spiegel is also expected to testify that there is a high correlation between domestic abuse, heavy alcohol abuse, and cognitive disorders. *See Differential Cognitive Profiles of Intimate Partner Violence Perpetrators Based on Alcohol Consumption, Alcohol Volume 70, August 2018, Pages 61-71, Sara Vitoria-Estruch; Angel Romero-Martínez; Marisol Lila; Luis Moya-Albiol.* Dr. Spiegel is expected to testify that approximately 85% of individuals in rehab programs have a history of IPV.

Dr. Spiegel is expected to testify that based on his review of Mr. Depp during the video deposition taken of Mr. Depp on November 10, 11 and 12, 2020, and December 14, 2021, Dr. Spiegel was able to review and assess Mr. Depp's appearance, behavior and thought process, thought content, cognitive symptoms, insight and judgment. Dr. Spiegel is expected to testify that Mr. Depp demonstrated impaired attention, difficulty with word-finding retrieval, demonstrated impaired cognitive memory and processing speed, difficulty in his ability to focus on the topic at hand, disorganized thoughts, difficulty recalling details of events and difficulty with impulse control and demonstrated erratic behavior. Dr. Spiegel is expected to testify that

based on Mr. Depp's age of 58, these impairments cannot be attributable to age, but are consistent with and a direct result of Mr. Depp's sustained use and abuse of alcohol and drugs. This is also consistent with the record evidence, which has demonstrated Mr. Depp having cognitive impairments not in line with his age, such as failing to recall his lines for his movies, and having them read to him while wearing an earpiece. Dr. Spiegel is further expected to testify that Mr. Depp's misrepresentations of sobriety and downplaying and failure to take responsibility for his drug and alcohol use are consistent with those individuals who have an alcohol and drug use disorder. Dr. Spiegel has also reviewed Mr. Depp's UK testimony and will testify that the inconsistencies in Mr. Depp's testimony regarding his drug and alcohol abuse is a clear example of patients with alcohol and drug use disorder. Dr. Spiegel is also expected to testify that a 2- to 5-day detoxification from drugs and alcohol is only the first step of rehabilitation treatment – this must be followed up with an extended plan or program, and a “cleansing” is not an effective mechanism to repair the cognition and memory effects of long-term drug and alcohol use disorder. In addition, Dr. Spiegel is expected to testify that drugs prescribed to Mr. Depp, including Seroquel, Neurontin, and Adderall are highly abusable, and prolonged abuse can have damaging effects on brain function, cognition, and memory. Dr. Spiegel is also expected to testify that while Mr. Depp was on these medications, he was not “sober” by any medical definition. Dr. Spiegel will further testify that the use of MDMA can cause feelings of being enraged, auditory and visual hallucinations, and erratic and uncontrolled behavior including self-mutilation and self-harm and cutting off one's own finger is behavior of that can occur in users of MDMA.

## II. Intimate Partner Violence

### A. Analysis of IPV.

Dr. Spiegel is expected to testify as to the definition and medical and psychological characteristics of IPV, both perpetrators and survivors. IPV is a pattern of assaultive and coercive behaviors that may include inflicted physical injury, psychological abuse, sexual assault, progressive social isolation, stalking, deprivation, intimidation and threats.

IPV is common. It affects millions of people in the United States each year. Data from CDC's National Intimate Partner and Sexual Violence Survey indicate about one in four women have experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime and reported some form of IPV-related impact. About 35% of female IPV survivors experience some form of physical injury related to IPV. There are also many other negative health outcomes associated with IPV. These include a range of conditions affecting the heart, digestive, reproduction, muscle and bones, and nervous systems, many of which are chronic. Survivors can experience mental health problems such as depression and posttraumatic stress disorder (PTSD) symptoms.

Dr. Spiegel is expected to testify that, based on his work with perpetrators and victims of IPV, as well as significant research in the field, there are identified risk factors, or characteristics of a person that increase risk of that person being an IPV perpetrator. Those risk factors include heavy alcohol and drug use, poor behavioral control/impulsiveness, a narcissistic personality, and attitudes accepting or justifying IPV. Dr. Spiegel is expected to testify that, based on the evidence he reviewed, including text messages, photographs, video tapes, audio files, medical



documentation, therapy records, witnesses, depositions, trial testimony and other exhibits, Mr. Depp has engaged in conduct indicative of or consistent with these risk factors.

Dr. Spiegel is expected to testify that this case includes allegations of all forms of IPV, including physical violence, sexual abuse, and psychological aggression, and is further expected to testify as follows:

i. **Physical violence.** Physical violence involves forceful physical contact that may vary from light pushes and slaps to severe beatings and lethal violence. A review of the evidence in this case shows a significant amount of physical abuse perpetrated against Ms. Heard throughout the course of their relationship, and that Ms. Heard was physically assaulted several times per week, sometimes daily. There are numerous witnesses who reported seeing cuts, bruises, and injuries for years, and it was reported that Mr. Depp grabbed, pushed, and shoved Ms. Heard; physically restrained her; pulled her by the hair; strangled her; punched her on her face, head, and body; slapped her with the front and back of his hand; kicked her; slammed her against the wall and floor; threw objects at her; suffocated her, flicked a cigarette at her; pulled her by the hair; and beat her up. In addition, Dr. Banks, M.D. testified that Mr. Depp acknowledged being physical with Ms. Heard and recalled hearing that he used a cigarette to burn himself. Banks Tr. 55:14-56:9.

ii. **Sexual abuse.** Sexual abuse includes coercive and physical behaviors varying from trying to persuade someone to perform a sexual act against their will, ignoring “no” responses, to physically forced sex acts. There is record evidence of Mr. Depp sexually assaulting Ms. Heard on a number of occasions.

iii. **Psychological aggression.** Psychological aggression (or emotional abuse) refers to acting in an offensive or degrading manner toward another, usually verbally, and may

include threats, ridicule, withholding affection, and restrictions (*e.g.*, social isolation, financial control). These behaviors are perpetuated by someone who is, was, or wishes to be involved in an intimate or dating relationship with an adult or adolescent, and one aimed at establishing control by one partner over the other. (Capaldi DM, Knoble NB, Shortt JW, Kim HK. A Systematic Review of Risk Factors for Intimate Partner Violence. *Partner Abuse*. 2012;3(2):231-280.doi:10.1891/1946-6560.3.2.231.).

Psychologically abusive behaviors by Mr. Depp that were reported in this case include but are not limited to: intimidation by throwing things, slamming things, writing on surfaces, such as countertops, lamp shades, mirrors and walls, erratic behavior; antagonistic behaviors about Ms. Heard's career; criticizing her ambition; obsessive jealousy about male co-stars; offensive and degrading comments (whore, cunt, bitch, ugly, fat); constant accusations of flirting and infidelity; controlling her clothing choices and movie parts; insisting on using his security detail and vehicles, not permitting her to have a password on her devices, showing up on set, insisting she spend his money and being upset when she resisted; criticizing her body; and emotional manipulation (threats of suicide; threats and actual infliction of self-harm).

**B. Substance Abuse is a Risk Factor of IPV**

Substance abuse has been found to occur in 40-60% of IPV incidents across various studies. Several lines of evidence suggest that substance use/abuse plays a facilitative role in IPV by precipitating or exacerbating violence. This includes IPV perpetration in the contexts of intoxication, and withdrawal and addiction. Likewise, drug-induced paranoia and fears of infidelity were used by perpetrators to justify IPV in ways that extended men's more everyday invocations of sexual jealousy and distrust as reasons for checking up on partners. Dr. Spiegel is expected to testify that intoxication related to alcohol and stimulant drugs (methamphetamines

and cocaine) was linked to IPV perpetration in all studies. Several studies have also shown that both survivors of IPV and perpetrators talk about how partners under the influence of alcohol and/or drugs turn from a “good husband to a bad husband” (Boonzaier & Rey, 2003); from “Dr. Jekyll to Mr. Hyde” (Gilbert et al., 2001)] ; from “a warrior to a beater” (Matamonasa-Bennett, 2015)]; turn into “dictators,” and “converts you into a monster” (Gilchrist et al., 2015) (Boonzaier & Rey, 2003). Dr. Spiegel is expected to testify that the more disinhibited by drugs and alcohol a person is, the more likely the person is to exhibit physical violence towards another person, and particularly if the intoxicated person has baseline impulsivity and lacks behavioral control/response prevention.

Studies have also shown an increased risk of IPV perpetration when dependent perpetrators were in withdrawal or craving alcohol, heroin and stimulant drugs due to irritability and frustration (Satyanarayana et al., 2015; Wilson et al., 2017) (Gilbert et al., 2001) (Abdul-Khabir et al., 2014; Ludwig-Barron et al., 2015) (Watt, 2012).

As discussed above, the record evidence reflects that Mr. Depp had a history of alcohol and drug abuse, including during the relationship with Ms. Heard.

**C. Lack of Behavioral Control and Impulsiveness is a Risk Factor of IPV**

Dr. Spiegel is expected to testify that the lack of behavioral control and impulsiveness is also a strong risk factor for IPV. Research indicates a robust association between impulsivity, or the inability to regulate certain behaviors, and various forms of aggressive behavior (*e.g.*, Abbey et al., 2002; Hynan & Grush, 1986; Netter et al., 1998), including IPV (*e.g.*, Cohen et al., 2003; Shorey, Brasfield, Febres, & Stuart, 2010; Schafer et al., 2004). Cross-sectional research indicates that men who report IPV perpetration are higher in impulsivity compared to men who do not report IPV (Cohen et al., 2003).

Dr. Spiegel is expected to testify that the record evidence reflects that Mr. Depp has a “frail temperament” that results in lack of behavioral control and impulsivity. This evidence includes, but is not limited to, notes from Mr. Depp’s doctor (Dr. Kipper) referring to Mr. Depp: “[t]here is also an issue of patience. He’s driven almost reflexively by his id - has no patience for not getting his needs met, has no understanding of delayed gratification and is quite childlike in his reactions when he does not get immediate satisfaction.” This lack of behavioral control and impulsiveness are significant risk factors for IPV. Dr. Spiegel will testify that Mr. Depp’s testimony in this case and the UK action demonstrate a lack of behavioral control and impulsiveness, including, but not limited to, the following testimony:

20       A. Sorry. I was saying that the ability or the impetus or the  
21           synapse that fires does not necessarily mean that you have to  
22           be drunk to smash something or throw something against the  
23           wall or punch a wall or door. It is a human reflex to  
24           something that feels stronger than you. It is a frustration  
25           and that is what happens.

Depp UK Trial 125:20-25.

14       A. Well, what I am trying to explain to you is that it does not  
15           take alcohol for one to become upset about something. That  
16           reaction, the internal reaction, does not require alcohol to  
17           slam your hand down on a table or be so frustrated about what  
18           you are unable to do, when it is out of your hands, and you  
19           have fallen prey to something that is bigger than you, and it  
20           is, you know, that is pretty much it.  
21       Q. Did you smash things when you were living with Ms. Paradis?  
22       A. Over 14 years. I imagine that I must have, and over 14 years  
23           I imagine that she must have.

Depp UK Trial 126:14-23. Mr. Depp also testified that he was arrested in 1994 because, as he admitted, he “trashed” a hotel room in New York in 1994, and prior to that arrest, was arrested for assaulting a hotel lobby security guard. Depp UK Trial 55-56:3-3. While in Paris in 1999, he became angry with members of the press, and confronted and threatened them with a large piece of wood. In 2018, Mr. Depp was sued for assault of a location manager on the set of City of Lies. Depp UK Trial 90:70-15. In addition, Dr. Spiegel will testify that these instances show a pattern of violence and impulsiveness in lieu of self-control, which is consistent with the behavior of a perpetrator of IPV. Depp’s paranoia, jealousy, and uncontrollable anger and rage is supported by testimony from Mr. Depp’s psychiatrist, Dr. Blaustein. Blaustein Tr. 48:22-49:19, 184. In fact, for Depp it was often “easier to play a character” than to live with his “devil.” Blaustein Tr. 151:20-152:2, 140:21-141:7.

**D. Narcissism is a Risk Factor of IPV**

A narcissist is a person who has an inflated sense of their own importance, a deep need for excessive attention and admiration, troubled relationships, and a lack of empathy for others. Dr. Spiegel will testify that according to the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, symptoms of Narcissistic Personality Disorder include (1) requiring excessive admiration; (2) possessing a sense of entitlement, such as an unreasonable expectation of favorable treatment or compliance with his or her expectations; (3) is exploitative and takes advantage of others to achieve his or her own ends; (4) lacks empathy and is unwilling to identify with the needs of others; (5) is often envious of others or believes that others are envious of him or her; and shows arrogant, haughty behaviors and attitudes. Dr. Spiegel will testify that narcissists have a fragile self-esteem that is vulnerable to the slightest criticism.

Dr. Spiegel is expected to testify that in his review of the record evidence, Mr. Depp has engaged in behavior and conduct indicative of and consistent with all these symptoms of Narcissistic Personality Disorder which is another risk factor for IPV. These behaviors and characteristics are documented by Mr. Depp's own treating physician, Dr. Kipper, as well as reflected by other record evidence.

Studies have shown that narcissistic men are more likely to commit domestic violence. For example, the findings of Kent State University researchers (2010) suggest that "the anger, hostility, and short fuse that accompany a man's narcissism tend to be directed toward ... women," and that "narcissistic men can become enraged when they are denied gratification... including when people reject them." In fact, some of the more common traits that overlap both narcissists and abusers include lack of empathy, controlling behavior, self-absorption, displays of physical violence when told "no," and displays of anger when they perceive rejection from their partner. Dr. Spiegel is also expected to testify when there is an association of substance abuse disorder with Narcissistic Personality Disorder, there is a significantly increased likelihood of more hostility and aggression from the perpetrator.

**E. Attitudes Accepting or Justifying IPV is a Risk Factor of IPV**

Attitudes toward IPV are known predictors of IPV victimization and perpetration. Dr. Spiegel is expected to testify that there is record evidence demonstrating that Mr. Depp would "joke" about IPV, even in public articles. This includes, but is not limited to, a GQ article in which Mr. Depp admitted telling Hunter S. Thompson about Kate Moss, "she gets a severe beating." Mr. Depp was also involved in a particularly striking text exchange with actor Paul Bettany, with whom Mr. Depp has admitted to using "cocaine, alcohol, and pills." In a text to Mr. Bettany dated June 11, 2013, Mr. Depp wrote "Let's burn Amber!!!" and "Let's drown her

before we burn her!!! I will fuck her burnt corpse afterwards to make sure she's dead." Dr. Spiegel is expected to testify that such cavalier attitudes toward IPV are a significant risk factor of IPV actually occurring in intimate relationships.

**F. Being a Previous Victim of Physical or Psychological Abusive is a Risk Factor of IPV**

Studies have also demonstrated that previously being a victim of physical or psychological abuse and witnessing IPV between parents as a child can also be a risk factor that leads to a person being an IPV perpetrator in his intimate relationships.<sup>29</sup> Dr. Spiegel is expected to testify that his review of the evidence demonstrates that Mr. Depp was a previous victim of physical violence from his mother, and saw his parents engage in IPV. This includes Mr. Depp's testimony that his "[b]rains [were] beaten out by my mom" as far back as he could remember, through the age of 17. Mr. Depp also testified that his mother would punch his father, knocking teeth out of his father's mouth, and that his father, in response, punched holes in the wall. This witnessing of violence at a young age is a high-risk factor of IPV.

**G. Warning Signs of IPV**

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<sup>29</sup> See e.g., Storvestre GB, Jensen A, Bjerke E, Tesli N, Rosaeg C, Friestad C, Andreassen OA, Melle I, Haukvik UK. Childhood Trauma in Persons With Schizophrenia and a History of Interpersonal Violence, *Front Psychiatry*. 2020 May 5;11:383. doi: 10.3389/fpsy.2020.00383. PMID: 32431632; PMCID: PMC7214725; Ernst AA, Weiss SJ, Hall J, Clark R, Coffman B, Goldstein L, Hopley K, Dettmer T, Lehrman C, Merhege M, Corum B, Rihani T, Valdez M, Adult intimate partner violence perpetrators are significantly more likely to have witnessed intimate partner violence as a child than nonperpetrators. *Am J Emerg Med*. 2009 Jul;27(6):641-50; Flynn A, Graham K. "Why did it happen?" A review and conceptual framework for research on perpetrators' and victims' explanations for intimate partner violence. *Aggress Violent Behav*. 2010;15(3):239-251. doi:10.1016/j.avb.2010.01.002; <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/riskprotectivefactors.html>.

In addition to risk factors of IPV, Dr. Spiegel is expected to testify based on studies and his work with perpetrators and victims of IPV, that there are certain warning signs to help recognize if someone is an IPV perpetrator. These warning signs include:

- **Use of physical aggression.** They often slap, hit, shove, or push their partner. Dr. Spiegel is expected to testify that based on the record evidence, including but not limited to, audio recordings, pictures of Ms. Heard's injuries, text messages, video recordings, and deposition and trial testimony, the record reflects that Mr. Depp has slapped, hit, shoved Ms. Heard on a regular basis, and has also head-butted her, grabbed her hair and punched her, dragged her across the room, kicked her, thrown objects at her, strangled her, and suffocated her.
- **They are unpredictable. Their moods tend to change rapidly and radically.** Dr. Spiegel is expected to testify to the record evidence, including but not limited to deposition and trial testimony, emails, texts, video, audio, and journal entries, that demonstrate Mr. Depp's change from a loving husband to what even Mr. Depp called "the Monster."
- **They are often jealous, suspicious, and/or angry – even if they have no reason to be.** Dr. Spiegel is expected to testify about the record evidence, which reflects Mr. Depp's jealousy of virtually any man (and woman) who worked with Ms. Heard, and his fear that she was having affairs with multiple partners.
- **They control their partner's time. They monitor and control their partner's activities, including whether they go to work or school, and how much they see their family and friends.** Dr. Spiegel is expected to testify that Mr. Depp reflected this conduct as well. Based on the record evidence, including deposition



and trial testimony, he would call directors and male costars to check on her, insist she use his vehicles and security detail, not have passwords on her devices so he could easily access them, interfere with filming and roles, and regulate and manipulate who she could see and spend time with.

- **They control their partner's money. They make important financial decisions with shared money by themselves, or they take their partner's money without permission.** Dr. Spiegel is expected to testify to the record evidence that reflects that Mr. Depp exerted his financial control over Ms. Heard and attempted to exert even more control.
- **They use verbal threats. They are not afraid to name-call, swear, and yell at their partner.** Dr. Spiegel is expected to testify to the degrading comments Mr. Depp made toward Ms. Heard (whore, cunt, bitch, ugly, fat). Mr. Depp also told Ms. Heard that she was being his mother and psychotic sister. Blaustein Tr. 157:2-13.
- **They isolate their partner. They may limit their partner's use of the phone or other sources of communication, or may force their partner to stay at home.** Dr. Spiegel is expected to testify that the evidence of Mr. Depp controlling where Ms. Heard stayed, regulating who she can see and when, and requiring that she not have any passwords on devices so he had unfettered access to her devices and communications is a warning sign of IPV.
- **They blame. They often try to blame their partner or others for their problems.** Dr. Spiegel is expected to testify that the record evidence reflects Mr. Depp constantly blaming Ms. Heard for the problems in their relationship, and

that Mr. Depp largely does not accept responsibility for any of his conduct, and routinely blames others.

- **They threaten to hurt themselves, their partner, or their partner's loved ones if their partner tries to leave.** Dr. Spiegel is expected to testify as to the warning signs of IPV, where Mr. Depp regularly told Ms. Heard during or after an altercation that he was thinking of suicide or threats of (and actual) self-harm if she did not do as he pleased, and audio recordings relating to using a knife to cut himself and inflicting a cigarette burn on himself.
- **They apologize and make promises.** Dr. Spiegel is expected to testify that perpetrators very commonly apologize after an instance of IPV and make promises not to repeat their behavior. The apologies may be sincere, at the time, but also may be motivated by wanting to remain in the relationship, where they view themselves as being dominant.

Dr. Spiegel is expected to testify that in his review of the record materials and in speaking with Ms. Heard, Mr. Depp exhibited all these warning signs in his relationship with Ms. Heard.

### **III. Rebuttal to Opinion of Dr. Shaw's regarding the Goldwater Rule**

Dr. Spiegel is expected to testify that the Goldwater Rule does not apply in the context of expert testimony. It has long been established that the Goldwater rule does not extend to the court context.<sup>30</sup> "Rigid application of the rule (according to its broadest interpretation) would appear to invalidate long-standing working practice in the courts and in insurance and

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<sup>30</sup> See e.g., Aoibheann McLoughlin, *The Goldwater Rule: a bastion of a bygone era?* HISTORY OF PSYCHIATRY, December 20, 2021.

government agencies, where psychiatric opinion without diagnostic interview is commonplace.”<sup>31</sup> Such a broad interpretation of the Rule is not supported by the APA and would prohibit expert testimony from psychiatric experts that is routinely admitted in court in a wide variety of contexts.<sup>32</sup> For example “[i]n psychiatric malpractice cases, psychiatrists proffer opinions as to the diagnoses, dynamics and best treatment protocols without directly examining the patients. This is most obvious in cases involving completed suicides, but also in boundary violation cases, improper pharmacological treatment for a given diagnosis, and other alleged malpractice situations. Chart reviews are accepted as the evidentiary bases for expert opinions.” (Kroll and Pouncey, 2016).

Furthermore, there is little empirical or theoretical evidence to support the claim that a diagnosis can only be achieved through in-person evaluation. Indeed, “written records and accounts, along with video footage, can provide robust diagnostic information on patients not personally interviewed” (McLoughlin, 2021). Dr. Spiegel has examined over three days of videotaped deposition of Mr. Depp, video footage of Mr. Depp during the relationship with Ms. Heard, audio recordings of Mr. Depp during the relationship with Ms. Heard, pictures, text messages, emails, medical records, psychiatric history, and other documents produced in discovery, testimony from the UK and depositions. With such an abundance of audiovisual and

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<sup>31</sup> *Id.*, see also, J. Kroll and C. Pouncey, *The ethics of APA's Goldwater Rule*. 44(2) JOURNAL OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW 226 (2016) (“Furthermore, the APA’s proscription on diagnosis without formal interview can be questioned, since third-party payers, expert witnesses in law cases, and historical psychobiographers make diagnoses without conducting formal interviews.”).

<sup>32</sup> American Psychiatric Association, Ethics Committee Opinion, March 15, 2017 (“... the rendering of expertise and/or an opinion in these contexts is permissible because there is a court authorization for ... opinion without examination. ... and this work is conducted within an evaluative framework including parameters for how and where the information may be used or disseminated.”).

documentary evidence, Dr. Spiegel's opinions, which are not diagnoses, but observed behaviors and statements from Mr. Depp that are consistent with IPV and narcissism, do not run afoul of the Goldwater Rule. All of Dr. Spiegel's opinions are within a reasonable degree of psychiatry and behavioral sciences and professional probability and/or certainty. Dr. Spiegel may also testify in response to the testimony and opinions of the Mr. Depp's expert witnesses, if any, and reserves the right to consider any further discovery and documentation or facts which become available to him.

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**Expertise and Qualifications**

Mr. Ackert's C.V. is attached as Att. 9, which details Mr. Ackert's professional experience and all articles and testimony he has completed over the last ten years. Mr. Ackert is a Managing Director at iDiscovery Solutions, Inc. ("IDS"), an expert services and consulting firm that provides independent digital forensics analysis, electronic discovery services, expert testimony, original authoritative studies, and strategic consulting services to the business and legal community. Mr. Ackert has a Bachelor of Science degree in Computer Science from the University of Virginia and has over 20 years of experience in consulting and litigation technologies that focus on electronic discovery and digital forensics. Specifically, Mr. Ackert has extensive experience creating and implementing preservation, collection, and production strategies and performing digital forensics and metadata analysis on electronically stored

# Exhibit B

5. **Richard J. Shaw, MD, Forensic Psychiatrist, Stanford University School of Medicine, 401 Quarry Road, Suite 1122, Palo Alto, California 94305.** Dr. Shaw is a Professor of Psychiatry who has been practicing psychiatry for over 35 years. Dr. Shaw currently works at the Department of Psychiatry and Behavioral Sciences at Stanford University School of Medicine where he has worked since 1996. Dr. Shaw serves as the Medical Director for Consultation-Liaison Services at the Lucile Packard Children's Hospital at Stanford University and as a Psychiatric Consultant for the Pediatric Emergency Room at Standard University Medical Center. Dr. Shaw is board certified in psychiatry and child and adolescent psychiatry. Dr. Shaw currently serves on various professional organizations including as a member of the Committee on the Physically Ill Child for the American Academy of Child and Adolescent Psychiatry. Dr. Shaw has authored 70 peer reviewed manuscripts and almost 30 book chapters. Dr. Shaw serves on the editorial board for *Academic Psychiatry*. Dr. Shaw is a seasoned expert who has been performing forensic psychiatric work for the past 18 years, has been retained as an expert in almost 200 cases, and has provided trial or deposition testimony in nearly 50 cases. Dr. Shaw received his Pre-clinical Training in Basic Medical Sciences from the University of London and his Medical Degree at the Middlesex Hospital Medical School from the University of London.

***Subject Matter of Dr. Shaw's Opinion:*** Dr. Shaw will testify concerning Dr. Spiegel's opinions as rendered in Ms. Heard's Supplemental Disclosure of Expert Witness dated January 11, 2022.

***Substance of Dr. Shaw's Opinion:*** Specifically, Dr. Shaw will draw upon his experience and expertise as a forensic psychiatrist to testify that (i) based on the Goldwater Rule, psychiatrists should not render professional opinions about the mental state of individuals they

have not personally and thoroughly evaluated; (ii) the Goldwater Rule remains best practices as it has been widely accepted by the professional organizations that dictate standards of care with regard to forensic practice; (iii) in rendering an opinion about cognitive deficits and psychiatric diagnoses in Mr. Depp without conducting a personal evaluation, Dr. Spiegel has failed to abide by the Goldwater Rule; and (iv) Dr. Spiegel misrepresents the literature on risk factors for IPV as Dr. Spiegel frames these risk factors as evidence that Mr. Depp is an IPV perpetrator.

*Summary of the Grounds for Dr. Shaw's Opinion:* Dr. Shaw will base his opinions on the following grounds:

f. The Goldwater Rule:

a. *American Psychiatric Association:*

- i. In 1973, the American Psychiatric Association (APA) developed a policy commonly known as the Goldwater Rule following a controversy that emerged during the 1964 presidential election when Fact magazine published the results of a large survey of psychiatrists who were asked whether Senator Barry Goldwater was psychologically fit to run for the presidency. Many respondents described the senator as “paranoid,” “grossly psychotic” and a “megalomaniac” while others provided diagnoses that included schizophrenia and narcissistic personality disorder.<sup>37</sup> After Senator Goldwater successfully sued the magazine for defamation of character, the APA asserted that psychiatrists should not give professional

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<sup>37</sup> Fact Magazine. 1,189 Psychiatrists Say Goldwater Is Psychologically Unfit to be President! Vol 1, No. 5. New York, NY: Fact Publishing; September-October 1964.

opinions about the mental state of individuals they have not personally and thoroughly evaluated.<sup>38</sup>

ii. The Goldwater Rule has subsequently been published as an annotation in Section 7.3 of the Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry: “On occasion psychiatrists are asked for an opinion about an individual who is in the light of public attention or who has disclosed information about himself/herself through public media. In such circumstances, a psychiatrist may share with the public his or her expertise about psychiatric issues in general. However, it is unethical for a psychiatrist to offer a professional opinion unless he or she has conducted an examination and has been granted proper authorization for such a statement.”<sup>39</sup>

iii. The APA Ethical Guidelines further caution that “a psychiatrist should avoid cloaking their public statements with the authority of the profession.”<sup>40</sup>

iv. In 2008, Richard Friedman, MD, a Professor of Psychiatry at Weill Cornell Medical College, similarly opined that “for a mental health professional – or any physician – to publicly offer a diagnosis at a distance of a non-patient not only invites public distrust of these professionals but also is intellectually dishonest and is damaging to the

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<sup>38</sup> American Psychiatric Association. The Principles of Medical Ethics: Principles With Annotations Especially Applicable to Psychiatry. Arlington, VA: American Psychiatric Press Inc; 2008.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.



profession.”<sup>41</sup> He also wrote that “a professional opinion should reflect a thorough and rigorous examination of a patient, the clinical history, and all relevant clinical data and protection of strict confidentiality, none of which is possible by casual observation of a public figure. To do so otherwise is unethical because it violates this fundamental principle and thereby misleads the public about what constitutes accepted medical and nonmedical professional practice.”<sup>42</sup>

v. In 2016, Ronald Pies, MD, a Professor of Psychiatry, also at Weill Cornell Medical College, writing in the *Psychiatric Times*, supported the premise of the Goldwater Rule, including that it is unethical to offer publicly the putative clinical diagnosis of any living person unless the psychiatrist has conducted a thorough clinical examination of the person, evaluated appropriate ancillary data such as the person’s family history or psychometric testing, and has been granted proper authorization for stating the person’s diagnosis publicly.<sup>43</sup> However, he argued for greater clarity and specificity in interpreting the Goldwater Rule. While Dr. Pies asserted that comments made by a psychiatrist that amount to a clinical diagnosis of a living person in the absence of a clinical evaluation was a breach of the Goldwater Rule, he wrote that there were circumstances in which a psychiatrist might give a professional opinion. These included: (1) historical inferences

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<sup>41</sup> Friedman RA. “Is It Time to Call Trump Mentally Ill?” *The New York Times*, February 17, 2017.

<sup>42</sup> *Ibid.*

<sup>43</sup> Pies RW: Deconstructing and Reconstructing the “Goldwater Rule,” *Psychiatric Times*, Vol 33 No 10, October 7, 2016

as to a likely diagnosis applied to a person who was no longer living, often a historical figure of interest; (2) non-diagnostic professional opinions regarding living persons when a psychiatrist might comment broadly about the clinical significance of a pattern of behavior without offering a specific clinical diagnosis; and (3) professional comments that offer a differential diagnosis of a symptomatic or behavioral pattern in a living person, without providing a clinical diagnosis of that person. Dr. Pies also clarified that a clinical diagnosis can only be made on the basis of a direct personal examination of a patient.

vi. In 2017, the APA Ethics Committee reasserted its support for the Goldwater Rule in an opinion in which it was asserted that while it was reasonable for psychiatrists to share their expertise about psychiatric issues in general, it was unethical to offer a professional opinion about an individual without conducting a psychiatric evaluation.<sup>44</sup> The Ethics Committee clarified that the rule applied to all professional opinions offered by a psychiatrist, not merely those limited to affirming the presence or absence of a psychiatric diagnosis. In explaining this position, the Ethics Committee gave three justifications in support of their opinion:

1. When a psychiatrist renders an opinion about the behavior, symptoms, or diagnosis of a public person without consent, the psychiatrist is violating the principle that all psychiatric

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<sup>44</sup> Oquendo M (2017). "APA Remains Committed to Supporting Goldwater Rule." [www.psychiatry.org](http://www.psychiatry.org) Accessed February 6, 2022.

evaluations should be conducted with both consent and authorization of the individual.

2. When a psychiatrist offers a professional opinion about an individual who has not been examined, the psychiatrist is departing from the established and accepted community standard of care which requires a careful review of the individual's medical history and first-hand examination. Practicing in this manner compromises the integrity of the psychiatrist and the psychiatric profession.
3. When psychiatrists offer medical opinions about an individual whom they have not examined, there is the potential to stigmatize those with mental illness.

vii. In a 2017 commentary on the APA Ethics Committee opinion, Maria Oquendo, MD, PhD, the President of the APA, came out strongly in support of this position, including that adherence to the Goldwater Rule should supersede concerns commonly expressed against the Rule, including those related to freedom of speech, civic duty, and "professional opinions or psychological profiles solicited by courts or law officials for forensic cases."<sup>45</sup> Dr. Oquendo concluded her commentary by speaking to the damage to the professional integrity and trust of psychiatry by the community and wrote that breaking the

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<sup>45</sup> Ibid.

Goldwater Rule was “irresponsible, potentially stigmatizing, and definitely unethical.”<sup>46</sup>

viii. The presidency of Donald Trump has brought fresh attention to the premise of the Goldwater Rule. In December 2016, a Huffington Post article featured a letter written by three professors of psychiatry citing President Trump’s “grandiosity, impulsivity, hypersensitivity to dislikes or criticism, and an apparent inability to distinguish between fantasy and reality” as evidence of his mental instability.<sup>47</sup> John D. Gartner, a practicing psychotherapist and author who teaches at Johns Hopkins University Medical School, and quoted in the U.S. News & World Report, described President Trump as having “malignant narcissism, which is characterized by grandiosity, sadism, and antisocial behavior.”<sup>48</sup> It has been argued that while the validity of *psychiatric profiling* is not established, it might reasonably be defended if it was deemed vital to public safety or national security.<sup>49</sup> However, this argument has little bearing with respect to private citizens involved in civil litigation.

*b. American Psychological Association*

i. In 2016, Susan H McDaniel, PhD, President of the American Psychological Association, in response to press coverage regarding

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<sup>46</sup> Ibid.

<sup>47</sup> Greene R (2016). Is Donald Trump Mentally Ill? 3 Professors Of Psychiatry Ask President Obama To Conduct ‘A Full Medical And Neuropsychiatric Evaluation’ The Huffington Post. [https://www.huffpost.com/entry/is-donald-trump-mentally\\_b\\_13693174](https://www.huffpost.com/entry/is-donald-trump-mentally_b_13693174). Accessed February 6, 2022.

<sup>48</sup> Milligan S (2017). Temper Tantrum, US News & World Report. <http://www.usnews.com/news/the-report/articles/2017-01-27/does-donald-trumps-personality-make-him-dangerous>. Accessed February 6, 2022

<sup>49</sup> Kroll J, Pouncey C (2016). The ethics of APA’s Goldwater Rule. *Journal of the American Academy of Psychiatry and the Law*, 44, 226-235.

whether or not therapists should analyze presidential candidates, came out strongly with the opinion that neither psychiatrists nor psychologists should offer diagnoses of candidates or any other living public figure they have never examined.<sup>50</sup> Dr. McDaniel wrote that the code of ethics of the American Psychological Association promotes the view that psychologists should “‘take precautions’ that any statements they make to the media ‘are based on their professional knowledge, training, or experience in accord with appropriate psychological literature and practice’ and ‘do not indicate that a professional relationship has been established’ with people in the public eye, including political candidates.”<sup>51</sup>

*ii.* When providing opinions of psychological characteristics, psychologists must conduct an examination adequate to support their statements or conclusions and should not offer psychiatric diagnoses of a living public figure they have not examined.

*c. American Medical Association:*

*i.* In 2017, the American Medical Association wrote new guidelines into the AMA Code of Medical Ethics stating that physicians should “refrain from making clinical diagnoses about individuals (*e.g.*, public officials, celebrities, persons in the news) they have not had the

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<sup>50</sup> McDaniel, SH. “Response to Article on Whether Therapists Should Analyze Presidential Candidates.” American Psychological Association, March 14, 2016.

<sup>51</sup> *Ibid.*

opportunity to personally examine.”<sup>52</sup> In a 2017 commentary on these guidelines, Mark Moran wrote that physicians should understand that they will be taken as authorities when they engage with the media and therefore should ensure that the medical information they provide is “accurate, inclusive of known risks and benefits, commensurate with their medical expertise, and based on valid scientific evidence and insight gained from professional experience.”<sup>53</sup>

g. Professional Standards of Forensic Practice Abide By The Goldwater Rule: Standards of care with regard to forensic practice have been addressed by the two principal professional organizations, the American Academy of Psychiatry and the Law and the American Board of Forensic Psychology. Both these organizations have published practice guidelines that are consistent with the principles outlined in the Goldwater Rule.

a. *American Academy of Psychiatry and the Law*

i. In 2015, the American Academy of Psychiatry and the Law (AAPL) published a Practice Guideline for the Forensic Assessment based on the work of an AAPL Task Force that consisted of many of the acknowledged experts in the field of forensic psychiatry.<sup>54</sup> The Practice Guideline was the product of a consensus based on the available literature and knowledge in a broad range of forensic

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<sup>52</sup> American Medical Association (2017). “Reference Committee on Amendments to Constitution and Bylaws.” Accessed Fairbury 6, 2022.

<sup>53</sup> Moran M (2017). AMA Goes Beyond ‘Goldwater Rule’ In Ethics Guidelines on Media Interaction. *Psychiatric News*. 52 (24): 1. doi:10.1176/appi.pn.2017.12b6. Accessed February 6, 2022

<sup>54</sup> American Academy of Psychiatry and the Law. AAPL Practice Guideline for the Forensic Assessment, *J Am Acad Psychiatry Law*, 43, 2, 2015.

assessments. The Practice Guidelines were intended to address the variable standards and inconsistencies in forensic practice, to ensure integrity in the course of a forensic evaluation, and to ensure adherence to the American Medical Association's Code of Ethics. These ethical guidelines call for adherence to honesty, objectivity, and respect for persons.

