

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHN T. FREY  
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FAIRFAX, VA

JOHN C. DEPP, II,

Plaintiff and Counter-defendant,

v.

Civil Action No.: CL-2019-0002911

AMBER LAURA HEARD,

Defendant and Counter-plaintiff.

**DEFENDANT AMBER LAURA HEARD'S  
MEMORANDUM IN SUPPORT OF SUPPLEMENTAL PLEA IN BAR**

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## I. INTRODUCTION

We ask the Court to apply the UK Judgment and dismiss Mr. Depp's Complaint because the issues have already been fully and finally adjudicated by Mr. Depp in another Court of law. Mr. Depp asserts that applying his adverse UK Judgment in this case would be "futile." Yet the law overwhelmingly supports, and directs, this legal application and dismissal.

In July 2020, after full discovery - including use of all discovery taken in this case for 16 months - Mr. Depp had his "day in court" in the UK, the "libel capitol of the world" and plaintiff-friendly "libel tourist destination" where *defendants* have the burden of proving the truth of their statements. UK Plaintiffs have a significant advantage in defamation cases, and despite this advantage, Mr. Depp still lost. The UK Court ruled against Mr. Depp, finding that Mr. Depp committed domestic violence against Amber Heard at least 12 times, causing her to fear for her life. The UK High Court fully and fairly adjudicated that issue in the forum chosen by Mr. Depp, with a significantly lower burden of proof. Mr. Depp's burden in this case is to prove by clear and convincing evidence that he NEVER committed domestic violence against Amber Heard. *Jackson v. Hartig*, 274 Va. 219, 227 (2007).

To permit Mr. Depp a second chance to re-litigate these adjudicated facts for the sole purpose of seeking a *directly inconsistent* judgment based on nothing more than the hope of creating contradictory "truths" from the same witnesses and evidence<sup>1</sup> only encourages duplicative

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<sup>1</sup> Mr. Depp has admitted there was no witness he wanted to call that he was not permitted to call in the UK proceedings, Att. 1, Mr. Depp Tr. 398:8-12 and has effectively admitted there was no evidence he wanted to present that he was unable to present in the UK proceedings. Att. 1, Mr. Depp Tr. 398:14-399:5. (by invoking the attorney client privilege and instructing him not to answer, Mr. Depp cannot now claim otherwise).



and parallel litigation and predatory libel tourism. Further, it is contrary to Virginia and US law, and a waste of valuable resources of this Court and the parties.<sup>2</sup>

Virginia has long recognized and extolled the similarities between the UK and US Judicial Systems and has consistently applied UK decisions in Virginia under the Doctrine of Comity and the Uniform Foreign-Country Money Judgments Recognition Act (“UFCMJRA”). Similarly, the UK Courts have applied US Judgments, and the UK High Court applied and recognized US law from this case, allowing evidence exchanged in this proceeding and referencing this litigation more than 25 times in its 129-page decision.

Collateral estoppel also bars Mr. Depp’s defamation claims because Mr. Depp has had a full and fair opportunity to litigate in the UK proceedings the exact same issue as in this case: whether Ms. Heard was the victim of domestic violence by Mr. Depp. Because the UK High Court found Mr. Depp committed domestic violence against Ms. Heard - at least 12 times - the Op-Ed statements are not actionable under Virginia law and the First Amendment of the United States Constitution. Mr. Depp’s claims are also barred by res judicata under Rule 1:6 because the underlying dispute between the parties is the same, again, whether Mr. Depp committed domestic violence against Ms. Heard. While Mr. Depp contends these doctrines mandate mutuality of the parties, the law is clear these principles must be examined on a case-by-case basis, and have been applied in many circumstances where mutuality was not present. The facts in this case fit perfectly within the exceptions to mutuality carved out by the Virginia Supreme Court.

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<sup>2</sup> Mr. Depp, who claims to have reviewed only a few paragraphs of the 585 paragraph UK decision, now characterizes his entire two year, multimillion dollar UK litigation as culminating in “one man’s opinion,” Att. 1, Mr. Depp Tr. 407:17-20, advocating that the UK Judgment should now be completely disregarded and subject to invalidation in another country - the US - since he lost the appeals in the UK. This Court should not condone such abject disrespect for a judicial system, especially after Mr. Depp chose that system.

To reject the application of Virginia law through Comity, the UFCMJRA, and the principles of collateral estoppel and res judicata in this case would be to effectively overrule and invalidate the UK Judgment. In so doing, this Court would be inviting, rather than ending, litigation by Mr. Depp across the US each time anyone, including the press, accuses Mr. Depp of being a wife beater and committing domestic violence against Amber Heard, even though these statements are true, as a matter of law. This Court's application of the UK Judgment will remove these uncertainties and scenarios and comply with sound principles of Virginia and US law.

This Court should recognize the UK Judgment, enforce its preclusive effects, and dismiss Mr. Depp's Complaint against Ms. Heard.

## II. FACTS AND PROCEDURAL BACKGROUND

On June 13, 2018, Plaintiff Mr. Depp sued for libel in the UK, predicated on the same set of facts at issue in this case. In *Mr. Depp v. News Group Newspapers, LTD, et al.* Mr. Depp sued News Group Newspapers, LTD, publisher of The Sun newspaper and Dan Wooton, an Editor, (collectively, the "UK Defendants") for calling Mr. Depp a "wife beater" and asserting there was significant evidence he committed domestic violence against Ms. Heard on multiple occasions, causing her to fear for her life. **Att. 2**, Mr. Depp's Particulars of Claim (the "UK Complaint"); *See also*, Notification of Judicial Notice of Adjudicated Facts and Law Impacting this Case ("JN") Att. A. The parties engaged in extensive discovery and motions practice that included video and audio recordings, pictures, nearly 100,000 text messages and emails, and over 30 sworn Witness Statements, as well as the discovery – including depositions - conducted in this case, ongoing for 16 months prior to the UK trial.<sup>3</sup> The trial took place over a period of three weeks which included

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<sup>3</sup> In fact, Mr. Depp, while claiming sobriety for a year prior to the March 2015 Australian attacks, withheld significant incriminating text messages establishing his extensive drug and alcohol consumption leading up to and through the violent assaults of Ms. Heard in Australia. Ms.

multiple Witness Statements by, as well as four days each of testimony by and cross examination of Mr. Depp and Ms. Heard, and the testimony of 24 other witnesses. On November 2, 2020, the UK High Court issued a 129-page, 585 paragraph decision, citing evidence produced in this case, and finding statements in two articles published in *The Sun* were proven by defendants, largely through the evidence and testimony given by Ms. Heard, to be substantially true, and dismissed Mr. Depp's libel claim. JN Att. A ¶¶ 2-4, 583-54. In its decision, the court explained that a defense to defamation is showing the meaning or "imputation conveyed by the statement complained of is substantially true." *Id.* ¶ 38. The burden of proving this defense by "the balance of probabilities" rests on the defendant. *Id.* ¶¶ 40-41. This standard of proof means "the occurrence of the event was more likely than not" and, as applied, whether it was "more likely than not that the claimant [Mr. Depp] did what the articles alleged." *Id.* ¶¶ 41. Under this standard, Mr. Depp benefitted from a more lenient burden of proof: he was not required to prove falsity and still failed to prevail. *Jackson*, 274 Va. at 227 (applying Constitutional requirement that public figure prove 'actual malice,' by clear and convincing evidence).

Relying on the defense of truth, the UK Defendants asserted, and the court accepted, that the meaning of *The Sun*'s articles was that Mr. Depp "beat his wife Amber Heard causing her to suffer significant injury and on occasion leading to her fearing for her life." JN Att. A. ¶¶ 12, 84. The defendants pleaded that Mr. Depp committed 14 acts of domestic violence against Ms. Heard to support their defense. *Id.* ¶¶ 14, 45-74. With the exception of two incidents,<sup>4</sup> the High Court

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Heard turned the texts over to the Defendants in the UK proceeding. The UK Defendants sought sanctions -to dismiss the case - based on Mr. Depp's violation of the UK Court Order. The UK Court granted the motion, but then granted Mr. Depp "relief from sanctions," on the condition he not seek retaliation against Ms. Heard in the US proceedings for her providing this information to the UK Defendants. *See* Notice of Judicial Notification of UK Ruling, July 9, 2020.