- ii.* The Practice Guideline specifically addresses the importance of informed consent in the course of a forensic assessment. The guidelines state that the evaluatee should be given an opportunity to ask questions regarding the process, contact counsel regarding questions about the assessment process, and give proper informed consent. With respect to collateral information, the Practice Guideline addresses the importance of a thorough review of collateral information including past psychiatric and mental health treatment records. With respect to the topic of conducting an assessment without an interview, the AAPL ethics guidelines state: "For certain assessments (such as record reviews for malpractice cases), a personal examination is not required. In all other forensic evaluations, if, after appropriate effort, it is not feasible to conduct a personal examination, an opinion may nonetheless be rendered on the basis of other information. Under these circumstances, it is the responsibility of psychiatrists to make earnest efforts to ensure that their statements, opinions, and reports or testimony based on these opinions, clearly state that there was no

personal examination and note any resulting limitations to their opinions.”<sup>55</sup>

- iii. The Practice Guideline specifically comments on the need for a thorough mental status examination to elicit information about the frequency and severity of psychiatric symptoms including mood, anxiety, trauma-related symptoms, thought content, thought form, delusional beliefs, perceptual disturbances, cognition, and concentration and relevant comments, insights, and judgment. With respect to rendering opinions, the Practice Guideline notes that the scientific foundation for the opinion may have to withstand a *Daubert* challenge in court and that the evaluator should ensure that the scientific technique used is reliable and generally accepted among other factors.<sup>56</sup> When an opinion cannot be rendered to a reasonable degree of medical certainty, the referral source should be notified before the evaluator writes a report. In cases in which further information or testing is required to render a final opinion, the Practice Guideline states that “these opinions can be problematic and are not generally recommended” and that if a preliminary opinion is given, “its limitation should be explained and the need for further information described.”<sup>57</sup>

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<sup>55</sup> *Ibid.*

<sup>56</sup> *Daubert v. Merrell Dow Pharmaceuticals*, 509 US 579. 1993.

<sup>57</sup> American Academy of Psychiatry and the Law. AAPL Practice Guideline for the Forensic Assessment, *J Am Acad Psychiatry Law*, 43, 2, 2015.



*b. American Board of Forensic Psychology*

- i.* The American Psychological Association has also published practice guidelines for the specialty of Forensic Psychology.<sup>58</sup> These guidelines contain specific text regarding the rendering of professional forensic opinions about persons who have not been examined: “Forensic practitioners recognize their obligations to only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for those opinions or to substantiate their findings (EPPCC Standard 9.01). Forensic practitioners seek to make reasonable efforts to obtain such information or data, and they document their efforts to obtain it. When it is not possible or feasible to examine individuals about whom they are offering an opinion, forensic practitioners strive to make clear the impact of such limitations on the reliability and validity of their professional products, opinions, or testimony.”<sup>59</sup>
- h.* Dr. Spiegel Failed to Abide by the Goldwater Rule: In rendering an opinion about cognitive deficits and psychiatric diagnoses in Mr. Depp without conducting a personal evaluation, Dr. Spiegel’s practice is not consistent with the Goldwater Rule. He is proposing to offer damaging testimony about the character of Mr. Depp without conducting a thorough evaluation based on principles that have been endorsed by the American Psychiatric Association, American Psychological Association, American

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<sup>58</sup> American Psychological Association. Specialty Guidelines For Forensic Psychology (2013). American Psychologist 68, 1, 7-19 <https://www.apa.org/practice/guidelines/forensic-psychology>. Accessed February 6, 2022

<sup>59</sup> Ibid.

Medical Association, American Academy of Psychiatry and the Law, and the American Board of Forensic Psychology. The opinions that Dr. Spiegel intends to offer are based on an incomplete data set, lacking a mental status examination and lacking a review of relevant prior psychiatric history. Moreover, Dr. Spiegel is proposing to offer his opinions without having obtained informed consent from Mr. Depp. The Goldwater Rule was established specifically to discourage testimony of this nature recognizing that when a psychiatrist provides opinions about mental status and psychiatric diagnoses, he/she carries an authority that bears significant weight in both legal proceedings and with the general public. The Ethics Committee of the American Psychiatric Association has consistently ruled that psychiatric profiling and diagnoses made without a personal examination of the individual are a violation of its principles. In addition, Dr. Spiegel does not indicate whether he believes his opinions can be rendered to a reasonable degree of medical certainty or specify that further information would be needed to confirm these opinions. As noted above, the Practice Guideline of the American Academy of Psychiatry and the Law and of the American Board of Forensic Psychology states that reference should be made to these limitations in cases where conclusions are drawn without a full data set.

- a. *Dr. Spiegel Improperly Speculates about the Cognitive Abilities of Mr. Depp without Evidence from Neuropsychological Testing:* Dr. Spiegel opines that Mr. Depp has demonstrated impaired attention, difficulty with word-finding retrieval, and impairments in cognitive memory and processing speed which he believes are a direct result of his sustained use and abuse of drugs and alcohol. However, Dr. Spiegel cites no neuropsychological testing data to

support these opinions. In addition, such opinions would generally be provided by a trained neuropsychologist who is credentialed to conduct such testing, rather than a psychiatrist. The manner in which these opinions have been developed is in violation of the Goldwater Rule.

*b. Dr. Spiegel Improperly Attributes Undocumented Deficits in Brain Function, Cognition and Memory to Medications Prescribed to Mr. Depp:* Dr. Spiegel is expected to testify that medications prescribed to Mr. Depp, including Seroquel, Neurontin, and Adderall, are highly abusable and that prolonged abuse can have damaging effects on brain function, cognition, and memory. Dr. Spiegel believes that, while taking these prescribed medications, Mr. Depp was not “sober” by any medical definition. It is not clear whether Dr. Spiegel has records to document the rationale for the prescription of these medications, the doses, the time of administration, or his clinical response. However, all three of these medications have established psychiatric indications and can be safely prescribed for many years without harmful effects on brain function, cognition, or memory. In fact, Adderall, a medication prescribed to improve focus and concentration and decrease impulsivity, has been shown in multiple studies to improve brain functioning and academic achievement.

*i. Dr. Spiegel Improperly Speculates About the Presence of Narcissistic Personality Disorder and Deficits in Temperament in Mr. Depp without a Proper Clinical Evaluation:* Dr. Spiegel intends to opine that Mr. Depp has characteristics of Narcissistic Personality Disorder,

which include lack of empathy, controlling behavior, self-absorption, displays of physical violence when told “no,” and displays of anger when they perceive rejection from their partner. However, to make a diagnosis of Narcissistic Personality Disorder, the Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition (DSM-5) specifies that the individual needs to manifest a pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts. The DSM-5 criteria do not include controlling behavior, displays of physical violence when told “no,” or displays of anger when they perceive rejection from their partner. In Ms. Heard’s Supplemental Disclosure of Expert Witnesses, Dr. Spiegel does not provide details of the data on which he bases his opinion. In addition, Dr. Spiegel intends to opine that Mr. Depp has a “frail temperament” that results in a lack of behavioral control and impulsivity. While there are established and evidence-based measures to assess temperament, there is no evidence that Dr. Spiegel has relied upon such data. The rendering of such opinions without a personal evaluation and supplementary evidence is another violation of the Goldwater Rule. Richard Friedman, MD, in a commentary on the practice of making clinical diagnoses in individuals without doing an in-person evaluation has also noted that characteristics of a diagnosis such as Narcissistic Personality Disorder may also be explained on the basis of other mental health issues.<sup>60</sup>

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<sup>60</sup> Friedman RA, (2008). Role of physicians and mental health professions in discussions of public figures. Journal

- i. Dr. Spiegel Misrepresents the Literature on Risk Factors for IPV as Evidence that Mr. Depp is an IPV Perpetrator: Much of the research conducted on topics of medical and psychiatric interest, including IPV, involves the identification of risk factors that are more commonly associated with specific behaviors or psychiatric conditions. This research can be useful in helping screen for specific diagnoses and developing interventions to help prevent these conditions. However, the presence even of multiple risk factors in any one individual is not evidence that that individual has this condition. With regard to Mr. Depp, his alleged past trauma history, alleged prior history of substance abuse, and alleged history of impulsive or erratic behaviors is not evidence that he is a perpetrator of IPV. The presence of IPV needs to be verified with objective data and cannot be established solely based on a profile of risk factors.

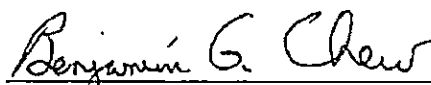
Dr. Shaw's rebuttal opinions will be based on a review of Ms. Heard's Supplemental Disclosure of Expert Witnesses dated January 11, 2022, as well as the evidence that Dr. Spiegel has relied on to form his opinion as identified as Attachment 7 to Ms. Heard's Supplemental Disclosure. Dr. Shaw's opinion will also be based on current and relevant peer-reviewed scientific literature. A full list of references that Dr. Shaw has relied on thus far to form his opinion is attached hereto as **Exhibit J**. Dr. Shaw may also testify as to any fact or opinion rendered or attributed to another witness or party as identified by non-parties. Plaintiff reserves the right to designate or substitute other witnesses of the same disciplines to testify as to the facts and opinions described herein. Plaintiff further reserves the right to supplement this Designation based on additional facts Plaintiff learns during discovery and/or his ongoing investigation of this matter.

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of the American Medical Association 300, 11, 1348-1350.

Dr. Shaw's CV is attached hereto as **Exhibit K**. He is being compensated for his work at the rate of \$800 per hour; none of his compensation is contingent on the opinions he renders or the outcome of the litigation.

Respectfully submitted,



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Dated: February 10, 2022

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 14 to exclude expert testimony of Dr. David R. Spiegel ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>27<sup>th</sup></sup>~~18<sup>th</sup>~~ day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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Adam S. Nadelhaft (VSB No. 91717)  
Clarissa K. Pintado (VSB No. 86882)  
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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
CIVIL PROCESSING  
2022 MAR 22 A 11:38  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 15 TO EXCLUDE EXPERT  
TESTIMONY OF RONALD S. SCHNELL AND KATHRYN ARNOLD**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, hereby moves the Court to exclude the testimony of one of the Defendant's designated experts, Ronald S. Schnell, as well as part of the testimony of Kathryn Arnold for the reasons set forth fully below.

### INTRODUCTION

Ms. Heard's anticipated attempt to present expert testimony by Mr. Schnell is wholly improper, as Mr. Schnell's anticipated testimony is utterly irrelevant and could only serve to confuse or mislead the jury. The only surviving claims are Mr. Depp's allegation of defamation against Ms. Heard for accusing Mr. Depp of physical abuse, and Ms. Heard's claims of defamation against Mr. Depp based on three statements made by Mr. Waldman in the *Daily Mail*. Mr. Schnell's opinions, which pertain to a statistical analysis of Twitter posts authored by individuals who are neither parties to this action nor Mr. Waldman, bear no relevance to this case and, rather than assist the jury, will only serve to confuse the jury. Ms. Arnold also bases some of her opinions on Mr. Schnell's opinion and, accordingly, that part of Ms. Arnold's opinion should be excluded.

This is not a Twitter war. If Ms. Heard takes issue with the purportedly negative Tweets referenced in Mr. Schnell's opinions, then she is free to take legal action against the authors of those Tweets. However, she is not entitled to gratuitously present irrelevant evidence of alleged conduct by nonparties, under the guise of an expert opinion to garner sympathy with the jury.

### ARGUMENT

**I. Mr. Schnell's Testimony Regarding Tweets Relating to Ms. Heard and Mr. Depp Is Irrelevant to the Issues in the Case.**

Mr. Schnell's opinion regarding Tweets that relate to Ms. Heard and Mr. Depp is wholly irrelevant to the case and, on that basis alone, can and should be excluded. *See* Va. Sup. Ct. R. 2:402. In her Counterclaims, Ms. Heard alleged that Mr. Depp "created, coordinated, controlled, and/or manipulated social media accounts created specifically for the purpose of targeting Ms.

Heard,” also referred to as a “bot” campaign. Countercl. ¶ 8. On demurrer the Court found that none of Ms. Heard’s allegations satisfied all three prongs of the Virginia Computer Crimes Act and accordingly dismissed this claim. *See* Court’s January 4, 2021 Opinion Letter. Mr. Schnell, in his deposition taken on March 16, 2022, testified that he was *not* offering an opinion with respect to the “bot” campaign. He also testified that he did *not* form an opinion as to whether these Tweets were orchestrated by or otherwise connected to Mr. Waldman or Mr. Depp. Instead, Mr. Schnell simply intends to testify about these negative Tweets of Ms. Heard, *which have no connection to the claims in this case.*

Ms. Heard has designated Mr. Schnell to render an opinion “about posts on social media, primarily Twitter, that contained and/or expressed negative comments and negativity (‘negative posts’ or ‘post’) about Amber Heard, from April 8, 2020 through the present.” Ms. Heard’s Third Supplemental and Rebuttal Disclosure of Expert Witnesses, attached as Exhibit A, at 26. Mr. Schnell “is expected to testify, that there are over a million negative posts relating to Amber Heard from April 8, 2020 through the present. Specifically, from the beginning of April 2020, until the end of January 2021, there were 1,243,705 negative posts relating to Amber Heard, including one or more of the tags #JusticeForJohnnyDepp, #AmberHeardIsAnAbuser, #AmberTurd, or #WeJustDontLikeYouAmber.” Ex. A at 26-27. *Mr. Schnell testified at deposition that he formed no opinion* (and did not attempt to form any opinion) as to (a) whether any of the 1,243,705 tweets were connected in any way to the three statements made by Mr. Waldman still at issue in the case; or (b) whether any of the four negative hashtags had any connection to the three statements made by Mr. Waldman. Without any connection to the purportedly defamatory statements made by Mr. Waldman, these tweets have no relevance to this case – they’re just negative tweets about Ms. Heard by people unrelated to this litigation. Ms. Heard must tie any purported damage to her career

to the only surviving claims in this case – the defamation claims against Mr. Depp based on statements made by Mr. Waldman in the *Daily Mail*. Mr. Schnell’s opinion – by Mr. Schnell’s own admission – does not and cannot do so. Because these Tweets are not at issue in this case nor relate to any claims in this case, Mr. Schnell’s opinion should be excluded as irrelevant. *See* Va. Sup. Ct. R. 2:402 (“Evidence that is not relevant is not admissible.”); *see also Johnson v. O’Brien*, No. 7:09-CV-00165, 2011 WL 5402105, at \*2 (W.D. Va. Nov. 4, 2011) (“The Court will not allow the Plaintiff to use this trial as a vehicle to continue the prosecution of his previously dismissed claims . . .”).

Separately, Ms. Heard has designated Ms. Arnold to opine on purported damage to Ms. Heard’s career based on a “bot” campaign. To form this part of her opinion, Ms. Arnold relies on the opinion of Mr. Schnell’s opinion. However, as discussed above, Mr. Schnell testified in his deposition taken on March 16, 2022 that his opinion has *nothing* to do with the “bot” campaign. Indeed, Mr. Schnell testified that he is not offering any opinion as to whether these Tweets are connected to Mr. Depp or Mr. Waldman. Incredibly, the disclosure of Ms. Arnold’s opinion indicates that Ms. Arnold consulted with Mr. Schnell and “Mr. Schnell has identified these tweet patterns as an orchestrated ‘bot’ campaign by Depp and his representatives that is triggered by statements in the press by or about Ms. Heard.” Ex. A at 38. *This is completely false*. Mr. Schnell *explicitly denied* at deposition that he would offer any such opinion and, accordingly, Ms. Arnold’s opinion lacks foundation.

**II. Any Probative Value Is Substantially Outweighed by the Danger of Unfair Prejudice and the Likelihood of Misleading and Confusing the Jury.**

Mr. Schnell’s opinions also should be excluded because the probative value of his testimony, *if any*, is substantially outweighed by the danger of unfair prejudice to Mr. Depp and the likelihood that it will mislead the jury. Va. Sup. Ct. R. 2:403. As noted above, Mr. Schnell is proposing to offer

irrelevant testimony about over 1.2 million purportedly negative Tweets about Ms. Heard *even though Mr. Schnell clearly testified that he has not made and will not make any connection between any of these Tweets and the statements by Mr. Waldman still at issue in Ms. Heard's Counterclaims*. Nor do any other experts retained by Ms. Heard offer any such opinion in their disclosures. Thus, Ms. Heard is effectively seeking to just introduce evidence of 1.2 million negative tweets about her with no relation whatsoever to the case, Mr. Depp, or Mr. Waldman. That is highly prejudicial and offers no probative value. Moreover, it will certainly confuse the jury. Ms. Heard may hope that these Tweets will evoke sympathy from the jury and/or salvage her claim for damages now that Warner Bros. has definitively debunked her theory that she would have made more money on *Aquaman II*, but, because these Tweets and Mr. Schnell's opinions are irrelevant to the claims of this case, unfairly prejudicial, and likely to mislead the jury, they should be excluded.

To the extent Mr. Schnell's opinion is being offered to support Ms. Heard's defamation claims, as a matter of law, Mr. Waldman and Mr. Depp cannot be responsible for the speech of strangers on Twitter.

### **III. In the Alternative, Specific Aspects of Mr. Schnell's Opinion Should Be Excluded.**

Should the Court not grant Mr. Depp's request to exclude Mr. Schnell's opinion in its entirety, Mr. Depp requests that the Court limit Mr. Schnell's opinion as to only his analysis of the Tweets, and exclude any opinion as to Instagram or Reddit because that part of his opinion does not meet the requirements of Rule 4:1(b)(4) and the subparts thereof. Ms. Heard's Third Supplemental Expert Disclosures indicate that: "Mr. Schnell will also testify that based on the number of negative posts about Ms. Heard during this time on Twitter, *a similar magnitude of negative comments would also be published on Instagram and Reddit*, and Mr. Schnell is expected to provide examples of such negative posts and the relationship among the three social

media sources.” Ex. A at 29 (emphasis added). Besides this cursory mention of Instagram and Reddit, Mr. Schnell provides no other opinions or summary of the grounds for his opinion that “a similar magnitude of negative comments would also be published on Instagram and Reddit.” *Id.*; see *Belshe v. Pinecrest Cluster Ass’n*, 68 Va. Cir. 89 (2005) (excluding expert opinion not materially divulged to opposing counsel, nor were the facts and grounds supporting those opinions revealed as required by Rule 4:1).

Mr. Schnell also is expected to testify about a “sudden increase” in the hashtag #AmberTurd on or around August 16-17, 2018. That was years before the statements by Mr. Waldman still at issue and cannot possibly be relevant to the claims here.

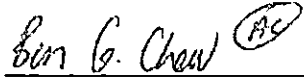
Finally, Mr. Schnell is expected to testify about a Twitter post marketing the release of *Aquaman 2* from October 16, 2021 that received approximately 100 negative replies within 24 hours. Mr. Schnell testified that he would not offer any opinion as to whether these purportedly negative replies were connected in any way to the defamatory statements alleged by Ms. Heard. Once again, this is totally irrelevant and highly prejudicial.

#### CONCLUSION

For the foregoing reasons, Mr. Depp respectfully requests that this Court grant his motion *in limine* and exclude Mr. Schnell’s testimony in its entirety and exclude Ms. Arnold’s testimony to the extent it relies on Mr. Schnell’s opinion.



Respectfully submitted,

 *Ben G. Chew* <sup>AC</sup>

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*Counsel for Plaintiff and  
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Dated: March 18, 2022

# Exhibit A

victimization-associated traumatic sequelae, such as shame, self-blame, humiliation, intimacy problems, interpersonal disconnection, and trust difficulties. Her psychological care will be palliative and function to remedy the psychological impact of the trauma arising during her life.








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Mr. Schnell's C.V. is attached as **Att. 3**. Mr. Schnell is an accomplished executive with a history of running large technology organizations, from early stage startups to large divisions of S&P 500 corporations. Mr. Schnell has also served as a testifying and consulting expert witness on high-profile cases in the areas of intellectual property, software licensing, cyber security, and other highly technical matters. He has knowledge of over forty computer languages, and is an adjunct professor at Nova Southeastern University, teaching computer security and operating systems in the computer science department.

Mr. Schnell is expected to testify as an expert in the field of statistical and forensic analysis of social media. As an expert in this field, Mr. Schnell and his firm, Berkley Research Group, conducted an investigation relating to posts on social media, primarily Twitter, that contained and/or expressed negative comments and negativity ("negative posts" or "posts") about Amber Heard, from April 8, 2020 through the present. Mr. Schnell located and collected, and is expected to testify, that there are over a million negative posts relating to Amber Heard from April 8, 2020 through the present. Specifically, from the beginning of April 2020, until the end of January 2021, there were 1,243,705 negative posts relating to Amber Heard, including one or more of the tags #JusticeForJohnnyDepp, #AmberHeardIsAnAbuser, #AmberTurd, or

#WeJustDontLikeYouAmber. Some of them are overlapping. The total number of distinct tweets that fall into that category is 1,019,433. Mr. Schnell has collected these on a hard drive, which has been provided to counsel for Mr. Depp. Mr. Schnell is expected to testify to these negative posts, including providing examples from the hard drive of collected data.

Some examples of posts that Mr. Schnell has collected and provided to counsel for Mr. Depp, and is expected to testify to, include:

-  **angelagrace**    @eilishgrace · Nov 27, 2020 ...  
Replying to @StephenKing  
Big pass on that. I don't watch shows with abusers and liars in it. I'll read the book again instead.  
**#AmberHeardIsAnAbuser**  
**#AmberHeardIsALiar**  
**#AmberHeardAbusedJohnnyDepp**  
**#AmberHeardFalsleyAccusedDepp**  
32 61 340
-  **Brian K. Murphy**  @bmurphy63 · Nov 27, 2020 ...  
It also doesn't hurt that ALL of the evidence proves that  
**#AmberHeardIsAnAbuser** & **#JohnnyDeppIsInnocent** regardless of what  
**#InjusticeNicol** ruled & was printed in the **#MSMIsTheEnemyOfThePeople**  
  
At the end of this there will be **#JusticeForJohnnyDepp**  
So there's that...  
32 61 340
-  **Ane** @AneHansen7 · Nov 29, 2020 ...  
Thinking about when Johnny and Amber went into couples therapy and the therapist confirmed that Amber had severe personality disorders. Maybe the therapist should testify? Inform about manipulation, ruthlessness, lack of empathy, violence ...**#AmberHeardIsAnAbuser**  
32 61 340



**Max\_Gordatio** @Max80094678 · Nov 27, 2020

...

Replying to @StephenKing

I read the book and liked it. I'd love to watch this show, but I won't support anything that liar and abuser Amber Heard is involved in. This woman mocks victims of domestic violence and uses them to make a career. So no thanks. #JusticeForJohnnyDepp #AmberHeardIsAnAbuser



19



**CheeryRosie Wald-mignon** #JusticeForJohnnyDepp · Jul 28, 2020

...

Well its took 4 years but everyone knows the truth now, she can hold as many press conferences as she likes its out there #AmberHeardIsAnAbuser and the world knows it!!!



100



**Melissa** @Quirky\_Alone88 · Jul 28, 2020

...

We don't want anything from you. You are a vile excuse of a human being, a money grabbing, fame hungry tramp, who stood on the backs of genuine survivors and trampled all over what it means to be feminine. #JohnnyDepp #JusticeForJohnnyDepp #AmberHeardIsAnAbuser #AmberTURD



**Beth** @Pink84 · Jul 28, 2020

...

Replying to @BBCNews

@realamberheard is the abuser not johnny. Of course it was painful, to have to recount all the fvcked up stuff she did to him. She needs to just go away and rot! #AmberHeardIsAnAbuser #JusticeForJohnnyDepp



7



**WriterEmmaBombeah** @AuthorWriterEB · Jul 28, 2020

...

Amber Heard lied at every point. It's clearly mapped out here today. Her lies are so bad it is embarrassing to read. And yes as stated she has many mental issues.

#JohnnyDepp Johnny Depp #JusticeForJohnnyDepp #HighCourt #AmberHeardIsAnAbuser #AmberHeard



Mr. Schnell is expected to testify about his statistical analysis of the Twitter posts, including the number of such posts per user, the number of users creating such posts, the commonality of the wording and formatting of such posts, the timing of such posts, and the frequency of such posts. This is all supported by the materials in the hard drive provided to counsel for Mr. Depp.

To conduct his search, Mr. Schnell and his team utilized the official Twitter “API” and conducted the following searches, starting from April 1, 2020: #JusticeforJohnnyDepp; #AmberheardIsAnAbuser; #AmberTurd; and #WeJustDontLikeYouAmber. The results of these searches were then pulled directly from Twitter using the API’s functionality. Because of the nature of those searches, Mr. Schnell is expected to testify that it is possible to show that the vast majority of the results contain negative statements about Ms. Heard. Mr. Schnell will also testify that based on the number of negative posts about Ms. Heard during this time on Twitter, a similar magnitude of negative comments would also be published on Instagram and Reddit, and Mr. Schnell is expected to provide examples of such negative posts and the relationship among the three social media sources.

Mr. Schnell is also expected to testify that there is no way to remove other people’s posts from these social media platforms, and therefore the negative posts’ impact will always remain and be accessible to the public.

Mr. Schnell’s opinions are to within a reasonable degree of scientific probability and/or certainty, and are based on his expertise, educational and technical background, his work experience, consultation with leading works and peer consultations, his knowledge based on all of the above, and his examination and review of data from the three social media platforms described.

It is expected that Mr. Schnell will review additional materials as they become available, including in discovery, including in response to discovery served in California that is being objected

to and challenged in the California courts, and may supplement his opinions based on additional information and materials he locates and are otherwise made available to him.

Mr. Schnell has performed additional research regarding negative tweets towards Ms. Heard *and* Mr. Depp. Mr. Schnell is expected to testify regarding expanded dates for the hashtags mentioned *supra*, to include January 1, 2018 through June 15, 2021. The number of uses of those hashtags between those dates was 2,790,876.

Mr. Schnell is expected to testify regarding the use of the following negative hashtags that are largely negative against Mr. Depp particularly relating to Ms. Heard. The hashtags analyzed were #JohnnyDeppIsALiar, #JusticeForAmberHeard, #WeAreWithYouAmberHeard, #IStandWithAmberHeard, #JohnnyDeppIsAWifeBeater, and #JohnnyDeppIsAnAbuser. Specifically, the number of uses of those hashtags between the same dates were 140,288.

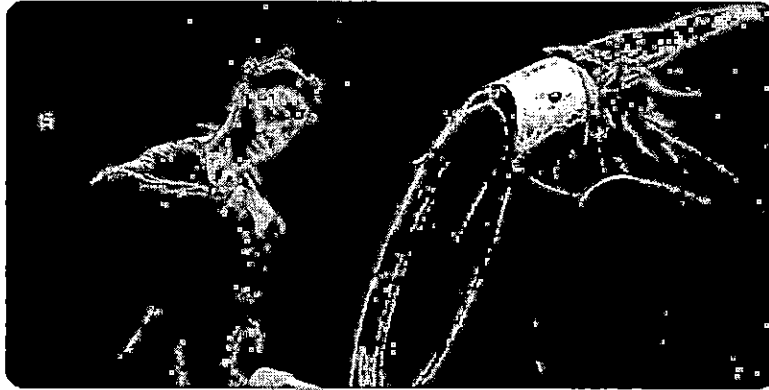
There were very few negative tweets towards Ms. Heard and/or Mr. Depp between December 18, 2018 and March 1, 2019.

Mr. Schnell is expected to testify regarding the use of the particular hashtag, #AmberTurd, and the sudden increase in the use of this hashtag on or around August 16 and August 17, 2018.

Mr. Schnell is expected to testify about his analysis of negative replies to a particular marketing tweet promoting Aquaman 2. The tweet he analyzed was by the Twitter user @CultureCrave, and was tweeted on October 16, 2021 at 1:24pm shown below:



Amber Heard filming #Aquaman2



1:24 PM · Oct 16, 2021 · Twitter Web App

Mr. Schnell analyzed the replies and quote tweets to this particular tweet from 1:24pm until midnight on that same night, finding mentions of #JusticeForJohnnyDepp, “abuser”, #WeJustDontLikeYouAmber, and #AmberTurd, and mentions of “boycott.”

Mr. Schnell is expected to rely on data and a graph that shows the use of all of the hashtags referenced in this designation, a copy of which is attached herein as Att. 4.<sup>4</sup> Mr. Schnell is further expected to testify that the number of mentions of the hashtags and negative posts relating to Amber Heard, the number of such posts per user, the number of users creating such posts, the timing of such posts, and the frequency of such posts are consistent with manipulation and a coordinated effort.<sup>5</sup>

<sup>4</sup> Due to an error in Microsoft Excel, page 1 of Attachment 4 to the Heard Second Supplemental Expert Witness Disclosure had an error that caused the data to be shifted one month to the left. This Disclosure has a corrected version of this graph. The data produced along with the graph remain unchanged.

<sup>5</sup> Page 2 of Attachment 4 is an additional graph of the same data as graphed in page 1 of Attachment 4, but with the plot of the #JusticeForJohnnyDepp hashtag removed. This allows the other hashtags in the graph to be more easily



Mr. Schnell is also expected to rebut the testimony of Doug Bania, who was disclosed by Mr. Depp.

**Mr. Bania's "Key" search terms are inappropriate and artificially limiting.** Mr. Bania's Designation section (d) discusses Mr. Bania's analysis of the Schnell API Data by searching for the terms "abuse hoax," "sexual violence hoax," and "fake sexual violence," which he calls the "Key Terms." Mr. Schnell will opine that someone skilled in the art of computer science and computer forensics would know that searching for these terms in quotes is not a scientific way to determine whether someone is tweeting about these topics. In order to match Mr. Bania's query, a Twitter user would need to type those words exactly as he searched them, with the same spacing, and in the same order.

Mr. Schnell has performed a proper forensic analysis of the hashtags using what he understood were the important parts of key terms. Specifically, Mr. Schnell performed searches within the Heard Hashtags for "Hoax," "Fake" and "Fraud". These words were searched in the dataset with the #AmberTurd, #WeJustDontLikeYouAmber, #AmberHeardIsAnAbuser, and #JusticeForJohnnyDepp hashtags. The search found over 81,000 instances of these terms in tweets with the Heard Hashtags, as can be seen in Attachment 4, page 19.

Mr. Bania's Designation, also in section (d), states, "If [his Key Terms were] found in the Schnell API Data, it could suggest the Tweets are related to the Daily Mail Articles or the Waldman Statements." It goes on to state that Mr. Bania concludes that the Tweets are "...likely a result of media coverage other than the Daily Mail Articles", due to the "low ratio" (0.07%) of the Key Terms in the Schnell API Data. However, Mr. Schnell's data show that using appropriate, non-

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visualized, since the scale created by the large number of #JusticeForJohnnyDepp tweets drown out the rest. This graph uses the same data previously produced

limiting key term searches, the relevant terms are used in 6.52% of the Schnell API Data. This is almost 100 times as high a ratio as concluded by Mr. Bania.

**Mr. Bania's search for the word "Waldman" is also insufficient and artificially limiting.** Mr. Bania's Designation contains an analysis of a search for the word "Waldman" within the Schnell API Data. Although this search is not referenced in the body of the Designation, it is in small print in footnote 16 pf section (d), and is also reflected in the Exhibits. Footnote 16 states, "Mr. Bania has performed this same analysis for the term 'Waldman.' My analysis indicates the term 'Waldman' is used 217,732, or 12.05% of the 1.81 [sic] Tweets between April 1, 2020 and June 15, 2021..."

First, it appears that Mr. Bania erred in stating that he searched through June 15, 2021. It is apparent from the data in Mr. Bania's Exhibit and his Designation that the data he searched was the Schnell API Data, which only spans April 1, 2020 and January 31, 2021.

Second, Mr. Schnell will opine that from his forensic analysis of the Schnell API Data, searching for the word "Waldman" is insufficient. Mr. Schnell found that many of the tweets with the Heard Hashtags refer to "Waldmignon" (as in, a portmanteau of Waldman and Filet Mignon, in what is likely a reference to Adam Waldman's minions). Adding this term to the term "Waldman" generates many more results, and raises Mr. Bania's percentage of total Heard Hashtag tweets that contain either "Waldman" or "Wald-Mignon" from 12.05% to 25.77% as can be seen in Attachment 4 page 19.

**Mr. Bania left out data for November 2020 in his calculations of Twitter hashtags.** In totaling his numbers and percentages, Mr. Bania did not include data from November 2020 for the hashtag #JusticeForJohnnyDepp (the most frequently used among the hashtags collected by Mr. Schnell). This omission creates an insufficiency in the analysis by Mr. Bania of over 552,355

tweets, which is over 56% of the total tweets during the time period of the data. Mr. Bania's designation does not mention the fact that an entire month is missing from his calculations in the body, although it is shown in small print in the supporting data in the exhibits, where there is simply a line that says "File is corrupt." Mr. Schnell has reviewed the data that were sent to Mr. Bania, and has confirmed that the file is not corrupt and Mr. Schnell was able to perform analysis on this hashtag for the entire time period.

**Mr. Bania incorrectly concludes that the Schnell API Data contains tweets from 2009 through 2021.** Mr. Bania's Designation section (b) incorrectly states that the Schnell API Data contains tweets as old as 2009, and states that Mr. Bania will use this incorrect conclusion to challenge the appropriateness of (his own) denominator in determining percentages throughout his expected opinions. In fact, Mr. Schnell will confirm that the tweets the Schnell API Data are limited to the months in which they are labeled. For the Schnell API Data, Mr. Schnell only gathered tweets with the various hashtags from April 2020 through January 2021.

**The tweets examined are negative tweets about Ms. Heard.** In Mr. Bania's Designation section (e)(i), he is expected to opine that Mr. Schnell did not perform an adequate analysis as to why the tweets considered in his opinion are "negative". Mr. Schnell did perform an analysis of the nearly 1 million tweets with the negative hashtags. After using industry standard "sentiment analysis" libraries, Mr. Schnell decided that it would be more accurate to take a statistically significant sample of the tweets and look at them manually. Mr. Schnell found that, as one would expect, people who used the hashtags #AmberTurd, #WeJustDontLikeYouAmber, #AmberHeardIsAnAbuser, and #JusticeForJohnnyDepp were tweeting in a negative way towards Ms. Heard. The small number (single digits per 1,000 tweets) that were not negative were "quote tweets" of the negative ones, with a supportive message towards Ms. Heard.

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**Expertise and Qualifications**

Ms. Arnold's C.V. is attached as **Att. 5**. She is an award-winning film producer and executive with over twenty years of experience in film production, acquisition, distribution, international sales, and film financing. Ms. Arnold has extensive experience in script development, screenwriting, casting, packaging, contract negotiation, production, sales, distribution and chain of title. She has worked with talent agents, producers, studio and distribution executives, investors, and lawyers in the development, production, financing and distribution of feature film projects, television, and online programming. Ms. Arnold has produced and/or executive produced six feature films, been involved in the development and production of dozens of feature film and television projects, produced a live streaming web series, and directed a documentary film on the iconic band Earth Wind & Fire.

From 1988–1991, she served as an executive at Guber-Peters Entertainment (the company that produced *Rainman*, *Batman*,) based at Warner Brothers Entertainment. From 1991–1996, she served as an executive and head of development for Secondary Modern Motion Pictures based at Universal Studios, and then from 1996–1999 as Head of Production and Development at the independent production company Cineville, LLC. Finally, prior to starting her own entertainment consulting company, she served as head of development and production for Monte Cristo Entertainment from 2000–2008.

Since 2008, Ms. Arnold has provided consultant services to attorneys, financiers, investors, production companies, international sales organizations, and film commissions in all areas related to entertainment industry standards and practices.

In addition to her consulting services, she has served as an expert witness and consultant on cases involving entertainment industry standards and practices, loss of wages, earning capacity, economic and reputational damage analysis, intellectual property rights, copyright issues, chain of title, hiring probabilities, defamation, estate claims, financial forecasting, new media, licensing, contracts, and business practices. Her clients have been both plaintiffs and defendants and have included the OWN Network, Merrill Lynch, Innovative Artists, Hoffman La Roche, the John C. Steinbeck Estate, actors, writers, producers and production companies. She has been qualified and testified as an expert witness in the following courts: Superior Court of California, County of Los Angeles; United States District Court, Los Angeles County; United States District Court, Central District of California; High Court of Justice, Queens Bench Division, Bristol District Registry, England; Circuit Court for the 13<sup>th</sup> Judicial Circuit in and For Hillsborough County Fl., Civil Division; US District Court Southern District of Texas Houston Division; US District Court, North San Diego County; United States International Trade Commission; testified in US State and Federal courts, as well as at arbitration.

Ms. Arnold has also presented an online video course for attorney continuing education for Attorney Credits Online, as well as published a text entitled The Entertainment Industry — Points to Consider When Evaluating a Case June 22, 2009. Additionally, she has written a series of entertainment industry-related articles and served as an entertainment media consultant to Bloomberg News, MSNBC, CCTV, NPR, and Associated Press International, among others.

### **Summary of Engagement for Counterclaims**

Ms. Arnold has been asked to offer her expert opinion and assess the reputational harm and economic opportunities lost by Ms. Heard as a result of the defamatory statements described in Paragraphs 45-47 of Ms. Heard's Counterclaim and Exhibits F-H attached to the Counterclaims ("the defamation" or "the defamatory statements"). Specifically, Ms. Arnold will testify as to the economic consequences on Amber Heard as a result of the following statements ("defamatory statements") included in the Counterclaim, at Paragraphs 45-47:

45. Depp, through Waldman, continued to claim that Ms. Heard was committing perjury to the Daily Mail, when he stated on April 8, 2020 that "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." **Exhibit F.**

46. Then on April 27, 2020, Depp, through Waldman, again told the Daily Mail that "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." **Exhibit G.**

47. On June, 24, 2020, Depp, through Waldman, falsely accused Ms. Heard in the Daily Mail of committing an "abuse hoax" against Depp. **Exhibit H.**

### **Sources Consulted**

In conjunction with the rendering of her opinion in this litigation, Ms. Arnold has reviewed pleadings, discovery, documents provided in discovery by both parties, trial and deposition testimony, has spoken with Ms. Heard and her publicist and management team, has conducted research, and has relied on her extensive experience and resources in the entertainment industry. The documents that she reviewed and relied on are listed in Att. 6.