<sup>4</sup> One of these incidents involved a procedural default, not the strength of the defendants' evidence. *See* JN Att. A. ¶ 405 ("Ms. Heard's description of his assaults on this occasion are in

found the UK Defendants proved Mr. Depp committed acts of domestic violence against Ms. Heard. *Id.* at ¶ 575. The UK Court's conclusions that Mr. Depp assaulted and abused Ms. Heard on 12 specific occasions are supported with detailed analyses and findings based on the evidence:

1. **Incident 1 - Tattoo Incident (2013):** Mr. Depp repeatedly slapped Ms. Heard across the face, knocking her to the floor, and then apologized to her. Mr. Depp first referred to himself as "the monster." *Id.* ¶¶ 47-48, 206-10.
2. **Incident 2 - Painting Incident (March 2013):** In anger and while drunk and high on drugs Mr. Depp hit Ms. Heard so hard that blood ended up on the wall, and he grabbed Ms. Heard, shook her, and shoved her into a wall. *Id.* ¶¶ 49-50, 211-225.
3. **Incident 3 - Hicksville (June 2013):** Mr. Depp, exhibiting jealousy during an outing, once back in their trailer caused significant damage to the trailer and assaulted Ms. Heard, including throwing glasses at her, smashing glass, and ripping her dress. *Id.* ¶¶ 51-52, 226-238).
4. **Incident 4 - Boston Plane (May 2014):** Mr. Depp consumed substantial alcohol and cocaine, "blacked out," kicked Ms. Heard and threw a boot at her, then passed out in the bathroom and was ill as a result of consuming alcohol and cocaine. Mr. Depp was later tearful and apologetic over his abuse of Ms. Heard. *Id.* ¶¶ 53-54, 239-265.
5. **Incident 5 - Bahamas (August 2014):** Mr. Depp assaulted and pushed Ms. Heard. *Id.* ¶¶ 55-56, 266-274.
6. **Incident 7 - Tokyo (January 2015):** Mr. Depp assaulted Ms. Heard by shoving her, slapping her, grabbing her hair, and muscling her back to the floor while standing over her and yelling. *Id.* ¶¶ 59-60, 280-286.
7. **Incident 8 - Australia (March 2015):** Mr. Depp drank alcohol and consumed drugs, caused considerable property damage and broken glass. Ms. Heard "was the victim of sustained and multiple assaults in Australia" and it "must have been terrifying." "Mr. Depp put her in fear for her life." Over three days, Mr. Depp pushed Ms. Heard, slapped her, shoved her to the ground and continued to slap her; grabbed her by the neck and shoved her against the refrigerator and slapped her face; later hit her multiple times, shoving and pushing her to the ground, choked her, and spit in her face; threw unopened bottles at her; shoved her into a ping pong table, threw more glass bottles through window panels in a glass door, and

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line with other of her allegations which I have accepted.... However, the omission to put this incident to Mr. Depp means that I do not accept that it is proven."). The other incident concerned a text message from Mr. Depp that Ms. Heard claimed was an apology for assaulting her. Because the text message did not overtly refer to physical violence and because Ms. Heard was unable to recall the incident, the court concluded that the defendants did not prove the apology was for physical violence. *Id.* ¶¶ 276-78.

grabbed her and tore her nightgown; grabbed Ms. Heard by her neck and again choked her against the refrigerator; slammed her against the countertop while strangling and choking her and banging her head against the countertop; ignored Ms. Heard saying “you are hurting and cutting me” and instead continued to hit her, and slammed a plastic telephone repeatedly against the wall with his hand. These assaults left Ms. Heard with a broken lip, swollen nose, and cuts all over her body. The Court rejected that Ms. Heard caused Mr. Depp’s finger injury or injury to his face, and found that it was Mr. Depp who scrawled graffiti in his own blood from his injured finger and then dipped his injured finger in paint and continued to write messages. *Id.* ¶¶ 61-62, 287-370;<sup>5</sup>

8. **Incident 9 - Los Angeles Staircase Incident (March 2015):** Mr. Depp hit Ms. Heard hard and repeatedly, lunged at Ms. Heard to hit her again, shoved Ms. Heard’s sister when she tried to stop him, grabbed Ms. Heard by the hair with one hand and hit her repeatedly in the head with the other hand, and destroyed personal property. *Id.* ¶¶ 63-64, 371-386.
9. **Incident 10 - Train in Southeast Asia (August 2015):** Mr. Depp hit Ms. Heard, choked her by wrapping his shirt around her neck, pushed her against a wall by grasping her throat and holding her there, causing her to fear for her life. *Id.* ¶¶ 65-66, 387-396.
10. **Incident 12 - Los Angeles (December 2015):** Mr. Depp put Ms. Heard “in fear of her life,” by (among other things): slapping her, grabbing her by her hair and dragging her through the apartment, pulling out chunks of her hair; following her upstairs and hitting her in the back of the head, grabbing her hair again, and dragging her by her hair up the last few steps, then shoving her at the top of the stairs; repeatedly hitting her and knocking her to the floor, then head-butting her in her face when she stood up and bashing her nose (the Court rejected Mr. Depp’s claims that this was “accidental”); pushing her and grabbing her by her hair and dragging her from room to room; dragging her into an upstairs office, grabbing her by her throat, pushing her down to the ground, and punching her in the back of her head; grabbing her by her hair, slapping her face, and screaming at her “I’ll fucking kill you”; getting on top of Ms. Heard on a bed and placing his knee on her back and his other foot anchored on the bedframe while punching her in the head, screaming “I fucking hate you,” causing the bedframe to splinter; and continuing to hit Ms. Heard with closed fists, pushing her face into the mattress, and pulling out chunks of her hair. The court rejected Mr. Depp’s claims that the injuries to Ms. Heard’s lip were caused by her biting her own lip, and the scratch on Mr. Depp’s nose was caused by Ms. Heard. It also found that Mr. Depp caused the property damage. *Id.* ¶¶ 69-70, 407-455.

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<sup>5</sup> The court further found that while in Australia, Mr. Depp drank alcohol “excessively,” used controlled substances, concluding: “I accept that she was the victim of sustained and multiple assaults by Mr. Depp in Australia. It is a sign of the depth of his rage that he admitted scrawling graffiti in blood from his injured finger and then, when that was insufficient, dipping his badly injured finger in paint and continuing to write messages and other things. I accept her evidence of the nature of the assaults he committed against her. They must have been terrifying. I accept that Mr. Depp put her in fear of her life.” JN Att. A. ¶ 370 (iv)-(v), (xxii).

**11. Incident - 13- Ms. Heard's 30<sup>th</sup> Birthday Celebration Los Angeles (April 21, 2016):**

Finding that Mr. Depp received grim financial news at a meeting, arrived at the birthday party drunk and high, and assaulted Ms. Heard. Among other things, he threw a magnum-sized bottle of champagne at Ms. Heard; grabbed her by her hair, pushed her to the ground scraping her knees on broken glass while further pushing and shoving her; pushing her onto a bed and bumping his chest with hers causing her to fall back down to the bed; and physically prohibiting her from leaving the rooms while he assaulted her. The court rejected that Ms. Heard assaulted Mr. Depp as he claimed. *Id.* ¶¶ 71-72, 459-476.

**12. Incident 14 - Los Angeles (May 21, 2016):** Finding that Mr. Depp assaulted Ms. Heard, by (among other things): ripping a phone from her hands and throwing it at her striking her cheek and eye; charging at her, pulling back her hair, striking her, and violently grabbing her face; slapping, shaking, and yanking her around the room while she screamed. *Id.* ¶¶ 73-74, 481-573.

When viewing the evidence as a whole, the court concluded that Mr. Depp's feelings were aptly described in one of his text messages stating:

She's begging for total global humiliation. She's gonna get it. . . . she sucked Mollusk's [I assume a reference to Elon Musk] crooked dick and he gave her some shitty lawyers . . . I have no mercy, no fear and not an ounce of emotion or what I once thought was love for this gold digging, low level, dime a dozen, mushy, pointless dangling overused floppy fish market . . . I'm so fucking happy she wants to fight this out!!! She will hit the wall hard!!! And I cannot wait to have this waste of a cum guzzler out of my life!!! I met fucking sublime little Russian here . . . Which makes me realize the time I blew on that 50 cent stripper . . . I wouldn't touch her with a goddam glove. I can only hope that karma kicks in and takes the gift of breath from her . . . Sorry man . . . But NOW I will stop at nothing!!!

JN Att. A. ¶ 580 (alteration in original).

On November 16, 2020, the UK High Court denied Mr. Depp permission to appeal. On March 25, 2021, the UK Court of Appeal issued its decision upholding the UK High Court's ruling against Mr. Depp, denying his application for permission to appeal, and dismissing his application to adduce further evidence. After exhausting his appeals, the judgment against Mr. Depp became final with no further appellate options on April 6, 2021.

All three counts in Mr. Depp's Virginia Complaint against Ms. Heard are based on his allegation that the statements published as an Op-Ed in the *Washington Post* imply he committed domestic violence against Ms. Heard, and (contrary to the UK Judgment) are false

### III. LEGAL STANDARD

A plea in bar asserts a single issue which, if proved, creates a bar to plaintiff's recovery. *Hawthorn v. VanMarter*, 279 Va. 566, 577 (2010). Protections of the First Amendment to the United States Constitution and Article I, Section 12 of the Virginia Constitution limit a plaintiff's right to seek legal redress for defamatory statements. See U.S. CONST. amend. I; VA. CONST. art., I § 12; *Jackson v. Hartig*, 274 Va. 219, 227. "In Virginia, when a plaintiff alleges defamation by publication, the elements are (1) publication of (2) an actionable statement with (3) the requisite intent." *Schaecher v. Bouffault*, 290 Va. 83, 91 (2015). Under Virginia common law, a statement must be both false and defamatory to be "actionable." *Id.* at 92. The United States Constitution further prohibits a public figure from recovery except upon clear and convincing proof that the defamatory statement was made "with 'actual malice'- that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Jackson*, 274 Va. at 228 (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964)); see also *Masson v. New Yorker Magazine*, 501 U.S. 496, 510 (1991); *McKee v. Cosby*, 874 F.3d 54, 61 (4th Cir. 2017) ("[A] public figure . . . bears the heavy, and often insurmountable, burden of proving actual malice." (internal citation omitted)).

This Supplemental Plea in Bar presents the distinct issue of undisputed facts establishing: The UK Court has adjudicated, on the merits, that statements published by a newspaper referring to Mr. Depp as a wife beater and domestic abuser of Ms. Heard are true and that Mr. Depp committed acts of domestic violence against Ms. Heard on multiple occasions, causing her on

occasion to fear for her life. This issue of fact creates a bar to Mr. Depp's recovery because, as a matter of law, he is unable to establish the statements in the Op-Ed are "actionable" or made with actual malice.

**IV. THIS COURT SHOULD RECOGNIZE THE UK JUDGMENT UNDER THE DOCTRINE OF COMITY AND THE UFCMJRA, AFFORDING IT FULL FAITH AND CREDIT, AND DISMISS COUNTS I-III OF THE COMPLAINT**

**a. Comity should be afforded to the UK Judgment because it was rendered on the merits after a fair trial under a standard of proof more favorable to Mr. Depp**

This Court should grant Comity to the UK Judgment, affording it full faith and credit, because it was issued after a full and fair trial on the merits in a well-known plaintiff-friendly forum selected by Mr. Depp. Comity is the recognition in one country of a foreign country's legislative, executive, or judicial acts. *Hilton v. Guyot*, 159 U.S. 113, 202-03 (1895).

Virginia courts recognize Comity as a means to enforce a foreign judgment and empower its preclusive effects. *See Clark v. Clark*, 11 Va. App. 286, 298-99 (Va. Ct. App. 1990) ("Comity envisions giving recognition or preclusive effect in the forum state to matters previously litigated in a foreign jurisdiction when the issues involved are res judicata: when the final decree or order entered in the former proceeding was entered on the merits."). *See also* Restatement (Fourth) Foreign Relations Law of the U.S. § 481 (2019) ("A party to a U.S. proceeding may rely on a foreign judgment to preclude relitigation of a claim governed by the foreign judgment (claim preclusion), or to resolve an issue of law or fact addressed in the foreign proceeding (issue preclusion)"); Ruth Bader Ginsburg, *Recognition and Enforcement of Foreign Civil Judgments: A Summary View of the Situation in the United States*, 4 INT'L LAW. 720, 721 (1970) ("Recognition' in this context refers to the res-judicata status of a foreign judgment; it occurs when the foreign



adjudication is held to bind the parties.”). The seminal United States Supreme Court case of *Hilton v. Guyot* articulated the factors to be examined in the comity determination:

[W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, **the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh . . .**

159 U.S. at 203 (emphasis added)(*cited with approval in Oehl v. Oehl*, 221 Va.618, 622).

Mirroring the Full Faith and Credit Clause of the United States Constitution, principles of international Comity likewise preclude an action for defamation where the truth of the statement has been adjudicated. For example, in *Schuler v. Rainforest Alliance, Inc.*, the Second Circuit upheld the granting of comity to a Mexican judgment and held that plaintiffs’ defamation claim pertaining to their ownership of property was precluded by the Mexico court’s prior holding on the same issue in a case where the plaintiffs failed to prove their ownership of the property. 684 F. App’x 77 (2d Cir. 2017); *see also Stevens v. Redwing*, 146 F.3d 538, 545 (8th Cir. 1998) (affording full faith and credit to a Georgia juvenile court decision finding the father sexually abused his daughter and holding that because the foreign jurisdiction found the statements to be true there was no tort of defamation). To allow Mr. Depp’s defamation claims to proceed is “essentially asking an American court to overrule” the UK High Court’s decision, and “principles of comity preclude this court from doing so.” *Rainforest Alliance, Inc.* 684 F. App’x at 79.

Virginia recognizes and has applied the Doctrine of Comity to UK Judgments and the Virginia Supreme Court considers UK and Virginia legal systems to be “reasonably comparable.” *Oehl v. Oehl*, 221 Va. 618, 624 (1980) (applying Comity to English visitation modification Order).

In *Oehl*, the Court granted comity stating, “Virginia's jurisprudence is deeply rooted in the ancient precedents, procedures, and practices of the English system of justice. A substantial portion of the common law of England and the writs, remedial and judicial, given by any statute or act of Parliament, made in aid of the common law have been legislatively incorporated in the law of this Commonwealth.” 221 Va. at 623; *see also* Va. Code § 1-201. Other U.S. courts have also concluded that the UK has fair and just tribunals. *See, e.g., Pony Express Records v. Springsteen*, 163 F. Supp. 2d 465, 473 (D.N.J. 2001) (“The opinion of the High Court runs to 74 pages, and details extensive evidence presented to the court, as well as the court’s thorough analysis of that evidence. Indeed, this court generally considers the courts of the United Kingdom fair and just tribunals.”); *Apostolou v. Merrill Lynch*, 2007 WL 2908074 (E.D.N.Y. 2007) (applying comity to London Employment Tribunal decision and noting, “the circumstances under which federal courts will disregard foreign proceedings ‘are construed especially narrowly when the alien jurisdiction is...a sister common law jurisdiction with procedures akin to our own.’”) (Internal citations omitted).

In addition, the UK offers reciprocity to US judgments, and the UK High Court offered reciprocity to this Court in its proceedings involving *The Sun* articles, working within the confines of the Protective Order issued by this Court. The UK High Court referenced the “Virginia libel action” over 25 times in its decision, relying on deposition transcripts, images, declarations and other documents produced in this case.

The UK’s legal framework for defamation differs from Virginia’s in certain aspects – all more favorable to Mr. Depp - but the operative law in the UK is the same as that of Virginia: it is a complete defense “to an action for defamation for the defendant to show that the imputation

conveyed by the statement complained of is substantially true.”<sup>6</sup> Defamation Act 2013 s.2(1) (2013); *Compare Alexandria Gazette Corp. v. West*, 198 Va. 154, 159 (1956) (“In Virginia both the truth and privilege are complete defenses in bar of any action for defamation, whether it be for common law slander or libel, or for insulting words.” (citations omitted)). The significant difference is that in the UK, defendants (not the plaintiff, who was Mr. Depp) have the burden to prove their statements are true by a preponderance of the evidence. Here, Mr. Depp has the burden of proof, and by the higher standard of clear and convincing evidence, that the statements are false. Thus, Mr. Depp was unable to prevail in the UK, where he was provided a much more favorable standard and burden of proof.

Mr. Depp cannot sustain his action for defamation because the UK High Court has adjudicated as true the statements in the Op-Ed that Ms. Heard was the victim of domestic abuse and the “inference” in the Op-Ed (since Mr. Depp was never named) that it was Mr. Depp who committed the domestic violence. JN Att. A ¶ 585 (“[T]he Defendants have shown that what they published in the meaning which I have held the words to bear was substantially true. I have reached these conclusions having examined in detail the 14 incidents on which the Defendants rely as well as the overarching considerations which the Claimant submitted I should take into account. In those circumstances, Parliament has said that a defendant has a complete defence.”) JN Att. A ¶¶ 583-85. It is indisputable that the UK High Court had subject matter jurisdiction and personal jurisdiction over the UK Action to make such a ruling. The Queen’s Bench Division hears matters involving contract and torts including libel and slander, and Mr. Depp, the plaintiff in the UK Case, chose to be subject to the UK legal system by filing the UK Complaint there. **Att. 2.** In addition to conducting full discovery in the UK, Mr. Depp had the added benefit of 16 months of discovery

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<sup>6</sup> “Substantially true” is equivalent to a preponderance of the evidence. *See* JN Att. A. ¶ 41.

in this US action – and used that discovery in the UK. As Mr. Depp admitted, he was not precluded from calling any witness or submitting any evidence that he wanted to submit. Att. 1, 398:8-12, 398:14-399:5. There was no claim of fraud on the UK court alleged by any party.

Mr. Depp should not be permitted to select a forum with plaintiff-friendly libel law as a “sword” then claim that its legal system is too “unique”<sup>7</sup> as a protective “shield” from Comity’s undesirable result. Mr. Depp undoubtedly selected the United Kingdom with its plaintiff-friendly reputation as “the libel capital of the world” in defamation cases in mind.<sup>8</sup> Even on the UK’s playing field, with all of its advantages to Mr. Depp, the UK Defendants prevailed.