Ms. Arnold has also consulted with Ron Schnell, a forensic expert in computer and social media data, also identified in this Designation. Mr. Schnell has reported to Ms. Arnold that there

are over a million negative posts relating to Amber Heard from April 8, 2020 through the present. Ms. Heard has been the subject of over 1,243,705 negative tweets and posts arising after the defamatory statements, from the beginning of April 2020 until the end of January 2021, including one or more of the tags #JusticeForJohnnyDepp, #AmberHeardIsAnAbuser, #AmberTurd, or #WeJustDontLikeYouAmber. Some of them are overlapping. The total number of distinct tweets that fall into that category is 1,019,433. Mr. Schnell has identified these tweet patterns as an orchestrated “bot” campaign by Depp and his representatives that is triggered by statements in the press by or about Ms. Heard. The bot campaign was specifically used to generate signatories to a “Remove Amber Heard from Aquaman 2” petition.<sup>6</sup>

As Ms. Arnold will testify, this is significant because the entertainment industry relies heavily on the reputation of actors in social media and frequently will run searches on any actors being considered for any role. Likewise, entities considering actors for commercial opportunities place substantial importance on the actor’s reputation in social media in determining the actor to best promote their products and services. The defamatory statements, widely disseminated by the bot campaign, have made it nearly impossible for Ms. Heard to promote herself for personal appearances, speaking engagements and industry events as normal circumstances would permit. The inability for Ms. Heard to promote herself as an actor has further exacerbated her economic damages.

#### **Summary of Ms. Arnold’s Opinions**

Ms. Arnold will testify that film studios and production companies evaluate the reputation of an actor in the public sphere when determining whether to offer an actor a role, and

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<sup>6</sup> Robart Lio, *How Social Bots Created an Anti-Amber Heard & Aquaman Campaign*, Medium.Com, Feb. 17, 2021, available at <https://medium.com/@aquaman-bots/how-social-bots-created-an-anti-amber-heard-aquaman-campaign-e68e16637d3a>.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 15 to exclude expert testimony of Ronald S. Schnell and Kathryn Arnold ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*



**WE ASK FOR THIS:**

---

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>29th</sup> 18th day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
CIVIL PROCESSING  
2022 MAR 22 A 11:39  
JENNIFER T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 16 TO EXCLUDE  
DEFENDANT'S TRIAL EXHIBIT 178**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, and, for the reasons set forth fully below, moves this Court to exclude Defendant's Trial Exhibit 178, which is annexed hereto as **Exhibit A**.

### INTRODUCTION

Defendant's Trial Exhibit 178 is a series of June 11, 2013 text messages between Mr. Depp and his friend, Paul Bettany, where they are *joking* about burning Amber as a witch. The probative value of these text messages, likewise, is a joke. The language used in these text messages, by both Mr. Depp and Mr. Bettany, however, is admittedly crude and, accordingly, runs the risk of shocking the jury into perceiving Mr. Depp's character in an unfavorable light. The potential prejudice of introducing Defendant's Exhibit 178 to the jury, accordingly, far outweighs its probative value in connection with the jury's key fact-finding task: to determine whether Ms. Heard was lying when she claimed Mr. Depp physically abused her during their marriage.

### ARGUMENT

Mr. Depp anticipates that Ms. Heard will, as the defendants in the UK Action did, introduce the text messages reflected in Defendant's Trial Exhibit 178 to impugn Mr. Depp's character and demonstrate that Mr. Depp was, in fact, violent towards Ms. Heard. Defendant's Trial Exhibit 178, however, is not admissible for this purpose.

While in Defendant's Trial Exhibit 178, Mr. Depp does discuss violence against Ms. Heard, the context reveals that this is clearly a joke, albeit an off-color one. Mr. Depp and Mr. Bettany are discussing how they can be "sure [Ms. Heard's] a witch:" Mr. Bettany suggests the "English course of action," a "drowning test," to which Mr. Depp responds "Let's drown her before we burn her!!! I will f\*ck her burnt corpse afterwards to make sure she is dead . . ." Ms. Heard, who has provided sworn testimony on the alleged incidents in which Mr. Depp physically abused her on

multiple occasions at this point, has *never* claimed that Mr. Depp ever attempted to “drown” or “burn” her. Nor has Ms. Heard alleged *any* incidents of violence in in the time frame (June 2013) of these text messages. In short, as should be plain from the messages themselves, Mr. Depp is not admitting to or planning a physical assault on Ms. Heard – he is just making a dirty joke to a friend. The probative value of these text messages is, accordingly, nil.

To the extent Defendant’s Exhibit 178 has a scintilla of probative value (to be clear, it does not), it is improper character evidence that should not be admitted at trial. *See* Va. Sup. Ct. R. 2:404. Evidence that an individual *actually committed a wrongful act* is, with a few exceptions, not admissible to show the commission of another wrongful act. *See, e.g., Commonwealth v. Minor*, 267 Va. 166, 176-77 (2004). It would, thus, be beyond the pale to permit Ms. Heard to offer evidence that Mr. Depp *joked about violence*, which he undisputedly *did not actually commit*, as evidence that he was violent towards Ms. Heard.

Despite the fact that the texts reflected in Defendant’s Exhibit 178 are clearly a bad joke, the obscene nature of the language use and the acts described creates a very real risk that a juror could be prejudiced against Mr. Depp after hearing these communications. A juror may be offended or, worse, speculate about the character of a man who would make such an obscene statement. The risk of this type of visceral reaction far exceeds the non-existent probative value of the text messages in Defendant’s Exhibit 178. Defendant’s Exhibit 178 should, accordingly, be excluded. *See* Va. Sup. Ct. R. 2:403; *Colonna’s Shit Yard Inc. v. Virginia Natural Gas, Inc.*, CL18-2169, 2021 WL 5829811, \*3 (Va. Dec. 9, 2021).

Respectfully submitted,



---

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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March <sup>22</sup>18, 2022

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 16 to exclude Defendant's Trial Exhibit 178 ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*



**WE ASK FOR THIS:**

---

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**SEEN AND OBJECTED TO:**

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*Counsel for Defendant Amber Laura Heard*

Ben G. Chew (AS)  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
CIVIL PROCESSING

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

2022 MAR 22 A 11:40

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Civil Action No.: CL-2019-0002911

**FILED UNDER SEAL**

(Pursuant to the Stipulated Protective Order Entered by the Court on  
June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 17 TO EXCLUDE  
DEFENDANT'S TRIAL EXHIBITS 582 & 582A**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, and, for the reasons set forth fully below, moves this Court to exclude Defendant's Trial Exhibits 582 and 582A, which are an audio recording and the transcript thereof, respectively.

### INTRODUCTION

Ms. Heard has included on her Exhibit List a recording and a transcript thereof, which is annexed hereto as **Exhibit A**, in which Ms. Heard shouts at Mr. Depp for apparently putting a cigarette out on her. Ms. Heard's statements on the audio recording are inadmissible hearsay and should be excluded on that basis alone. Additionally, audio recording seems to have been spliced out of a larger audio recording, which Ms. Heard has neither produced nor identified on her Exhibit List, in violation of the "rule of completeness" applicable to recorded statements. Defendant's Trial Exhibits 582 and 582A should, accordingly, be ruled inadmissible at trial.

### ARGUMENT

The veracity of Ms. Heard's claim that Mr. Depp physically abused her during their marriage is the core both Mr. Depp's defamation claims against Ms. Heard and Ms. Heard's counterclaim for defamation against Mr. Depp. It is safe to presume, then, that Ms. Heard is offering her statement, reflected in Defendant's Trial Exhibits 582 and 582A, that Mr. Depp should "[g]o put [his] f\*cking cigarettes out on someone else" for the truth of the matter asserted therein: that Mr. Depp put a cigarette out on her. This statement is inadmissible hearsay, pure and simple. *See* Va. Sup. Ct. R. 2:801(c) ("Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."); *Warnick v. Commonwealth*, 72 Va. App. 251, 270 (Va. Ct. App. 2020) (citing Va. Sup. Ct. R. 2:802) ("Hearsay is inadmissible unless an exception to the general prohibition against its admission applies.").

The recording and corresponding transcript should also be excluded for evidence because it appears to be spliced from a larger recording, in violation of the rule of completeness. *See* Va. Sup. Ct. R. 2:106. Ms. Heard has not produced the complete recording from which Defendant's Trial Exhibit 582 appears to have been excerpted. Nonetheless, Mr. Depp's contention that Defendant's Trial Exhibit 582 is only a part

of a larger whole is supported by other record evidence. As an initial matter, the recording is a mere whisp, only 11 seconds long. More importantly, there is another short recording which seems to have been a part of the same recoding as Defendant's Trial Exhibit 528 and provides important context: as reflected in Plaintiff's Trial Exhibit 85, annexed hereto as **Exhibit B**, there is another short recording where Ms. Heard, states at the end "you just *threw* a fucking cigarette on me." *See* Exhibit B (CTRL00071910). It seems that Ms. Heard's statement in Defendant's Trial Exhibit 528 – suggesting Mr. Depp put a cigarette out on her – may be an escalation or exaggeration of Ms. Heard's statement in the audio recording transcribed in Plaintiff's Exhibit 85 suggesting that Mr. Depp merely *threw* a cigarette in Ms. Heard's direction. *See* Exhibit B (compare CTRL00071910 with CTRL00071911). One must also ask, what may have been spliced out between these two statements?

To the extent that the Court rules that Defendant's Trial Exhibits 582 and 582A are not held to be inadmissible hearsay, Mr. Depp requests that Defendant's Trial Exhibits 582 and 582A be excluded from evidence pursuant to the rule of completeness, as offering this the statements in these exhibits out of context would be more prejudicial than probative. *See* Va. Sup. Ct. Rule 2:106(a); *Pino v. Sch. Bd. for City of Chesapeake*, 96 Va. Cir. 269, \*1 (2017). In the alternative, Mr. Depp requests that Ms. Heard be ordered to produce the complete recording from which Defendant's Trial Exhibit 528 was extracted and, if she can produced such recording, offer only the complete version of the recording into evidence, if she so choses. *See* Va. Sup. Ct. Rule 2:106(a).<sup>1</sup>

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<sup>1</sup> If the Court declines to impose this requirement on Ms. Heard, Mr. Depp ask that the Court, at the very least, require Ms. Heard to play the other recording transcribed in Plaintiff's Exhibit 85 (Exhibit B at CTRL00071910) before presenting Defendant's Trial Exhibit 582 or 582A to the jury (which is on Plaintiff's Trial Exhibit List), to allow the jury the opportunity to at least consider a broader context.

Respectfully submitted,



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
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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

  
Dated: March 18, 2022

# EXHIBIT A

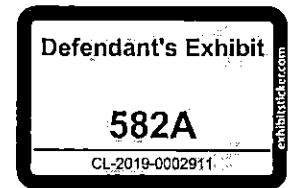


**AMBER LAURA HEARD:** Go put your fucking cigarettes out on someone else. You fucking have consequences for your actions. That's it.

**JOHN C. DEPP, II:** Shut up, fat-ass.

**AMBER LAURA HEARD:** Yeah. You got me there.

[00:00:11]



# EXHIBIT B

# SIMONS MUIRHEAD & BURTON LLP

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## "CTRL00071905"

Time		
00:00-0:43	AH	go I fucked up and cried in my bedroom after I had dumped you a fucking week, week prior, a fucking week prior after you beat the shit out of me. And then a week later you show in my, show up at my doorstep in my room saying you want to say goodbye. OK say goodbye.
	JD	Oh I said it?
	AH	Yes you did say it. I'll go to the text messages so that we are clear.
	JD	Yes because you'd said it before to me.
	AH	Okay, no doubt but you did not say you came over to say bye?
	JD	I made a huge mistake
	AH	You didn't say that to me
	JD	I made a huge mistake:
	AH	You didn't say that to me
	JD	Well I won't do it again.
	AH	What's the mistake then? Did you or did you not say that you were coming over to say bye

## "CTRL00071906"

Time		
00:00-0:20	JD	(unaudible) fucking talk to you
	AH	Hey I was standing right there. Please don't run into me...
	JD	Get out of my way
	AH	I am not going to get out of your way I am standing right here.
	JD	Okay I will make sure I avoid you
	AH	Please try to avoid human beings when they're standing in front of you
	JD	Hey that's really good advice you're really knowledgeable.

## "CTRL00071907"

Time		
00:00-0:25	JD	Fuck off, go go away
	AH	No please please stop
	JD	I can say that if I want to. After all the shit you said to me
	AH	Please stop

F1009.10.1  
DEPP00017445

	JD	(inaudible) in there and get out of my fucking face...
	AH	We have to once in a while recalibrate and just learn
	JD	No no we don't have to recalibrate
	AH	Yes we do sometimes we do, sometimes we have to go okay
	JD	No because you blow it and you suck and I'm sick of it and fuck you
	AH	Take a second take an inhale take an exhale
	JD	No I am sick of it
	AH	Take an inhale take an exhale control your self control yourself a little bit better you fucking need help.

**"CTRL00071908"**

Time		
00:00-0:23	AH	Monster
	JD	Watch me
	AH	No there isn't. There's no difference.
	JD	Watch me, watch me douchebag
	AH	Never a difference. Never a difference. There won't be. There won't be a difference this time.
	JD	Why do you think I come crawling back.
	AH	I know it. No, I know it, yeah, I know there won't be a difference. I know it will take seven, five, ten days depending on where I go. If I go to New York wanna be with my friends, If I fuck off to Texas... By the way
	JD	You know what, no. You go suck cock.
	AH	Bye

**"CTRL00071910"**

Time		
00:00-0:45	AH	Couch, couch, couch! You give me one couch, I gave you three other couches. Two? Two couches.
	JD	You don't pay attention to them
	AH	Please give me couch.
	JD	What do you want?
	AH	Couch.

JD	Couch, fine. What do you want?
AH	I want couch.
JD	mumbles
AH	I want couch. Agree please, though. You said you agreed before when we started talking.
JD	Couch agree.
AH	When we stopped fighting.
JD	Have I been fighting?
AH	Yes. Everything you said has been nasty and provoking and mean spirited.
JD	Not you of course.
AH	No I'm not saying that you asked me yours by the way you just threw a fucking cigarette on me.

**"CTRL00071911"**

Time		
00:00-0:45	AH	Go and put your fucking cigarettes out on someone else. You fucking have consequences for your actions. That's it.
	JD	Shut up fat ass
	AH	Yeah you got me there

**"CTRL00071913"**

Time		
3 mins	AH	Johnny stop, stop it please, please, I want you to sit down, please, you asked me what I want I told you, what are you fucking (inaudible) for, you asked me what I wanted and then you (inaudible) when I responded I answered honestly
	JD	you want me to (inaudible)
	AH	you asked me what I wanted
	JD	I don't believe you I don't wanna (inaudible)
	AH	Okay I (inaudible) want you to understand what I am saying to an extent that makes me want [inaudible]. You're asking me and then you are putting words in my mouth, you're asking me [inaudible] if you were to break up with me
	JD	I don't care what you're saying just say it
	AH	If you wanna break up with me (inaudible) care who we are (inaudible) I know that you and I have a future together however I am the only person who [inaudible] right now that is absolutely aware of that fact so
	JD	(inaudible)
	AH	Okay okay okay alright
		(inaudible)
	AH	Right now I (inaudible)
		(inaudible)
	AH	louder, every other man I know, every relationship I know the man is like oh yeah, (inaudible)
JD	because you're a fucking cunt	



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 17 to exclude Defendant's Trial Exhibits 582 & 582A ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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**SEEN AND OBJECTED TO:**

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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

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CLERK OF CIRCUIT COURT  
FAIRFAX COUNTY, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Protective Order Entered by the Court on  
June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 18 TO EXCLUDE EXPERT  
TESTIMONY OF DOCTOR DAWN M. HUGHES**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, hereby moves the Court to exclude parts of the testimony of Doctor Dawn M. Hughes for the reasons set forth fully below. Plaintiff expressly reserves the right to move to exclude Dr. Hughes on any other basis not mentioned herein after Dr. Hughes' deposition, which is currently set for March 28, 2022.

### INTRODUCTION

Ms. Heard's attempt to present certain expert testimony by Dr. Dawn Hughes is improper because parts of Dr. Hughes' anticipated testimony are irrelevant, without foundation, and could only serve to confuse or mislead the jury. *See* Ms. Heard's Third Supplemental and Rebuttal Disclosure of Expert Witnesses, attached as Exhibit A, at 1-26. In what appears to have become a pattern for Ms. Heard, Ms. Heard attempts to submit expert testimony to opine that certain disputed conduct has occurred. Just like Dr. Spiegel, another expert retained by Ms. Heard, Dr. Hughes opines that Mr. Depp allegedly physically abused Ms. Heard – based on cherry-picked evidence that unilaterally supports Ms. Heard's position, while ignoring contradictory record evidence and without ever having met or spoken with Mr. Depp. Dr. Hughes has no valid basis whatsoever to render such opinions. These parts of Dr. Hughes' opinion lack foundation and invade the province of the jury. Furthermore, their nonexistent probative value is clearly outweighed by the unfair prejudice they would cause to Mr. Depp and would be certain to confuse or mislead the jury.

### ARGUMENT

**I. Dr. Hughes' Testimony Regarding Conduct That Has Occurred Lacks Proper Foundation and Violates Relevant Professional and Ethical Standards.**

Dr. Hughes intends to provide expert testimony as a forensic psychologist to opine that certain conduct occurred between Mr. Depp and Ms. Heard. That is improper. For example, Dr. Hughes intends to testify that: "*The intimate partner violence inflicted upon Ms. Heard by Mr. Depp* is categorized as severe because it consists of strangulation, punching, beating up, sexual

violence, threats to kill, an increase in frequency and severity of abuse, and serious injuries such as black eye, facial bruising, nose injury, concussion, and loss of consciousness.” Ex A. at 5 (emphasis added); *“Mr. Depp also engaged in serious sexual violence* during instances of rage and violence in which he forcibly penetrated Ms. Heard’s vagina with the neck of a liquor bottle during one of the most violent episodes in their relationship. Other times, he forcibly and violently thrust his fingers up her vagina, moved her body by holding onto her vagina, and yelled obscenities at her.” Ex. A at 14 (emphasis added); “In examining the factors present in this case, there is statistical support to suggest that *the intimate partner violence perpetrated by Mr. Depp toward Ms. Heard was serious, severe, and dangerous.*” Ex. A at 14 (emphasis added); “There were two very serious abusive incidents worth noting in which Ms. Heard thought Mr. Depp could kill her. The first time was in Australia in March 2015 when *Mr. Depp engaged in an all-out assault upon her* whereby he hit her, slapped her, threw her around, pinned her on her back on a counter, squeezed her neck strangling her, ripped off her nightgown, and raped her with a Jack Daniels bottle while screaming over and over again, ‘You ruined my life. I hate you. I’m going to fucking kill you.’” Ex. A at 15 (emphasis added); “Then, in December 2015 in Los Angeles, *Mr. Depp perpetrated another severe assault against Ms. Heard* wherein he repeatedly punched and slapped her with his ring-adorned hands, dragged her by the hair across the apartment, headbutted her, and strangled her while yelling ‘I fucking hate you. I hate you. I’m going to fucking kill you.’” Ex. A at 15 (emphasis added).

Dr. Hughes’ opinion that such conduct occurred between Mr. Depp and Ms. Heard lacks any valid basis or proper foundation. Such an opinion *cannot legitimately be drawn from psychological methods*, and is instead based on cherry-picked evidence which is contradicted by other record evidence (*i.e.*, compare images of Ms. Heard’s purported injuries on May 21, 2016

and Ms. Heard's testimony that LAPD officers walked across broken glass and observed property damage with sworn testimony of those same LAPD officers that they did not observe any injuries to her face or any property damage). Dr. Hughes' opinions also violate relevant professional ethical standards.<sup>1</sup> See Dr. Curry's Rebuttal Report of Dr. Hughes, previously attached as Exhibit H to Mr. Depp's Designation of Opposing Expert Witnesses, attached hereto as Exhibit B. Mr. Depp's retained forensic psychologist, Dr. Shannon Curry, has opined that "Dr. Hughes repeatedly misrepresents descriptions of IPV between Ms. Heard and Mr. Depp as factual, thus introducing potential prejudice and violating the privacy and dignity of both parties for reasons irrelevant to her purpose as an examiner. *To reiterate, it is never the psychologist's task to determine that IPV occurred . . .*" Ex. B at 24 (emphasis added).

Egregiously, *Dr. Hughes, like Dr. Spiegel, is seeking to opine about Mr. Depp's mental condition despite never having met nor evaluated Mr. Depp.* Dr. Hughes' opinions regarding "Mr. Depp's psychological instability" and "[t]he unpredictability, volatility, and severity of Mr. Depp's behavior," Ex. A at 13, are wholly irrelevant to Dr. Hughes' psychological evaluation of Ms. Heard. Dr. Hughes cloaked these personal and perjorative opinions of Mr. Depp as scientifically founded, despite that they are based primarily, if not solely, on Ms. Heard's own self-report. Further, Dr. Hughes violated professional practice standards by failing to state the limitations of her opinions about an individual who she did not examine.<sup>2</sup> Taken together, Dr. Hughes' opinions regarding Mr. Depp's mental status and alleged conduct lack proper foundation,

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<sup>1</sup> See Ethical Principles of Psychologists and Code of Conduct (EPPCC) (American Psychological Association [APA], 2017) Standard 2.04: *Bases for Scientific and Professional Judgments*, Standard 9.01: *Bases for Assessments*, Standard 9.02: *Use of Assessments*, Standard 9.04: *Minimizing Intrusions on Privacy*, and Standard 9.06: *Interpreting Assessment Results*.

<sup>2</sup> See EPPCC (APA, 2017) Standard 9.02: *Use of Assessments* and Standard 9.06: *Interpreting Assessment Results*.

violate generally accepted and enumerated standards of psychological practice,<sup>3</sup> and should therefore be excluded.

**II. Dr. Hughes' Testimony Regarding Her Administration of the CAPS-5 on December 27, 2021, Ten Days After Dr. Curry Administered This Test, Should Be Excluded.**

Dr. Hughes failed to disclose her administration of the CAPS-5 test in her supplemental designation report dated January 11, 2022. On January 20, 2022, Dr. Curry provided Dr. Hughes with the complete and detailed CAPS-5 from the Court-ordered IME of Ms. Heard. Dr. Hughes nonetheless waited until February 11, 2022 to disclose that she administered the CAPS-5 with Ms. Heard on December 27, 2021. Additionally, there are glaring deficiencies in Dr. Hughes' administration of the CAPS-5 including, most notably, that Dr. Hughes failed to adhere to standard test procedure, thereby invalidating the entirety of its results. *See* Mr. Depp's February 25, 2022 Designation of Experts, attached hereto as Exhibit C, at 4. The first line of the CAPS-5 instructions reads: "Standard administration and scoring of the CAPS-5 are essential for producing reliable and valid scores and diagnostic decisions." Ex. C at 4. Because Dr. Hughes' administration of the CAPS-5 is utterly deficient, her testimony based on this test should be excluded in its entirety.

**III. Dr. Hughes' Testimony Invades the Province of the Jury.**

While "expert testimony cannot be excluded on the ground that it invades the jury's decision-making role on ultimate issues . . . [t]hat does not mean, however, that experts can be used for matters of common knowledge." *Rhodes v. Lance, Inc.*, 55 Va. Cir. 253 (2001). "The common-knowledge bar rests not on the ground that the expert testimony touches on the core issue of the case (it may or may not do so), but rather that expertise is simply unneeded." *Id.* (granting plaintiff's motion *in limine* to exclude the "[expert's] conclusion that the defendant had the green

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<sup>3</sup> *See supra* n.1.

light” because that is “an inference a layman is equally competent to reach without the unhelpful imprimatur of an expert”). Further, Rule 2:702(b) prohibits expert testimony “that is speculative or which opines on the credibility of another witness.” Va. Sup. Ct. R. 2:702(b).

Astonishingly, and as mentioned above, Dr. Hughes seeks to opine that specific instances of IPV have occurred. Ex. A at 1-26. This opinion not only lacks a valid basis and exceeds what a psychologist can opine to, it invades the province of the jury because the jury is equally competent to determine the issue of whether Mr. Depp abused Ms. Heard “without the unhelpful imprimatur of an expert.” *Rhodes*, 55 Va. Cir. 253. Further, by basing her opinion on the assumption that Ms. Heard’s allegations of abuse against Mr. Depp are accurate and truthful, Dr. Hughes is necessarily rendering an opinion as to the credibility of numerous other witnesses that dispute Ms. Heard’s account, including (but certainly not limited to) Mr. Depp, LAPD Officers Tyler Hadden and Melissa Saenz, Monroe Tinker, N.P., Dr. Anderson, and Mr. Alejandro Romero among many others. The jury does not require Dr. Hughes’ assistance in assessing the credibility of witnesses with respect to the ultimate issue of whether Mr. Depp physically abused Ms. Heard.

**IV. Any Probative Value of Dr. Hughes’ Testimony is Substantially Outweighed by the Danger of Unfair Prejudice and the Likelihood of Misleading the Jury.**

Finally, Dr. Hughes’ opinions also should be excluded because the probative value of her testimony, *if any*, is substantially outweighed by the danger of unfair prejudice to Mr. Depp and the likelihood that it will mislead the jury. Va. Sup. Ct. R. 2:403. As noted above, Dr. Hughes is proposing to offer damaging testimony about the character and mental condition of Mr. Depp as well as testimony about what acts have occurred. Such damaging – and, with respect to Mr. Depp’s mental state, irrelevant – testimony should be excluded as unfairly prejudicial and likely to mislead the jury.



Respectfully submitted,



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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March 18, 2022

# Exhibit A

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff and Counterclaim Defendant,

v.

AMBER LAURA HEARD,

Defendant and Counterclaim Plaintiff.

Civil Action No.: CL-2019-0002911

**COUNTERCLAIM PLAINTIFF AND DEFENDANT'S  
THIRD SUPPLEMENTAL AND REBUTTAL DISCLOSURE OF EXPERT WITNESSES**

Counterclaim Plaintiff and Defendant Amber Heard ("Ms. Heard") hereby identifies the following individuals who are expected to be called as expert witnesses at trial:<sup>1</sup>

**Dawn M. Hughes, Ph.D., ABPP  
Clinical and Forensic Psychologist  
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New York, New York 10016  
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**Introduction**

Dr. Dawn Hughes was retained by counsel for Amber Heard, in connection with *John C. Depp II v Amber Heard* (Civil Action No. CL-2019-0002911) which is pending in the Circuit Court of Fairfax County, Virginia. Ms. Heard is being sued for defamation by her ex-husband, John C. Depp II (known as "Johnny Depp"), in relation to her authoring an op-ed in the *Washington Post* on being a survivor of domestic violence. Although the op-ed never mentioned Mr. Depp by name, Mr. Depp stated in the complaint in this matter that he "never abused Ms.

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<sup>1</sup> This Expert Designation addresses expert testimony and opinions relating to Ms. Heard's Counterclaim and Ms. Heard's defenses.

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Heard.” Ms. Heard then filed a counterclaim against Mr. Depp for defamation. Dr. Hughes was asked to conduct a forensic psychological evaluation of Ms. Heard to assess for the dynamics and consequences of intimate partner violence that may have been present in her relationship with her now ex-husband, Mr. Depp, and to assess for any psychological consequences stemming from the defamatory statements to the media made by Mr. Depp through his attorney and agent, Adam Waldman.<sup>2</sup>

### Expertise and Qualifications

Dr. Dawn Hughes is a clinical and forensic psychologist and an expert in interpersonal violence, abuse, and traumatic stress, which includes intimate partner violence, rape and sexual assault, physical assault, childhood maltreatment and abuse, and sexual harassment. For the past 25 years, Dr. Hughes has conducted hundreds of assessments and psychological treatments of

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<sup>2</sup> Specifically, Dr. Hughes will testify as to the psychological consequences on Amber Heard as a result of the following statements (“defamatory statements”) included in the Counterclaim, at Paragraphs 45-47, and at Exhibits F, G and H to the Counterclaim:

45. Depp, through Waldman, continued to claim that Ms. Heard was committing perjury to the Daily Mail, when he stated on April 8, 2020 that “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.”

46. Then on April 27, 2020, Depp, through Waldman, again told the Daily Mail that “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.”

47. On June, 24, 2020, Depp, through Waldman, falsely accused Ms. Heard in the Daily Mail of committing an “abuse hoax” against Depp.

both male and female victims of intimate partner violence, rape and sexual-assault, childhood sexual abuse, and sexual harassment in the workplace. She has significant training and experience regarding the dynamics and consequences of abuse, intimate partner violence, victimization, sexual harassment, and traumatic stress. Dr. Hughes has made numerous professional presentations, invited addresses, and conducted formal trainings (including judicial trainings) in the areas of interpersonal and intimate partner violence, abuse, and trauma. She is frequently contacted by judges and court administrations to conduct continuing legal education seminars on trauma and was selected by the Appellate Division of the State of New York to conduct their mandatory attorney trainings on intimate partner violence, traumatic stress, and how the psychological impact of exposure to violence and abuse may influence the victim's participation in the legal system. In addition, she routinely attends professional conferences and trainings, obtain continuing-education credits, read journal articles, and consult with peers as part of her general practice as a clinical and forensic psychologist to remain current with developments in her field of practice.

Dr. Hughes is a Clinical Assistant Professor of Psychology in the Department of Psychiatry of New York Presbyterian Hospital-Weill Cornell Medical Center serving on the voluntary faculty for approximately 20 years. In this capacity, she contributes to the psychology training program, teaches an ethics seminar to interns, engages in other intern didactics, and was instrumental and active in the NYP-COPE program which provided much needed psychological first-aid and resources to hospital staff who struggled with emotional, psychological, and traumatic effects from being on the front lines in battling the Covid-19 pandemic in NYC.

Dr. Hughes is actively engaged in professional activities in several organizations, such as the American Psychological Association (Trauma Psychology Division and American

Psychology-Law Society), International Society of Traumatic Stress Studies, the Women's Mental Health Consortium, among others. She was a founding member and is President-elect of the Trauma Psychology Division of the American Psychological Association and has served on the Executive Committee for a good portion of the past decade. She recently completed her three-year term as an elected member to the Council of Representatives of the American Psychological Association representing the Trauma Division. Dr. Hughes was a founding member and past-President of the Women's Mental Health Consortium, a NYC-based multidisciplinary organization providing services and resources regarding women's mental health.

Dr. Hughes is Board Certified in Forensic Psychology representing one of approximately 350 psychologists in North America who are board certified in forensic psychology by the American Board of Forensic Psychology, a specialty board of the American Board of Professional Psychology (ABPP). This credential is intended to signify the highest levels of expertise and practice in forensic psychology. Dr. Hughes has been qualified as an expert witness by courts in the States of New York, New Jersey, Connecticut, and Pennsylvania, and in the United States District Courts for the Southern, Eastern, and Northern Districts of New York. She is licensed to practice in the States of New York, Connecticut, and North Carolina. Her curriculum vitae can be found in **Att. 1**.

#### **Summary of Opinions**

Dr. Hughes' opinions are based on more than 25 years of clinical and forensic experience assessing and treating victims of intimate partner violence and the empirical and social-science data pertinent to this subject matter. Further, these opinions are based on her forensic psychological evaluation of Amber Heard, a review of copious documents and materials that

have been made available to her in this case, and collateral interviews. The documents that she reviewed and relied on are listed in Att. 2. This designation represents a summary of Dr. Hughes' professional analysis and opinions and does not purport to represent all the information and data that was derived from the comprehensive forensic evaluation process. Dr. Hughes' opinions are offered to a reasonable degree of psychological probability and/or certainty.

A brief summary of Dr. Hughes' professional opinions (which are discussed in greater detail below) are as follows:

1. Amber Heard's report of violence and abuse in her relationship with Mr. Depp is consistent with what is known as intimate partner violence, a pattern of manipulation, fear, and control in a relational context that is maintained through the use of multiple abusive behaviors such as physical violence, psychological aggression, coercive control, emotional abuse, and sexual violence.
2. The intimate partner violence inflicted upon Ms. Heard by Mr. Depp is categorized as severe because it consists of strangulation, punching, beating up, sexual violence, threats to kill, an increase in frequency and severity of abuse, and serious injuries such as black eye, facial bruising, nose injury, concussion, and loss of consciousness.
3. Amber Heard has identifiable psychological symptomatology and distress as a result of the defamatory statements (as set forth in ¶¶ 45-47 of the Counterclaim) made to the press and media about her. Each statement has its own properties that elevate psychological distress and emotional dysregulation; however, importantly, the defamatory statements exacerbate Ms. Heard's Posttraumatic Stress Disorder (PTSD) by triggering painful and intrusive reminders of Mr. Depp's past physical, emotional, psychological, and sexual abuse toward her thereby greatly intensifying the psychological impact of each statement. Mr. Depp's defamatory statements are a continuation of the psychological abuse that was prominent in the relationship, such as denial, blame, avoidance of responsibility, and gaslighting.
4. Ms. Heard was assessed to be a reliable historian. Psychological testing revealed that she approached the evaluation in a forthright matter with no evidence of malingering or feigning psychological distress. Additionally, Ms. Heard did not appear to distort or exaggerate the information she provided, nor did she try to portray Mr. Depp as worse than was likely accurate and continued to profess empathy for him and his own psychological struggles. Ms. Heard demonstrated the ability to offer both positive and negative aspects of herself, her behavior, her partner, her relationship, and her life.
5. With respect to intimate partner violence, it is commonly understood that such acts often occur in private with few witnesses and with little external corroboration, however, that

does not appear to be the case in this matter. Dr. Hughes' analysis revealed significant corroborating evidence that is consistent with Ms. Heard's report of intimate partner violence including text messages, photographs, video tape, audio files, medical documentation, therapy records, collateral interviews, and witnesses to the aftermath of the violence.

6. Dr. Hughes will provide expert testimony that is relevant, scientifically based information regarding the common experiences, perceptions, psychological consequences, and actions of individuals exposed to intimate partner violence as well as their participation, or lack thereof, in procedures and sanctions against their partner. In addition, Dr. Hughes' expert testimony will seek to dispel myths and misconceptions about intimate partner violence that are commonly held by lay persons about what the persons in such a relationship "should" do or "shouldn't" do, and why these are not correct assumptions.

In support of these opinions, Dr. Hughes is expected to testify to the following:

#### **Methodology**

A standard forensic psychological evaluation of a particular individual contains several parts: psychological testing, comprehensive semi-structured clinical interview, review of materials relevant to the case (legal, medical, psychological), consultations, and interviews with collateral sources (if relevant and if available). Amber Heard was psychologically evaluated on six separate occasions –September 26, 2019; October 11, 2019; November 8, 2019; November 11, 2019; January 18, 2021, and December 27, 2021 – for a total of approximately 30 hours. Ms. Heard was administered several psychological tests which are detailed below. Ms. Heard was also queried as to her functioning with regard to work, motherhood, relationships, and any continued psychological impacts of the defamatory statements. Documents and materials relevant to her case were reviewed and are listed in Att. 2. Additionally, collateral interviews were conducted with both her therapists that she was in treatment with during her relationship



with Mr. Depp, including Dr. Bonnie Jacobs and Dr. Connell Cowan. A collateral interview was also conducted with her mother, Paige Heard, who is now deceased.<sup>3</sup>

### Summary of Psychological Testing

Dr. Hughes administered multiple psychological assessment measures to Ms. Heard:

1. Personality Assessment Inventory (PAI)
2. Trauma Symptom Inventory – 2 (TSI-2)
3. Miller Assessment of Symptoms Test (M-FAST)
4. Life Events Checklist (LEC)
5. Posttraumatic Stress Disorder Checklist for DSM-5 (PCL-5)
6. Beck Depression Inventory – II (BDI-II)
7. Beck Anxiety Inventory (BAI)
8. Mood Disorder Questionnaire (MDQ)
9. Abusive Behaviors Observations Checklist (ABOC)
10. Conflict Tactics Scale-2 (CTS-2)
11. Danger Assessment Scale (DA)
12. Clinician-Administered Posttraumatic Stress Disorder Scale for DSM-5 (CAPS-5) – Past Month Version

Some of these psychological tests have validity indices that were designed to assess the individual's response style, consistency, carelessness, confusion, defensiveness, reading difficulties, exaggeration, malingering, and other factors that could potentially distort the results of the test. In a forensic context where a motivation may exist to falsely report or distort psychological symptomatology, the issue of malingering and exaggerating psychological distress and/or mental illness was carefully considered. Importantly, the stated objective of Dr. Hughes' initial forensic psychological assessment was not solely to determine whether Ms. Heard was suffering from any psychological effects or PTSD from the IPV by Mr. Depp. Results from psychological testing, when examined within the context of clinical examination, history, and

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<sup>3</sup> Dr. Hughes is expected to testify as to her collateral interviews with Dr. Jacobs, Dr. Cowan, and Paige Heard which helped form her opinions in this case. Dr. Jacobs, Dr. Cowan, and Paige Heard corroborated that Ms. Heard made contemporaneous reports of physical, psychological, and emotional abuse by Mr. Depp.

corroborative data, suggest that Ms. Heard is not malingering or feigning psychological difficulties.

The overall impression of the objective psychological testing suggests several clinically significant difficulties for Ms. Heard that likely cause notable impairments in functioning. Her profile is remarkable for significant anxiety, traumatic stress, fears, affective lability, depressive experiencing, intrusive experiences, defensive avoidance, and difficulties in relationships. She endorsed a symptom picture that is consistent with traumatic stress, particularly interpersonally related trauma.