**b. The UK Decisions should be recognized under the UFCMJRA and enforceable to the same extent as any judgment rendered in the Commonwealth**

The UFCMJRA codified at Va. Code § 8.01-465.13:1, *et seq.*, provides “the Commonwealth shall recognize a foreign-country judgment to which this chapter applies.” Va. Code § 8.01-465.13:3. The UFCMJRA applies to the UK Judgment that “denies recovery of a sum of money,” § 8.01-465.13:2. Mr. Depp sued for monetary damages and was denied recovery. The UK High Court provides impartial tribunals and procedures compatible with due process and possessed personal jurisdiction over Mr. Depp and subject matter jurisdiction over the defamation

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<sup>7</sup> Pl. Mem. in Opp. to Mot. for Leave to Amend at 5.

<sup>8</sup> Vincent R. Johnson, *Comparative Defamation Law: England and the United States*, 24 U. Miami Int’l and Comp. L. Rev. 7n.11 (2017). *See also* Geoffrey Robertson Q.C. & Andrew Nicol, *Media Law*, 65 (3d ed. 1992) (“British libel law is so notoriously favorable to plaintiffs that an increasing number of forum-shopping foreigners are taking action in London against newspapers and books that are printed, and mainly circulated, abroad.”); Rodney A. Smolla, *Law of Defamation*, § 1.03[3] (1996) “London has become an international libel capital. Plaintiffs with the wherewithal to do so now often choose to file suit in Britain in order to exploit Britain’s strict libel laws, even when the plaintiffs and the publication have little connection to that country.”); Bruce W. Sanford, *Libel and Privacy*, § 2.2 (2nd ed. 1996 Supp.) (“The need for familiarity with English libel law has increased with greater use of news material beyond national boundaries, forum shopping by internationally prominent libel plaintiffs, and the arrival of multi-million dollar damage awards in England”).

claim. Ms. Heard has observed the procedures for seeking recognition under the UFCMJRA by asserting recognition in her affirmative defenses. § 8.01-465.13:5. Mr. Depp has the burden to oppose recognition of the foreign judgment under the UFCMJRA. § 8.01-465.13:3 (“A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection B or C exists.”). Because the UK Judgment is entitled to UFCMJRA recognition, it is “(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in the Commonwealth would be conclusive; and (2) Enforceable in the same manner and to the same extent as a judgment rendered in the Commonwealth.” § 8.01-465.13:6.

The UK Judgment should be recognized under the UFCMJRA and in the same manner as any other judgment rendered in the Commonwealth with its full preclusive effects. Like judgments recognized under Comity, judgments recognized under the UFCMJRA are treated “in the same manner as judgments of a sister state that is entitled to full faith and credit.” *Seale & Assocs. v. Vector Aero. Corp.*, 2010 U.S. Dist. LEXIS 129748 (E.D. Va. Dec. 7, 2010), at \*6-9 (recognizing an Ontario Judgment under the prior version of the UFCMJRA and finding that the action was barred by res judicata). A recognized foreign country’s Judgment will be given res judicata and collateral estoppel effect. *Id.* at \*9 (citing *Guinness PLC v. Ward*, 955 F.2d 875, 889 n.9 (4th Cir. 1992)). Like the cases of *Seale* and *Guinness*, a competent court issued a final judgment on the merits, and “to permit parties to relitigate the merits of the foreign proceeding would completely contravene the purpose of the Act.” *Guinness*, 955 F.2d at 893.

**c. Refusing to recognize the UK Judgment would set a dangerous precedent, chilling free speech in the US and abroad**

The entire publishing world should be entitled to rely on the UK Judgment and the “truth” adjudicated therein. If this Court refuses to recognize the UK Judgment, the ramifications not only

for residents of Fairfax County, but potentially across the US, would contravene international reciprocity and chill free speech. If this Court effectively overrules the UK Judgment and does not recognize and apply the “truth” proven in adverse UK libel judgments (where defendants bear the burden and prevail), and permits plaintiffs to forum shop for a directly contrary “alternative truth” after an adverse libel Judgment, it would create litigation havoc, inviting lawsuits by Mr. Depp throughout the United States, each time anyone – including the press - repeats the findings of the UK Court: that Mr. Depp is a wife beater and committed domestic violence against Amber Heard at least 12 times. Ms. Heard, of course, has an enormous reputational interest in the matter, and would likely be compelled to defend the (already proven) truth.

Enabling Mr. Depp, who had a full and fair opportunity to litigate his “truth,” without binding him to the consequences of his adverse libel determination will serve only to present a perpetual threat of litigation that will chill and may well freeze speech on a matter of public concern. The chilling effect on free speech would reverberate across the Atlantic as authors and publishers in the U.S. and abroad would be in a quagmire of judicial uncertainty, fearing or facing endless litigation. The stakes increase exponentially when the speech is of a matter of public concern, and this Court has ruled the Op-Ed speech addressed a public concern (*see* Order dated March 24, 2021). Recognition of the UK Judgment will ensure that future plaintiffs will not stifle speech concerning important issues such as domestic violence, victim intimidation by institutions, social dynamics that protect abusers, and other matters of public concern by filing in multiple jurisdictions when their outcome is unfavorable. Recognition would also further the objective of the SPEECH Act which was intended to prevent oppressive enforcement of foreign defamation lawsuits that “suppress the free speech rights of the defendants to the suit,” and “inhibit other written speech that might otherwise have been written or published but for the fear of a foreign

lawsuit.” 28 U.S. Code § 4101 Findings. The SPEECH Act allows a Court to enforce a foreign judgment for defamation where “the defamation law applied in the foreign court’s adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the first amendment to the Constitution of the United States and by the constitution and law of the State in which the domestic court is located.” 28 USCS § 4102. Here, the UK High Court’s finding that the statements were true and thus not libelous provides the same protection for freedom of speech as in the United States.

**V. MR. DEPP’S CLAIMS ARE BARRED  
UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL**

**a. Virginia recognizes defensive collateral estoppel as  
an exception to the mutuality requirement where it is  
compellingly clear a plaintiff has fully and fairly litigated an issue**

Collateral estoppel precludes Mr. Depp from relitigating the central issue of whether he, in fact, abused Ms. Heard, therefore barring his defamation claims. *See Bates v. Devers*, 214 Va. 667, 671 (1974). “Collateral estoppel is the preclusive effect impacting in a subsequent action based upon a collateral and different cause of action. In the subsequent action, the parties to the first action and their privies are precluded from litigating any issue of fact actually litigated and essential to a valid and final personal judgment in the first action.” *Id.*<sup>9</sup> The Virginia Supreme Court reinforced Virginia’s recognition of exceptions to mutuality in *Bates*, stating: the “**mutuality doctrine should not be mechanistically applied when it is compellingly clear from the prior record that the party in the subsequent civil action against whom collateral estoppel is asserted**

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<sup>9</sup> Res judicata is a general term for an adjudicated matter, encompassing both doctrines of issue and claim preclusion. *Bates*, 215 at 670-71. However, it commonly refers to the doctrine barring relitigation of the same claim or cause of action, or any part thereof which could have been litigated on the merits, between the same parties and their privies, now restated by Rule 1:6. *Id.* To avoid confusion, we refer to issue preclusion as “collateral estoppel” and claim and cause of action preclusion as “res judicata.”

*has fully and fairly litigated and lost an issue of fact which was essential to the prior judgment.* 214 Va. at 672 n.7 (emphasis added) (citing *Graves v. Associated Transp. Inc.*, 344 F.2d 894 (4th Cir. 1965) and *Eagle Star & British Dominions Ins. Co. v. Heller*, 149 Va. 82 (1927)). “The policy underlying mutuality is to insure a litigant that **he will have a full and fair day in court** on any issue essential to an action in which he is a party.” *Id.* (emphasis added).

The predecessors and progeny of *Bates* warn against strict adherence to mutuality. *See e.g.*, *Graves v. Associated Transp., Inc.*, 344 F.2d 894, 897 (4th Cir. 1965) (“The mutuality rule was probably never a solid wall; exceptions were created under the pressure of the public interest in an end to litigation.”). In *Graves*, the Fourth Circuit, applying Virginia law, barred plaintiff Graves’ tort claims where the defendant—a non-party to a prior lawsuit—asserted collateral estoppel to bar claims of plaintiff, a prior party. After extensive review of Virginia cases on collateral estoppel, the court reasoned that Graves had “already **had his day in court**” and held the trial court erred in rejecting the plea of res judicata tendered by defendant. *Id.* at 902. The Court stated, “there is no compelling reason, however, for requiring that the party asserting the plea of res judicata must have been a party, or in privity with a party, to the earlier litigation.” *Id.* at 899. Likewise, in *Kinsley v. Markovic*, the Fourth Circuit applying Virginia law held that a tort plaintiff suing a taxicab driver for injuries to his thumb, lost on the merits, and sought a “second try at the pot of gold” by bringing an action against the taxicab company, was barred from doing so. 333 F.2d 684, 684-85 (4<sup>th</sup> Cir. 1964). The Court stated “The plaintiff has **had his day in court**. The substantive issue of Markovic’s alleged fault as the proximate cause of the plaintiff’s injury has been fully tried and determined. The plaintiff is not entitled to have it tried afresh.” *Id.* at 685 (4th Cir. 1964) (emphasis added). In another case involving a taxicab incident, *Lober v. Moore*, the D.C. Circuit held that a prior jury verdict in the Arlington Circuit Court against plaintiff and in favor of the



taxicab company foreclosed relitigation of negligence in a suit by the plaintiff against the operator of the vehicle in federal court. 417 F.2d 714 (D.C. Cir. 1968). In a detailed analysis of Virginia law on exceptions to mutuality, the Court in *Lober* stated,

Yet no more in Virginia than elsewhere has the rule of mutuality been absolute. . . and a case-by-case approach to newly emerging res judicata problems is evident. We discern in the Virginia cases, not a devotion to the principle of mutuality as an unbending dogma, but a recognition that the appropriateness of its application hangs on the relative strength of the policy considerations in competition. . . . Much more important--and in our view decisive--are the Virginia decisions disseminating the policy that one adverse litigative adventure on any one issue is enough for any one litigant.

*Id.* at 719. Rather than mutuality, “the principal requirement to invoke the bar of collateral estoppel is that the plaintiff must have had a full and fair opportunity to litigate the same issue or fact in a previous action.” *Moore v. Allied Chemical Corp.*, 480 F. Supp. 377, 382 (E.D. Va. 1979). Permitting the use of defensive collateral estoppel<sup>10</sup> in *Moore*, the court noted “the Supreme Court of Virginia has recognized the doctrine of collateral estoppel, even though the previous determination may have involved a different cause of action **and different parties.**” *Id.* (emphasis added). The mutuality requirement has received significant criticism, because “it simply does not make good sense,” and the “modern trend is to discard the mutuality rule as such.” *Hozie v. Preston*, 493 F. Supp. 42 (W. D. Va. 1980) (holding that defensive collateral estoppel barred plaintiff’s claims where relitigation of a central issue would necessarily involve the same evidence and a complete retrial of the identical issue already litigated, there was in binding plaintiffs to the prior holdings, and plaintiffs were provided due process and “**had their day in court**”) (emphasis added).

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<sup>10</sup> Defensive collateral estoppel is used as a “shield” by a defendant not a party to the first suit against a plaintiff who was a party to the first suit; whereas offensive use of collateral estoppel is used as a “sword” by a nonparty against a defendant who was a party to the first suit. *Spiker v. Capitol Milk Producers Coop., Inc.*, 577 F. Supp. 416, 418 (W.D. Va. 1983).

Virginia courts permit defensive collateral estoppel as justice requires.<sup>11</sup> In *Eagle Star*, for example, the Virginia Supreme Court held that the trial court erred in denying defendant's pleas of res judicata and estoppel and prohibiting evidence of the plaintiff's prior conviction of willfully burning goods in a civil case against the insurer of the same goods. 149 Va. 82 (1927). Disregarding any mutuality requirement, the Court stated,

To permit a recovery under a policy of fire insurance by one who has been convicted of burning the property insured, would be to disregard the contract, be illogical, would discredit the administration of justice, defy public policy and shock the most unenlightened conscience. To sustain such a judgment would be to encourage and give support to the current thoughtless and carping criticism of legal procedure, and to justify the gibe that the administration of the law is the only remaining legalized lottery.

*Id.* at 111. *Eagle Star*'s rejection of strict mutuality was reaffirmed and applied in a purely civil context by the Virginia Supreme Court in *State Farm Mut. Auto Ins. v. Wright*, 173 Va. 261, 266 (1939) (rejecting strict mutuality on the grounds of public policy); *see also Nero v. Ferris*, 222 Va. 807 (1981) (recognizing the existence of "nonmutuality grounds" that do not require a showing of privity; *Lohr v. McCurdy*, 52 Va. Cir. 352 (Rockingham Cir. Ct. 2000) ("Even if this court were to find that Nationwide and McCurdy were not in privity with each other, the doctrine of collateral estoppel would still act to bar this claim. Defining the doctrine of "defensive collateral estoppel," Black's Law Dictionary states that "defensive collateral estoppel" is estoppel "which prevents relitigation by plaintiff of issues previously lost against another defendant." (citing Black's Law Dictionary 261-62 (6<sup>th</sup> ed. 1994); *Moore*; and *Bates*). The U.S. Supreme Court and the majority of jurisdictions in the United States allow defensive use of nonmutual estoppel. *See, e.g., Blonder-*

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<sup>11</sup> While courts in the U.S. differ as to whether the foreign court's preclusion rules should apply, in this case it is immaterial as both courts permit the use of non-mutual collateral estoppel. *Hunter v. Chief Constable of the Westmidlands Police* (1982) AC 529 (permitting defensive collateral estoppel on due process and policy grounds).

*Tongue Lab., Inc. v. Univ. of Illinois Found.*, 402 U.S. 313, 325 (1971) (applying defensive collateral estoppel and stating “the achievement of substantial justice rather than symmetry is the measure of the fairness of the rules of res judicata”); *Bernhard v. Bank of America Nat. Trust & Sav. Assn.*, 19 Cal. 2d 807, 122 P. 2d 892 (Cal. 1942) (“Many courts have abandoned the requirement of mutuality and confined the requirement of privity to the party against whom the plea of res judicata is asserted.”) (citing *Eagle Star*).

Furthermore, nonmutual collateral estoppel is applied by US courts to bar claims, including defamation claims, previously adjudicated in foreign jurisdictions, including the UK. *See, e.g., Schuler v. Rainforest Alliance*, 684 F. App’x at 78-79 (holding plaintiffs could not establish defamation claim after issue was adjudicated in Mexican court against different defendant); *Apostolou v. Merrill Lynch*, 2007 WL 2908074 (E.D.N.Y. 2007) (“the doctrine [of issue preclusion] applies to issues decided by the courts of foreign countries.”)(alteration in original)(quoting *Alfadda v. Fenn*, 966 F. Supp.1317, 1325 (S.D.N.Y. 1997); *Omega Imp. Corp. v. Petri-Kine Camera Co.*, 451 F.2d 1190, 1196 (2d Cir. 1971) (barring relitigation of West German corporation's legal status based on previous decision of West German court with different defendant). In *Schuler v. Rainforest Alliance*, the Schulers had previously filed a lawsuit in Mexico against a company (“AGSA”) alleging trespass on part of their property. 161 F. Supp. 3d 298 (D.Vt. 2016). AGSA prevailed in the action in Mexico because the Schulers failed to prove they were the owners of the land in question. *Id.* at 303. AGSA later sought certification from the Rainforest Alliance, and the Rainforest Alliance published a statement in its audit that AGSA lawfully owned the land. The Schulers then filed a claim for defamation in the U.S. District Court for the District of Vermont against Rainforest Alliance—a non-party to the proceedings in Mexico—based on the statement in the audit. *Id.* at 305-08. That court, granting Comity to the

decision of the court in Mexico, held that Shulers failed to allege a plausible claim of defamation because, among other things, “the gist of the challenged statement [was] true.” *Id.* at 313 (emphasis added) (internal citations omitted). So too were the Sun’s challenged statements and, by virtue of the UK Judgment, Ms. Heard’s.

**b. Mr. Depp “has had his day in Court”**

Virginia’s collateral estoppel requirements are clearly established in this case. Mr. Depp had a full and fair opportunity to litigate in the UK, and “actually litigated,” the issue of whether he committed domestic violence against Ms. Heard, which was essential to the prior judgment. *See Bates*, 214 Va. at 671. Mr. Depp’s Complaint filed in the UK High Court alleged that he was defamed by statements, which in their “natural and ordinary meaning” meant that “Claimant was guilty, on overwhelming evidence, of serious domestic violence against his then wife, causing significant injury and leading to her fearing for her life . . . .” Att. 3 ¶ 10. After extensive discovery and a three-week trial, where the burden of proof was on the defendants to prove the allegations were true, the UK High Court found that Mr. Depp had engaged in at least 12 acts of domestic violence against Ms. Heard, some of which caused her to fear for her life. JN Att. A. ¶¶ 12, 84. The policy considerations in this case favor a swift closing of the curtain on this protracted spectacle. To tolerate Mr. Depp’s proceeding with this vexatious and duplicative litigation would be repugnant to the public policy of this Commonwealth and a waste of judicial resources at time when such resourced remain limited.

For Mr. Depp to prevail in this case, he must prove by clear and convincing evidence that he “did not commit [any] ‘domestic abuse’ or ‘sexual violence’ against Ms. Heard” and that “Ms. Heard is not a victim of [any] domestic violence.” *Comp.* ¶¶ 78, 89, 100. The only way Mr. Depp

can prove this is by seeking a different factfinder to directly overrule and contradict *all* of the UK High Court’s factual findings and conclusions on *all 12 of the Incidents of Domestic Violence*.