Ms. Heard was administered the *Posttraumatic Stress Disorder Scale for DSM-5 (PCL-5)*. Intimate partner violence is recognized as a traumatic stressor capable of resulting in posttraumatic stress symptomatology and related difficulties. Ms. Heard's responses on the *PCL-5* support a DSM-5 diagnosis of Posttraumatic Stress Disorder with an etiology of the intimate partner violence she experienced by her former partner, Mr. Depp. Ms. Heard endorsed symptoms in all four clusters of PTSD: intrusive reminders of the trauma, avoidance of reminders of the trauma, negative alterations in cognition and mood, and alterations in arousal and reactivity.

In addition, on December 27, 2021, Ms. Heard was administered the *Clinician-Administered Posttraumatic Stress Disorder Scale for DSM-5 (CAPS-5) – Past Month Version*. The *CAPS-5* is a structured clinical diagnostic tool that was developed at the National Center for PTSD to achieve a valid and reliable diagnosis of PTSD. Results of the *CAPS-5* continue to support a DSM-5 diagnosis of Posttraumatic Stress Disorder utilizing the index trauma of the intimate partner violence by Mr. Depp. Ms. Heard's responses on the *CAPS-5* indicate that she is experiencing symptoms in all four clusters of PTSD.

Multiple alternative hypotheses were considered during previous and this current assessment vis a vis their relationship to these PTSD symptoms and diagnosis. Ms. Heard has experienced other traumatic life events that qualify as a Criterion A traumatic stressor, notably childhood physical and emotional abuse by her father, and witnessing intimate partner violence and abuse by her father toward her mother. Empirical data has demonstrated a strong association between exposure to childhood violence and later adult victimization, such as IPV. Although such a link is not simple or direct, robust research indicates that childhood experiences with violence make an individual vulnerable to new experiences of violence, and abuse and exposure to a subsequent trauma can exacerbate traumatic effects of a new trauma. During previous assessments of Ms. Heard as well as this most recent one, it was determined that these other traumas are not manifesting themselves in current symptomatology and are not currently a source of psychological concern for her. The traumatic event that causes Ms. Heard significant psychological distress and traumatic stress symptoms continues to be the violence and abuse by her former husband, Mr. Depp.

For an assessment of intimate partner violence (IPV) related behaviors, Ms. Heard was administered the *Abusive Behavior Observation Checklist (ABOC)* and the *Conflict Tactic Scale-2*, both of which measure common characteristics of intimate partner abuse. Results revealed the presence of severe IPV including physical abuse, physical injury, sexual violence and abuse, coercion and threats, intimidation, isolation, and minimization and denial of the abuse. She was also administered the *Danger Assessment Scale*, a 20-item measure that assesses for risk factors that have been associated with homicides in violent relationships. The *Danger Assessment Scale* revealed that Ms. Heard was in a very serious situation with Mr. Depp and at risk for serious, repetitive, and deadly intimate partner violence.

### Analysis of Intimate Partner Violence

This evaluation and review of the evidence revealed that Ms. Heard's report of her relationship with Mr. Depp is consistent with a pattern of chronic and severe intimate partner abuse, including physical violence, psychological abuse, sexual violence, and controlling behaviors.

The Center for Disease Control (CDC) has determined that intimate partner violence (IPV) remains a serious public health problem that affects millions of Americans. Intimate partner violence is described by the CDC as physical violence, sexual violence, stalking, and psychological aggression (including coercive acts) that are utilized by a current or former intimate partner. Intimate partner abuse is often part of a larger coercive relational dynamic that is characterized by a pattern of manipulation, fear, and coercive control that is maintained through the use of multiple abusive behaviors, such as (1) physical abuse; (2) psychological abuse (i.e., a pattern of behavior that functions to instill fear, intimidate, threaten future harm, and maintain power and control over another individual); (3) emotional abuse (i.e., behaviors that serve to denigrate a person's self-worth through offensive put-downs, slurs, name-calling, insults, constant criticism, humiliation and subjugation); (4) economic abuse (i.e., withholding or making all financial decisions); and (5) sexual abuse (i.e., when one is forced, either by threats, coercion, or physical force, to submit to sexual activity against their will).

The alternating cycle of violence and abuse in the relationship is often interspersed with neutral and/or positive moments and times without violence. These good times keep the victim psychologically attached to their partner and instill false hope for positive change. However, the overarching dynamic of these relationships is the perpetrator's unchecked power, manipulation, and control over the battered victim, and his relentless use of violence and abuse, which

deteriorates the psychological functioning of the victim, diminishing her coping resources and strategies, and ultimately rendering it difficult for her to extricate herself from the abusive relationship.

### *Physical Violence*

Ms. Heard described a significant amount of physical abuse perpetrated by Mr. Depp throughout the course of their relationship. It is severe based on types of abuse, the duration of the abuse, and the frequency of the violent acts. Specific physically abusive behaviors that were reported in this case include: grabbed, pushed, and shoved her; physically restrained her; pulled her by the hair; strangled her; punched her on her face, head, body; slapped her with the front and back of his hand which was adorned with heavy metal rings; kicked her; headbutted her; slammed her against the wall and floor; dragged her across the floor; threw her into a glass table; threw objects at her; flicked a cigarette at her; pulled her by the hair; and beat her up.

### *Physical Injury*

Ms. Heard reported sustaining significant pain and numerous injuries as a result of Mr. Depp's physical and sexual assaults. She often did not seek medical evaluation or treatment for assault-related injuries as is common for abuse victims. Notwithstanding, there were several times when she did seek medical treatment from Dr. Kipper's practice and his nurses. In addition, photos were taken of her injuries on multiple occasions by herself and her friends.

Specific injuries that were reported in this case include: excruciating pain; bruises on her face and body; black eyes; busted lip; loss of consciousness; vaginal pain; cuts; concussion; nose injury and pain; lost hair; and cuts on her feet and arms from broken glass.

### *Psychological Aggression and Abuse*

Ms. Heard reported that Mr. Depp engaged in repeated psychological aggression and abuse which is a pattern of behavior that functions to instill fear, to intimidate, to denigrate a partner's self-worth, to threaten future violence, and to maintain power and control over an intimate partner. Mr. Depp repeatedly demonstrated not only his ability, but his willingness, to use multiple and serious forms of physical assaults and sexual violence against Ms. Heard which decreased her psychological functioning and increased her fear and helplessness.

Mr. Depp's abuse of Ms. Heard was punctuated and exacerbated by his chronic addiction to drugs and alcohol. Whereas alcohol and substance abuse can be present in relationships characterized by intimate partner violence, it does not cause the violence and abuse. What it does do is increase the risk to the victim because one's level of internal controls are markedly reduced when one is intoxicated. This substance-fueled rage also pulled for Ms. Heard to adopt a caretaking role with Mr. Depp and offer herself and others repeated excuses for his behavior thereby obfuscating the abuse and the harm caused to her.

Psychologically abusive behaviors that were reported in this case include but are not limited to: intimidation by throwing things, slamming things, and erratic behavior; antagonistic behaviors about her career; criticized her ambition; constant unreliability then blamed her for not waiting for him or for addressing it; obsessive jealousy about male co-stars; offensive and degrading comments (whore, cunt, bitch, easy, ugly, fat ass); constant accusations of flirting and infidelity; controlling her clothing choices ("no woman of mine if going to dress like a whore"); surveillance and tracking efforts (calling directors and male co-stars to check on her; showing up on set; insisting on using his security detail; having to "prove" things to him; searching her

phone); threats to kill her; criticized her body; and emotional manipulation (threats of suicide; threats and actual engagement of self-harm), among others.

Mr. Depp's psychological instability, as evidenced by his chronic substance abuse, erratic violent outbursts, deranged writing on walls, tables, mirrors, etc., repeated property damage, frequent throwing of objects, acts of violence toward himself and self-harm, and withdrawal from the relationships for long periods of time where he was unreachable, among others, are not only highly dysfunctional, but forms of psychological abuse, intimidation, and emotional manipulation. These acts continued to keep Ms. Heard psychologically unstable, hypervigilant, anxious, emotionally dependent, and often left her walking on eggshells as to what Mr. Depp was going to do next. The illusion of safety and calm was always short lived. Mr. Depp's instability required Ms. Heard to continue to deal with days of chaos and trauma, always trying to calm Mr. Depp first, and then seek safety for herself second. The unpredictability, volatility, and severity of Mr. Depp's behavior increased Ms. Heard's fear of him and his ability to maintain power and control in the relationship. This dynamic created formidable psychological obstacles for Ms. Heard to identify the abuse and extricate herself from the relationship.

### *Sexual Violence*

This evaluation revealed significant sexual violence perpetrated by Mr. Depp toward Ms. Heard. Sexual violence is forcing or attempting to force a partner to take part in a sex act, sexual touching, or a non-physical sexual event (e.g., sexting) when the partner does not want to or cannot consent. Intimate partner sexual abuse is any form of sexual violence that takes place within a current or former intimate relationship and it often co-occurs with other forms of abuse.

Ms. Heard reported that there were multiple instances when Mr. Depp forcibly and aggressively grabbed Ms. Heard's head coercing her to engage in fellatio, and times when he

forcibly performed cunnilingus on her. Whereas she did not say no, Ms. Heard was desperate to make him feel loved, be less mad at her, and make him feel that they were “okay.” Thus, she tolerated these aggressive violations, always hoping that such acts would turn “romantic,” yet they rarely did. She often made excuses for Mr. Depp in order to psychologically shield herself from the reality and psychic pain of these violations.

Mr. Depp also engaged in serious sexual violence during instances of rage and violence in which he forcibly penetrated Ms. Heard’s vagina with the neck of a liquor bottle during one of the most violent episodes in their relationship. Other times, he forcibly and violently thrust his fingers up her vagina, moved her body by holding onto her vagina, and yelled obscenities at her. None of these acts were to initiate sex and none of them consensual. Quite the contrary, they were acts of sexual violence reflecting an abuse of Mr. Depp’s power and control over her, and specifically perpetrated to humiliate and subjugate Ms. Heard. These repeated sexual violations were often accompanied by vulgar and degrading verbal assaults toward her. These sexual violations were psychologically devastating to Ms. Heard and physically painful. The research has suggested that women who are exposed to both physical and sexual violence in an intimate relationship are at risk for more severe psychological and traumatic symptomatology.

#### ***Danger Assessment***

The *Danger Assessment Scale* is an empirically validated measure specifically designed to assess for risk factors that have been associated with severe and lethal intimate partner violence. In examining the factors present in this case, there is statistical support to suggest that the intimate partner violence perpetrated by Mr. Depp toward Ms. Heard was serious, severe, and dangerous. When someone scores in that range and is still in the relationship, assertive safety planning and risk reduction strategies are recommended.



Specific lethality risk factors that were identified over the course of the relationship

include:

- an increase in violence and abuse
- threats to kill
- forced sexual violence
- strangulation
- use of illegal drugs and problematic drinking
- controlling behaviors
- persistent jealousy
- destruction of property
- surveillance behaviors
- threats to commit suicide.

There were two very serious abusive incidents worth noting in which Ms. Heard thought Mr. Depp could kill her. The first time was in Australia in March 2015 when Mr. Depp engaged in an all-out assault upon her whereby he hit her, slapped her, threw her around, pinned her on her back on a counter, squeezed her neck strangling her, ripped off her nightgown, and raped her with a Jack Daniels bottle while screaming over and over again, “You ruined my life. I hate you. I’m going to fucking kill you.” As noted above, strangulation, sexual violence, destruction of property, substance abuse, and threats to kill are significant risk factors for severe and lethal intimate partner violence.

Then, in December 2015 in Los Angeles, Mr. Depp perpetrated another severe assault against Ms. Heard wherein he repeatedly punched and slapped her with his ring-adorned hands, dragged her by the hair across the apartment, headbutted her, and strangled her while yelling “I fucking hate you. I hate you. I’m going to fucking kill you.” Making a threat to kill increases the likelihood of an act of serious harm and when combined with a perpetrator’s use of violence, psychological instability, and substance abuse represents a very high-risk and dangerous situation.

### *Coping Responses to Violence and Abuse*

The research has demonstrated that women who are involved in abusive relationships employ a variety of formal, informal, and personal strategies to cope with the abuse, avoid the abuse, protect themselves from the abuse, and escape from the abuse. They do many things - it just does not stop their partner's abuse and victimization. Some strategies represent formal help-seeking behaviors such as calling the police, obtaining protection orders, seeking medical assistance, going to a shelter, obtaining counseling, and terminating the relationship. Commonly, women in abusive relationships attempt to stop and deal with the abuse from within the relationship. Examples of these informal strategies include talking with their partner to try to get him to change, complying with his demands, acquiescing, talking to family members and friends, passive and active forms of self-defense, and physically fighting back. Importantly, the research also demonstrates that it ultimately remains the perpetrator's choice to cease his use of violence and abuse regardless of the strategies employed by the victim.

A woman's difficulty in extricating herself from an abusive relationship does not in any way indicate that she is unconcerned about the abuse or wants it to occur. Rather, the victim *is* absolutely concerned about the abuse but engages in psychological avoidance, minimization, denial, and suppression efforts herself in order to maintain the relational status quo, because she is emotionally attached, and in order to stay safe. An abused woman's decisional analysis to stay or leave is mediated by multiple and complex factors such as personal resources, tangible resources, ongoing abuse, psychological functioning, emotional attachment, love and hope for change, vulnerability factors, and threats of retaliation.

This evaluation revealed that Ms. Heard utilized many formal and informal strategies to cope with the violence and abuse inflicted upon her by Mr. Depp. Informal strategies included

efforts to work with and negotiate with Mr. Depp on ways to stop the violence and abuse. She attempted to please Mr. Depp, appease him, avoid angering him, and comply with his eccentric ways to prevent further abuse and degradation. She hid her scripts and refrained from practicing lines to obviate an altercation. She altered her choice of clothing to satisfy him and prevent being told she dressed like a whore. She avoided going to cast parties, rap parties, and talking with her male co-workers because this made Mr. Depp irrationally jealous, often resulting in verbal and physical fights. She repeatedly tried to talk with Mr. Depp to persuade him to stop his abusive behaviors, stop his significant drug addiction and excessive alcohol abuse, and engage with her in positive ways. She pleaded with him and constantly encouraged him to get treatment for his own abusive childhood which she saw as a contributing factor to his self-loathing, self-destructive tendencies, and his polysubstance abuse. She repeatedly requested that Mr. Depp engage with her in couples therapy which they did on a few occasions of limited duration and minimal success. She repeatedly encouraged and assisted him in obtaining professional treatment and support for his substance abuse.

Other informal and personal coping strategies involve obtaining support from others. Ms. Heard disclosed the abuse to her mother, her sister, and multiple friends, all in an attempt to receive emotional support in the aftermath of an explosive incident. At times, in her conversations with others, Ms. Heard also engaged in minimization, suppression, and denial of the true extent of Mr. Depp's violent and abusive behavior and this is because Ms. Heard knew that others would tell her to leave Mr. Depp. She did not want to be criticized for staying and did not want Mr. Depp to be negatively judged as she still loved him and was committed to working on the relationship despite the abuse, thus she maintained the secret. In addition, Mr. Depp actively sabotaged Ms. Heard's efforts at self-care and external support, vilifying and sometimes

excommunicating those individuals with whom she relied on. Engaging in deliberate behavior that isolates victims from social support is a common tactic of abusers.

Another informal coping strategy utilized by Ms. Heard in response to the violence and abuse by Mr. Depp was her own use of passive and active forms of physical and defensive actions during an abusive incident. This is not uncommon. A high percentage of women in abusive relationships use some form of responsive violence against their partner. Importantly, Ms. Heard's use of defensive physical actions did not prove to be an effective strategy as it did not stop the assault, but rather increased Mr. Depp's anger and violence toward her. It is important to recognize that there is a distinction between relationship "fights" and "assaults." Partner assaults differ from fights because of the motive, dynamics, and consequences. Assaults function to hurt, denigrate, punish, subjugate, exploit, dominate, and control an intimate partner and, importantly, they are not attempts to resolve conflict. Partner assaults are repeated over time, tend to escalate, and have marked asymmetry in the amount of injury sustained. Intimate partner violence has long been understood as comprising more than just hitting, but rather a wide array of abusive tactics, such as psychological degradation, coercion, abuse of power and control, threats, manipulation, the instillation of fear, sexual violence, and surveillance controls. Importantly, when taking Ms. Heard's reactive violence into account, this evaluation revealed that there was a significantly differential impact of the violence and abuse utilized by Mr. Depp. There was a serious imbalance of power and control, a disparity of size and strength, differential perpetration of severe violence, differential threat and risk of serious injury, sexual violence, differential impact of actual physical injury and psychological harm, and an imbalance of fear and danger.

Ms. Heard also engaged in formal strategies to cope with the intimate partner violence including engaging in psychological treatment with multiple providers and engaging with Mr. Depp's providers. She actively spoke with Mr. Depp's medical team, conceptualizing his drug and alcohol addiction as a core dysfunctional aspect of their relationship and a functional cause of the abuse. She attended Al-Anon meetings and actively participated in efforts to help Mr. Depp achieve sobriety. She read countless books about substance abuse, and dysfunctional and abusive relationships. Ms. Heard's efforts to help Mr. Depp get safe and sober were repeated over and over again throughout the course of the relationship thereby funneling her psychological resources to caring for him and away from her own needs and the full realization of the severity of the abuse inflicted upon her.

Another formal strategy was Ms. Heard's own psychological treatment. Ms. Heard engaged in psychotherapy with multiple treatment providers, including Dr. Connell Cowan and Dr. Bonnie Jacobs, over the course of the relationships to try and figure out what *she* could do to stop Mr. Depp's abuse upon her. This is a common misattribution error in cases of intimate partner violence where the abused victim eventually comes to believe her partner's claims that she is the cause of his aberrant behavior. She constantly felt responsible for his abuse, apologized often, and contemplated what she could do "better" to not have him hurt her. Notwithstanding, Ms. Heard spoke to Mr. Depp on countless occasions that she could no longer sustain any further abuse. Sometimes he indicated he understood and promised to do better, and yet other times he denied the abusive incidents even occurred, denied hurting her, minimized the extent of the abuse, and blamed her for his use of violence. Despite desperately wanting him to change, Mr. Depp's alcohol and drug addiction remained chronic and his controlling and violent tendencies persisted. Mr. Depp did not change. In fact, the abuse toward Ms. Heard worsened over time,

increasing in frequency and severity. In the end, she obtained a temporarily restraining order against him.

Importantly, Ms. Heard was embroiled in the profound paradox that is the hallmark of intimate partner violence where love and violence are intertwined. Women can be in love and afraid at the same time and this phenomenon is clinically understood as a tolerance for cognitive inconsistency. It is a myth that women just leave at the first sign of trouble or “should leave” if it is truly that bad. It is normal to give one’s abusive partner second, third, and sometimes unlimited chances to redeem themselves. But, over time, the violent acts become normalized as a central feature of the relationship that needs to be tolerated – not accepted but tolerated. Ms. Heard was no exception. She was caught in a web of love, emotional attachment, genuine loyalty and concern for Mr. Depp, and the illusion that he would finally come to his senses and change for the better. As such, she often concealed and minimized his violence and abuse (to family, friends, and even treatment providers) to protect him, and herself at some point, from public condemnation. She assumed the best and denied the worst in order to hold on to the positive aspects of the relationship and the love she had for Mr. Depp. However, eventually, those psychological defenses broke down and were no longer effective as the physical and psychological injury became too great to bear and the positive aspects became all too infrequent resulting in the decisional analysis for Ms. Heard to finally terminate the relationship.

#### **Psychological Impact of Defamation**

In cases of intimate partner violence, leaving the relationship does not always end the violence and abuse. In fact, ending an abusive relationship is statistically a very dangerous point in time for the abused victim. Whereas Ms. Heard left Mr. Depp, filed for a restraining order due to domestic violence, and eventually divorced him, she was not free. Mr. Depp’s psychological

and emotional abuse continued. Mr. Depp's defamation suit and false statements to the media halted her healing from the traumatic effects of victimization and introduced new levels of psychological abuse, intimidation, degradation, and gaslighting which continued that cycle of abuse that she thought she escaped from, this time abusing Ms. Heard through the legal system and through media attacks. The overarching theme of Mr. Depp's attacks are that Ms. Heard is a liar. For a victim of intimate partner violence, fear that they would not be believed ranks among the highest reasons why they do not speak out about their abuse and why violence against women is the most underreported crime. This has had devastating consequences for Ms. Heard.

The psychological impact of three of Mr. Depp's defamatory statements (through Adam Waldman, his attorney and agent) were specifically assessed (April 8, 2020; April 27, 2020; and June 4, 2020). Whereas it was determined that these comments had notable psychological impact, they represent a continuation and exacerbation of the totality of Mr. Depp's abusive behaviors. Ms. Heard suffered repeated attacks on her credibility with Mr. Depp's frequent lies to the media, a particularly significant problem when one is in the public sphere. The problem with every lie is that one must refute that lie, and that requires intense psychological resources. As such, with each unpredictable media comment made by Mr. Depp, havoc and chaos were again thrust into her life to no fault of her own, forcing her to deal with the negative consequences of having to explain and "prove" the lie. These lies resulted in numerous losses, such as the loss of time and energy; loss of friendships; loss of jobs; and financial loss, all of which greatly impacted her daily functioning and her capacity to cope.

As a result of Mr. Depp's defamatory statements (through Adam Waldman, his attorney and agent), Ms. Heard suffered notable psychological distress and an exacerbation of posttraumatic stress disorder that stems from the initial pattern of violence and abuse. Each time

Mr. Depp released a defamatory statement to the media calling her a liar or that her account of violence and abuse in the relationship was a “hoax,” Ms. Heard suffered (and continues to suffer) from stress, anxiety, nightmares, crying, flashbacks, feeling afraid, emotional numbing, dissociation, struggles with trusting others, significant sleep disruption, relationship and intimacy problems, interpersonal disconnection, hypervigilance, and intense psychological pain.

In addition, Mr. Depp’s defamatory statements activated long held feelings of shame and humiliation about the abuse and the relationship in general, common consequences of victimization. This was particularly true with Mr. Depp’s April 8, 2020 remarks about “fake sexual violence” and a “sexual violence hoax.” Rape and sexual violence are one of the most humiliating, violating, and shame inducing experiences that an individual could endure, and it is one of the most powerful predictors of PTSD in both men and women. The sexual violence that Ms. Heard experienced by Mr. Depp is one of the most private, vulnerable, and painful aspects of her life. For Mr. Depp to call her account “fake” and for her to have to refute it, has resulted in significant psychological distress, emotional pain, humiliation, and an exacerbation of PTSD.

While in the abusive relationship, Mr. Depp repeatedly utilized abusive tactics whereby he minimized his abuse and violence, blamed her for the abuse, denied that the abuse even occurred, and reversed the attack on her claiming that he was the victim, and she was the abuser. But Ms. Heard successfully extricated herself from that awful dynamic of violence and abuse and yet Mr. Depp’s abuse continued through his false media comments. This forced her to confront the whole cycle of abuse, violence, blame, gaslighting, and condemnation all over again.

The psychological consequences and harm to women because of partner violence have been well documented, and include decline in general mental health, depression, anxiety,



posttraumatic stress disorder, substance abuse, suicidality, shame, humiliation, self-blame, and diminished self-worth and self-efficacy, among others. This evaluation revealed that Ms. Heard meets DSM-5 criteria for Posttraumatic Stress Disorder (PTSD) with an etiology of the violence and abuse perpetrated by Mr. Depp. Ms. Heard endorsed symptoms in all four clusters of PTSD: intrusive reminders of the victimization, violence, and abuse (flashbacks, memories, nightmares); conscious avoidance efforts to detract her from reliving the violence and abuse; negative effects on her thinking and mood; and an increase in hyperarousal and physiological reactivity.

Importantly, PTSD is a cue-related disorder and environment stimuli serve to trigger the disorder with accompanying psychological reactivity. Each time Mr. Depp released a media statement branding her a liar, that served as a trauma trigger activating memories of the horror and truth of the abusive relationship. Mr. Depp's comments are so inextricably connected to the original trauma that they result in additive psychological and traumatic effects. His statements also activate the PTSD dimension of hyperarousal and hypervigilance as Ms. Heard experiences greater concern for her personal safety, resulting in anxiety, an acute awareness of her surroundings, and continual scanning for danger.

**Errors in Methodology and Analysis of Dr. Shannon Curry, Psy. D. in administration of the CAPS-5 to Ms. Heard on December 17, 2021**

Dr. Curry's conclusion that Ms. Heard does not meet the threshold for PTSD is flawed and incorrect. Given that Dr. Curry administered the *CAPS-5* on December 17, 2021, just ten days earlier from Dr. Hughes' assessment on December 27, 2021, a comparison of findings is warranted. Importantly, Dr. Curry failed to utilize the proper anchor point for the index trauma for Ms. Heard thereby yielding incorrect results. Dr. Curry erroneously utilized only the sexual assaults by Mr. Depp on the *CAPS-5* for all the subsequent symptom queries that were posed to Ms. Heard even though Ms. Heard identified "the worst of the violence in the marriage" as her

trauma. But contrary to standard practice in the field and the instructions and intent of the test, Dr. Curry limited the queries to the sexual assaults by Mr. Depp. As such, Ms. Heard answered truthfully and honestly, not linking specific current symptoms to her sexual assault experiences because Ms. Heard's PTSD encompasses so much more than those incidents.

Ms. Heard's responses on the *CAPS-5* to Dr. Curry do, in fact, demonstrate traumatic stress related to the overall abuse by Mr. Depp, but that was not assessed by Dr. Curry. If you give a limited prompt and restricted anchor, you are going to obtain skewed results. The *CAPS-5* instructions require the identification of a single index trauma(s), or a group of thematically related traumatic events, to serve as the basis of symptom inquiry. Moreover, when the individual indicates that his/her worst trauma exposure was due to multiple incidents of the same type of event (e.g., multiple instances of childhood sexual abuse, multiple combat exposures, or multiple incidents of intimate partner violence), the multiple events of the same type would be treated as a singular exposure. Dr. Curry failed to adhere to the stated instructions and intent of the test and thus did not properly query Ms. Heard's for the full breadth of her trauma-based sequelae.

For the *CAPS-5*, in general, if the symptoms expressed by the individual can be connected to the overall trauma exposure, then it would be counted toward the PTSD diagnosis. Ms. Heard provided enough details to Dr. Curry on the *CAPS-5* as to her symptomatology and functioning as a result of the IPV, and Ms. Heard replied many times, "not in the last month." This should have prompted Dr. Curry to exercise due diligence and administer the Worst Month Version of the *CAPS-5* to truly ascertain the extent of Ms. Heard's trauma-based symptoms. Dr. Curry failed to do so. Moreover, by listening to Ms. Heard's responses, a skilled examiner would have realized that narrowing the range of symptoms to only the sexual assaults was

flawed and thus would have queried, “Are you having any other symptoms in the last month related to the abuse and violence and not just the sexual assaults?” in order to accurately assess for PTSD symptomatology. Dr. Curry again failed to do so. As a result, Dr. Curry’s flawed administration yielded an unreliable and invalid conclusion.

That said, the content of Ms. Heard’s responses on the *CAPS-5* to Dr. Curry on December 17, 2021 was generally consistent with Ms. Heard’s responses to Dr. Hughes’ administration of the *CAPS-5* on December 27, 2021, and with Ms. Heard’s accounting of her trauma symptoms to Dr. Hughes during multiple assessments over the past three years. Dr. Hughes correctly did not limit Ms. Heard’s frame of reference to only the sexual assaults. If one removes that anchor, Dr. Hughes and Dr. Curry yield remarkably similar results with enough symptoms that satisfy PTSD criteria.

### Prognosis

Ms. Heard’s prognosis is guarded and her treatment is likely to be long term. Psychological recovery from the traumatic effects of intimate partner victimization is more than just the physical healing of cuts and bruises because the psychological damage from the relational betrayal and emotional abuse runs deep. Ms. Heard has continually availed herself of professional treatment and has been motivated for healing to occur, but her treatment is currently in the infancy stage because it has necessitated a focus on crisis management and psychological stabilization resulting from the defamatory statements by Mr. Depp. Her physical and emotional safety continues to be threatened, thereby exacerbating her PTSD. Interpersonal violence-related PTSD can be a chronic condition, often waxing and waning throughout a person’s life, being triggered by environmental and life stressors. Ms. Heard will require treatment to address and ameliorate these trauma triggers as they arise. In addition, she will require treatment for

victimization-associated traumatic sequelae, such as shame, self-blame, humiliation, intimacy problems, interpersonal disconnection, and trust difficulties. Her psychological care will be palliative and function to remedy the psychological impact of the trauma arising during her life.

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Mr. Schnell's C.V. is attached as **Att. 3**. Mr. Schnell is an accomplished executive with a history of running large technology organizations, from early stage startups to large divisions of S&P 500 corporations. Mr. Schnell has also served as a testifying and consulting expert witness on high-profile cases in the areas of intellectual property, software licensing, cyber security, and other highly technical matters. He has knowledge of over forty computer languages, and is an adjunct professor at Nova Southeastern University, teaching computer security and operating systems in the computer science department.

Mr. Schnell is expected to testify as an expert in the field of statistical and forensic analysis of social media. As an expert in this field, Mr. Schnell and his firm, Berkeley Research Group, conducted an investigation relating to posts on social media, primarily Twitter, that contained and/or expressed negative comments and negativity ("negative posts" or "posts") about Amber Heard, from April 8, 2020 through the present. Mr. Schnell located and collected, and is expected to testify, that there are over a million negative posts relating to Amber Heard from April 8, 2020 through the present. Specifically, from the beginning of April 2020, until the end of January 2021, there were 1,243,705 negative posts relating to Amber Heard, including one or more of the tags #JusticeForJohnnyDepp, #AmberHeardIsAnAbuser, #AmberTurd, or

# Exhibit B

DR.  
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**REBUTTAL REPORT**

RESPONSE TO THE OPINIONS OF DAWN HUGHES, PHD, ABPP

**Date of Report:** February 8, 2022

**Re:** *John C. Depp, II v. Amber L. Heard*

**Civil Action No.:** CL-2019-0002911

**Circuit:** Fairfax County

*This report is confidential and cannot be released without permission of the Court.*

**I. EXPERT QUALIFICATIONS**

Dr. Curry is a clinical and forensic psychologist licensed in California and Hawaii. She has 15 years of experience conducting research, therapy, and psychological evaluations pertaining to trauma, violence, and relationships. Dr. Curry earned her Master's and Doctorate degrees in clinical psychology from Pepperdine University. She also completed a post-doctoral Master of Science degree in Clinical Psychopharmacology at Alliant University, making her one of only 500 psychologists to fulfill this requirement for prescription authority in certain states and military jurisdictions.

Dr. Curry completed an *American Psychological Association (APA)-Accredited* doctoral internship at Tripler Army Medical Center, where she was one of only two civilian interns admitted to the otherwise all-military cohort. Under the purview of the Department of Defense, the U.S. Department of Veterans Affairs, and the National Institute for PTSD and Combat Psychology in Bethesda, she received intensive training in combat and military psychology, neuropsychological assessment, and the evaluation and treatment of PTSD.

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Dr. Curry subsequently completed a two-year post-doctoral residency at Hawaii State Hospital (HSH), a locked psychiatric facility for individuals with severe mental illness who are involved with the criminal justice system. While at HSH, Dr. Curry became a certified forensic evaluator for the state of Hawaii, providing court-ordered evaluations and testimony related to a wide range of criminal matters. She also implemented new hospital programming to address the high rate of trauma among individuals in forensic mental health settings. Specifically, Dr. Curry led evidence-based treatment programs<sup>1</sup> for female survivors of complex trauma,<sup>2</sup> served as Co-Chair of the Hospital's Board for Trauma-Informed Care, obtained an institutional grant from the national Substance Abuse and Mental Health Services Association (SAMHSA), and led a hospital-wide transition to a Trauma-Informed model of care to reduce reliance on physical restraint and seclusion methods of behavior management.

Dr. Curry's commitment to social justice work has contributed to her wide breadth of professional experience. Since 2011, Dr. Curry has served on the advisory board for the University of California Center for Unconventional Security Affairs (CUSA); participating in interdisciplinary research and program development to address global security issues of poverty, disease, violence, warfare, and environmental sustainability. She is also a long-time member of the Peruvian American Medical Society (PAMS), a non-profit organization comprised of healthcare providers and other volunteers who conduct "medical missions" within the post-war community of Ayacucho, Peru. Dr. Curry's related research on culturally-response trauma interventions in Peru following the twenty-year Sendero Luminoso guerrilla war received awards from the American Psychological Association and Psychology Beyond Borders.

Dr. Curry is the owner and Executive Director of the Curry Psychology Group (CPG), the leading<sup>3</sup> multispecialty mental health center in Orange County, California. As a therapist, she continues to

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<sup>1</sup> "Seeking Safety" is a structured, evidence-based therapy program designed to help people recover from trauma and co-occurring substance use issues.

<sup>2</sup> "Complex trauma" is a term that refers to a series of traumatic events that occur over a long period of time such as months or years.

<sup>3</sup> Based on the referral base, daily patient average, and practice valuation of private, independent, outpatient/ "office visit" healthcare settings offering multispecialty mental health services (*i.e.*, treatment of adults, children, couples, and families; psychological evaluation [neuropsychological, forensic, and military-specific disability and/or fitness-for-duty] workshops and courses) in Orange County, CA.

contract with the Department of Defense, ensuring that service members, veterans, and their families have access to high-quality, evidence-based treatment and evaluation services. Dr. Curry also provides pro-bono counseling services to Afghan refugees and female trauma survivors in partnership with CUSA and the charitable organization, Pathways, respectively. Her specialties include individual therapy with a particular focus on grief, trauma, and relationships; and the Gottman Method of Couples Therapy. Dr. Curry has completed all three levels of clinical training and more than 1000 hours of supervised practice in this highly research-based method. In addition, she is a Gottman Educator and Workshop Leader, working with couples to manage transitions to parenthood, substance use issues, high levels of conflict, sexual problems, betrayal, military-related stressors, and trauma/PTSD.

Dr. Curry regularly serves as an expert witness and independent evaluator for state courts, law enforcement agencies, the U.S. military, and private attorneys. She has completed hundreds of psychological evaluations for civil and criminal matters, serving as an expert for prosecutors, criminal defendants, and civil parties. The majority of her forensic work focuses on trauma and interpersonal violence issues, including stalking, sexual assault, physical assault, sexual harassment, intimate partner violence (IPV), child abuse, and secondary trauma issues of substance use and reckless endangerment.



## II. INTRODUCTION

In all fields of science, transparency is the means by which credibility is earned. Furthermore, credibility is not based on a scientific opinion's persuasiveness but the rigorousness of its underlying methods (Martingale & Gould, 2013). This critical distinction was underscored in *Daubert*, in which the court noted:

“The inquiry envisioned by Rule 702 is, we emphasize, a flexible one. Its overarching subject is the scientific validity—and thus the evidentiary relevance and reliability—of the principles that underlie a proposed submission. *The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate.*”<sup>4</sup>

As scientists, forensic psychologists avail themselves of these governing rules and standards by accurately reporting our data and procedures (Martingale & Gould, 2013). Furthermore, our ethical guidelines state that forensic psychologists make “readily available for inspection all data which they considered, regardless of whether the data supports their opinion, subject to and consistent with court order, relevant rules of evidence, test security issues, and professional standards (AERA, APA, & NCME, in press; Committee on Legal Issues, American Psychological Association, 2006; Bank & Packer, 2007; Golding, 1990) (APA, 2013).”<sup>5</sup>

Forensic psychologists also “recognize the importance of documenting all data they consider with enough detail and quality to allow for reasonable judicial scrutiny and adequate discovery,”<sup>6</sup> and they “seek to make available all documentation . . . that might reasonably be related to the opinions to be expressed” (APA, 2013; APA, 2017).<sup>7</sup>

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<sup>4</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 594-95 (1993) (emphasis added).

<sup>5</sup> See SGFP Guideline 11.01: Accuracy, Fairness, and Avoidance of Deception

<sup>6</sup> See SGFP Guideline 10.06: Documentation and Compilation of Data considered

<sup>7</sup> See SGFP Guideline 10.07: Provision of Documentation; See also, EPPCC Standard 9.04: Release of Test Data

Despite these standards, deficiencies in psychological evaluations remain difficult for non-psychologists to detect, in part due to the specialized nature of forensic assessment. In addition, psychometric test materials are typically shielded from discovery because of copyright protections or the professional requirement that psychologists maintain “secrets of the trade.” In these instances, scientific peer-review is a valuable method for preserving accountability and good psychological science within the courtroom (Welner et al., 2012).

### III. REBUTTAL REVIEW

Dr. Dawn Hughes’ forensic psychological evaluation<sup>8</sup> of the defendant, Ms. Amber Heard, does not withstand scrutiny. Dr. Hughes used invalid<sup>9</sup> and scientifically unreliable<sup>10</sup> test measures, misrepresented the meaning of results on these measures, ignored clear evidence that Ms. Heard engaged in exaggeration and minimization of symptoms on two different tests, and reached conclusions that were inadequately substantiated, irrelevant to the underlying legal question, and beyond the scope of psychological science. The following rebuttal report aims to review and explain these deficiencies and their implications for the overall reliability of Dr. Hughes’ opinions.

#### 1. Extended Duration Between Evaluation Dates

1.1. Page six of Dr. Hughes’ report indicates that she conducted a psychological examination of Ms. Heard on five separate occasions. Four of the evaluation dates occurred in 2019 (September 26<sup>th</sup>, October 11<sup>th</sup>, November 8<sup>th</sup> & 11<sup>th</sup>). A fifth evaluation appointment occurred more than fourteen months later, on January 18, 2021. Based on the dates noted on the test materials that Dr. Hughes provided to me for review, it appears that all testing was completed on the first date of the evaluation, September 26, 2019.

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<sup>8</sup> The terms “assessment,” “evaluation,” and “examination” will be used interchangeably in the report to refer to the investigation of an individual’s personality, psychological problems, adjustment, and functioning in important areas of life by means of interviews, observations of behavior, and administration of psychological tests.

<sup>9</sup> The term “validity” is used in this report to refer to how accurately a test measures what it intends to measure.

<sup>10</sup> The term “reliability” is used in this report to refer to how consistent and dependable a test is. A test is considered reliable if it provides approximately the same results for a person each time its administered to them.

- 1.2. The significant amount of time that passed between the first and last date of Dr. Hughes' evaluation of Ms. Heard is atypical and warrants explanation in Dr. Hughes' subsequent report. Furthermore, Dr. Hughes should have communicated any potential implications of her deviation from standard procedure.<sup>11</sup> However, Dr. Hughes' report does not address why she examined Ms. Heard over five separate appointments, nor why the appointments were spaced over a sixteen-month duration.
- 1.3. Completing an evaluation over an extended period can lead to several issues that impact the accuracy of the opinions rendered. First, Dr. Hughes does not identify the date of her report. In general, the evaluation report is started within two to four weeks of the examination while the content of the interview and observations of the examinee's behavior are fresh in the examiner's mind. As time goes on, it becomes more likely that the examiner's memory of the evaluation will become less accurate. Furthermore, psychological test instruments offer a "snapshot" of the examinee's mental status at the time the test was administered. Test results eventually become "stale" and may no longer represent the examinee's current psychological status as time passes. The accuracy of an evaluation that occurs over an extended duration can also be affected by changing situational factors in an examinee's life. Although there are always limitations in any scientific endeavor, experts are expected to communicate the potential impact of these limitations. To this end, professional practice standard 9.06 requires that psychologists account for factors "that might affect psychologists' judgments or reduce the accuracy of their interpretations" and that "they indicate any significant limitations of their interpretations (APA, 2017).<sup>12</sup> Dr. Hughes does not address any such limitations in her report.

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<sup>11</sup> See SGFP Guideline 10.03: Appreciation of Individual Differences: "When interpreting assessment results, forensic practitioners consider the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences that might affect their judgments or reduce the accuracy of their interpretations (EPPCC Standard 9.06). Forensic practitioners strive to identify any significant strengths and limitations of their procedures and interpretations;"

See also EPPCC Standard 9.06, Interpreting Test Results.

<sup>12</sup> See EPPCC Standard 9.06, Interpreting Assessment Results; See also, EPPCC Standards 2.01b and c, Boundaries of Competence; See also, EPPCC Standard 3.01, Unfair Discrimination.

## 2. Inappropriate Referral Question<sup>13</sup>

2.1. The referral question is the critical first step in forensic assessment and subsequently defines the entire structure and focus of the evaluation (Conroy, 2006; DeMier, 2013; Grisso, 2008). Page two of Dr. Hughes' report offers the following description of the referral purposes that guided her evaluation of Ms. Heard:

“Dr. Hughes was asked to conduct a forensic psychological evaluation of Ms. Heard to assess for the dynamics and consequences of intimate partner violence that may have been present in her relationship with her now ex-husband, Mr. Depp, and to assess for any psychological consequences stemming from the defamatory statements to the media made by Mr. Depp through his attorney and agent, Adam Waldman” (p. 2).

2.2 The above statement can be organized into three distinct referral purposes:

2.1.1. To “assess for the *dynamics* [emphasis added] . . . of intimate partner violence”

2.1.2. To “assess for the... *consequences* [emphasis added] of intimate partner violence”

2.1.3. To “assess for any *psychological consequences* [emphasis added] stemming from the defamatory statements to the media made by Mr. Depp through his attorney and agent, Adam Waldman.”

2.3 Dr. Hughes' first aim, to assess the “dynamics” of intimate partner violence (IPV), is not an appropriate goal for a forensic psychological evaluation. Professional practice standards<sup>14</sup> and extensive bodies of literature emphasize the critical importance of structuring the evaluation

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<sup>13</sup> The term “referral question” is used interchangeably with the terms “evaluation purpose,” “legal question” and “psycholegal question;” all of which refer to the goal, or underlying premise, of the forensic psychological evaluation. The legal question defines the structure and focus of the evaluation, including the procedures utilized, types of data to be collected, and the focus of the report.

<sup>14</sup> SGFP *Guideline 10.01: Focus on Legally Relevant Factors* states: “Forensic examiners seek to assist the trier of fact to understand evidence or determine a fact in issue, and they provide information that is most relevant to the psycholegal issue; and SGFP *Guideline 11.04: Comprehensive and Accurate Presentation of Opinions in Reports and Testimony*: The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed.

around a psycholegal<sup>15</sup> issue that is present before the court (APA, 2013; Martingale & Gould, 2013; DeMier, 2013; Grisso, 2008; Melton et al., 2018; Skeem & Golding, 1998). Dr. Hughes' purported goal of assessing for dynamics of IPV has no basis in statutory law nor is it associated with any established methods of evaluation. It is also beyond the scope of a psychological examination which focuses on individual factors rather than the "dynamics" of an event (Martingale & Gould, 2013; DeMier, 2013; Grisso, 2008; Melton et al., 2018; Skeem & Golding, 1998).

2.4 In any case that pertains to IPV, the question for the psychologist is never whether IPV has occurred—that is the responsibility of the factfinder. Rather, psychologists can gather information and provide opinions based on the presence or absence of individual factors correlated with IPV and characteristics that are "protective" or serve to mitigate against the potential risk for violence.

### 3. Data and Conclusions are Irrelevant to the Psycholegal Purpose

3.1. Although Dr. Hughes' initial referral reason is flawed, her other two reasons for the evaluation—to assess for "consequences<sup>16</sup> of intimate partner violence" and "psychological consequences of defamatory statements"—pertain to the relevant psycholegal question of *emotional injury*.<sup>17</sup> Nonetheless, the subsequent focus of Dr. Hughes' report fails to remain within the parameters of this psycholegal issue.<sup>18</sup> More specifically, Dr. Hughes over-relies on

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<sup>15</sup> The term "psycholegal" is used throughout this report to refer to intersecting psychological knowledge and legal concepts. It is a primary consideration in forensic evaluation reports, and constrains the focus of the procedures, data reporting, and opinions to those which directly bear upon issues presented before the court.

<sup>16</sup> Although Dr. Hughes does not indicate whether the "consequences" she aims to assess are psychological in nature, it is assumed this was her meaning when she used the term.

<sup>17</sup> "Psychological injury" "emotional injury" and "mental injury" are terms that are used interchangeably to refer to harm in the form of substantial symptoms of distress and impairments in functioning.

<sup>18</sup> SGFP Guideline 10.01: *Focus on Legally Relevant Factors* states: "Forensic practitioners provide information that is most relevant to the psycholegal issue. In reports and testimony, forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, and address their opinions and recommendations to the identified psycholegal issues (American Bar Association & American Psychological Association, 2008; Grisso, 1986, 2003; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007);"

a diagnostic label (*i.e.*, PTSD)<sup>19</sup> while excluding relevant information about Ms. Heard's functional abilities,<sup>20</sup> includes inappropriate and unscientific assertions that Mr. Depp perpetrated IPV against Ms. Heard, and substantiates opinions with inaccurate and unreliable test measures.<sup>21</sup> The inclusion of irrelevant information in the evaluation report can distract from pertinent data, introduce undue prejudice, and violate the privacy and dignity of the parties involved (Foote et al., 2020; Kane & Dvoskin, 2011; Koch et al., 2006; Melton et al., 2018). Moreover, Dr. Hughes' lack of adherence to the psycholegal question of emotional injury in her evaluation opposes extensive bodies of empirical literature and professional standards of practice, as discussed further below (Foote et al., 2020; Kane & Dvoskin, 2011; Koch et al., 2006; Melton et al., 2018).<sup>22</sup>

**3.2. Structure of an emotional injury evaluation.** To assess emotional injury, a forensic psychologist assesses whether there are identifiable signs of distress present and whether these signs relate time-wise to a proximate cause. In all personal injury evaluations, diagnostic labels are peripheral to the primary goal of identifying whether an examinee has experienced a

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Also, SGFP Guideline 11.04: *Comprehensive and Accurate Presentation of Opinions in Reports and Testimony*: "The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed;"

See also, EPPCC Standard 4.04, *Minimizing Intrusions on Privacy*.

<sup>19</sup> See section 3.3 for further discussion related to the problem of overreliance on diagnostic labels in an emotional injury evaluation.

<sup>20</sup> The term "functional abilities" is used to refer to an individual's ability to engage in and carry out tasks across multiple life areas (*e.g.*, employment, relationships, financial management, self-care, household duties, and recreation/hobbies). It is the primary focus of many tort-related examinations as it can demonstrate "how much" a person has been emotionally harmed, based on the amount of change that has occurred in their daily activities from before the trauma and after. As such, it coincides with legal constructs relevant to tort cases including "damages," "compensability," and "proximal cause." It is always the goal of the forensic examiner to utilize methods of evaluation and focus their report on the data that coincide with these types of specific legal issues, or whichever are most relevant to the case at hand.

<sup>21</sup> See section 4 of the present report for further discussion.

<sup>22</sup> SGFP Guideline 10.01: *Focus on Legally Relevant Factors* states: "Forensic practitioners provide information that is most relevant to the psycholegal issue. In reports and testimony, forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, and address their opinions and recommendations to the identified psycholegal issues (American Bar Association & American Psychological Association, 2008; Grisso, 1986, 2003; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007);" and SGFP Guideline 11.04: *Comprehensive and Accurate Presentation of Opinions in Reports and Testimony*: The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed; also EPPCC Standard 4.04, *Minimizing Intrusions on Privacy*.

decline in *functioning*<sup>23</sup> after a purported injury or trauma (Foote et al., 2020; Kane & Dvoskin, 2011; Koch et al., 2006; Melton et al., 2018). First, the forensic psychologist can assess whether a change has occurred by comparing the examinee's pre-trauma and post-trauma functioning abilities. Next, by examining the extent of the differences across different life domains, the psychologist can quantify "how much" the examinee has changed. In this way, the information the evaluator provides to the court is directly relevant to assisting the factfinder in legal decisions of "damages," "compensability," and "proximal cause" (Foote et al., 2020; Kane & Dvoskin, 2011; Koch et al., 2006; Melton et al., 2018). In all assessments of psychological injury, the forensic evaluator's aim is *not to determine whether a purported trauma occurred*, but rather *if there is a functional limitation that was caused by the alleged trauma* (Pietz, 2020).

- 3.3. ***Overreliance on a diagnostic label.*** The professional obligation of a forensic evaluator is to provide the factfinder with an objective presentation of the examinee's functioning per an underlying psycholegal issue (*i.e.*, emotional injury) (Martingale & Gould, 2013). As previously stated, the core inquiry in assessing psychological harm is how the alleged injury *impacts the individual's functioning* (Melton et al., 2018). Dr. Hughes deviates from this psycholegal framework by diagnosing Ms. Heard with PTSD while excluding information about Ms. Heard's functional capacity. Although a diagnosis is not inappropriate *per se*, it is considered "ethically and legally precarious" (Greenberg, Shuman, and Meyer, 2004, p. 10) due to its tendency to mislead or distract from the more relevant issues of the evaluation (McLearn, Pietz & Denney, 2004; Melton et al., 2018). In other words, a diagnosis may help to categorize distress, but it in no way demonstrates whether Ms. Heard experienced a decline in functioning after alleged IPV (Greenberg, Shuman, & Meyer, 2004; Melton et al., 2018). Per SGFP Guideline 10.01, forensic psychologists "consider the problems that may arise by using a clinical diagnosis in some forensic contexts and consider and qualify their opinions and testimony appropriately" (APA, 2013, SGFP Guideline 10.01). As such, the decision to include a diagnosis in a forensic evaluation report must be made carefully and accompanied with an explanation of the potential limitations it can cause. Dr. Hughes did not abide by

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<sup>23</sup> The term "functioning" is used to refer to an individual's ability to engage in and carry out tasks across multiple life areas (e.g., employment, relationships, financial management, self-care, household duties, and recreation/hobbies).

these principles. Instead, she diagnosed Ms. Heard with PTSD using an inadequate test<sup>24</sup> and failed to warn the factfinder of the associated limitations.

3.4. *Omission of relevant information of Ms. Heard's functional abilities.* Mental injury evaluations are comprehensive, requiring multiple sources of data by which to compare the person's overall functioning before and after the alleged harm (Denney, 2012; Kane & Dvoskin, 2011; Weiner & Otto, 2013). In cases in which PTSD or traumatic stress is alleged, best practices recommend that records be sought to establish the examinee's pre-trauma functioning from "birth to the day before" the alleged trauma (*i.e.*, "day-before analysis") (Kane & Dvoskin, 2011; Melton et al., 2018). Several inferences can be made by comparing the individual's pre- and post-trauma functioning. First, if there is an identifiable change, the amount of change and the scope of the impairments will represent the severity of the injury. If the change occurred after the alleged trauma *and* enough data exists to reliably rule out the influence of other current mental conditions or traumatic life events (*e.g.*, childhood abuse, serious accidents, natural disasters, sudden losses, violent crimes), then causation can be reasonably implied (Foote et al., 2020; Kane & Dvoskin, 2011; Melton et al., 2018). It is therefore critical that all relevant history is explored and disclosed. In doing so, the psychologist is guided by Ethical Principle B of *Fidelity and Responsibility*, as well as Principle C: *Integrity*, and Standard 5.01 regarding the *avoidance of false or deceptive statements* (APA, 2017). In addition, Specialty Guidelines 11.01 and 11.04 provide guidance regarding *accuracy, fairness, and avoidance of deception* and *comprehensive and accurate presentation of opinions in reports*, respectively (APA, 2013).

3.5. Dr. Hughes' report does not address the issue of Ms. Heard's pre- or post-trauma functioning. Furthermore, Dr. Hughes failed to include information about Ms. Heard's self-reported exposure to trauma in childhood and her pre-existing mental health conditions,<sup>25</sup> both of which bear significantly upon the determination of a present mental injury. The inclusion of such data demonstrates that the evaluator has weighed all possible causes for an individual's purported distress (Melton et al., 2018; Kane & Dvoskin, 2011). Finally, Dr. Hughes' failure to rule-out alternative hypotheses opposes the ethical duty of psychologists to "avoid partisan

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<sup>24</sup> See section 5.6 of this report for a discussion of the PTSD symptom checklist Dr. Hughes employed.

<sup>25</sup> See nursing notes of Erin Boerum, R.N. (AH\_TDP\_00016929-59).



presentation” of data and “treat all participants . . . weigh all data, opinions, and rival hypotheses impartially” (APA, 2013, SGFP Guideline 1.02: Impartiality and Fairness).

3.6. *Irrelevant scientific framework opinions.* An expert can be hired to provide scientific framework testimony, or “general scientific testimony,” about topics within their general area of expertise. In such cases, the expert offers educative scientific research to help the factfinder understand relevant specialized knowledge (Faigman, Monahan, & Slobogin, 2014; Foote, 2020; Faust, Grimm, Ahern, & Sokolik, 2010; Goodman & Croyle, 1989). A forensic psychologist who offers scientific framework testimony may or may not evaluate one or more parties involved in the case.

3.6.1. If an evaluation is *not* conducted, psychologists must “appropriately limit the nature and extent of their conclusions or recommendations” (EPCCC Standard 9.01, APA, 2017). While this does not prevent psychologists from applying their specialized knowledge to hypothetical questions about individuals in the case, they should not render opinions about either party. Furthermore, psychologists must convey the potential inaccuracy of the views offered in a hypothetical context (APA, 2017; Faigman et al., 2014; Foote, 2020).<sup>26</sup> Dr. Huhges provides opinions about Mr. Depp in her evaluation report that are not substantiated by an examination of the plaintiff. Moreover, she fails to make clear the limitations of her opinions.

3.6.2. On the other hand, if an evaluation *is* conducted, the psychologist must limit all opinions—including scientific framework testimony—to the evaluation’s

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<sup>26</sup> See EPCCC Standard 9.01, Bases for Assessments, “(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.) (b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence, and 9.06, Interpreting Assessment Results.) (c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations” (APA, 2017).

underlying psycholegal question. This core principle of *relevance* is emphasized throughout the professional literature and standards of psychological practice (APA, 2013; APA, 2017; Grisso, 2010; Rocchio, 2020; Martingale & Gould, 2013; Melton et al., 2018).<sup>27</sup> In accordance with Guideline 10.01 of the *Specialty Guidelines for Forensic Psychology*: “Forensic practitioners provide information that is most relevant to the psycholegal issue. In reports and testimony, forensic practitioners typically provide information about examinees’ functional abilities, capacities, knowledge, and beliefs and address their opinions and recommendations to the identified psycholegal issues (American Bar Association & American Psychological Association, 2008; Grisso, 1986, 2003; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007)” (APA, 2013). In other words, when a forensic psychologist conducts an evaluation, they must limit their conclusions to the assessment results and refrain from inserting other opinions (Rocchio, 2020).

3.6.3. Dr. Hughes conducted a psychological evaluation and included scientific framework opinions in her report. However, in opposition to the aforementioned professional standards, Dr. Hughes’ scientific framework opinions deviate substantially from the psycholegal purpose of an emotional injury evaluation. Whereas the referral reason underlying Dr. Hughes’ evaluation asks whether Ms. Heard is experiencing psychological consequences related to her allegations of IPV and defamation, Dr. Hughes’ scientific framework opinions focus instead on the dynamics of the alleged events. To reiterate, the role of the forensic psychologist is to provide scientific information pertaining to an individual’s psychological status. The “dynamics” of alleged IPV, as presented by Dr. Hughes, are not relevant to Ms. Heard’s psychological functioning. Furthermore, it is not appropriate for a psychologist to opine that an event has occurred, as Dr. Hughes

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<sup>27</sup> The issue of relevance is further addressed by SGFP Guideline 11.04, *Comprehensive and Accurate Presentation of Opinions in Reports and Testimony*, which states that, “the specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed,” and EPPCC Standard 4.04, which states: “(a) Psychologists include in written and oral reports and consultations, only information germane to the purpose for which the communication is made. (b) Psychologists discuss confidential information obtained in their work only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters” (APA 2013; APA, 2017).

does, because this is a determination that can only be made by the trier of fact. The majority of Dr. Hughes' summarized opinions from pages five and six of her report demonstrate her improper focus on events, rather than Ms. Heard's psychological status:

- 3.6.3.1. Opinion number one: Amber Heard's report of violence and abuse in her relationship with Mr. Depp is consistent with what is known as intimate partner violence, a pattern of manipulation, fear, and control in a relational context that is maintained through the use of multiple abusive behaviors such as physical violence, psychological aggression, coercive control, emotional abuse, and sexual violence (p. 5).
- 3.6.3.2. Opinion number two: The intimate partner violence inflicted upon Ms. Heard by Mr. Depp is categorized as severe because it consists of strangulation, punching, beating up, sexual violence, threats to kill, an increase in frequency and severity of abuse, and serious injuries such as black eye, facial bruising, nose injury, concussion, and loss of consciousness (p. 5).
- 3.6.3.3. Opinion number five: "with respect to intimate partner violence, it is commonly understood that such acts often occur in private with few witnesses and with little external corroboration, however, that does not appear to be the case in this matter. *Dr. Hughes' analysis revealed significant corroborating evidence that is consistent with Ms. Heard's report of intimate partner violence* [emphasis added] including text messages, photographs, video tape, audio files, medical documentation, therapy records, collateral interviews, and witnesses to the aftermath of the violence" (p. 6)
- 3.6.3.4. Opinion number six: "Dr. Hughes will provide expert testimony that is relevant, scientifically based information regarding the common

experiences, perceptions, psychological consequences, and actions of individuals exposed to intimate partner violence as well as their participation, or lack thereof, in procedures and sanctions against their partner. In addition, Dr. Hughes' expert testimony will seek to dispel myths and misconceptions about intimate partner violence that are commonly held by lay persons about what the persons in such a relationship 'should' do or 'shouldn't' do, and why these are not correct assumptions" (p.6).

#### 4. Deficient Psychometric Testing

4.1. *General standards for forensic psychometric test instruments.* A higher and more exacting standard of accuracy and relevance of psychological testing is required in forensic evaluations (Martingale & Gould, 2013; Otto & Goldstein, 2013). Forensic psychologists are expected to ensure that the tests they select have been validated with populations that are similar to the subject being examined, to be aware of the underlying studies upon which their test instruments rely, to understand the nature of "normative" (*i.e.*, comparison) groups, and to ensure that their resulting opinions delineate between facts and inferences (Kane & Dvoskin, 2011). Without meeting these explicit requirements, psychologists cannot testify *to a reasonable degree of psychological or scientific certainty*, as Dr. Hughes purports to do,<sup>28</sup> that their assessment results are valid (Kane & Dvoskin).

4.2. *Criteria for a "forensically relevant" test instrument.* Furthermore, forensic psychologists use *forensically relevant* test instruments (Heilbrun, Rogers & Otto, 2002). Such instruments were developed to measure clinical constructs and address the questions pertinent to criminal and civil litigation, including the examinee's approach to the test (*i.e.*, accurate self-report). Forensically relevant instruments have undergone *additional* testing to confirm their accuracy in forensic contexts specifically. In addition, they can identify feigning or defensiveness in responding and provide information regarding clinical factors relevant to a personal injury

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<sup>28</sup> On page 5 of Dr. Hughes' report, she writes: "Dr. Hughes' opinions are offered to a reasonable degree of psychological probability and/or certainty." Such statements should not be made automatically but rather intentionally, after exploring the impact of weaknesses and limitations within the evaluation (DeNier, 2013).

evaluation (Kane & Dvoskin, 2011). Heilbrun et al. (2002) developed a widely cited list of criteria to help determine whether a psychometric test instrument is appropriate for forensic evaluation. Based on their recommendations, any forensic test method must: (a) be commercially published and distributed; (b) have an available test manual; (c) have demonstrated and adequate levels of reliability and validity for the purpose for which it will be used; (d) have undergone successful peer review; (e) have known decision-making formulas; (f) in general, objective tests and actuarial data are preferable compared to clinical judgment, assuming appropriate research data exist for the test; and (g) assess for response style, which includes both positive or negative impression management (Heilbrun et al., 2002; Foote, 2020).

4.3. *The importance of response-style assessment.* Forensic psychological examinees will be incentivized to present themselves in a manner that benefits their outcome in all legal contexts. As a result, they may have conscious or unconscious motivations to sway the evaluation results, even if they intend to be forthright in their responses. Given the increased possibility for examinees to provide “distorted” or inaccurate test responses, the first goal of a forensic evaluation is to establish the validity (*i.e.*, accuracy) of an examinee’s self-report on test measures. Furthermore, forensic evaluators are advised to approach the assessment assuming that the examinee’s self-report is *not* reliable (Grisso, 2010; Resnick & Knoll, 2018). The accuracy of an examinee’s response-style can be gauged with empirically-established assessment tools and measures.<sup>29</sup>

4.4. *Special significance of assessing response-style with claims of PTSD.* The use of forensically relevant psychometric test instruments is essential when evaluating PTSD. Research has suggested that 20 to 30 percent of personal injury litigants who purport to have PTSD are feigning the disorder (Guriel & Fremouw, 2003; Lees Haley, 1997). In addition, it seems that PTSD is relatively easy to imitate. Studies in which healthy individuals were asked to attempt to obtain a diagnosis of PTSD on a diagnostic checklist, like the one Dr. Hughes’ used with Ms. Heard,<sup>30</sup> found that they were able to do so 86 to 94 percent of the time (Burges &

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<sup>29</sup> See EPPCC Standard 9.02: Use of Assessments, & SGFP Guideline 10.02: Selection and Use of Assessment Procedures.

<sup>30</sup> See section 5.6 of this report for discussion of the test Dr. Hughes used to assess Ms. Heard for PTSD.

McMillan, 2001; Lees Haley & Dunn, 1994; Resnick et al., 2018; Slovenko, 1994). Despite these highly relevant risks to accuracy in forensic assessment of PTSD, Dr. Hughes concluded that Ms. Heard has PTSD using an easily-exploitable symptom checklist. It is unclear why Dr. Hughes failed to use more appropriate diagnostic tools<sup>31</sup> that offer a more robust measurement of PTSD symptoms and identify response distortion (Guriel & Fremouw, 2003; Lees Haley, 1997).

4.5. *Inappropriateness of “checklist” measures.* Symptom checklists are not appropriate for use in forensic evaluations. They have high “face validity,” meaning their purpose is obvious and they “show” what they intend to measure. In legal settings, the face-valid nature of symptom checklists is hugely leading. This enables the measures to be easily exploited by forensic examinees who have a high incentive to present themselves in a manner that will benefit their case (Glancy et al., 2015; Matto et al., 2019; Resnick & Knoll, 2018; Wang & Gorenstein, 2013; Medoff, 2010). Such checklists cannot detect or resist any form of disingenuous response. This is because they were developed for use in treatment settings, not a comprehensive forensic assessment. In treatment settings, the use of face-valid symptom checklists is non-problematic, as patients are assumed to be interested in obtaining proper care and are, therefore, taken at their word about the symptoms they’re experiencing. Therefore, checklists are given to patients so they can “check off” the items that pertain to them and assist the provider in determining appropriate interventions. However, these types of measures lack accuracy, reliability and are typically non-relevant to the purpose of a forensic evaluation. As such, consensus within the forensic psychology specialty is that they are not appropriate for use in evaluations (Burges & McMillan, 2001; Lees-Haley & Dunn, 1994; Resnick et al., 2018; Slovenko, 1994).

4.6. Dr. Hughes used not one but eight checklist measures in her evaluation of Ms. Heard. Her inclusion of these test methods opposes professional standard 9.02, which states that psychologists “administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate” and “use assessment instruments whose validity and reliability have been established for use with members of the

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<sup>31</sup> See my evaluation report of Ms. Heard for a description of forensically-relevant test instruments for diagnosis of PTSD.

population tested” (APA, 2017). Moreover, her reliance on face-valid measures opposes important bodies of empirical literature, professional practice guidelines, and legal rules requiring the use of scientifically supported, validated, and reliable test instruments for forensic evaluation (Foote & Lareau, 2013). Furthermore, her substantiation of opinions with the results of such measures introduces unknowable margins of error and seriously compromises the foundation upon which psychological opinions are rendered and legal decisions are made.

## 5. Misrepresentation of Psychometric Test Validity

5.1. Dr. Hughes misrepresented the tests she used, overstating their validity and relevance to the present matter while omitting discussion of their limitations and purpose. A summary of each of the measures Dr. Hughes describes in her report is presented below.<sup>32</sup>

5.2. *The Danger Assessment Scale:* On page eight of her evaluation report, Dr. Hughes describes the Danger Assessment Scale as “an empirically validated measure specifically designed to assess for risk factors that have been associated with severe and lethal intimate partner violence.” This statement fails to acknowledge the invalidity of the test *for the purpose in which it was being used* (i.e., in Dr. Hughes’ forensic psychological evaluation of Ms. Heard). In forensic evaluation, validity is not approached as an abstract concept but rather one which fundamentally pertains to the current psycholegal purpose. Whereas Dr. Hughes’ describes several checklists as “valid,” none are valid as forensic test measures.

5.2.1. The Danger Assessment Scale is a 20–item checklist designed to be administered by nursing staff to women presenting in emergency departments with injuries from possible IPV. The patient is given a 20-item questionnaire and asked to check off the risk factors for lethality that are present in her relationship (e.g., “does he own a gun?”). This measure was conceptualized to help women in abusive relationships overcome their denial and minimization of the abuse so they might subsequently accept resources for support and intervention. It is a high face-value checklist, meaning that it is obvious

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<sup>32</sup> Dr. Hughes’ report only references 4 of the 11 test measures she utilized in her assessment of Ms. Heard. A full review of the test methods Dr. Hughes’ employed, and Ms. Heard’s results is included in my court-ordered IME report.

that it intends to assess for the lethality of intimate partner violence. It also does not control for the potential that an examinee might attempt to exaggerate their experiences, nor has it been validated for use in forensic psychological evaluations. This measure has no resistance to response distortion and fails to meet the psychometric test standards for forensic evaluation (Heilbrun et al., 2002; Glancy et al., 2015; Matto et al., 2019; Resnick & Knoll, 2018; Wang & Gorenstein, 2013; Meldoff, 2009).

5.3. *Abusive Behaviors Observations Checklist (ABOC)*: The ABOC is a checklist designed to facilitate therapy for survivors of IPV. This face-valid inventory provides the patient with descriptions of various forms of abuse and the adaptations that survivors commonly make in their thinking and behavior. Its purpose is to help survivors recognize the types of abuse they experienced, understand the behaviors and cognitions that they may have utilized to cope with the violence, and thus better articulate and process their experiences in therapy. There is no research to support the accuracy or relevancy of this test for use in forensic psychological evaluations.

5.4. *Conflict Tactics Scale – 2 (CTS-2)*: The Revised Conflict Tactics Scale is a checklist designed for researching family violence and conflict. It is also commonly used as part of an initial patient intake by social workers and case managers. It asks 39 questions about the respondent's behavior and 39 questions about the partner's behavior. The respondent indicates how often each behavior has occurred using an 8-point scale. This similarly-exploitable scale is not appropriate for use in forensic psychological evaluations.

5.5. Despite the inadequacy of the two measures mentioned above for use in a forensic evaluation, Dr. Hughes states that Ms. Heard's results on these two checklists "revealed the presence of severe IPV including physical abuse, physical injury, sexual violence and abuse, coercion and threats, intimidation, isolation, and minimization and denial of the abuse" (p. 8).

5.6. *Posttraumatic Stress Disorder Checklist for DSM-5 (PCL-5)*: The PCL-5 was developed by the VA as a brief screening checklist for PTSD. All DSM-5 PTSD symptoms are listed. The patient checks off which symptoms they are experiencing according to one of the offered



severity ratings. It is intended for use in treatment settings only and identifies a potential need for further diagnostic testing with the CAPS-5. It is not designed for forensic purposes. Similar to the aforementioned measures, the PCL-5 has no resistance to response distortion by the examinee and fails to meet the psychometric test standards for forensic evaluation (Heilbrun et al., 2002; Glancy et al., 2015; Matto et al., 2019; Resnick & Knoll, 2018; Wang & Gorenstein, 2013; Meldoff, 2009).

5.7. Despite this, Dr. Hughes inaccurately concludes on page eight of her report that Ms. Heard's responses on the PCL-5 "support a DSM-5 diagnosis of Posttraumatic Stress Disorder with an etiology of the intimate partner violence she experienced by her former partner, Mr. Depp." This inferential leap directly violates professional Standard 9.01, which states, "when [the instrument's] validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation" (APA, 2017).

5.8. Dr. Hughes does not reference any other test results in her report. Her statements about the measures discussed here oppose professional standards of practice, including Standard 9.06, which states: "When interpreting assessment results, including automated interpretations, psychologists take into account the *purpose* of the assessment" (APA, 2017) (emphasis added). In addition, her repeated misrepresentation of test instruments and results opposes professional ethics of accuracy, fairness, and avoidance of deception. In particular, SGFP Guideline 11.01 states: "When providing reports and other sworn statements or testimony in any form, forensic practitioners strive to present their conclusions, evidence, opinions, or other professional products in a fair manner. Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence contrary to their own position or opinion" (APA, 2013).

## 6. Misrepresentation of Test Results

6.1. Ethical Standard 9.01(a) states, "Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony on information and techniques sufficient to substantiate their findings" (APA,

2017). In accordance with this standard, the evaluating psychologist must limit their conclusions to those results supported by the evaluation and not go beyond the data when explaining assessment results.<sup>33</sup> As specified in Specialty Guideline 11.02, care should also be taken to carefully “distinguish observations, inferences, and conclusions. Forensic practitioners are encouraged to explain the relationship between their expert opinions and the legal issues and facts of the case at hand” (APA, 2013).

6.2. Dr. Hughes misrepresented the meaning of Ms. Heard’s scores on invalid test measures while seeming to ignore significant scores on more reliable instruments (Heilbrun et al., 2002; Grisso, 2003; Foote & Lareau, 2013; Kane & Dvoskin, 2011).<sup>34</sup> She presented the results of one symptom checklist as supportive of “a DSM-5 diagnosis of Posttraumatic Stress Disorder with an etiology of the intimate partner violence she experienced by her former partner, Mr. Depp.” Dr. Hughes also administered two other checklists about experiences of intimate partner violence. Based on nothing more than Ms. Heard’s endorsement of the items presented on these checklists, Dr. Hughes reported that the measures “revealed the presence of severe IPV”<sup>35</sup> and “that Ms. Heard was in a very serious situation with Mr. Depp and at

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<sup>33</sup> SGFP Guideline 11.04: Comprehensive and Accurate Presentation of Opinions in Reports and Testimony states: “Forensic practitioners avoid offering information that is irrelevant and that does not provide a substantial basis of support for their opinions, except when required by law;” see also, EPPCC Standard 4.04.

<sup>34</sup> EPPCC Standard 9.01, *Bases for Assessments* states, “(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)”

Also, EPPCC Standard 9.02, *Use of Assessments* states: “(a) Psychologists administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques. (b) Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation;”

Also, EPPCC Standard 9.08, *Obsolete Tests and Outdated Test Results*, states: “(b) Psychologists do not base [their assessment or intervention] decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose.”

<sup>35</sup> On page eight of her evaluation report, Dr. Hughes writes: “For an assessment of intimate partner violence (IPV) related behaviors, Ms. Heard was administered the Abusive Behavior Observation Checklist (ABOC) and the Conflict Tactic Scale2, both of which measure common characteristics of intimate partner abuse. Results revealed the presence of severe IPV including physical abuse, physical injury, sexual violence and abuse, coercion and threats, intimidation, isolation, and minimization and denial of the abuse.”

risk for serious, repetitive, and deadly intimate partner violence.”<sup>36</sup> Such conclusions far exceed any reasonable inference that can be drawn from these measures, especially when provided to an examinee in a forensic context.

6.3. Furthermore, Dr. Hughes’ inferences are irrelevant to the underlying legal purpose of the evaluation—to determine the presence and causality of an emotional injury. To be clear, in all assessments of psychological injury, the forensic evaluator’s aim is *not to determine whether a purported trauma occurred* but rather *if there is a functional limitation that was caused by the alleged trauma* (Pietz, 2020). In this way, *causality* is merely the evaluation of symptom severity over time—it does not involve determinations that an event did or did not occur.<sup>37</sup>

6.4. ***Ignoring clear evidence of response distortion by Ms. Heard.*** Dr. Hughes appears to ignore clear evidence that Ms. Heard engaged in response distortion, or inaccurate self-descriptions, on two objective test measures. On one of the tests designed to measure trauma-related distress, there was evidence of significant exaggeration of symptoms. On another test that measures general personality and psychopathology, Ms. Heard obtained validity scores consistent with attempts at favorable self-presentation. A more detailed discussion about Ms. Heard’s response-style on these measures is provided below:

6.4.1. *Trauma Symptom Inventory – 2 (TSI-2)*: The TSI-2 is an objective test designed to capture a broad range of symptoms that may be associated with trauma. Ms. Heard’s scores on the TSI-2 are consistent with significant overreporting of trauma-based symptoms (ATR = 87, 98th percentile). She endorsed an extremely high number of “atypical symptoms,” or symptoms and experiences that are rarely reported, even in the most severe trauma cases. Specifically, Ms. Heard’s endorsement of unlikely symptoms was higher than 98% of other test takers. Individuals who have obtained a similar score may be intentionally

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<sup>36</sup> On page eight of her evaluation report, Dr. Hughes writes: “[Ms. Heard] was also administered the Danger Assessment Scale, a 20-item measure that assesses for risk factors that have been associated with homicides in violent relationships. The Danger Assessment Scale revealed that Ms. Heard was in a very serious situation with Mr. Depp and at risk for serious, repetitive, and deadly intimate partner violence.”

<sup>37</sup> See the previous discussion on the structure and purpose of an emotional injury evaluation in Section 2.4 of this report.

exaggerating symptoms or they may tend to “experience and/or report symptoms as being more intense than others do” (Briere, 2011).

6.4.2. Personality Assessment Inventory (PAI): The PAI is a 344-item standardized psychometric test of adult personality and psychopathology (symptoms of mental illness). It is designed to evaluate a person’s patterns of thinking, emotion, motivation, behavior, and symptoms of mental illness. Ms. Heard elevated a scale on the PAI which suggests she attempted to portray herself as relatively free of shortcomings (PIM = 57). She may also have significantly minimized her use of illicit substances (DRG = 62).

6.5. Despite these clear indications of response distortion (*i.e.*, “faking good” and “faking bad”), Dr. Hughes inaccurately states in her report that “psychological testing revealed that [Ms. Heard] approached the evaluation in a forthright matter with no evidence of malingering or feigning psychological distress. Additionally, Ms. Heard did not appear to distort or exaggerate the information she provided” (p. 5, opinion four). By forcefully presenting only the data which supported her position and withholding clear yet potentially contradictory evidence, Dr. Hughes presented her findings in a manner that violates the trust placed in experts to provide impartial and scientific opinions to assist the trier of fact (Martingale and Gould, 2013).