Collateral estoppel bars Mr. Depp from contradicting the factual findings of the UK High Court so he cannot, as a matter of law, sustain his claims for defamation and defamation *per se* against Ms. Heard because the allegedly defamatory statements in the Op-Ed are true. See *Schaecher v. Bouffault*, 290 Va. 83, 91 (2015); *Leach v. Va. State Bar*, 73 Va. Cir. 362 (Richmond 2007) (applying collateral estoppel to bar defamation claim where previous adjudication rendered statements true). To be “actionable,” a statement must be both “false and defamatory.” *Schaecher*, 290 Va. at 91; see also *Union of Needletrades, Indus. & Textile Emples. v. Jones*, 268 Va. 512 (2004)).

**c. Ms. Heard and the UK Defendants were in privity**

Even if this Court were to “mechanistically” apply the collateral estoppel requirement, which for the reasons stated above this Court should not, collateral estoppel still would bar relitigation of the issues litigated in the UK because Ms. Heard and the UK defendants were in privity. Mutuality of the parties is also disregarded where a nonparty to the first suit is in privity with a party of the first suit. *Nero*, 222 Va. at 831; *Bates*, 214 Va. at 671. Virginia courts do not apply a fixed definition of privity to all cases involving claim and issue preclusion, and a determination of whether two parties are privies requires a careful examination into the circumstances of each case. *Nero*, 222 Va. at 831. The person’s relationship to the subject matter of the litigation—not the relationship between persons or entities—is determinative. *Lane v. Bayview Loan Servicing, LLC*, 297 Va. 645 (2019).

Although Ms. Heard was not a formal party to the UK litigation, she was a primary subject of the dispute and was intimately involved in the litigation. The statements published in *The Sun*

were equally about Ms. Heard as they were Mr. Depp. Moreover, Ms. Heard is mentioned over ten times in the each of *The Sun* articles. Among other statements about Ms. Heard, the articles said she “produced evidence of domestic abuse” and had “recounted a detailed history of domestic abuse incidents, some of which had led to her fearing for her life.” Att. 3. ¶ 10. Ms. Heard’s testimony of her abuse was crucial to UK Defendants’ defense of truth and integral to the UK High Court’s Judgment. Ms. Heard provided seven sworn witness statements and in-person testimony at trial over four days. Only Ms. Heard could provide the first-hand accounts of the trauma she endured on these occasions, and without her testimony, the defendants could not have prevailed. Because she “actively participated in [the first litigation]” and was inextricably bound to it, Ms. Heard is in privity. *Spiker*, 577 F. Supp. at 418. Mr. Depp’s defamation claims are therefore barred under the collateral estoppel doctrine.

**VI. MR. DEPP’S CLAIMS ARE BARRED BY  
RES JUDICATA UNDER VIRGINIA COMMON LAW AND RULE 1:6**

Mr. Depp’s claims are likewise barred under the doctrine of res judicata (claim and cause of action preclusion) because the real issue in dispute between the parties is the same: whether published statements are true that Mr. Depp committed domestic violence against Ms. Heard. Like collateral estoppel, res judicata protects parties from the “cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication.” *Funny Guy, LLC v. Lecego*, 293 Va. 135, 142 n.7 (2017). Rule 1:6 governs *claim* and *cause of action* preclusion—not *issue* preclusion. Rule 1:6(a) forever precludes a party who lost one lawsuit on the merits from proceeding against the same opposing party or parties on any claim that arises from the same conduct, transaction or occurrence.

Va. Sup. Ct. R. 1:6. Rule 1:6(d) expressly preserves the common law governing privity as it relates to Rule stating, “The law of privity as heretofore articulated in case law in the

Commonwealth of Virginia is unaffected by this Rule and remains intact. For purposes of this Rule, party or parties include all named parties and those in privity.” In adopting Rule 1:6, Virginia Supreme Court rejected the strict “same-evidence formulation” espoused in *Davis v. Marshall Homes, Inc.*, 265 Va. 159, 576 S.E.2d 504 (2003), opting instead for a return to the traditional, and more flexible, same-subject matter test. *Funny Guy*, 293 Va. at 142. Thus, because Ms. Heard was a party in privity in the UK proceeding and thus satisfies Rule 1:6’s “same opposing party” requirement, this provides another reason the UK Judgment – a final decision on the merits – dooms Mr. Depp’s claims here because the claims were *See* Section IV(c), *supra*; *see Lee v. Spoden*, 290 Va. 235, 248 (2015) (holding that that Lee and a consulting company were in privity to apply res judicata claim preclusion where consulting company was not a party to prior contempt proceedings).

Virginia courts take a practical approach to analyzing whether a claim or cause of action arises out the same transaction or occurrence. *Funny Guy*, 293 Va. at 155. “No single factor is indispensable or determinative,” and the courts examine a wide range of factors, including “whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage.” *Id.* The evidence supporting the two causes can show that the second action is so closely related to the first that the second action should be barred. *Id.* This Court should consider the factors “pragmatically” with a “view toward uncovering the **true underlying dispute** between the parties.” *Id.* (emphasis added). Furthermore, “a prior final judgment on the merits of a cause of action extinguishes all rights of the plaintiff to remedies against the defendant with respect to *all or any part of the transaction, or series of connected transactions, out of which the action arose.*” *Id.* (citing Restatement (Second) of Judgments § 24(1) (1982)).

In *Fox v. Deese*, a concert promoter sued multiple parties involved in different jobs with different employers on multiple, overlapping but not congruent claims relating to a Mardi Gras concert gone awry. The multiple transactions that served as the basis for those claims spanned several months of activity in different government and private offices. Even with this wide range of factual circumstances, the Court held that the claims arose out of the same transaction or occurrence. *Fox*, 234 Va. at 423 (applying Va. Code § 8.01-281 and Rule 1:4(k)). “In doing so, *Fox* recognized that all of the varied circumstances **orbited around one core dispute.**” *Funny Guy*, 293 Va. at 152 (emphasis added). Mr. Depp’s abuse of Ms. Heard is the “core dispute,” around which both causes of action orbit, so any of Mr. Depp’s rights to remedies have been extinguished by the UK Judgment.

## VII. CONCLUSION

For the foregoing reasons, this Court should recognize and apply the findings of the UK Judgment, and dismiss Mr. Depp’s Complaint against Ms. Heard in its entirety and with prejudice, and for such other relief as legally warranted, and as the Court deems appropriate.



Dated this 14th day of June 2021.

Respectfully submitted,

Amber L. Heard



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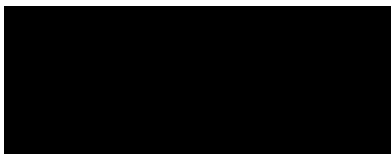
**CERTIFICATE OF SERVICE**

I certify that on this 14th day of June, 2021, a copy of the foregoing was served by email, pursuant to the Agreed Order dated August 16, 2019, as follows:

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John C. Depp, II*



Elaine Charlson Bredehoft (VSB No. 23766)



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# **Transcript of John C. Depp, II, Volume 2**

**Date:** November 11, 2020  
**Case:** Depp, II -v- Heard

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

----- x  
Continued Videotaped Deposition of JOHN C. DEPP, II

Reston, Virginia

Wednesday, November 11, 2020

10:04 a.m.

Volume 2

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Job No. 328714

Pages 267 - 571

Reported by: Karen Young

1 Continued Videotaped Deposition of JOHN C.  
2 DEPP, II, held at the offices of:  
3 CHARLSON BREDEHOFT COHEN & BROWN, P.C.  
4 11260 Roger Bacon Drive  
5 Suite 201  
6 Reston, Virginia 20190  
7 (703) 318-6800  
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12 Pursuant to notice, before Karen Young,  
13 Notary Public of the Commonwealth of Virginia.  
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A P P E A R A N C E S

ON BEHALF OF JOHN C. DEPP, II:

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ON BEHALF OF AMBER LAURA HEARD:

ELAINE CHARLSON BREDEHOFT, ESQUIRE

ADAM S. NADELHAFT, ESQUIRE

CHARLSON BREDEHOFT COHEN & BROWN, P.C.

11260 Roger Bacon Drive

Suite 201

Reston, Virginia 20190

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ALSO PRESENT:

Dustin Thomason, Videographer

Amber Laura Heard, by mobile videoconference

Leslie Hoff, Charlson Bredehoft Cohen & Brown, P.C.

Michelle Bredehoft, Charlson Bredehoft Cohen &  
Brown, P.C.

1 all right, but --

2 A I don't know, letters --

3 Q There were certainly communications of  
4 different types.

5 A Communications is a -- is a --

6 Q Okay.

7 A Sure.

8 Q All right. And there were medical  
9 records, correct?

10 A Of what?

11 Q There were some medical records that were  
12 in evidence, do you recall? Including of your  
13 finger.

14 A I remember that there was -- there were  
15 medical records for my finger. The other medical  
16 records may -- I mean, there was Kipper. Yeah, I  
17 think a few things were touched on, but the --  
18 well, in terms of medical records and such, I think  
19 the other side was lacking in some of their medical  
20 evidence.