## 7. Inappropriate Statements of Opinion

7.1. Science is precise in nature and forensic psychologists are trained to avoid language that inappropriately implies something other than what is accurate and intended (Otto, DeMier, Boccaccini, 2014). Therefore, it is important to acknowledge Dr. Hughes’ inappropriate and repetitive use of presumptive and prejudicial language when describing the plaintiff, whom she did not examine, and in her unnecessarily detailed and graphic descriptions<sup>38</sup> of *alleged*

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<sup>38</sup> SGFP Guideline 10.01: *Focus on Legally Relevant Factors* states: “Forensic practitioners provide information that is most relevant to the psycho-legal issue;” also, SGFP Guideline 11.04: *Comprehensive and Accurate Presentation of Opinions in Reports and Testimony*: “Forensic practitioners are encouraged to limit discussion of background information that does not bear directly upon the legal purpose of the examination or consultation. Forensic practitioners avoid offering information that

incidents of IPV, which she fails to qualify as such. Instead, Dr. Hughes repeatedly misrepresents descriptions of IPV between Ms. Heard and Mr. Depp as factual, thus introducing potential prejudice and violating the privacy and dignity of both parties for reasons irrelevant to her purpose as an examiner. To reiterate, it is never the psychologist's task to determine that IPV occurred, nor is it appropriate for an expert to advocate for any specific party or sociopolitical purpose. Our role is only to assist the factfinder by providing sound and objective scientific knowledge so that they may decide the legal and moral issues before the court. Therefore, Dr. Hughes' failure to separate facts from inferences is unscientific, highly misleading, and violates multiple rules of professional practice (APA, 2013; APA, 2017; Bush, Connell, and Denney, 2020; Grisso, 2010; Melton et al., 2018).<sup>39</sup>

7.2. Dr. Hughes' first noted use of language that is inappropriate in a forensic report was identified on page two, in her statement that she was asked "to assess for any psychological consequences *stemming from the defamatory statements to the media made by Mr. Depp through his attorney and agent, Adam Waldman* [emphasis added]." This statement inappropriately conveys that defamation has occurred when the matter has not yet been tried in court. While one poorly worded sentence might be otherwise attributed to careless error, almost every page of Dr. Hughes' report contains similarly presumptive and pejorative statements about the plaintiff. A selection of examples are presented below:

7.2.1. "On June 24, 2020, *Depp, through Waldman, falsely accused Ms. Heard* [emphasis added] in the Daily Mail of committing an 'abuse hoax' against Depp" (p. 2, footnote 47).

7.2.2. "*The intimate partner violence inflicted upon Ms. Heard by Mr. Depp* [emphasis added] is severe because it consists of strangulation, punching, beating up, sexual violence, threats to kill, an increase in frequency and severity of abuse, and

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is irrelevant and that does not provide a substantial basis of support for their opinions, except when required by law;" see also, EPPCC Standard 4.04, *Minimizing Intrusions on Privacy*.

<sup>39</sup> See SGFP Guideline 11.01: Accuracy, Fairness, and Avoidance of Deception; Also, EPPCC Standard 5.01; Also, SGFP Guideline 11.02: Differentiating Observations, Inferences, and Conclusions; Also, SGFP Guideline 11.04: Comprehensive and Accurate Presentation of Opinions in Reports and Testimony; Also, EPPCC Standard 4.04.

serious injuries such as black eye, facial bruising, nose injury, concussion, and loss of consciousness” (p. 5).

- 7.2.3. “The Danger Assessment Scale *revealed that Ms. Heard was in a very serious situation with Mr. Depp and at risk for serious, repetitive, and deadly intimate partner violence [emphasis added]*” (p. 8)
- 7.2.4. Page 8: “Results *revealed the presence of severe IPV [emphasis added]* including physical abuse, physical injury, sexual violence and abuse, coercion and threats, intimidation, isolation, and minimization and denial of the abuse” (p. 8)
- 7.2.5. “Mr. Depp *repeatedly demonstrated not only his ability, but his willingness, to use multiple and serious forms of physical assaults and sexual violence against Ms. Heard [emphasis added]* which decreased her psychological functioning and increased her fear and helplessness” (p. 10)
- 7.2.6. “Mr. Depp’s *abuse of Ms. Heard [emphasis added]* was punctuated and exacerbated by his chronic addiction to drugs and alcohol” (p. 11)
- 7.2.7. “*This substance-fueled rage [emphasis added]* also pulled for Ms. Heard to adopt a caretaking role with Mr. Depp and offer herself and others repeated excuses for his behavior thereby obfuscating *the abuse and the harm caused to her [emphasis added]*” (p. 11)
- 7.2.8. “Mr. Depp’s *psychological instability [emphasis added]*, as evidenced by his chronic substance abuse, *erratic violent outbursts, deranged [emphasis added]* writing on walls, tables, mirrors, etc., repeated property damage, frequent throwing of objects, *acts of violence toward himself and self-harm [emphasis added]*, and withdrawal from the relationships for long periods of time where he was unreachable, among others, are *not only highly dysfunctional, but forms of psychological abuse, intimidation, and emotional manipulation [emphasis added]*” (p. 11)

- 7.2.9. *“Mr. Depp’s instability required Ms. Heard to continue to deal with days of chaos and trauma [emphasis added], always trying to calm Mr. Depp first, and then seek safety for herself second. The unpredictability, volatility, and severity of Mr. Depp’s behavior [emphasis added] increased Ms. Heard’s fear of him and his ability to maintain power and control in the relationship [emphasis added] (p. 12).*
- 7.2.10. *“This evaluation revealed significant sexual violence perpetrated by Mr. Depp [emphasis added] toward Ms. Heard” (p. 12)*
- 7.2.11. *“the intimate partner violence perpetrated by Mr. Depp [emphasis added] toward Ms. Heard was serious, severe, and dangerous” (p. 13)*
- 7.2.12. *“Mr. Depp also engaged in serious sexual violence during instances of rage and violence in which he forcibly [emphasis added] penetrated Ms. Heard’s vagina with the neck of a liquor bottle during one of the most violent episodes in their relationship. Other times, he forcibly and violently [emphasis added] thrust his fingers up her vagina, moved her body by holding onto her vagina, and yelled obscenities at her. None of these acts were to initiate sex and none of them consensual. Quite the contrary, they were acts of sexual violence reflecting an abuse of Mr. Depp’s power and control over her, and specifically perpetrated to humiliate and subjugate Ms. Heard. These repeated sexual violations [emphasis added] were often accompanied by vulgar and degrading verbal assaults toward her.”*
- 7.2.13. *“There were two very serious abusive incidents worth noting [emphasis added] in which Ms. Heard thought Mr. Depp could kill her. The first time was in Australia in March 2015 when Mr. Depp engaged in an all-out assault upon her [emphasis added] whereby, he hit her, slapped her, threw her around, pinned her on her back on a counter, squeezed her neck strangling her, ripped off her nightgown, and raped her with a Jack Daniels bottle [emphasis added] while screaming over and over again, ‘You ruined my life. I hate you. I’m going to fucking kill you’” (p. 14)*

7.2.14. “Then, in December 2015 in Los Angeles, *Mr. Depp perpetrated another severe assault against Ms. Heard wherein he repeatedly punched and slapped her with his ring-adorned hands, dragged her by the hair across the apartment, headbutted her, and strangled her* [emphasis added] while yelling ‘I fucking hate you. I hate you. I’m going to fucking kill you’” (p. 14)

7.2.15. “In addition, *Mr. Depp actively sabotaged Ms. Heard’s efforts* [emphasis added] at self-care and external support, vilifying and sometimes excommunicating those individuals with whom she relied on” (p. 16)

7.3. The language used by Dr. Hughes in her evaluation report does not represent the neutral and detached manner expected of a forensic psychologist reporting their objective results (Bush, Connell, & Denney, 2013; Martingale & Gould, 2013). Moreover, Dr. Hughes’ pattern of presenting data and conclusions in absolute terms opposes professional ethics of accuracy, fairness, and avoidance of deception (APA, 2013; APA, 2017; Bush, Connell, and Denney, 2020; Grisso, 2010; Melton et al., 2018).<sup>40</sup>

#### IV. Conclusion

Dr. Hughes’ report demonstrates overt deficiencies and raises serious questions regarding the overall appropriateness of how her evaluation of Ms. Heard was conducted and the validity and reliability of its results.

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<sup>40</sup> SGFP Guideline 11.01, “When providing reports and other sworn statements or testimony in any form, forensic practitioners strive to present their conclusions, evidence, opinions, or other professional products in a fair manner. Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence contrary to their own position or opinion (EPPCC Standard 5.01);” also, SGFP Guideline 11.02, Differentiating Observations, Inferences, and Conclusions: “In their communications, forensic practitioners strive to distinguish observations, inferences, and conclusions. Forensic practitioners are encouraged to explain the relationship between their expert opinions and the legal issues and facts of the case at hand;” also, EPPCC: 9.06 Interpreting Assessment Results: “When interpreting assessment results, including automated interpretations, psychologists take into account the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences, that might affect psychologists’ judgments or reduce the accuracy of their interpretations. They indicate any significant limitations of their interpretations. (See also Standards 2.01b and c, Boundaries of Competence, and 3.01, Unfair Discrimination)”



Nonetheless, Dr. Hughes raises several important issues in her report related to the scientific knowledge of IPV. Specifically, she discusses the powerful forces that maintain a survivor's attachment to their abuser.<sup>41</sup> She also describes current research-based models for understanding the dynamics of IPV and how power and control are the primary features which characterize multiple variations of abusive behavior. These descriptions of IPV assist in dispelling common myths about what constitutes IPV and how a survivor "should" behave. That being said, this scientific information was not clearly linked to the underlying psycholegal purpose of her evaluation of Ms. Heard, i.e., to identify the presence of any emotional injury and its relatedness to Ms. Heard's allegations against Mr. Depp. As such, the introduction of this scientific principles is extraneous and irrelevant to Dr. Hughes' role as an evaluator.

The role of a psychologist in the courtroom does not involve sociopolitical advocacy, nor is our helpfulness based on the persuasiveness of our position. Rather, our assistance to the trier of fact is only as valuable as the objectivity of our opinions and the soundness of the foundation upon which they rest.

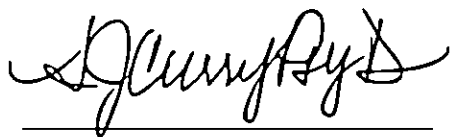
In discussing this, forensic psychologist Thomas Martindale (2001) wrote:

There is an important difference between an expert opinion and a personal opinion. When an expert has formulated an opinion, it is reasonably presumed that the expert has drawn upon information accumulated and published over the years. The defining attributes of an expert opinion relate not to the credentials held by the individual whose fingers type the words or from whose mouth the words flow; rather, the requisite characteristics relate to the procedures that were employed in formulating the opinion and the body of knowledge that forms the foundation upon which those procedures were developed. If the accumulated knowledge of the expert's field was not utilized, the opinion expressed is not an expert opinion. It is a personal opinion, albeit one being expressed by an expert. (p. 503).

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<sup>41</sup> See page 9 and portions of pages 15 and 16 of Dr. Hughes' report for her discussion of the science of IPV, particularly as it relates to the cyclic nature of intimate partner violence and how the intermittent periods of relief between violent episodes serve to reinforce the survivor's sense of hope and attachment to her abusive partner; as well as adaptive mechanisms that are commonly employed by survivors in violent relationships.

Report not valid unless signed:

A handwritten signature in black ink, appearing to read "Shannon J. Curry", written over a horizontal line.

Shannon J. Curry, PsyD, MSCP  
Clinical & Forensic Psychologist

February 8, 2022

Date

# Exhibit C

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

JOHN C. DEPP, II

*Plaintiff,*

v.

AMBER LAURA HEARD,

*Defendant.*

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Civil Action No.: CL-2019-0002911

**PLAINTIFF'S DESIGNATION/IDENTIFICATION OF EXPERT WITNESSES**

Plaintiff John C. Depp, II, by and through his undersigned counsel, pursuant to Rule 4:1(b)(4)(A)(i) of the Rules of the Supreme Court of Virginia, and the Court's Scheduling Order dated April 22, 2021, and in response to Interrogatory No. 15 in Ms. Heard's First Set of Interrogatories dated October 7, 2019, hereby designates and identifies his expert witnesses in response to new matters raised in Ms. Heard's Second Supplemental Disclosure of Expert Witnesses dated February 10, 2022.

Given the ongoing state of discovery—in particular, the continuing document productions from the parties and non-parties and the fact that depositions of certain key parties and witnesses have yet to occur—Plaintiff reserves the right to supplement this Expert Witness Designation, to include (1) identifying additional or different areas of expected testimony for the designated witnesses, (2) identifying additional or different bases for the expected testimony of the designated witnesses, and/or (3) designating additional or different expert witnesses.

**Retained Experts**

1. Shannon J. Curry, PsyD, Clinical Psychologist, Curry Psychology Group, 200 Newport Center Drive, Suite 204, Newport Beach, California 92660. Dr. Curry is a

clinical and forensic psychologist with extensive clinical and research experience and expertise in individual and community trauma, forensic psychology, and relationships/the Gottman method of couples' therapy. Currently, Dr. Curry is the owner and director of the Curry Psychology Group, a multispecialty mental health center in Newport Beach, California. Dr. Curry has ten years of experience as a licensed clinical psychologist, providing direct therapy and assessment services and supervising masters- and doctoral-level clinicians. Prior to becoming a clinical psychologist, Dr. Curry worked for seven years as a therapist. She is experienced in treating adults, couples, adolescents, children, and families across a diverse range of settings including community counseling centers, forensic psychiatric hospitals, correctional programs, military facilities, and rural clinics both in the U.S. and abroad (Ayacucho, Peru and La Paz, Mexico). In addition to her clinical work, Dr. Curry is on the board for the University of California Irvine Center for Unconventional Security Affairs ("CUSA") and is involved in continued research on issues of poverty, warfare, violence, environmental sustainability, and complex disaster.

Dr. Curry received her Bachelor of Arts in Psychology and Social Behavior with high honors from the University of California, Irvine; a Master of Arts in Psychology from Pepperdine University; a Post-Doctoral Master of Science in Clinical Psychopharmacology from Alliant University (for psychologist prescriptive authority in certain states and federal jurisdictions); and a doctorate in Clinical Psychology from Pepperdine University with research honors. Dr. Curry completed a year-long doctoral internship at Tripler Army Medical Hospital in Honolulu, Hawaii, an American Psychological Association ("APA")-Accredited training site, where she obtained intensive experience in psychological assessment and the treatment of posttraumatic stress disorder ("PTSD"). She then completed a two-year post-doctoral residency at Hawaii State Hospital, a forensic psychiatric hospital where she specialized in trauma and

forensic psychology and obtained Certification as a Forensic Evaluator for the Hawaii State Department of Courts and Corrections.

*Subject Matter of Dr. Curry's Opinion:* In addition to the opinions Dr. Curry will render as previously disclosed in Mr. Depp's Expert Designations dated January 11, 2022 and February 10, 2022, Dr. Curry will testify regarding Dr. Dawn Hughes' forensic psychological evaluation of Ms. Heard and opinions as rendered in Ms. Heard's Second Supplemental Disclosure of Expert Witnesses dated February 10, 2022.

*Substance of Dr. Curry's Opinion:* Specifically, Dr. Curry is expected to draw upon her experience and expertise as a clinical and forensic psychologist, the results of her comprehensive, multi-method evaluation of Ms. Heard, and her review of current and relevant peer-reviewed scientific literature to testify that Dr. Hughes' evaluation of Ms. Heard and expert opinions rendered are deficient and in contradiction of professional standards including but not limited to Dr. Hughes' administration and scoring of the CAPS-5 test.

*Summary of Grounds of Dr. Curry's Opinion:* Specifically, Dr. Curry is expected to testify about Dr. Hughes' administration of the CAPS-5 with Ms. Heard on December 27, 2021, just ten days after Dr. Curry administered the same test with Ms. Heard as part of the Court-ordered IME on December 17, 2021. As an initial matter, it is unclear why Dr. Hughes failed to disclose this additional test administration in her supplemental designation report dated January 11, 2022. On January 20, 2022, Dr. Curry provided Dr. Hughes with the complete and detailed CAPS-5 from the Court-ordered IME of Ms. Heard. Dr. Hughes nonetheless waited until February 11, 2022 to disclose that she administered the CAPS-5 with Ms. Heard on December 27, 2021 as noted in Ms. Heard's Second Supplemental Disclosure of Expert Witnesses. Furthermore, Dr. Hughes did not provide Dr. Curry with the results of this test until February 20,

2022, and only after Dr. Curry requested the data from Dr. Hughes on February 17, 2022. Lastly, Dr. Hughes' report does not explain what prompted her to conduct this new test in December after choosing *not* to administer it over the 27-month period since Dr. Hughes first examined Ms. Heard and during Dr. Hughes' 25 hours of her examination of Ms. Heard.<sup>1</sup>

Because Dr. Curry only received the data for the CAPS-5 test from Dr. Hughes on February 20, 2022, she has not yet completed her review and analysis of the 20 pages of questions and annotated examinee responses. However, at first glance, several deficiencies in Dr. Hughes' administration of the CAPS-5 are evident. First, Dr. Hughes did not adhere to the standard test procedure. The CAPS-5 is a standardized interview, meaning that anyone who is given the CAPS-5 should be asked the same set of questions in the exact same order and in the exact same way. This enables an examinee's responses to be compared to the responses of thousands of others who have taken the same test and upon which the test's scoring system was developed. Given the high level of standardization upon which the CAPS-5 relies, Dr. Hughes' insertion of non-standard questions introduces unknown error, thereby invalidating the test.

The first line of the CAPS-5 instructions read: "Standard administration and scoring of the CAPS-5 are essential for producing reliable and valid scores and diagnostic decisions" (p. 1).<sup>2</sup> In addition, the evaluator is instructed to "[r]ead prompts verbatim, one at a time, and in the order presented" (p. 1).

The standardized questions on the CAPS-5 are designed to gather a highly detailed account of the examinee's experience with each PTSD symptom. Twenty symptoms of PTSD are assessed, and about four to eight questions pertain to each symptom. This thoroughness ensures

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<sup>1</sup> According to the examination dates Dr. Hughes stated in Ms. Heard's Second Supplemental Disclosure of Expert Witnesses dated February 10, 2022, she first examined Ms. Heard on September 26, 2019. However, Dr. Hughes also references interviews conducted with Ms. Heard "over the last three years." This statement indicates that Dr. Hughes began her examination of Ms. Heard in February of 2019.

<sup>2</sup> See the CAPS-5 Test completed by Dr. Curry on December 17, 2021.

that the psychologist obtains enough information to determine whether the examinee's description captures the actual DSM-5 definition of the symptom, whether the frequency and intensity of each symptom meets diagnostic criteria, if there is apparent relatedness between symptoms and the alleged trauma, and whether the examinee's descriptions are consistent with genuine experiences of PTSD or with feigned presentations of the disorder.

Dr. Hughes deviated from standard procedure by inserting her own questions into the CAPS-5 interview. Furthermore, her questions did not relate to the index trauma, or "anchor," that she selected to guide the test (*i.e.*, "IPV by Johnny"). According to the CAPS-5 instructions, proper test administration would have required that Dr. Hughes read the scripted test questions in reference to the identified anchor of alleged "IPV by Johnny," and only in reference to that anchor. Instead, Dr. Hughes' annotations on the CAPS-5 indicate that she repeatedly followed up each category of standardized questioning with a separate question of her own; asking Ms. Heard whether she experienced the symptom in relation to "childhood."<sup>3</sup>

If Dr. Hughes wanted to rule-out the influence of childhood events on Ms. Heard's reported trauma symptoms, proper test procedure requires that a new CAPS-5 be administered for the separate index trauma. Page three of the CAPS-5 test manual states: "For patients with multiple traumas, it may be the case that multiple interviews will be conducted, *focusing exclusively on the response to one trauma at a time* [emphasis added]." In other words, Dr. Hughes should have administered one CAPS-5 interview according to the anchor, "IPV by Johnny," and another CAPS-5 interview for the anchor of "childhood abuse."

Conducting two separate CAPS-5 interviews would have ensured that a complete detailed account was provided for symptoms as they relate to each index trauma. Instead, Dr.

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<sup>3</sup> Dr. Hughes' annotations (e.g., "Childhood?" "- No") in the margins of the CAPS-5 indicate that she inserted her own non-standardized query related to adverse childhood events reported by Ms. Heard.



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 18 to exclude expert testimony of Dr. Dawn M. Hughes ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

---

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**SEEN AND OBJECTED TO:**

---

Elaine Charlson Bredehoft (VSB No. 23766)  
Adam S. Nadelhaft (VSB No. 91717)  
David E. Murphy (VSB No. 90938)  
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brottenborn@woodsrogers.com  
jtreece@woodsrogers.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup> 18th day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

Elaine Charlson Bredehoft (VSB No. 23766)  
Adam S. Nadelhaft (VSB No. 91717)  
Clarissa K. Pintado (VSB No. 86882)  
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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
CIVIL PROCESSING

2022 MAR 22 A 11: 21

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 19 TO EXCLUDE EXPERT  
TESTIMONY OF JULIAN ACKERT**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, hereby moves the Court to exclude the testimony of Julian Ackert. Plaintiff expressly reserves the right to exclude the testimony of Mr. Ackert on any other basis after his deposition.

### INTRODUCTION

Given that the Court has twice rejected Ms. Heard's request for a forensic imaging of Mr. Depp's devices, Ms. Heard's designation of Mr. Ackert to opine on the authenticity of Mr. Depp's data is not only irrelevant, but another affront to the Court's explicit rulings in this case. The authenticity of Mr. Depp's data is not at issue in this case, and the opinions Mr. Ackert intends to render at trial could only serve to confuse or mislead the jury. Accordingly, the portions of Mr. Ackert's opinions that relate to the authenticity of Mr. Depp's data should be excluded as irrelevant.

Unlike Mr. Depp's data, the authenticity of Ms. Heard's data is at issue, as Ms. Heard relies upon photographs of purported injuries to support her defamatory allegations of physical abuse against Mr. Depp. The authenticity and integrity of these photographs, accordingly, is relevant to the underlying claim in this case. Indeed, Mr. Bryan Neumeister, Mr. Depp's retained forensic and technical expert, has already opined that certain of Ms. Heard's photographs have gone through a photo editing application. Ms. Heard, however, is in contempt of this Court's November 8, 2021 Order directing her to turn over specified, forensically-imaged data to Mr. Neumeister for analysis in a timely manner and appropriate format. As set forth in Mr. Depp's forthcoming Motion for Sanctions and the accompanying Declaration of Mr. Neumeister, Mr. Neumeister did not receive *any* extracted data from Ms. Heard's devices until March 2, 2022, additional extracted data is still being sent over to Mr. Neumeister as of March 22, 2022, and much of the data that has been received is either irrelevant (i.e., not pictures of Ms. Heard) and/or appears to be corrupted, likely

due to the improper use of unlicensed software by Ms. Heard's experts. Quite simply, the improper imaging of the devices has made it such that neither Mr. Neumeister nor Mr. Ackert can render an opinion as to the authenticity of the photographs extracted from this imaging. The remaining portions of Mr. Ackert's opinion that attest to the authenticity of Ms. Heard's data, thus, lacks foundation and, on that basis, should be excluded.

### ARGUMENT

#### **I. Mr. Ackert's Testimony Concerning the Integrity of Mr. Depp's and Ms. Heard's Data Is Irrelevant to the Issues in the Case and Lacking in Foundation**

Mr. Ackert's opinion regarding Mr. Depp's data is wholly irrelevant to the case and, on that basis alone, can and should be excluded. *See* Va. Sup. Ct. R. 2:402. Ms. Heard has *twice* attempted to compel a forensic imaging of Mr. Depp's devices and this Court has denied both requests, finding that the parties are not similarly situated. It is Ms. Heard, not Mr. Depp, who relies on the integrity of her data to support her defamatory allegation that Mr. Depp abused her. Despite the Court's clear rulings on this issue, Ms. Heard has designated Mr. Ackert to "testify that missing creation dates and/or modification dates that post-date the facts can be a sign of digital evidence manipulation." *See* Exhibit A (Ackert Designation) at 93. Because the authenticity of Mr. Depp's digital evidence is not at issue in this case, Mr. Ackert's opinion regarding Mr. Depp's digital evidence is irrelevant and should be excluded. *See* Va. Sup. Ct. R. 2:402 ("Evidence that is not relevant is not admissible.").

Mr. Ackert's opinion as to the authenticity of Mr. Depp's data also lacks foundation because Mr. Ackert has not completed a forensic imaging of Mr. Depp's devices. Quite simply, he cannot competently opine to the authenticity (or purported lack thereof) of any evidence produced by Mr. Depp because he has never actually analyzed the data. A forensic imaging of the original devices is the only way to determine with certainty if data has been altered and Mr. Ackert has not

done that. Indeed, as Mr. Neumeister has already explained “[a] file’s last modified date refers to the date and time that a file is last saved. Typically, a file is modified or written to when a user opens and then saves a file, regardless of whether any data is changed or added to the file. For this reason, the last modified date will generally indicate the last date and time that a file was saved.” *See* Exhibit B (Neumeister Decl., dated Jan. 18, 2022) at ¶ 5. “For these reasons, just because a certain file of data has a creation or modified date after the original creation date when the file first came into existence, it does not follow that the data has necessarily been manipulated or altered in any way.” *Id.* at ¶ 7. Mr. Ackert’s opinion with respect to Mr. Depp’s data should also be excluded as lacking in foundation. Va. Sup. Ct. R. 2:602.

Ms. Heard has also designated Mr. Ackert to opine “that the digital evidence produced by Ms. Heard has not been altered in any manner prior to production, and that there is no evidence suggesting manipulation of digital evidence using anti-forensic software that could obfuscate detection of altering digital evidence prior to production.” Ex. A at 92-93. Due to the avoidable and, frankly, inexcusable delays in conducting the forensic imaging and extraction of relevant data from Ms. Heard’s devices, Mr. Neumeister is, to date, *still* in the process of conducting a forensic analysis of Ms. Heard’s data. Accordingly, to date, and certainly at the time of Mr. Ackert’s designation when a forensic imaging of Ms. Heard’s devices had not yet been completed, Mr. Ackert could not possibly have conducted a competent forensic analysis either. Accordingly, Mr. Ackert’s opinion with respect to the authenticity of Ms. Heard’s data lacks foundation because it could not be based on a forensic imaging of the original devices. Further, Mr. Neumeister has already opined that the basic metadata of some of the images already produced by Ms. Heard indicate that the photographs went through a photo editing application, so Mr. Ackert’s unfounded opinion should, at the very least, be viewed with extreme skepticism. *See* Exhibit C (Neumeister Designation dated January 11, 2022) at 19. Due to the lack



of the foundational analysis required to authenticate Ms. Heard's data, Mr. Ackert's opinion in this regard should be excluded.


**II. Any Probative Value Is Substantially Outweighed by the Danger of Unfair Prejudice and the Likelihood of Misleading and Confusing the Jury.**

Mr. Ackert's opinions also should be excluded because the probative value of his testimony, *if any*, is substantially outweighed by the danger of unfair prejudice to Mr. Depp and the likelihood that his opinion will mislead the jury. Va. Sup. Ct. R. 2:403. As noted above, Mr. Ackert is proposing to offer irrelevant testimony about the authenticity of Mr. Depp's data, which has no bearing on any of the factual issues remaining to be determined in this case. Moreover, Mr. Ackert's opinion as to authenticity, if admitted, could confuse the jury, by incorrectly and improperly implying (a) that the integrity of Mr. Depp's data is at all relevant and (b) that there was an appropriate "expert" analysis upon which the opinion is based. Mr. Ackert's opinions concerning Mr. Depp's data should, accordingly, also be excluded as unfairly prejudicial and likely to mislead the jury.

**CONCLUSION**

For the foregoing reasons, Mr. Depp respectfully request that this Court grant his motion *in limine* and exclude Mr. Ackert's testimony in its entirety.

Respectfully submitted,



---

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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March 22, 2022

# Exhibit A

documentary evidence, Dr. Spiegel's opinions, which are not diagnoses, but observed behaviors and statements from Mr. Depp that are consistent with IPV and narcissism, do not run afoul of the Goldwater Rule. All of Dr. Spiegel's opinions are within a reasonable degree of psychiatry and behavioral sciences and professional probability and/or certainty. Dr. Spiegel may also testify in response to the testimony and opinions of the Mr. Depp's expert witnesses, if any, and reserves the right to consider any further discovery and documentation or facts which become available to him.

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**iDiscovery Solutions, Inc.**  
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**Expertise and Qualifications**

Mr. Ackert's C.V. is attached as **Att. 9**, which details Mr. Ackert's professional experience and all articles and testimony he has completed over the last ten years. Mr. Ackert is a Managing Director at iDiscovery Solutions, Inc. ("iDS"), an expert services and consulting firm that provides independent digital forensics analysis, electronic discovery services, expert testimony, original authoritative studies, and strategic consulting services to the business and legal community. Mr. Ackert has a Bachelor of Science degree in Computer Science from the University of Virginia and has over 20 years of experience in consulting and litigation technologies that focus on electronic discovery and digital forensics. Specifically, Mr. Ackert has extensive experience creating and implementing preservation, collection, and production strategies and performing digital forensics and metadata analysis on electronically stored

information (“ESI”), and has performed preservation, collection, analysis, and production of ESI in hundreds of matters.

#### **Summary of Engagement**

Mr. Ackert has been retained by the Defendant and Counter-claimant Amber Heard (“Ms. Heard”) through her counsel in this matter to provide digital forensic preservation and analysis services and electronic discovery consulting, search, and production services. Specifically, Mr. Ackert has preserved, analyzed, and/or produced digital evidence in the possession, custody, and control of Ms. Heard and has analyzed digital evidence and the very limited metadata that has been produced by Mr. Depp.

#### **Sources Consulted**

In conjunction with the rendering of his opinions in this litigation, Mr. Ackert has reviewed certain case pleadings and motions, certain deposition testimony transcripts, the digital evidence and metadata, both metadata included in accompanying production load files as well as metadata embedded within the digital evidence, produced in discovery by Ms. Heard, and digital evidence and the very limited metadata, both metadata included in accompanying production load files as well as metadata embedded within the digital evidence, produced by Mr. Depp, including but not limited to the documents referenced by BATES number in this disclosure.

#### **Summary of Mr. Ackert’s Opinions**

Mr. Ackert is expected to testify on the authenticity of the digital evidence produced in discovery by Ms. Heard, including but not limited to pictures, videos, recordings, emails, and text/chat messages. Specifically, Mr. Ackert will opine on the metadata for the digital evidence produced by Ms. Heard, that the digital evidence produced by Ms. Heard has not been altered in any manner prior to production, and that there is no evidence suggesting manipulation of digital

evidence using anti-forensic software that could obfuscate detection of altering digital evidence prior to production. Because discovery is not complete and Mr. Depp's forensic discovery expert Mr. Neumeister has not produced any opinions regarding the authenticity of the digital evidence produced by Ms. Heard as of the date of this disclosure, the scope of Mr. Ackert's testimony will include the totality of digital evidence produced by Ms. Heard and opinions in response to any currently undisclosed opinions of Mr. Neumeister, not just what has been produced as of this expert disclosure date. Mr. Ackert will supplement within a reasonable period of time after Mr. Neumeister concludes his review and provides his opinions and bases for his opinions under the Rules.

Mr. Ackert is also expected to testify on the production of Mr. Depp's digital evidence, including but not limited to audio files and pictures. Specifically, for certain pictures produced by Mr. Depp, including but not limited to DEPP00007303, DEPP00009916, DEPP00009934, DEPP00009943, DEPP00009944, DEPP00009945, and DEPP00034908. Mr. Ackert has identified instances where the embedded date metadata, such as creation and modification date metadata, is either missing or is dated significantly after the alleged date of the incident depicted in the picture. Mr. Ackert will testify that missing creation dates and/or modification dates that post-date the facts can be a sign of digital evidence manipulation. For certain audio files produced, including but not limited to, DEPP00009046 and DEPP00009047, Mr. Ackert has identified embedded date modified metadata that post-dates embedded date creation metadata, indicating that the content of the audio file produced was somehow modified after it was created and before it was produced to Ms. Heard in discovery.

The specific metadata issues for the BATES numbers referenced above are as follows:

- DEPP00007303, DEPP00009916, DEPP00009934, DEPP00009943, DEPP00009944, and DEPP00009945: There is no embedded date metadata for these photographs, and the accompanying production load file did not provide any metadata that could authenticate these photographs. The lack of metadata indicates that the photographs may have been altered after they were taken.
- DEPP00034908: The embedded date metadata for this photograph indicates a date of July 2017, which is significantly after the date of the alleged incident. The accompanying production load file did not provide any metadata that could authenticate this photograph. This lack of authenticating metadata indicates that the photograph may have been altered after it was taken.
- DEPP00009046 and DEPP00009047: The embedded date modification dates of these recordings is June 2016, indicating that there was some modification to this evidence between the time they were created in September 2015 and the modification date of June 2016.

Mr. Ackert has identified issues with the metadata included in the accompanying production load files for the evidence produced by Mr. Depp in the chart below and is currently working on an analysis of the available embedded metadata of this produced evidence. Mr. Ackert will supplement within a reasonable period of time his opinions related to this evidence produced by Mr. Depp.

All of these opinions are provided to within a reasonable degree of probability or certainty in this field of digital forensics analysis and electronic discovery services.

Evidence with metadata issues in production load files

DEPP00008254	DEPP00008300	DEPP00008439	DEPP00009160	DEPP00009923	DEPP00010346	DEPP00018187
DEPP00008255	DEPP00008301	DEPP00008440	DEPP00009161	DEPP00009924	DEPP00010514	DEPP00018188
DEPP00008256	DEPP00008302	DEPP00008441	DEPP00009797	DEPP00009925	DEPP00010588	DEPP00018189
DEPP00008257	DEPP00008303	DEPP00008442	DEPP00009804	DEPP00009926	DEPP00010777	DEPP00018190
DEPP00008258	DEPP00008304	DEPP00008443	DEPP00009805	DEPP00009927	DEPP00010921	DEPP00018191
DEPP00008261	DEPP00008305	DEPP00008444	DEPP00009806	DEPP00009928	DEPP00010948	DEPP00018192
DEPP00008262	DEPP00008306	DEPP00008454	DEPP00009807	DEPP00009929	DEPP00012977	DEPP00018193
DEPP00008263	DEPP00008307	DEPP00009043	DEPP00009808	DEPP00009930	DEPP00012978	DEPP00018194
DEPP00008264	DEPP00008308	DEPP00009044	DEPP00009809	DEPP00009931	DEPP00012979	DEPP00018195
DEPP00008265	DEPP00008309	DEPP00009045	DEPP00009810	DEPP00009932	DEPP00012980	DEPP00018196
DEPP00008266	DEPP00008310	DEPP00009049	DEPP00009811	DEPP00009933	DEPP00012981	DEPP00018210
DEPP00008267	DEPP00008355	DEPP00009050	DEPP00009812	DEPP00009935	DEPP00012982	DEPP00018224
DEPP00008268	DEPP00008382	DEPP00009051	DEPP00009823	DEPP00009936	DEPP00012983	DEPP00018225
DEPP00008269	DEPP00008383	DEPP00009052	DEPP00009824	DEPP00009937	DEPP00014146	DEPP00018226
DEPP00008270	DEPP00008428	DEPP00009053	DEPP00009911	DEPP00009938	DEPP00014147	DEPP00018227
DEPP00008271	DEPP00008429	DEPP00009054	DEPP00009912	DEPP00009939	DEPP00014148	DEPP00018228
DEPP00008272	DEPP00008430	DEPP00009055	DEPP00009913	DEPP00009940	DEPP00014149	DEPP00018229
DEPP00008273	DEPP00008431	DEPP00009056	DEPP00009914	DEPP00009941	DEPP00017813	DEPP00018230
DEPP00008274	DEPP00008432	DEPP00009057	DEPP00009915	DEPP00009942	DEPP00017814	DEPP00018231
DEPP00008275	DEPP00008433	DEPP00009058	DEPP00009917	DEPP00009946	DEPP00018181	DEPP00018300
DEPP00008276	DEPP00008434	DEPP00009059	DEPP00009918	DEPP00010149	DEPP00018182	DEPP00018301
DEPP00008277	DEPP00008435	DEPP00009060	DEPP00009919	DEPP00010150	DEPP00018183	DEPP00007520
DEPP00008278	DEPP00008436	DEPP00009064	DEPP00009920	DEPP00010151	DEPP00018184	
DEPP00008296	DEPP00008437	DEPP00009143	DEPP00009921	DEPP00010344	DEPP00018185	
DEPP00008299	DEPP00008438	DEPP00009145	DEPP00009922	DEPP00010345	DEPP00018186	

**Michelle A. Jorden, M.D.,  
Forensic Pathologist,  
850 Thornton Way  
San Jose, CA 95128**

Dr. Jorden is a forensic pathologist who is both: (1) Chief Medical Examiner and Neuropathologist, Office of the Medical Examiner-Coroner, Santa Clara County, San Jose, California, and (2) Clinical Associate Professor (Affiliated) of Stanford School of Medicine, Department of Pathology at Stanford University. She also serves in the following positions and committees: (a) Domestic Violence Review Team of Santa Clara County Member; (b) Chair, Child Death Review Team; (c) Child Abuse Prevention Council Member; (d) Trauma Executive Committee Member, Santa Clara County; (e) National Association of Medical Examiners EPP- Forensic Fellow In-Service Exam Committee Member, American Society of Clinical Pathology; (f) National Association of Medical Examiners Ad Hoc Organ and Tissue



# Exhibit B

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**DECLARATION OF BRYAN NEUMEISTER**

1. My name is Bryan Neumeister.
2. I am a court certified video, audio, and digital photographic forensics and technical expert and the CEO of USAForensic LLC.
3. I have extensive experience collecting, analyzing, and producing electronically stored information (“ESI”) in law enforcement and legal proceedings, including approximately 600 cases in the last four years alone. I have over 41 years of audio/video professional experience, and twenty years of experience testifying and consulting for federal and state governments, agencies, prosecutors, defense attorneys, Fortune 500 companies, and individuals in a variety of aspects concerning analysis of photographs, audio and visual recordings, phone and text messages, and other digital data. My CV is attached hereto.

This declaration is based on my personal knowledge, years of experience, training, and education.

4. There are three basic types of computer date stamps: modified date, access date, and creation date (also known collectively as “MAC”).
5. A file’s last modified date refers to the date and time that a file is last saved. Typically, a file is modified or written to when a user opens and then saves a file, regardless of whether any

data is changed or added to the file. For this reason, the last modified date will generally indicate the last date and time that a file was saved.


6. Creation dates do not necessarily reflect when a file was originally created. Rather, creation date stamps indicate when a file came to exist on a particular storage medium, such as a hard drive. Creation dates can thus indicate when a user or computer process created a file or can also reflect the date and time that a file was copied onto a particular storage medium. Where a file has been copied, moved, or downloaded onto a new medium, its "creation date" indicates the later act of file transference, rather than the date the file originally came into existence.

7. For these reasons, just because a certain file of data has a creation or modified date after the original creation date when the file first came into existence, it does not follow that the data has necessarily been manipulated or altered in any way.

8. In my experience, it is very common in litigation for files to have creation or modified dates after the original creation date.

I declare under penalty of perjury that the foregoing is true and correct.

Submitted on this 18th day of January 2022

A handwritten signature in black ink, appearing to read "Bryan Neumeister", with a long horizontal line extending to the right.

---

Bryan Neumeister

# Exhibit C

hour for deposition and trial testimony time; none of his compensation is contingent on the opinions he renders or the outcome of the litigation.

4. **Bryan Neumeister, Technical Forensics Expert, USA Forensic LLC, 30 Lee Gate Lane, Grosse Pointe Farms, Michigan 48236.** Mr. Neumeister is a court certified video, audio, and digital photographic forensics and technical expert with extensive experience analyzing digital evidence and data in law enforcement and legal proceedings. As CEO of USA Forensic LLC in Phoenix and Detroit, Mr. Neumeister has over twenty years of experience testifying and consulting for federal and state governments, prosecutors, Fortune 500 companies, and individuals, in a variety of aspects concerning analysis of video, photographs, audio and visual recordings, phone and text messages, and other digital data. He has worked on almost 600 cases in just the past four years alone. He has worked as an Audio and Video Forensic Consultant for the U.S. Department of Defense and has worked with the U.S. Department of Justice and numerous other governmental agencies as an independent expert.

Mr. Neumeister has spent forty years working specifically with audio, video, and photography in 23 countries, some of which was spent in broadcasting and film, with dozens of awards honoring his work. He has seen how the technological aspect of sound, film, video, and photography has grown exponentially. There are few, if any, forensic experts who have worked through all these changes, both on the creative end and the scientific end of this field. Mr. Neumeister has testified in federal, military, state, and local courts. Currently he is working on international cases and on a case pending review before the U.S. Supreme Court.

*Subject Matter of Mr. Neumeister's Opinion:* Mr. Neumeister is expected to testify as to the characteristics of digital data, in particular video, audio recordings, photographs, text messages, and emails, produced by Ms. Heard and/or non-parties during discovery in this case,

on which Ms. Heard relies for her allegations that Mr. Depp purportedly engaged in physical abuse or violence towards her.

*Substance of Mr. Neumeister's Opinion:* Specifically, based on the information so far produced, Mr. Neumeister will testify that many of the reviewed photographs, text messages, video, and audio recordings on which Ms. Heard purports to rely for her allegations that Mr. Depp engaged in physical abuse or violence towards her are not original or authentic and, therefore, not reliable. For example, Mr. Neumeister will testify as to how easy it is to alter the metadata as well as the physical appearance of photographs produced by Ms. Heard purporting to depict injuries she suffered. Mr. Neumeister will also testify that some of these photographs have been processed through a photograph editing application called "Photo 3." Further, Mr. Neumeister will testify as to how the audio recordings produced by Ms. Heard can easily be altered to add in certain sounds.

*Summary of the Grounds for Mr. Neumeister's Opinion:* Mr. Neumeister's opinions will be based on a review of the digital data and evidence produced in this case, including photographs of alleged physical injuries and destruction of property, recordings of Mr. Depp and Ms. Heard, Ms. Heard's text messages, Mr. Depp's text messages, and relevant surveillance videos from the Eastern Columbia Building. Mr. Neumeister's opinions will also be based on a review of a forensic imaging of Ms. Heard's devices; including mobile devices and relevant Cloud accounts, which, as of the date of this Expert Designation, is still in progress. Mr. Neumeister's opinion will be based on an analysis of all photographs and deleted photographs provided to Mr. Depp's counsel of Ms. Heard taken during the following time periods, which all correspond to dates in which Ms. Heard alleges that Mr. Depp abused her:

<b>Date of Alleged Abuse</b>	<b>Time Period To Be Searched</b>
Late 2012/Early 2013	December 15, 2012 – January 15, 2013
March 8 and 22, 2013	March 6, 2013 – April 5, 2013
June 2013	June 1 – June 30, 2013
May 24, 2014	May 22, 2014 – June 7, 2014
August 17, 2014	August 15, 2014 – August 31, 2014
December 17, 2014	December 15, 2014 – December 31, 2014
January 25, 2015	January 23, 2015 – February 8, 2015
March 3-5, 2015	March 1, 2015 – March 19, 2015
March 22-23, 2015	March 20, 2015 – April 6, 2015
August 2015	August 1, 2015 – August 31, 2015
November 26, 2015	November 24, 2015 – December 10, 2015
December 15, 2015	December 13, 2015 – December 29, 2015
December 29, 2015	December 29, 2015 – January 12, 2016
April 21, 2016	April 19, 2016 – May 5, 2016
May 21, 2016	May 19, 2016 – June 4, 2016
July 22, 2016	July 15, 2016 – July 29, 2016

Mr. Neumeister may also testify as to any fact or opinion rendered or attributed to another witness or party as identified by other parties' witnesses. Plaintiff reserves the right to designate or substitute other witnesses of the same disciplines to testify as to the facts and opinions described herein. Plaintiff further reserves the right to supplement this Expert Witness Designation based on additional facts Plaintiff learns during discovery and/or his ongoing

investigation of this matter. In particular, as of the date of this Expert Designation, the extraction of the relevant data as outlined in paragraph 6 of the Court's Order dated November 8, 2021 has not been completed.<sup>9</sup> Once this is completed, Mr. Neumeister will promptly supplement this designation by including his analysis and review of the relevant data mentioned above.

Mr. Neumeister's CV is attached hereto as **Exhibit H**. Mr. Neumeister's colleague's, Matt Erickson's, CV is attached hereto as **Exhibit I**. He is being compensated for his work at the rate of \$575 per hour; none of his compensation is contingent on the opinions he renders or the outcome of the litigation.

**5. Shannon J. Curry, PsyD, Clinical Psychologist, Curry Psychology Group, 200 Newport Center Drive, Suite 204, Newport Beach, California 92660.** Dr. Curry is a clinical and forensic psychologist with extensive clinical and research experience and expertise in individual and community trauma, forensic psychology, and relationships/the Gottman method of couples' therapy. Currently, Dr. Curry is the owner and director of the Curry Psychology Group, a multispecialty mental health center in Newport Beach, California. Dr. Curry has nine years of experience as a licensed clinical psychologist, providing direct therapy and assessment services and supervising masters- and doctoral-level clinicians. Prior to becoming a clinical psychologist, Dr. Curry worked for seven years as a therapist. She is experienced in treating adults, couples, adolescents, children, and families across a diverse range of settings including community counseling centers, forensic psychiatric hospitals, correctional programs, military facilities, and rural clinics both in the U.S. and abroad (Ayacucho, Peru and La Paz, Mexico). In addition to her clinical work, Dr. Curry is on the board for the University of California Irvine

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<sup>9</sup> Ms. Heard failed to comply with the Court's Order dated November 8, 2021 because she did not grant access to her original devices for purposes of performing a physical imaging of relevant data by November 30, 2021 as explicitly required in the Order. *See* Order at ¶ 4. The forensic imaging of Ms. Heard's devices did not occur until December 17, 2021, when Ms. Heard underwent an Independent Medical Examination (IME) by Dr. Curry as ordered by this Court.



VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 19 to exclude expert testimony of Julian Ackert ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

---

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup> 18th day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
CIVIL PROCESSING  
2022 MAR 22 A 11:31  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 20 TO EXCLUDE  
DEFENDANT'S TRIAL EXHIBITS 857, 858, 960 AND 984**

Plaintiff and Counterclaim Defendant John C. Depp, II, by counsel, and, for the reasons set forth fully below, moves this Court to exclude Defendant's Trial Exhibits 857, 858, 960, 984, which are annexed hereto as Exhibits A, B, C, and D, respectively.<sup>1</sup>

### INTRODUCTION

Ms. Heard has telegraphed from the beginning of this case, but most explicitly in her Counterclaims, that she intends to rely on text messages in which Mr. Depp uses disparaging language and epithets to describe Ms. Heard to further impugn Mr. Depp's character and support her defamatory claims of abuse. It is, thus, unsurprising that these text messages, quoted at length in Ms. Heard's Counterclaims, found their way onto Ms. Heard's Exhibit List. The statements by Mr. Depp reflected in these text messages, however, are wholly irrelevant to any factual issue to be decided by the jury. Ms. Heard's only possible intention for offering these text messages at trial is to, quite simply, shock the jury into viewing Mr. Depp in a negative light. Fortunately, Virginia's rules of evidence do not permit this type of mudslinging.

### ARGUMENT

The text messages which are the subject of this Motion *in Limine* (No. 20) were, quite critically, sent by Mr. Depp to his friends and family *after* Ms. Heard falsely claimed, very publicly, that Mr. Depp abused her during their marriage on May 27, 2016. The outrage and name calling reflected in these text messages, while crude, is not probative of the central factual issue in this case: whether Mr. Depp physically abused Ms. Heard during their marriage.

"Relevant evidence" is evidence "having a tendency to make the existence of any fact in issue more probable or less probable than it would be without the evidence." Va. Sup. Ct. R.

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<sup>1</sup> For ease of reference, the specific text messages which are the subject of this Motion are: (a) in Exhibit A (Def's Ex. 857), the August 13, 2016 text messages between Mr. Depp and Christian Carino reflected in rows 303-306; (b) in Exhibit B (Def's Ex. 858), the August 15 and 16, 2016

2:401. Mr. Depp's statements, after Ms. Heard falsely and publicly accused him of domestic abuse, for instance, calling Ms. Heard a "whore" "begging for total global humiliation," does not make it more or less probable that he physically abused her during their marriage. It just shows he was angry, as anyone publicly accused of domestic abuse would be.

Ms. Heard will undoubtedly argue that Mr. Depp's disparaging statements are relevant to the actual malice inquiry in connection with Ms. Heard's Counterclaim for defamation. This argument, however, is a legal and factual fallacy. To demonstrate actual malice, a defamation plaintiff must prove that the defendant knew the allegedly defamatory statements were false or recklessly disregarded of whether they were false. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964). While this can be an exacting standard to satisfy in most cases, this case is unique: it involves two, essentially-mirror image defamation claims asserted against the only two people who truly know whether the statements at issue are true or false. If Mr. Depp did not abuse Ms. Heard, she indisputably knows her claim that he did is false. If Mr. Depp did abuse Ms. Heard during their brief marriage, he knows that Mr. Waldman's statements calling Ms. Heard a liar are false. Mr. Depp's hatred of Ms. Heard, after she accused him of abuse and filed for divorce, is irrelevant. *See Jackson v. Hartig*, 274 Va. 219, 231 (2007) (holding that proof of "ill will toward a public figure plaintiff is, without more, insufficient to establish knowledge of falsity or reckless disregard for the truth").

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text messages from Mr. Depp to Mr. Carino reflected in rows 3714 and 3722; (c) in Exhibit B (Def's Ex. 858), the August 16, 2016 text message from Mr. Depp to Dr. Kipper reflected in row 3303; and (d) in Exhibits C and D (Def's Exs. 960 & 984, which appear to be duplicates), the April 19, 2019 text messages from Mr. Depp to Erin Boerum reflected in rows 200 and 202. To the extent that the foregoing messages are reflected in any other exhibits on Ms. Heard's Exhibit List, whether in a duplicate or alternative form, Mr. Depp requests that the Court's ruling on this Motion *in Limine* (No. 20) apply to such exhibits with equal weight.

While the probative value of Mr. Depp's post-allegations statements concerning Ms. Heard is of negligible, if any, probative value to the defamation claims in this case, the risk of undue prejudice to Mr. Depp if the jury is permitted to see these text messages – which will almost certainly feature in Ms. Heard's opening statements – is quite high. Jurors may, understandably, be offended by the crude and obscene nature of some of Mr. Depp's comments concerning his ex (or soon-to-be ex) wife and come to perceive Mr. Depp in a more negative light due to the fact that Mr. Depp used some colorful language to express his disgust with Ms. Heard's conduct. This potential, and indeed likely, visceral reaction for some jurors raises an undue risk that such jurors will be distracted from the task at hand – evaluating the evidence (or lack thereof) of physical abuse by Mr. Depp – and adjudge Mr. Depp a “wifebeater” based simply on his words. Defendant's Exhibits 857, 858, 960, and 984 should, accordingly, be ruled inadmissible, as the potential for undue prejudice from admitting these exhibits far exceeds their probative value.

Respectfully submitted,



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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March <sup>22</sup>18, 2022

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 20 to exclude Defendant's Trial Exhibits 857, 858, 960, and 984 ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

---

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup> 18<sup>th</sup> day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

Elaine Charlson Bredehoft (VSB No. 23766)  
Adam S. Nadelhaft (VSB No. 91717)  
Clarissa K. Pintado (VSB No. 86882)  
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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
CIVIL PROCESS  
2022 MAR 22 A 11:  
JULIAN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA.

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 21 TO EXCLUDE  
EVIDENCE AND ARGUMENT REGARDING AMBER LAURA HEARD'S HEARSAY  
STATEMENTS REGARDING ABUSE**

Plaintiff and Counterclaim Defendant John C. Depp, II (“Mr. Depp”) requests that the Court exclude anticipated evidence and argument by Ms. Heard regarding hearsay statements of abuse made to her friends and acquaintances, for the reasons set forth below:

Much of Ms. Heard’s case is hearsay, pure and simple. Despite Ms. Heard’s claims to have suffered incidents of abuse “too numerous to recount,”<sup>1</sup> there is only a single witness who has ever testified to having seen any violence by Mr. Depp – Ms. Heard’s sister Whitney Henriquez. Notably, Ms. Heard’s sister backed up her story *after* Ms. Heard admitted at deposition during the parties’ divorce to having once punched Mr. Depp, and then sought to justify it by claiming under oath that she had done so because she feared Mr. Depp might harm Ms. Henriquez. But aside from a single blood relation testifying about a single alleged incident, none of Ms. Heard’s friends and acquaintances, whose testimony will be presented (if at all) by deposition, have testified to witnessing any physical violence firsthand. Rather, their testimony with respect to Ms. Heard’s account of domestic abuse is largely secondhand hearsay – Ms. Heard merely reported to them that she had been injured. All hearsay statements of Ms. Heard claiming abuse should be excluded, and her witnesses should be limited to testifying, if at all, regarding what they actually witnessed firsthand. Accordingly, the Court should enter an *in limine* Order limiting the deposition testimony of the following individuals to preclude introduction by Ms. Heard of their testimony regarding Ms. Heard’s own hearsay descriptions of violence: Raquel Pennington; Joshua Drew; Elizabeth Marz; Kristina Sexton; and Lisa Beane.

- Raquel Pennington testified, for instance, that she “learned from Amber” that Mr. Depp “had been in a rage and trashed” a trailer, but acknowledged that she had not seen any such thing (75:11-23); she testified that Ms. Heard told her Johnny had thrown a bottle at her;

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<sup>1</sup> See, Ms. Heard’s Responses to Fourth Interrogatories, p. 9.

but did not witness it (Pennington Transcript, 88:23-89:1; 92:11-13); she testified that Ms. Heard had told her that her hair had been ripped, but did not witness it (121:18-122:4). In short, Ms. Pennington has no firsthand knowledge of any violence – she can testify to the extent that she saw purported injuries, but she should not be allowed to testify regarding what Ms. Heard told her.

- Joshua Drew acknowledged at deposition that he never witnessed Mr. Depp strike or throw anything at Ms. Heard (Drew Transcript, 24:15-25); on the night of May 21, 2016, when Ms. Heard claims to have been struck by a thrown phone, Mr. Drew acknowledges that he did not see any violence or other behavior by Mr. Depp, and that he was told about it by Ms. Heard and Ms. Pennington (“I can’t recall specifically whether I was told at that time or whether it was relayed to me at some point later in the evening...”) (Drew Transcript, 63:20-64:16).
- Ms. Sexton similarly, recounted at length at her deposition things that she did not witness but that Ms. Heard had merely told her – some of them, apparently, shortly before Ms. Sexton was deposed (“She said that he had gone on a bender for days and was taking all sorts of stuff and had thrown her against the wall and he had thrown her against a counter and broken glass...”) (Sexton Transcript, 98:24-104:5).
- The deposition testimony of Ms. Marz, similarly, relies on hearsay statements (“I remember hearing about the flight situation that they – that he – that he shoved her on a flight. But I don’t – I don’t remember if I heard about it before May 21<sup>st</sup> or after.”) (Marz Transcript at 194:7-15.)



- The deposition testimony of Lisa Beane similarly reflects a lack of firsthand knowledge, and merely claims to report second or thirdhand descriptions of violence (stating that she was “aware” because she had been “told” that “Mr. Depp injured his wife”).

Ms. Heard’s deposition designations include portions of testimony, some of which are described above, that are manifestly inadmissible hearsay. Ms. Heard is not entitled to cite to her own former statements to her friends to bolster her story. *See*, Va. R. S. Ct. 2:802.

The Court should enter an *in limine* Order precluding Ms. Heard from presenting evidence or argument to the jury of her own prior descriptions of abuse to her friends.

Respectfully submitted,



---

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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: March <sup>22</sup>~~18~~, 2022

# EXHIBIT 1

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VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

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JOHN C. DEPP, II, :  
Plaintiff, : Civil Action No.:  
v. : CL-2019-0002911 :  
AMBER LAURA HEARD, :  
Defendant. : Volume 1  
----- x

CONFIDENTIAL

Videotaped Deposition of RAQUEL ROSE PENNINGTON  
Conducted Virtually  
Thursday, January 20, 2022  
9:41 a.m.

Job No.: 424031  
Pages: 1 - 155  
Reported By: Rhonda Norberg, RPR, CSR No. 9265,  
CCRR No. 185

CONFIDENTIAL

Transcript of Raquel Rose Pennington, Volume 1

Conducted on January 20, 2022

75

1 THE WITNESS: Yeah, I don't -- I don't 11:49:09  
2 remember a specific time watching her take a sip of 11:49:10  
3 a drink. 11:49:13  
4 BY MS. VASQUEZ: 11:49:16  
5 Q Was she holding a drink? 11:49:16  
6 A I don't remember. 11:49:18  
7 Q This evening in Hicksville, did you see 11:49:21  
8 Mr. Depp consume any drugs or alcohol? 11:49:24  
9 A I -- I didn't see -- I don't have a 11:49:26  
10 specific image in my mind of him consuming. 11:49:31  
11 Q You testified that, quote, you learned from 11:49:36  
12 Amber the next morning that Mr. Depp had been in a 11:49:38  
13 rage and trashed the trailer; is that correct? 11:49:40  
14 A I did testify that, yeah. 11:49:46  
15 Q Did you personally witness Mr. Depp, quote, 11:49:48  
16 in a rage, unquote, that Ms. Heard described? 11:49:51  
17 MR. BRENNER: Objection; vague. 11:50:00  
18 MR. ROTTENBORN: Same objection. 11:50:02  
19 THE WITNESS: Did I personally witness the 11:50:04  
20 rage in the trailer? 11:50:06  
21 BY MS. VASQUEZ: 11:50:06  
22 Q Yes. 11:50:07  
23 A No. 11:50:09  
24 Q Did you hear Mr. Depp yelling in the 11:50:10  
25 trailer? 11:50:15

CONFIDENTIAL  
Transcript of Raquel Rose Pennington, Volume 1  
Conducted on January 20, 2022

88

1	Ms. Pennington?	12:07:22
2	A The testimony that I'm looking at right	12:07:24
3	now, Paragraph 17?	12:07:27
4	Q My -- my question is do you remember	12:07:29
5	testifying that when you -- when you asked Amber	12:07:32
6	what had happened, she told you that Johnny had	12:07:34
7	thrown a bottle of wine at her in the bedroom?	12:07:37
8	MR. ROTTENBORN: Same objections.	12:07:42
9	MR. BRENNER: Join.	12:07:42
10	THE WITNESS: Same question. This	12:07:43
11	testifying on Paragraph 17?	12:07:45
12	MR. BRENNER: I think I can clear this up.	12:07:49
13	Sorry my video stopped working.	12:07:51
14	I think the disconnect is she doesn't know	12:07:53
15	if you're asking her about did she testify about	12:07:54
16	that before or if you're asking about her	12:07:56
17	recollection of the incident now, so that's --	12:07:58
18	that's the disconnect here you're walking into.	12:08:00
19	MS. VASQUEZ: Got it.	12:08:04
20	MR. BRENNER: And I'll try to get my	12:08:10
21	video --	12:08:13
22	BY MS. VASQUEZ:	12:08:13
23	Q Do you remember Amber telling you that	12:08:14
24	Johnny had thrown a bottle of her -- a bottle of	12:08:16
25	wine at her in the bedroom?	12:08:18

CONFIDENTIAL  
Transcript of Raquel Rose Pennington, Volume 1  
Conducted on January 20, 2022

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1	A	Yes.	12:08:20
2	Q	And you testified in Paragraph 17 to that	12:08:23
3		effect, correct?	12:08:28
4	A	Yes.	12:08:29
5	Q	You also testified that when -- quote, you	12:08:33
6		went to look and found that a full bottle of wine	12:08:45
7		had hit and broken a piece of art that Amber really	12:08:47
8		loved above the bed, and that broken glass was	12:08:53
9		scattered all over the bed.	12:08:55
10	A	Did I testify that?	12:08:57
11	Q	Yes.	12:08:59
12	A	Yes.	12:08:59
13	Q	Is that an accurate description of what you	12:09:02
14		saw?	12:09:04
15	A	Yes.	12:09:04
16	Q	And where did you see this? In what room?	12:09:07
17	A	In their bedroom of PH3.	12:09:10
18	Q	How did you get to this penthouse from	12:09:14
19		Penthouse 5?	12:09:21
20	A	I went upstairs in Penthouse --	12:09:22
21		Penthouse 5, across the top story, which all three	12:09:33
22		penthouses were connected, through to Penthouse 3 --	12:09:38
23		the bedroom was also on the top story -- and all the	12:09:43
24		way through and around.	12:09:49
25	Q	Did Ms. Heard come with you when you went	12:09:53

CONFIDENTIAL  
Transcript of Raquel Rose Pennington, Volume 1  
Conducted on January 20, 2022

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1	Do you remember?	12:12:55
2	A It would have been red.	12:12:55
3	Q Was it a magnum bottle?	12:13:01
4	A I don't think so.	12:13:02
5	Q What picture had been damaged?	12:13:06
6	A I think it was one of -- a Leonor Fini, I	12:13:11
7	believe.	12:13:31
8	Q What did -- apologies, Ms. Pennington.	12:13:31
9	What did it look like?	12:13:36
10	A I don't remember which one.	12:13:37
11	Q You didn't witness Mr. Depp throw a bottle	12:13:38
12	of wine at Ms. Heard that evening, correct?	12:13:41
13	A Correct.	12:13:45
14	Q And this is just what Ms. Heard told you,	12:13:46
15	right?	12:13:51
16	MR. ROTTENBORN: Object to form, misstates	12:13:51
17	testimony.	12:13:53
18	MR. BRENNER: Join.	12:13:56
19	THE WITNESS: The incident is just what she	12:13:57
20	told me?	12:13:59
21	BY MS. VASQUEZ:	12:14:02
22	Q The fact that Mr. Depp -- Mr. Depp threw a	12:14:05
23	bottle at Ms. Heard that evening, you didn't see	12:14:06
24	that happen, so it's just based on what Ms. Heard	12:14:08
25	told you, correct?	12:14:11



CONFIDENTIAL  
Transcript of Raquel Rose Pennington, Volume 1  
Conducted on January 20, 2022

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1	Q	How did you know that the hair clearly	01:17:31
2		belonged to Amber?	01:17:38
3	A	Hair had been ripped out of her scalp and	01:17:41
4		it was her color on the floor of her apartment.	01:17:50
5	Q	But you didn't see the hair get ripped out	01:17:57
6		of her head, right?	01:18:00
7	A	Correct.	01:18:02
8	Q	So your understanding that this was	01:18:04
9		Ms. Heard's hair that was ripped out of her head was	01:18:09
10		based on what Ms. Heard told you, right?	01:18:11
11	MR. BRENNER:	Objection; misstates	01:18:15
12		testimony.	01:18:17
13	MR. ROTTENBORN:	Same objection.	01:18:17
14	THE WITNESS:	Repeat the question, please?	01:18:21
15	MS. VASQUEZ:	Could I have it read back,	01:18:21
16		please?	01:18:21
17		(The question was read.)	01:18:39
18	THE WITNESS:	My understanding that it was	01:18:39
19		Ms. Heard's hair was what I saw on her body and on	01:18:41
20		the floor.	01:18:45
21	BY MS. VASQUEZ:		01:18:46
22	Q	And the fact that it had been, quote,	01:18:51
23		ripped out of her head, that was based on what	01:18:54
24		Ms. Heard told you, right?	01:18:56
25	MR. BRENNER:	Same objection.	01:19:00

CONFIDENTIAL  
Transcript of Raquel Rose Pennington, Volume 1  
Conducted on January 20, 2022

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1	MR. ROTTENBORN: Join.	01:19:03
2	THE WITNESS: Yes, and common sense.	01:19:05
3	MS. VASQUEZ: Move to strike everything	01:19:09
4	after "Yes."	01:19:10
5	If we could pull up Pennington Exhibit 7,	01:19:11
6	please. It bears the Bates Pennington 13.	01:19:16
7	THE VIDEOCONFERENCE TECHNICIAN: Showing	01:19:28
8	Exhibit 7 on the screen.	01:19:29
9	MR. ROTTENBORN: And I'll just object to	01:19:35
10	those motions to strike just for the record.	01:19:38
11	Obviously, you don't get to strike testimony just	01:19:40
12	because you don't like it.	01:19:42
13	MS. VASQUEZ: And again I'm going to object	01:19:47
14	to your speaking objections. You know better than	01:19:50
15	that, Ben.	01:19:52
16	(Exhibit No. 7 was marked for	01:19:52
17	identification by the	01:19:52
18	videoconference technician;	01:19:52
19	attached hereto.)	01:19:52
20	BY MS. VASQUEZ:	01:19:53
21	Q Ms. Pennington, do you recognize the	01:19:53
22	photograph?	01:19:55
23	A Yes.	01:19:57
24	Q Is this the picture of a clump of hair on	01:20:00
25	the floor that you referenced in your prior	01:20:03

# EXHIBIT 2

1 IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

2

3 \_\_\_\_\_  
JOHN C. DEPP, II,

4 Plaintiff,

5 vs.

Civil Action No.:

CL-2019-0002911

6

AMBER LAURA HEARD,

7

Defendant.

8 \_\_\_\_\_

9

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14

15 CONFIDENTIAL VIDEO DEPOSITION OF JOSHUA DREW

16 Irvine, California

17 Tuesday, November 19, 2019

18

19

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21

22

Reported by:

23 MICHELLE BULKLEY

CSR #13658

24 Job #3773164

25 PAGES 1 - 280

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1 It's -- it's not that it was infrequent, so much as 11:22  
2 it was sporadic and, honestly, for a large portion  
3 of it, fairly casual. Not the kind of thing where  
4 you would just count the number of times. It was  
5 regular interactions over various periods of time. 11:22

6 Q Well, your counsel is not going to let you  
7 speculate, but I'm going to ask you to get a range.  
8 Is it more than 10 times?

9 A Yes.

10 Q More than 50 times? 11:23

11 A Yes.

12 Q More than a hundred times?

13 A That I might -- that might push the  
14 boundaries.

15 Q From the time that you first met Mr. Depp 11:23  
16 on movie night until this very moment sitting here  
17 today, have you ever seen Mr. Depp strike Amber  
18 Heard?

19 A No.

20 Q Have you ever seen him throw a telephone 11:23  
21 at her?

22 A No.

23 Q Have you ever seen him hit her with a  
24 fist?

25 A No. 11:23

1 to my recollection. 12:03

2 Q So it would be approximately sometime  
3 around 8:30, 8:29?

4 A Thereabouts, but I don't recall  
5 specifically. 12:03

6 Q What else do you remember about the events  
7 of the evening of May 21?

8 A I mean, I can -- I can tell you  
9 contemporaneously from the start, if there's  
10 something specific you'd like me to expound on. 12:03

11 Q Who is Officer Melissa Saenz?

12 A My understanding, it was the name of the  
13 Latina officer that first responded with her  
14 partner.

15 Q When did she arrive at the scene, if you 12:03  
16 recall?

17 A Vaguely I remember them arriving about  
18 45 minutes to an hour after Johnny had left, but,  
19 again, exact times I'm a little foggy.

20 Q Do you know why -- strike that. 12:04

21 Do you know who, if anyone, called it in?

22 A My understanding is that iO called  
23 remotely.

24 Q What is the basis of that understanding?

25 A Well, when I encountered Amber and Rocky 12:04

CONFIDENTIAL

1 after everything had transpired, I wanted to know 12:04  
2 what had -- what had happened. And to be very  
3 honest with you, I can't recall specifically whether  
4 I was told at that time or whether it was relayed to  
5 me at some point later in the evening, that iO had 12:04  
6 been on the phone specifically to explain to Johnny  
7 in regards to the excrement incident, and that at  
8 some point while iO was on the phone, Johnny had hit  
9 her in the face with the iPhone while Raquel was  
10 there. 12:04

11 And I don't know whether somebody yelled  
12 to call the police, but she was the one who called  
13 the police, is what it was relayed to me.

14 Q But all that was relayed to you; nothing  
15 you observed? 12:05

16 A I was not witness to it, no.

17 Q Going back to the Latina officer, was  
18 there another officer with her?

19 A Yes. There was a bald gentleman, white.

20 Q Was his name -- do you recall that his 12:05  
21 name was Tyler Hadden?

22 A I know that now from reading the  
23 proceedings, but I couldn't recall directly.

24 Q Did you know -- did one of the two  
25 identify herself as the senior officer? 12:05

# EXHIBIT 3



1 CONTAINS CONFIDENTIAL TO PURSUANT ORDER PORTIONS

2 VIRGINIA:

3 IN CIRCUIT COURT OF FAIRFAX COUNTY

4 -----  
5 JOHN C. DEPP, II

6 Plaintiff,

Civil Action No.

7 v.

CL 2019-0002911

8 AMBER LAURA HEARD,

9 Defendant.  
10 -----  
11  
12

13 DEPOSITION OF KRISTINA SEXTON

14 CONTAINS CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER  
15 PORTIONS

16 Gold Coast, Australia

17 December 18, 2019  
18  
19  
20  
21  
22

23 Reported by:

24 Jason W. Bradley

25 JOB NO. 173420

1 CONTAINS CONFIDENTIAL TO PURSUANT ORDER PORTIONS

2 MS. VASQUEZ: I'm going to move to strike as  
3 non-responsive to the question posed and as improper  
4 hearsay.

5 BY MS. KAPLAN:

6 Q. Now, I want to talk about it, move to an  
7 incident that occurred in Australia. But I want to  
8 designate this portion of the transcript highly  
9 confidential because of the topics that I'm going to be  
10 asking you about, okay, Ms. Sexton?

11 A. Mhmm, yes.

12 MS. VASQUEZ: Counsel, I would just state for  
13 the record that there is no "highly confidential"  
14 designation in the protective order. Obviously it's  
15 Ms. Heard's right to designate any portion or the  
16 transcript confidential pursuant to the terms of the  
17 protective order, and Mr. Depp will reserve his rights  
18 --

19 MS. KAPLAN: We're going to designate this  
20 portion of the transcript as confidential, and we trust  
21 that Mr. Depp will respect that.

22 MS. VASQUEZ: Okay.

23 BY MS. KAPLAN:

24 Q. Did there come a time when you learned about a  
25 trip that Ms. Heard had taken to Australia?

1 CONTAINS CONFIDENTIAL TO PURSUANT ORDER PORTIONS

2 MS. VASQUEZ: Objection. Vague and ambiguous  
3 as to time. Leading the witness.

4 MS. KAPLAN: You can answer.

5 A. Yes. I got a phone call when they got back  
6 from Australia to come over. And I went over to see her  
7 and I was superexcited because I'd only been to  
8 Australia once before. And I was like, "Oh my God.  
9 What happened?" Because I knew she wasn't working, that  
10 he was working on Pirates and she was there to accompany  
11 him. So, I figured she must have gone and done fun  
12 stuff while she was there. She was just very shut down  
13 and she said that it was awful, that she hadn't even  
14 really left the house, that Johnny had kind of kept her  
15 there and they had had a huge fight. She said that he  
16 had gone on a bender for days and was taking all sorts  
17 of stuff and that he had thrown her against the wall and  
18 he had thrown her against a counter and broken glass,  
19 and he'd pushed her onto the broken glass. And that --  
20 it was just awful and she didn't want to really talk  
21 about it or come back. Or come back to it. She just,  
22 she just kept saying it was awful. I didn't find out  
23 about the broken glass and the shoving until later. I'm  
24 sorry, I'm putting that in now. And I didn't learn  
25 about that until later. When she initially came back

1 CONTAINS CONFIDENTIAL TO PURSUANT ORDER PORTIONS

2 she had said he had gone on a bender and that he had  
3 been on something and that they were fighting and he had  
4 been up for a couple of days straight and it was awful  
5 and she couldn't leave the house. Then subsequently  
6 over time I learned all the other stuff that happened.

7 MS. VASQUEZ: I'm going to move to strike as  
8 non-responsive to the question and as improper hearsay  
9 statement.

10 BY MS. KAPLAN:

11 Q. Okay. Keeping the confidentiality designation,  
12 what other stuff did you learn later in time?

13 MS. VASQUEZ: Objection. Vague and ambiguous.  
14 Vague and ambiguous as to time. The question is  
15 unintelligible.

16 MS. KAPLAN: Withdrawn.

17 Q. I think you said that you subsequently learned  
18 additional things about the Australia trip later in  
19 time; is that correct, Ms. Sexton?

20 A. Yes.

21 Q. What did you learn later in time?

22 MS. VASQUEZ: The same objections, vague and  
23 ambiguous.

24 MS. KAPLAN: You can answer.

25 A. I learned that he had pushed her onto a wall.

1 CONTAINS CONFIDENTIAL TO PURSUANT ORDER PORTIONS

2 and also onto the counter top and that he had broken  
3 glass and bottles and everything. He had cut himself  
4 with one of the glass bottles and then written something  
5 to the effect of, like, "slut" or "whore" or something  
6 onto the paintings or the mirrors or something. And  
7 that he had -- he had pushed her -- when he had her down  
8 on the counter she told me that he had assaulted her  
9 with the bottle and that he hit her with the bottle and  
10 that he had inserted into her the bottle.

11 MS. VASQUEZ: Move to strike as non-responsive  
12 to the question posed, and improper hearsay testimony.

13 BY MS. KAPLAN:

14 Q. I want the record to be very clear, Ms. Sexton.  
15 What did Ms. Heard say to you Mr. Depp had done to her  
16 with the bottle?

17 MS. VASQUEZ: Calls for hearsay testimony.  
18 Leading. Assumes facts not in evidence.

19 MS. KAPLAN: You can answer. And I would like  
20 you to be -- I know it's upsetting, but I would like you  
21 to be as precise as possible.

22 MS. VASQUEZ: The same objections.

23 A. Her exact words were, "He took the bottle and  
24 he shoved it into me." And I said, "What do you mean  
25 'into' you?" And she looked at me. And I said, "Amber,

1 CONTAINS CONFIDENTIAL TO PURSUANT ORDER PORTIONS

2 that's rape." And she said, "I know. I didn't realize  
3 it at the time but, yeah, it was."

4 BY MS. KAPLAN:

5 Q. Anything else you remember about what Ms. Heard  
6 said to you that day about Mr. Depp's use of the bottle?

7 MS. VASQUEZ: Again, the same objections.

8 Calls for hearsay. Assumes facts not in evidence. And  
9 leading the witness.

10 MS. KAPLAN: You can answer.

11 A. That is the most clear to me. Again, she  
12 talked about him breaking the bottles at her, destroying  
13 the house, that the house had been destroyed, that he  
14 had thrown wine everywhere. That he had cut her with it  
15 and hit her with it. That she was pushed onto that  
16 broken glass. But I will say that that's what I  
17 remember most clearly, her saying that.

18 Q. When did Ms. Heard say this to you, so the  
19 record is clear?

20 MS. VASQUEZ: Objection. Calls for hearsay.

21 MS. KAPLAN: You can answer.

22 A. I've heard different bits and pieces. The  
23 bottle conversation we had maybe in the last year. She  
24 had told me how he had attacked her but then we were  
25 talking about something and she started crying and she

1 CONTAINS CONFIDENTIAL TO PURSUANT ORDER PORTIONS

2 went into more detail and then told me about the bottle.