21 Q Was there any witness that you wanted to  
22 call that was unable to be called?



1 MR. CHEW: I'm going to instruct the  
2 witness not to answer to the extent that requires  
3 you to disclose communications between yourself and  
4 your counsel.

5 THE WITNESS: Uh-huh.

6 MR. CHEW: The choice of witnesses  
7 certainly would be a subject discussed between you  
8 and your counsel, so I would instruct you not to  
9 answer.

10 THE WITNESS: I'll -- I'll have to go  
11 with Ben's suggestion.

12 MS. CHARLSON BREDEHOFT: All right. So  
13 you're instructing him not to answer on the basis  
14 of attorney-client privilege?

15 MR. CHEW: Yes, the choice of witnesses  
16 would be -- I wasn't counsel --

17 MS. CHARLSON BREDEHOFT: I wasn't asking  
18 for choice of witnesses. I was asking if there was  
19 anyone that he wanted to call that was not called,  
20 in other words, that wouldn't come, that was  
21 unavailable, you know, was sick, anything that he  
22 wanted but was not available to present.

1           MR. CHEW: Well, I would still instruct  
2 you not to answer to the extent this was --  
3 entailed communications between you and your  
4 counsel in the U.K. If you can answer it without  
5 that, you can answer it, but that would be  
6 something that would normally be the subject  
7 between attorney-client.

8           THE WITNESS: I don't think that I can go  
9 into any discussions that I've had with any of my  
10 counsel, but I don't recall that there were any  
11 witnesses that I wanted, that I was desperate for  
12 and we didn't get, no.

13 BY MS. CHARLSON BREDEHOFT:

14           Q     Was there any evidence that you wanted to  
15 present that you were unable to present for any  
16 reason?

17           MR. CHEW: And again, I would instruct  
18 the witness not to answer to the extent it would  
19 require him to disclose communications between  
20 himself and counsel. If you can't answer the  
21 question without disclosing attorney-client  
22 communications, you should not answer the question.

1           A     The fact is I can't, as it would be  
2     breaching attorney -- attorney-client privilege.  
3     Those would have been things that I would discuss  
4     with my lawyers, so I don't know how to answer  
5     that, or if I can.

6           Q     But separate from your attorneys, you  
7     can't think of anything you wanted to present but  
8     it was unavailable for some reason.

9           MR. CHEW:   Same instruction.

10          A     Yeah, and I got it, and you're right, I  
11     get it, but I don't want to leave you hanging. I  
12     can say this. Again, this is from -- just on a  
13     personal -- out of personal experience, the -- the  
14     protocol and the -- and the way things play out in  
15     a U.K. court are at times quite complicated. For  
16     example, if something is not brought up by the  
17     defending counsel, then the other side -- the  
18     plaintiff has no ability to bring -- bring certain  
19     things up that have not been discussed before even  
20     though they are a part of the case.

21                    So that is something that I noticed in  
22     the U.K. proceedings. It's very, very different

1 than United States.

2 Q In that context, is there anything you  
3 can think of that -- and we've already talked about  
4 witnesses, so I'm on evidence.

5 A Uh-huh.

6 Q Is there anything you can think of that  
7 you wanted to present evidentiary wise in the High  
8 Court that you were unable to?

9 MR. CHEW: And again, instruct the  
10 witness not to answer to the extent it requires him  
11 to divulge attorney-client privilege, and I also  
12 object to the extent the question purports to call  
13 for legal conclusion.

14 A Yeah, I'll stay with Ben on that one if  
15 you don't mind.

16 Q So you can't answer it outside of  
17 whatever your counsel may have --

18 A I don't think so. I think it would -- it  
19 would -- I would have to step into this arena of  
20 attorney-client privilege, and I don't see any  
21 other way to even try to speak without -- without  
22 breaching that, so --

1 Q So outside of communications with  
2 counsel, you cannot think of any evidence that you  
3 would have liked to --

4 MR. CHEW: Objection, asked and --  
5 BY MS. CHARLSON BREDEHOFT:

6 Q -- present but you were unable to?

7 MR. CHEW: Asked and answered, but you  
8 may answer again.

9 THE WITNESS: I think unfortunately, it  
10 would require me to -- to have to -- even if I had  
11 to dip my toe into the attorney-client privilege,  
12 it would -- it would -- that would be -- if I were  
13 -- if I were to answer the question fully, it would  
14 definitely require me to -- to breach that.

15 MR. CHEW: Now a time for lunch?

16 MS. CHARLSON BREDEHOFT: Yeah, we can do  
17 that, sure.

18 THE WITNESS: You're just looking for  
19 cookies aren't you?

20 MR. CHEW: I am. You've got me again.

21 THE VIDEOGRAPHER: We are going off the  
22 record. The time is 13:11.

1 question, argumentative.

2 A Yes, I understood it pretty well.

3 Q And the opinion, the judgment found that  
4 the statements that were made in Mr. Wootton's  
5 article that's Deposition Exhibit Number 8 were  
6 substantially true. Do you recall that?

7 A Based on probabilities I believe is how  
8 the judge put it. Is that not correct? I think it  
9 is. The probability is -- I believe is how he  
10 phrased it.

11 Q Do you remember him finding that the  
12 statements were, quote, substantially true, end of  
13 quote?

14 MR. CHEW: Objection to the form of the  
15 question, argumentative. The document speaks for  
16 itself.

17 A Res ipsa loquitur. I -- if he finds that  
18 substantially true, then he finds that  
19 substantially true. That's one man's opinion, and  
20 he's entitled to that.

21 Q Well, it's not just one man's opinion,  
22 right? This is a judge in a court that you

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC  
2 I, Karen Young, the officer before whom  
3 the foregoing deposition was taken, do hereby  
4 certify that the foregoing transcript is a true and  
5 correct record of the testimony given; that said  
6 testimony was taken by me stenographically and  
7 thereafter reduced to typewriting under my  
8 direction, and that I am neither counsel for or  
9 related to, nor employed by any of the parties to  
10 this case and have no interest, financial or  
11 otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set  
13 my hand and affixed my notarial seal this 22nd day  
14 of November, 2020.



17 NOTARY PUBLIC IN AND FOR  
18 THE COMMONWEALTH OF VIRGINIA

19  
20 My commission expires:

21 June 30, 2022

22 Registration No. 7046852

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
MEDIA AND COMMUNICATIONS LIST  
BETWEEN:

CLAIM NO HQ18M01923



JOHN CHRISTOPHER DEPP II

Claimant

-and-

(1) NEWS GROUP NEWSPAPERS LTD  
(2) DAN WOOTTON

Defendants

---

PARTICULARS OF CLAIM

---

1. The Claimant is a world famous actor and producer more commonly known as Johnny Depp. The Claimant has appeared in over 80 films and television series, and decades of involvement with Make a Wish Foundation. He is resident in California USA. In February 2015 the Claimant married Amber Heard. The Claimant and Ms Heard divorced on 13 January 2017 having separated in May 2016.
2. The First Defendant is the publisher of *The Sun* newspaper, which has a daily circulation of over 1.9m and a much larger readership. The First Defendant is also the owner and publisher of *The Sun's* associated website [www.sun.co.uk](http://www.sun.co.uk) ("the Website"). The website is accessible by any user of the internet and is accessed by in excess of 5.3m unique browsers daily. The First Defendant's mobile platform has a reach in excess of 3.8m.



3. The Second Defendant is a journalist and was at all material times employed by the First Defendant. He is currently an Executive Editor of *The Sun*.
4. At all material times the First Defendant was vicariously liable for the actions of the Second Defendant.