3 Q. When you say you had a conversation last year,  
4 was it a conversation in person or --

5 A. Yes.

6 Q. -- some other way?

7 A. Yes, in person.

8 Q. It was a conversation in person?

9 A. Yes.

10 Q. Where did the conversation take place?

11 A. In her home.

12 Q. In Los Angeles?

13 A. Yes.

14 Q. After Ms. Heard told you that Mr. Depp had  
15 inserted -- withdrawn. What was your understanding when  
16 she told you that Mr. Depp had inserted a bottle into  
17 her?

18 MS. VASQUEZ: Objection. Assumes facts not in  
19 evidence. Calls for speculation. Improper opinion  
20 testimony by this witness. And calls for hearsay.

21 MS. KAPLAN: You can answer.

22 A. It was my opinion that he had penetrated her  
23 genitals with the bottle. That's why I said, "That's  
24 rape", and she then agreed that it was rape. I could  
25 tell from the way that she was talking that it was a

1 CONTAINS CONFIDENTIAL TO PURSUANT ORDER PORTIONS

2 traumatic event and she was starting to cry and, yes.

3 Q. Anything else about that conversation that you  
4 haven't told me, Ms. Sexton?

5 A. Not that I can recall at the moment.

6 Q. Let's take a five-minute break and I will see  
7 if I have anything else.

8 (12.09 pm)

9 (A short break)

10 (12.14 pm)

11 MS. KAPLAN: Thank you, Ms. Sexton. I have no  
12 further questions.

13 A. Okay.

14 MS. VASQUEZ: Okay. At this point why don't we  
15 take a five-minute break. And we'll go back on the  
16 record in five minutes.

17 MS. KAPLAN: We just took a five-minute break.  
18 Do you want another five-minute break?

19 MS. VASQUEZ: I didn't know, Ms. Kaplan, that  
20 you were not going to ask any further questions so, yes,  
21 I do need another five-minute break.

22 (12.15 p.m.)

23 (A short break)

24 (12.23 p.m.)

25 Cross-examination by MS. VASQUEZ:



# EXHIBIT 4

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IN THE CIRCUIT COURT OF FAIRFAX COUNTY  
SUPREME COURT OF VIRGINIA

JOHN C. DEPP II, )  
)  
PLAINTIFF, )  
) CASE NO. CL-2019-2911  
VS. )  
)  
AMBER LAURA HEARD, )  
)  
DEFENDANT. )  
\_\_\_\_\_ )

VIDEOTAPED DEPOSITION OF ELIZABETH RAE MARZ  
TUESDAY, NOVEMBER 26, 2019

REPORTED BY: DAYNA HESTER, C.S.R. 9970  
JOB NO. 3776627  
PAGES 1 - 299

1           between Johnny and Amber. Rocky also           15:58  
2           told me that Amber was still in love           15:58  
3           with Johnny, so it was not surprising           15:58  
4           to me that Amber did not tell me these           15:58  
5           details herself."           15:58  
6           Q. Do you recall telling Mr. Schwartz that           15:58  
7           early in 2016 Rocky had told you that Johnny had           15:58  
8           been, quote, "volatile, especially towards Amber,"           15:58  
9           and "had shoved or pushed Amber on a private           15:58  
10          flight"?           15:58  
11          A. I remember hearing about the flight           15:58  
12          situation that they -- that he -- that he shoved her           15:58  
13          on a flight. But I don't -- I don't remember if I           15:58  
14          heard about it before May 21st or after. I don't           15:58  
15          remember.           15:58  
16                  And when I was giving this deposition           15:58  
17          [verbatim], I was very much -- it felt very casual           15:58  
18          and, like, story -- I wasn't being asked, like,           15:58  
19          super specific questions, and so it was more           15:58  
20          speaking as I would normally speak and just pulling           15:58  
21          from what I remember. But then maybe there was           15:58  
22          some -- I didn't go through it.           15:58  
23                  When he -- yeah, it gave me the           15:58  
24          opportunity to really go through it. But, yes, I do           15:58  
25          remember giving some of this information during           15:58

# EXHIBIT 5

DESIGNATED BY MR. DEPP AS CONFIDENTIAL - L. BEANE  
VIRGINIA: IN THE COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II, )  
 )  
 Plaintiff, ) Case No.:  
 ) CL 2019-0002911  
 vs. )  
 )  
 AMBER LAURA HEARD, )  
 )  
 Defendant. )

-----  
\*\*\*CONFIDENTIAL\*\*\*

DEPOSITION OF LISA BEANE  
New York, New York  
Friday, December 13, 2019

\*\* REVISED \*\*

Reported by:  
KEVIN HAGHAZARI  
JOB NO. 173500

1 DESIGNATED BY MR. DEPP AS CONFIDENTIAL - L. BEANE

2 Q. So you recall a conversation with  
3 Debbie Lloyd?

4 A. Yes.

5 Q. And I take it a separate conversation  
6 with Monroe Tinker?

7 A. Yes.

8 Q. Anyone else?

9 A. No.

10 Q. Okay. And I take it, from your  
11 testimony, Ms. Beane, that unlike Dr. Kipper,  
12 where you recall having more than one  
13 conversation, you recall with Debbie Lloyd,  
14 just one conversation; is that correct?

15 A. Yes.

16 Q. Can you tell me everything, sitting  
17 here today, you can remember, about that  
18 conversation with Debbie Lloyd?

19 MS. VASQUEZ: Objection. Calls for  
20 hearsay.

21 A. Sorry, my gum (indicating).

22 Q. Sorry.

23 A. I got it.

24 Q. Do you need to take a break?

25 A. No, it just stuck to my lip, so it

1 DESIGNATED BY MR. DEPP AS CONFIDENTIAL - L. BEANE  
2 wasn't going to be pleasant.

3 With Debbie, yes, it was a conversation  
4 regarding a trip to Australia. I don't  
5 remember when they were in Australia. And it  
6 was just that there was a big fight.

7 Q. And was it your -- withdrawn.

8 During that conversation -- withdrawn.

9 As a result of that conversation with  
10 Debbie Lloyd, was it your understanding that  
11 Mr. Heard had acted violent --

12 A. Mr. Depp --

13 Q. Mr. Depp had acted violently towards  
14 Ms. Heard.

15 MS. VASQUEZ: Objection. Hearsay.  
16 Calls for speculation. Lack of persona;  
17 knowledge in this instance.

18 Q. You can answer.

19 A. That he was in a rage and --

20 Q. And in that rage -- go ahead.

21 A. In a rage, throwing things. That's all  
22 I know.

23 Q. Okay. Tell me everything you recall  
24 about the conversation you had, that you just  
25 mentioned with Monroe Tinker?

1 DESIGNATED BY MR. DEPP AS CONFIDENTIAL - L. BEANE

2 MS. VASQUEZ: Objection. Calls for  
3 hearsay. Assumes facts not in evidence.

4 Q. You can answer.

5 A. That Mr. Depp injured his wife,  
6 physically injured his wife.

7 Q. Monroe Tinker told you that?

8 A. Yes, we were both aware, because  
9 Dr. Kipper told us, and we were discussing  
10 it.

11 Q. In connection with your conversations  
12 with Dr. Kipper about this topic, did he say  
13 anything to you about exercising discretion,  
14 given Mr. Depp's status as a concierge client  
15 and as a famous celebrity?

16 MS. VASQUEZ: Objection. Hearsay.  
17 Leading the witness.

18 It's inappropriate, counsel.

19 Q. You can answer.

20 MS. VASQUEZ: You're loading the  
21 witness.

22 Q. You can answer.

23 A. Yes.

24 Q. What did he say?

25 A. For all --



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 21 to exclude evidence and arguments regarding Defendant Amber Laura Heard's hearsay statements regarding abuse ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_, 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

---

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup> 18th day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
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2022 MAR 22 A 11:51  
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J. T. FREY  
CIRCUIT COURT  
FAIRFAX, VA

**FILED UNDER SEAL**

(Pursuant to the Stipulated Amended Protective Order Entered by the  
Court on June 21, 2021)

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 22 TO EXCLUDE  
EVIDENCE AND ARGUMENT REGARDING PLAINTIFF JOHN C. DEPP, II'S  
MEDICAL CONDITION AND MEDICAL HISTORY**

Plaintiff and Counterclaim Defendant John C. Depp, II (“Mr. Depp”) requests that the Court exclude anticipated evidence and argument by Ms. Heard regarding Mr. Depp’s medical condition and medical history (except insofar as such evidence specifically relates to physical injuries sustained by Mr. Depp during the parties’ relationship, or the use of drugs or alcohol in Ms. Heard’s presence in the context of alleged abuse), for the reasons set forth below:

### **INTRODUCTION AND SUMMARY OF FACTS AND ISSUES**

Ms. Heard wants a circus, and clearly intends to take this trial down a number of unnecessarily salacious rabbit holes, including and especially with respect to Mr. Depp’s medical history. Following scorched earth discovery on that topic, Ms. Heard has manifested an intention of presenting evidence regarding Mr. Depp’s medical history and treatments, including treatments for conditions completely irrelevant to the narrow issues in this case (i.e., Mr. Depp’s treatment for physical injuries). For instance, Ms. Heard’s proposed trial exhibit no. 387 is a medication list that includes a variety of medications including Nexium, Cialis, and Valtrex. Similarly, Ms. Heard has manifested an intention of presenting historical evidence related to Mr. Depp’s drug or alcohol use, regardless of whether such substance use occurred in the presence of Ms. Heard or has anything to do with the alleged abuse at issue in this action. *See, e.g.*, deposition testimony of Ms. Heard’s expert, David Spiegel, purporting to testify regarding “Mr. Depp’s alcohol and drug use since the 1980s.” (Spiegel Transcript at 229:11-230:10). And as if to prove that she intends to take the low road at trial, Ms. Heard included in her interrogatory responses that Mr. Depp was “taking erectile dysfunction medication” and suggested that that might somehow be a motivation for abuse. (*See*, Ms. Heard’s Responses to Fourth Interrogatories, p. 13). None of this meets the standard for relevance. Moreover, the marginal or nonexistent probative value of such evidence is substantially

outweighed by its unfair prejudice to Mr. Depp, and the likelihood of confusing or misleading the jury with obvious irrelevancies. Ms. Heard's tactics amount to nothing more than pure harassment.

## ARGUMENT

### **I. Mr. Depp's Medical History And Drug History Is Irrelevant**

"Evidence that is not relevant is not admissible." Va. R. S. Ct. 2:402. "'Relevant evidence' means evidence having any tendency to make the existence of any fact in issue more probable or less probable than it would be without the evidence." Va. R. S. Ct. 2:401. Whether Mr. Depp did drugs in the eighties, or nineties, or early 2000s, does not meet that standard. Similarly, whether Mr. Depp takes a particular prescription, such as Cialis or Valtrex, is not relevant. Indeed, the *only* aspect of Mr. Depp's medical history that is legitimately at issue is treatments received for injuries caused by Ms. Heard, such as surgeries on his hand after Ms. Heard severed part of his finger with a thrown bottle. Ms. Heard's anticipated attempt to present evidence of Mr. Depp's medical conditions and past drug use is wholly irrelevant and improper and should be excluded.

### **II. Mr. Depp's Medical And Drug History Is Unfairly Prejudicial And Of Marginal Probative Value**

Even if the test for basic relevance were satisfied (which it is not), Ms. Heard's anticipated plan of using the trial of this action as a vehicle to present evidence of Mr. Depp's medical condition and past alleged alcohol consumption or drug use would be unfairly prejudicial and would be likely to confuse or mislead the jury. Va. R. S. Ct. 2:403; *Doe v. Virginia Wesleyan Coll.*, 91 Va. Cir. 340 (2015) ("Roe seeks to preclude the introduction of evidence at trial related to his alleged alcohol consumption and related school discipline. Doe responds that evidence of Roe's historical alcohol consumption and related school discipline are

relevant to the issue of Roe's alleged alcohol consumption on the night of the alleged assault. Roe clarified at the Hearing that he is not moving to preclude evidence of Roe's alcohol consumption on the night of the alleged assault on Doe. The Court finds that, even if such evidence of Roe's historical alcohol consumption and related school discipline were relevant, the probative value of such evidence is substantially outweighed by the danger of undue prejudice. Evidence related to Roe's historical alcohol consumption and related school discipline therefore is precluded from admission at trial."'). At the outset, it is clear that society generally is hostile to drug use, and spending time at trial detailing Mr. Depp's alleged history of drug use has an obvious tendency to prejudice the jury against him. *See, e.g., U.S. v. Madden*, 38 F.3d 747, 753 (4th Cir. 1994) (noting that "evidence that one is a drug user" is "highly prejudicial"); *Lambert v. Commonwealth*, 70 Va.App. 740, 758 (evidence of drug dealing properly excluded as its probative value was outweighed by prejudicial effect). The presentation of historical evidence of Mr. Depp's alleged drug use would therefore have an inevitable tendency to prejudice the jury against him, and confuse or mislead the jury into thinking that his past history of drug use somehow makes it likelier that he is of a bad character, and might have abused Ms. Heard. Against the obvious prejudicial effect of such evidence must be weighed its virtually nonexistent probative value – evidence of any drug use outside the presence of Ms. Heard has no meaningful tendency to make it more or less likely that Mr. Depp abused her. Accordingly, such evidence should be excluded.

Similarly, evidence of Mr. Depp's medical condition generally is of marginal or no probative value – any medical conditions Mr. Depp may have are not legitimately at issue. Nor are his prescriptions. There is no conceivable probative value, for instance, in Ms. Heard's attempt to present evidence that Mr. Depp takes Valtrex. And as for Ms. Heard's shameless



attempt to embarrass Mr. Depp at trial by presenting evidence of erectile dysfunction medication, the probative value of such evidence is marginal at best, and is clearly outweighed by its obvious tendency to distract the jury.

**CONCLUSION**

The Motion should be granted.

Respectfully submitted,



---

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
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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

  
Dated: March 18, 2022

# EXHIBIT 1

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V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHN C. DEPP, II, :

Plaintiff and Counterclaim :

Defendant, : Civil Action No.

v. : CL-2019-0002911

AMBER LAURA HEARD, :

Defendant and :

Counterclaim Plaintiff.:

- - - - - X

CONFIDENTIAL

Videotaped Deposition of DAVID R. SPIEGEL, M.D.

Conducted Virtually

Monday, March 14, 2022

11:37 am EST

Job No.: 439252

Pages: 1 - 309

Reported By: Debra Ann Whitehead

CONFIDENTIAL  
Transcript of David R. Spiegel, M.D.  
Conducted on March 14, 2022

229

1	And go ahead and answer it again.	16:22:15
2	A To -- to understand what you are	16:22:17
3	saying -- I want to make sure I got it right --	16:22:19
4	you're asking me did I directly administer an exam	16:22:22
5	of cognition to Mr. Depp. And the answer is no, I	16:22:26
6	did not. I think that --	16:22:29
7	Q Thank you.	16:22:31
8	A -- that comes the answer.	16:22:32
9	Q Thank you.	16:22:35
10	A But in fairness to me, that's not what	16:22:36
11	you said in psychiatric terms. So in fairness to	16:22:41
12	me. I wasn't being difficult. Go ahead.	16:22:43
13	Q I didn't -- I didn't hear what you said.	16:22:45
14	A I just said, in fairness to me -- in	16:22:48
15	fairness to me, I wasn't being difficult. You --	16:22:49
16	in psychiatric terms you were saying things that	16:22:52
17	wasn't exactly accurate, so I just had to make	16:22:56
18	sure I clarified. Go.	16:22:58
19	Q On Page 75, if we scroll down to the	16:23:00
20	bottom right after 1. And I'm just going to read	16:23:03
21	this sentence.	16:23:09
22	Dr. Spiegel is expected to testify about	16:23:12

CONFIDENTIAL  
Transcript of David R. Spiegel, M.D.  
Conducted on March 14, 2022

230

1 the medical and psychological impact on Mr. Depp 16:23:14  
2 based on the evidence of Mr. Depp's alcohol and 16:23:19  
3 drug use since the 1980s. 16:23:22  
4 Did I read that sentence correctly? 16:23:25  
5 A Yes, you did. 16:23:26  
6 Q Do you -- did you read and approve this 16:23:27  
7 statement? 16:23:33  
8 A Yes. Yes, I did. 16:23:33  
9 Q And do you agree with this statement? 16:23:35  
10 A Yes, I do. 16:23:46  
11 Q So you formed an opinion about the 16:23:46  
12 medical and psychological impact on Mr. Depp of 16:23:59  
13 alcohol and drug use. Correct? 16:24:03  
14 A Yes. I think what -- you're saying it, 16:24:06  
15 yes. 16:24:09  
16 Q Tell me what that opinion is based on. 16:24:10  
17 A Based on the numerous reports, including 16:24:12  
18 from Dr. Kipper, about his substance use. 16:24:16  
19 Including the fact that, again, he required detox. 16:24:20  
20 Including the fact that he -- there were notes 16:24:23  
21 saying he had done this, he admitted he did this. 16:24:26  
22 So my opinion was based on all that. 16:24:28

# EXHIBIT 2

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff and Counterclaim Defendant,

v.

AMBER LAURA HEARD,

Defendant and Counterclaim Plaintiff.

Civil Action No.: CL-2019-0002911

**DEFENDANT AND COUNTERCLAIM PLAINTIFF AMBER LAURA HEARD'S  
OBJECTIONS AND RESPONSES TO PLAINTIFF AND COUNTERCLAIM  
DEFENDANT'S FOURTH SET OF INTERROGATORIES**

Pursuant to Rule 4:8 of the Rules of the Supreme Court of Virginia ("Rules"), Defendant and Counterclaim Plaintiff Amber Laura Heard, by and through her attorneys, submits these objections and responses (the "Responses") to Plaintiff and Counterclaim Defendant John C. Depp, II's Fourth Set of Interrogatories dated February 12, 2021 (the "Interrogatories").

**GENERAL OBJECTIONS**

The following general objections and responses (the "General Objections") are incorporated into each specific objection and response (the "Specific Objections") as if fully set forth therein:

1. Defendant and Counterclaim Plaintiff objects that Plaintiff and Counterclaim Defendant has exceeded the permissible number of Interrogatories, including all parts and subparts, in violation of Rule 4:8(g).
2. Defendant and Counterclaim Plaintiff objects to the Interrogatories to the extent they would require Defendant and Counterclaim Plaintiff to provide or reveal the contents of any document or information privileged from disclosure pursuant to the attorney-client privilege, the qualified immunity provided to litigation work product, or any other applicable privilege. Defendant and Counterclaim Plaintiff will not provide such information.



obliged, thinking it would 'change the mood' and perhaps get Johnny off the mental jealousy loop he appeared to be stuck in, but he could not achieve an erection. He was taking erectile dysfunction medication to attempt to alleviate this stress, and the medication's ineffectiveness in this instance made him more angry. He took it out on me. Eventually, Johnny passed out.

During that fall, Johnny was continuing to be sexually and verbally abusive, especially after spending time with my father and/or his other drinking/drug buddies, such as, Marilyn Manson. He would not be able to get an erection and would become angry with me. I called it 'angry sex' that Johnny could not fully perform. He would throw me on the bed, he did this several times, and he'd force himself on me in an angry way. He had developed a habit of trying to have angry sex with me, which most of the time ended with him being more angry at me while blaming me for his impotence.

After these episodes, Johnny would be kinder and apologized for fights.

A year into the relationship, Johnny gave an interview on a red carpet and was asked about his split from Vanessa. He dismissed it: "*That's just rumors.*" I was sat in make-up on a photoshoot reading it on my phone, heartbroken. I resigned not to talk to him again. That's the first time Christi hounded me with phone calls, saying "*Just hear my brother out, he loves you.*" They blamed the journalist. I let her talk me into it, even though it was a direct quote. Time passed and at the Lone Ranger premiere he waited until I was about to meet his kids to reveal to them that he was split from Vanessa, but he never went on the record to correct the rampant gossip accusations that -I caused the break up with Vanessa. He let me take the blame for their split even though I had nothing to do with it. That severely impacted my reputation which I was reliant on to progress my career. He could have cleared that up in a second.

On March 12, 2013, a Tuesday, Johnny sent me a text message about a book called Disco Bloodbath. I responded, "*Is it about last Friday night, by any chance?*" Johnny then responded, "*How can you make me smile about such a hideous moment??? Yes, it is.... Funny bitch. I fucking*

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 22 to exclude evidence and arguments regarding Plaintiff John C. Depp, II's medical condition and medical history ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

---

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**SEEN AND OBJECTED TO:**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the <sup>and</sup> 18<sup>th</sup> day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002971

FILED  
CIVIL PROCESSING  
2022 MAR 22 A 11:52  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**PLAINTIFF JOHN C. DEPP, II'S MOTION *IN LIMINE* NO. 23 TO EXCLUDE  
TESTIMONY OF AMY BANKS**

Plaintiff and Counterclaim Defendant John C. Depp, II, by Counsel, hereby moves the Court to enter an *in limine* Order precluding Defendant and Counterclaim Plaintiff Amber Laura Heard from introducing testimony of Dr. Amy Banks. Dr. Banks was a “relationship consultant” who met with Ms. Heard and/or Mr. Depp a total of four times in 2015.<sup>1</sup> Ms. Heard designated large portions of her deposition relating to the purported abuse that Ms. Heard described suffering at the hands of Mr. Depp. However, her testimony is premised entirely on hearsay and should be excluded on those grounds. The remainder of Dr. Banks’ testimony is irrelevant.

Ms. Heard’s designations included (among other examples) the following:

- Q “In working with Amber Heard and Mr. Depp, was it your belief that Amber was a victim of domestic violence at the hands of Mr. Depp?” A “It was.” Tr. 87:9-12.<sup>2</sup>

<sup>1</sup> While Dr. Banks is a psychiatrist, she made clear throughout the deposition that she was not acting in her capacity as a psychiatrist, but rather as relationship consulting. *See* Tr. 51:17-19 (“Again, I wasn’t acting as a psychiatrist for Amber Heard. I was as a relationship consultant.”).

<sup>2</sup> A copy of the transcript is attached hereto as Exhibit 1.

- Q “Why did it not surprise you that Amber was seeking a restraining order?” A “Because of the violence that I knew existed in the relationship.” Tr. 61:6-10.
- Q “Did there come a time where you understood what Amber was referring to when she said she was ‘fleeing the most traumatic and crushing situation I have ever faced’?” THE WITNESS: “My understanding was that she was in a relationship with Johnny Depp that had gotten violent and out of control.” Tr. 35:17-20, 36:1-3.
- Q “And what type of violence did you understand was occurring for Mr. Depp toward Amber?” THE WITNESS: “I recall descriptions of drug use, rage, breaking, throwing things around the house. I recall her telling me that when he would fight, she would -- when he would attack her physically, she couldn’t help herself, she would fight back.” Tr. 38:1-3, 6-11.
- Q “Would -- did -- did Mr. Depp hit Amber?” THE WITNESS: “By Amber’s report, yes.” Q “By Amber’s report, did Mr. Depp hit Amber with his hand?” THE WITNESS: “Yes.” Tr. 38:20, 39:2-4, 6.

These are just a few of the numerous examples of Dr. Banks’ deposition which pertain to purported abuse by Mr. Depp. Dr. Banks admitted that she never saw Mr. Depp abuse Ms. Heard. *See* Tr. 86:5-8 (Q “You did not personally witness any violence between Mr. Depp and Ms. Heard, did you?” A “There was none when we were on the Skype calls, no.”). Dr. Banks also admitted that it was Ms. Heard who told her about the purported violence, not Mr. Depp. *See* Tr. 84:18-20 (Q “And who reported that Mr. Depp initiated that violence?” A “That was Amber Heard.”); *see also* Tr. 81:5-9 (Q You don’t recall if [Mr. Depp] discussed violence? A I don’t recall, yes. Q So did he admit to hitting Ms. Heard at any point in this session? A I don’t recall).

Dr. Banks' testimony is based entirely on inadmissible hearsay for which no exception applies. It should be excluded entirely.

Respectfully submitted,

 (A)

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Dated: March 18, 2022



# EXHIBIT 1

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VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

----- x  
JOHN C. DEPP, II, :  
Plaintiff, : Case No.  
v. : CL-2019-0002911  
AMBER LAURA HEARD, :  
Defendant. :

----- x

THIS TRANSCRIPT HAS BEEN MARKED CONFIDENTIAL  
PURSUANT TO THE PROTECTIVE ORDER

\*\*\*\*\*

Deposition of AMY BANKS, M.D.  
Conducted Remotely via Zoom  
Monday, February 7, 2022  
9:35 a.m.

Job No.: 430536  
Pages: 1 - 89  
Reported By: AMY L. STRYKER, CCR

CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

Transcript of Amy Banks, M.D.

Conducted on February 7, 2022

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1	it's going crazy. Sorry about that. This is	10:04:24
2	sometimes a problem with these virtual	10:04:44
3	depositions. I apologize.	10:04:48
4	If you look at Amber's e-mail, April 13,	10:04:51
5	2015, in the second paragraph, she says, As with	10:04:54
6	some of life's most rewarding gifts, I happened	10:05:00
7	upon your book by accident...at just the right	10:05:05
8	time. I picked it up in the airport (while in	10:05:07
9	transit, fleeing the most traumatic and crushing	10:05:10
10	situation I have ever faced) and spent the next	10:05:13
11	few days in the precious comfort of your insight	10:05:15
12	and advice.	10:05:19
13	Did there come a time --	10:05:19
14	You received that portion of the e-mail	10:05:21
15	from Amber, correct?	10:05:22
16	A Yeah, I -- I believe so, yes.	10:05:24
17	Q Okay. Did there come a time where you	10:05:26
18	understood what Amber was referring to when she	10:05:28
19	said she was "fleeing the most traumatic and	10:05:29
20	crushing situation I have ever faced"?	10:05:34
21	MR. CRAWFORD: Objection; calls for	10:05:36
22	speculation.	10:05:37

CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

Transcript of Amy Banks, M.D.

Conducted on February 7, 2022

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1           THE WITNESS: My understanding was that           10:05:37  
2           she was in a relationship with Johnny Depp that       10:05:38  
3           had gotten violent and out of control.           10:05:41  
4           BY MR. NADELHAFT:           10:05:44  
5           Q And when you say that Amber, Was in a           10:05:44  
6           relationship that -- that had gotten violent and       10:05:48  
7           out of control, what do you mean by that?           10:05:51  
8           A I mean -- I mean that he had -- they had       10:05:54  
9           physical altercations and his drug use had           10:05:57  
10          escalated and she felt that she was in risk -- at   10:06:04  
11          risk.           10:06:08  
12          Q And how did you come to that           10:06:09  
13          understanding?           10:06:14  
14          A In subsequent conversations, she told me.       10:06:15  
15          Q And then Amber writes: It with a plea of       10:06:19  
16          confidence that I can say after 3 and a half years   10:06:31  
17          of the most trying and compelling relationship I       10:06:34  
18          have ever known, I finally married the man with       10:06:37  
19          whom I am desperately in love. However I write to   10:06:39  
20          you today because those years, the relationship       10:06:43  
21          and my heart, has arrived at a breaking point.       10:06:45  
22          Did you under- -- did there come a time           10:06:49

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CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

Transcript of Amy Banks, M.D.

Conducted on February 7, 2022

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1	Q And what type of violence did you	10:07:43
2	understand was occurring for Mr. Depp toward	10:07:46
3	Amber?	10:07:50
4	MR. CRAWFORD: Objection; calls for	10:07:51
5	speculation, foundation.	10:07:52
6	THE WITNESS: I recall descriptions of	10:07:54
7	drug use, rage, breaking, throwing things around	10:07:59
8	the house. I recall her telling me that when he	10:08:05
9	would fight, she would -- when he would attack her	10:08:11
10	physically, she couldn't help herself, she would	10:08:16
11	fight back. Those are things I clearly recall.	10:08:18
12	MR. CRAWFORD: I'd like to insert an	10:08:24
13	objection to the extent that the response	10:08:26
14	contained hearsay.	10:08:31
15	Q And do you re- -- what was your	10:08:32
16	understanding as to how Mr. Depp attacked Amber	10:08:33
17	physically?	10:08:36
18	A What -- I'm not -- I don't understand the	10:08:36
19	question.	10:08:38
20	Q Would -- did -- did Mr. Depp hit Amber?	10:08:39
21	MR. CRAWFORD: Objection; foundation,	10:08:44
22	assumes facts not in evidence, calls for	10:08:45

CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

Transcript of Amy Banks, M.D.

Conducted on February 7, 2022

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1	speculation.	10:08:47
2	THE WITNESS: By Amber's report, yes.	10:08:47
3	Q By Amber's report, did Mr. Depp hit Amber	10:08:51
4	with his hand?	10:08:56
5	MR. CRAWFORD: Same objections.	10:08:58
6	THE WITNESS: Yes.	10:08:59
7	Q By Amber's report, did Mr. Depp hit Amber	10:09:00
8	by kicking her?	10:09:02
9	MR. CRAWFORD: Same objections.	10:09:04
10	THE WITNESS: I don't recall that.	10:09:05
11	Q Other than by hitting Ms. -- Amber with	10:09:07
12	his hands, do you recall any other violence,	10:09:11
13	physical violence, that Amber reported to you by	10:09:15
14	Mr. Depp?	10:09:18
15	MR. CRAWFORD: Same objections.	10:09:18
16	THE WITNESS: Not specifics.	10:09:19
17	Q Okay. And you responded in this e-mail	10:09:21
18	that you would -- you could help Amber, correct?	10:09:29
19	In this e-mail attachment, 1 -- Exhibit 1.	10:09:33
20	A I believe I said that I would try to help,	10:09:36
21	yes.	10:09:38
22	Q Right. And you're -- you're in Boston,	10:09:39

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Transcript of Amy Banks, M.D.

Conducted on February 7, 2022

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1	THE WITNESS: I don't recall the -- I	10:20:25
2	don't recall the details of it, no.	10:20:28
3	BY MR. NADELHAFT:	10:20:30
4	Q And -- and did you at any time look at any	10:20:30
5	of Amber's medical records?	10:20:41
6	A Her medical records? No.	10:20:43
7	Q Did you ever look at Mr. Depp's medical	10:20:45
8	records?	10:20:47
9	A I did not.	10:20:47
10	Q Did you ever speak to or communicate with	10:20:48
11	Dr. David Kipper?	10:20:53
12	A Not that I recall.	10:20:54
13	Q Okay. Did you know that Ms. Heard was	10:20:58
14	communicating with -- was seeing Connell Cowan as	10:21:02
15	a psychiatrist as well?	10:21:08
16	A I didn't know the name of the person.	10:21:09
17	Again, I wasn't acting as a psychiatrist	10:21:12
18	for Amber Heard. I was as a relationship	10:21:15
19	consultant. So I did know that she had other	10:21:18
20	treaters, and I did not talk with them.	10:21:22
21	Q And did you talk with any treaters of	10:21:25
22	Mr. Depp?	10:21:28

CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

Transcript of Amy Banks, M.D.

Conducted on February 7, 2022

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1	THE WITNESS: I didn't know specifics of	10:30:34
2	why she was -- it didn't surprise me. I didn't	10:30:38
3	know specifics of why she was getting a	10:30:42
4	restraining order.	10:30:44
5	BY MR. NADELHAFT:	10:30:45
6	Q Why did it not surprise you that Amber was	10:30:45
7	seeking a restraining order?	10:30:48
8	A Because of the violence that I knew	10:30:48
9	existed in the relationship.	10:30:50
10	Q And where you wrote: I'm hoping that you	10:30:52
11	are safe and with friends, what did you mean by	10:31:06
12	that?	10:31:08
13	A It's pretty standard practice when	10:31:09
14	somebody's in a domestic violence situation, that	10:31:11
15	you create a safety plan, and that that usually	10:31:15
16	includes, you know, someplace that you can go to	10:31:18
17	that's safe when you get a restraining order in	10:31:20
18	case there's retaliation. And so I was just	10:31:24
19	naming that, that I'm hoping that she has actually	10:31:26
20	gone someplace where she can be safe... Yeah.	10:31:30
21	Q When you were working with Amber in 2015,	10:31:33
22	did she discuss that she had friends that would	10:31:37



CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

Transcript of Amy Banks, M.D.

Conducted on February 7, 2022

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1	Q And did he discuss violence with	10:59:45
2	Ms. Heard?	10:59:51
3	MR. NADELHAFT: Objection; form, hearsay.	10:59:53
4	THE WITNESS: I don't recall.	10:59:55
5	Q You don't recall if he discussed violence?	10:59:55
6	A I don't recall, yes.	10:59:57
7	Q So did he admit to hitting Ms. Heard at	11:00:01
8	any point in this session?	11:00:04
9	A I don't recall.	11:00:05
10	Q Did he state that Ms. Heard hit him at any	11:00:06
11	point in this session?	11:00:14
12	A I don't recall.	11:00:15
13	MR. NADELHAFT: Objection; form, hearsay.	11:00:16
14	MR. CRAWFORD: Okay. So can I take -- I'm	11:00:40
15	sorry to do this. Can we take a quick, 15-minute	11:00:42
16	break? I can revisit my notes here, and hopefully	11:00:46
17	wrap this up pretty quickly.	11:00:50
18	MR. KELLEY: Well, I have just 11:00 on	11:00:54
19	this end. So 11:15 we'll reconvene.	11:00:57
20	MR. CRAWFORD: Yes. Does that work?	11:01:02
21	MR. NADELHAFT: Yeah, that's fine with me,	11:01:03
22	Andrew.	11:01:05

CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

Transcript of Amy Banks, M.D.

Conducted on February 7, 2022

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1	clearly, I have recall for. The things that I	11:20:09
2	have not stated clearly or I said "I don't	11:20:13
3	recall," I have said "I don't recall." So the	11:20:13
4	things that I have said, I'm sure of. The things	11:20:21
5	that I have said "I don't recall," I don't recall.	11:20:23
6	BY MR. CRAWFORD:	11:20:25
7	Q Okay. And you previously testified it was	11:20:25
8	clear to you that Mr. Depp and Ms. Heard's	11:20:28
9	relationship was violent, correct?	11:20:31
10	A Correct.	11:20:33
11	Q And was it clear to you who initiated that	11:20:34
12	violence?	11:20:38
13	MR. NADELHAFT: Objection; form,	11:20:39
14	foundation.	11:20:40
15	THE WITNESS: That was clear to me.	11:20:40
16	Q And who initiated that violence?	11:20:44
17	A Mr. Depp.	11:20:46
18	Q And who reported that Mr. Depp initiated	11:20:47
19	that violence?	11:20:53
20	A That was Amber Heard.	11:20:54
21	Q Is it -- isn't it true that you can't be	11:20:57
22	certain that any relationship is violent based on	11:21:03

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CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

Transcript of Amy Banks, M.D.

Conducted on February 7, 2022

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1 joint session with Mr. Depp? 11:22:10

2 A In my recollection, yes, she did, that 11:22:12

3 that was part of the conversation of how the 11:22:14

4 relationship could not -- escalate at times, yes. 11:22:17

5 Q Okay. You did not personally witness any 11:22:21

6 violence between Mr. Depp and Ms. Heard, did you? 11:22:25

7 A There was none when we were on the Skype 11:22:27

8 calls, no. 11:22:31

9 Q So you don't know for certain that there 11:22:32

10 was any violence in Mr. Depp and Ms. Heard's 11:22:35

11 relationship, correct? 11:22:38

12 A What I know for certain is that it was 11:22:39

13 reported to me by Ms. Heard in the presence of 11:22:41

14 Johnny Depp, without contradiction. 11:22:45

15 Q You testified previously, though, that you 11:22:50

16 don't recall if Mr. Depp admitted to hitting 11:23:02

17 Ms. Heard, correct? 11:23:06

18 A I do not recall that. 11:23:06

19 MR. CRAWFORD: Nothing further on my end. 11:23:15

20 Thank you, Dr. Banks. I appreciate it. 11:23:17

21 THE WITNESS: You're welcome. 11:23:19

22 MR. NADELHAFT: Okay. 11:23:20

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CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

Transcript of Amy Banks, M.D.

Conducted on February 7, 2022

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1 Dr. Banks, just a couple of questions. 11:23:20

2 EXAMINATION 11:23:20

3 BY MR. NADELHAFT: 11:23:20

4 Q In working with Amber and Mr. Depp, did 11:23:23

5 you believe that Amber was telling the truth about 11:23:26

6 the violence she received at the hands of 11:23:28

7 Mr. Depp? 11:23:32

8 A I did. 11:23:32

9 Q In working with Amber Heard and Mr. Depp, 11:23:33

10 was it your belief that Amber was a victim of 11:23:36

11 domestic violence at the hands of Mr. Depp? 11:23:38

12 A It was. 11:23:40

13 MR. NADELHAFT: Okay. Thank you. Nothing 11:23:41

14 further. We really appreciate your time. 11:23:42

15 THE VIDEOGRAPHER: Off the record -- 11:23:46

16 MR. KELLEY: All set? 11:23:49

17 THE VIDEOGRAPHER: Off the record at 11:23:50

18 11:23. 11:23:52

19 (Off the record at 11:23 a.m.)

20

21

22

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**ORDER**

Upon consideration of Plaintiff's Motion *in limine* No. 23 to exclude testimony of Amy Banks ("Plaintiff's Motion"), Plaintiff's memorandum of law in support thereof, any opposition, and the record, it is, this \_\_\_\_ day of \_\_\_\_\_ 2022, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.

\_\_\_\_\_  
The Honorable Penney S. Azcarate  
CHIEF JUDGE

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

WE ASK FOR THIS:

---

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**SEEN AND OBJECTED TO:**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <sup>22nd</sup> 18th day of March 2022, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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