#### **The Online Article**

5. On or around 10pm on 27 April 2018 in an article headlined "*GONE POTTY How can JK Rowling be 'genuinely happy' casting wife beater Johnny Depp in the new Fantastic Beasts film?*" under the byline of and/or written by the Second Defendant, the Defendants and each of them published on the Website at the URL <https://www.thesun.co.uk/tvandshowbiz/6159182/jk-rowling-genuinely-happy-johnny-depp-fantastic-beasts/> the following words defamatory of the Claimant ("the Online Article"):

*"GONE POTTY How can JK Rowling be 'genuinely happy' casting wife beater Johnny Depp in the new Fantastic Beasts film?"*

*In his brand new column, Dan Wootton reveals the Harry Potter author is facing a significant backlash from the #MeToo movement over her decision to stand by the casting of Depp despite claims he beat ex-wife Amber Heard*

*By Dan Wootton, Executive Editor*

*[1] FOR a holier-than-thou Twitterati preacher, JK Rowling tries to present herself as a leading light for women in the entertainment industry.*

*[2] But the author will need to use every trick in Harry Potter's magic book to handle the growing outrage in Hollywood over her decision to stand by the*

*casting of Johnny Depp in the lead role in her precious Fantastic Beasts and Where To Find Them franchise.*

*[Photo Caption] JK Rowling has faced sharp criticism for backing Johnny Depp to star in her latest Harry Potter film.*

*[3] Today I reveal a significant backlash from within the #MeToo and Time's Up movement because the Scot is hellbent on backing her famous pal – despite his clearly inexcusable behaviour towards ex-wife Amber Heard.*

*[4] Rowling is proving herself to be the worst type of Hollywood Hypocrite here.*

*[5] Her claim that she is “genuinely happy” to have Depp star as the central character, dark wizard Gellert Grindelwald, in her big-budget film sequel Fantastic Beasts: The Crimes of Grindelwald provides him total rehabilitation in the eyes of the movie industry.*

*[6] She is condoning behaviour that she would be loudly slamming on social media if it was a male executive making the same decision.*

*[Photo Caption] Depp has been slapped with a restraining order after ex-wife Amber Heard produced evidence of domestic abuse*

*[7] So let me be very clear for the benefit of an apparently unaware Ms Rowling: Overwhelming evidence was filed to show Johnny Depp engaged in domestic violence against his wife Amber Heard.*

*[8] She was granted a restraining order after alleging Depp assaulted her following a drunken argument and submitted photographs to the court showing her bruised face.*

*[9] Heard – backed up by numerous friends on the record – recounted a detailed history of domestic abuse incidents, some of which had led to her fearing for her life. According to the court documents, there were kicks, punches, shoves and “all-out assault”.*

*[10] While Depp's many high powered friends accused Heard of simply seeking a pay-out, she proved them wrong by committing to donate ALL of the £5 million she received to charity.*

*[Photo caption] However, he is set to star as Gellert Grindelwald in the latest Fantastic Beasts and Where to Find Them film*

[11] *If Rowling is the supporter of women's rights she claims, has she been blinded by a personal friendship with Depp?*

[12] *After all, she coveted him enough to have spent £22 million buying his old yacht, which he had ironically re-named for Heard.*

[13] *Rowling is a powerful figure, who likes to slaughter anyone who dares publicly question her morals or decisions.*

[14] *But today two brave members of Me Too/Time's Up – both victims of Harvey Weinstein – go public to question her decision.*

[Photo caption] *Amber Heard produced a huge amount of evidence outlining the abuse - including shocking pictures of bruising on her face*

[15] *In a message to Rowling, actress Caitlin Dulany says: "We would like to see things change in this industry and not see people who have allegedly victimised women.*

[16] *"It is not much of a change if you are seeing people rewarded with roles.*

[17] *"Amber has been through a difficult time with him. But it seems like what happened hasn't really affected Johnny.*

[18] *"We would like to see things change in this industry and this is an example of that not happening.*

[19] *"I would hope for different role models than someone who has that kind of history. It is important when you are casting."*

[Photo caption] *Fantastic Beasts: The Crimes of Grindelwald is the next instalment in the Harry Potter franchise*

[20] *Actress Katherine Kendall adds: "I don't stand behind hitting people or abusing people. It seems that Amber got hurt.*

[21] *"As someone who has been the victim of sexual abuse and a supporter of Me Too and telling my story to help others, I cannot advocate violence.*

[22] *"I think it is a confusing message to put people in roles that are aimed at children and young people if there is a suggestion they have done something of that nature."*

*[Photo caption] Fantastic Beasts and Where to Find Them, starring Eddie Redmayne, was a huge hit with fans - but should Johnny Depp star in its sequel?*

*[23] So today I publish five questions Rowling MUST answer:*

- 1. Do you take domestic violence accusations as seriously as sexual harassment given your support of the Me Too movement?*
- 2. If so, do you believe Amber Heard's detailed 2016 court filing detailing abuse allegations by Johnny Depp, which included pictures showing her injuries and on the record accounts by other witnesses?*
- 3. Why did Depp agree to pay £5 million as a settlement, including a confidentiality agreement, if there was no truth to the allegations?*
- 4. You admitted last year there were "legitimate questions" about Depp's casting. What were these and how did you overcome them?*
- 5. Heard appeared to suggest on Instagram that you had taken her divorce statement "out of context" in order to defend Depp's casting. Have you spoken to her directly?*

*[24] Warner Bros releases the Depp-fronted film in November.*

*[25] While Rowling has an inability to ever admit she's made a mistake, it's not too late for a last-minute re-cast. It would cost millions, but Rowling has the money.*

*[26] I believe it is the only decision that would show she's a woman of true character and principle, even when her famous friends are involved."*

6. The Online Article was published until around 7.58am on 28 April 2018 and then updated to remove the words "wife beater" and change the headline to "GONE POTTY How can JK Rowling be 'genuinely happy' casting Johnny Depp in the new Fantastic Beasts film after assault claim?" Thereafter the Online Article in its updated form continued to be published by the Defendants and each of them on the Website until at least the date hereof.
7. The Online Article was read by a very substantial number of readers in this jurisdiction. The second, third and fourth sentences of paragraph 2 above are repeated. The Claimant does not have website traffic data and is currently unable

to plead with any more particularity the extent of online publication. This information is in the possession of the First Defendant and if not pleaded in the Defence can be the subject of disclosure or evidence in the Proceedings.

### **The Hardcopy Article**

8. In the 28 April 2018 edition of *The Sun* under the headline “*How can JK Rowling be ‘genuinely happy’ to cast Depp after assault claim?*” under the byline of and/or written by the Second Defendant, the Defendants and each of them published the following words defamatory of the Claimant (“the Hardcopy Article”):

*“How can JK Rowling be ‘genuinely happy’ to cast Depp after assault claim ?*

*[1] FOR a holier-than-thou Twitterati preacher, JK ROWLING tries to present herself as a leading light for women in the entertainment industry.*

*[2] But the author will need to use every trick in Harry Potter's magic book to handle the growing outrage in Hollywood over her decision to stand by the casting of JOHNNY DEPP, left, in the lead role in her precious Fantastic Beasts franchise, The Crimes of Grindelwald.*

*[3] There's a significant backlash in the #MeToo and Time's Up movements because the author is hell-bent on backing her famous pal – despite his inexcusable behaviour towards ex-wife AMBER HEARD.*

*[4] Rowling, right, is proving herself to be the worst type of Hollywood Hypocrite here.*

*[5] Her claim that she is ‘genuinely happy’ to have Depp star as the central character - dark wizard Gellert Grindelwald - in her big-budget film sequel offers him total rehabilitation in the eyes of the movie industry.*

*[6] She is condoning behaviour she would be slamming on social media if it was a male executive making the same decision.*

*[7] So let me be very clear for the benefit of an apparently unaware Ms Rowling: Overwhelming evidence was filed to show Johnny Depp engaged in domestic violence against Amber Heard. She was granted a restraining order after alleging*

*Depp assaulted her following a drunken argument and submitted photos to the court showing her bruised face, inset left.*

*[8] Heard – backed up by numerous friends on the record – recounted a detailed history of domestic abuse incidents, some of which had led to her fearing for her life.*

*[9] According to the court documents, there were kicks, punches, shoves and “all-out assault”.*

*[10] While Depp’s high powered friends accused Heard of simply seeking a pay-out, she proved them wrong by committing to donate ALL of the £5million she received from him to charity.*

*[11] If Rowling is the supporter of women’s rights she claims, has she been blinded by a personal friendship with Depp?*

*[12] After all, she coveted him enough to have spent £22million buying his old yacht, which, ironically, Depp renamed for Heard.*

*[13] Rowling is a powerful figure, who likes to slaughter anyone who dares publicly question her morals or decisions. But today two members of #Me Too/Time’s Up – both victims of HARVEY WEINSTEIN– go public to question her decision.*

*[14] In a message to Rowling, actress CAITLIN DULANY says: “We would like to see things change in this industry and not see people who have allegedly victimised women.*

*[15] “It is not much of a change if you are seeing people rewarded with roles. Amber has been through a difficult time with him.*

*[16] “But it seems like what happened hasn’t really affected Johnny.*

*[17] “We would like to see things change and this is an example of that not happening.*

*[18] “I would hope for different role models than someone who has that kind of history. It is important when you are casting.”*

*[19] Actress KATHERINE KENDALL adds: “I don’t stand behind hitting people or abusing people. It seems that Amber got hurt.*

[20] *"As someone who has been the victim of sexual abuse and a supporter of #MeToo and telling my story to help others, I cannot advocate violence.*

[21] *"I think it is a confusing message to put people in roles that are aimed at children and young people if there is a suggestion they have done something of that nature."*

[22] *So today I publish five questions Rowling MUST answer:*

1. *Do you take domestic violence accusations as seriously as sexual harassment given your support of the #MeToo movement?*
2. *If so, do you believe Amber Heard's detailed 2016 court filing detailing abuse allegations by Johnny Depp, which included pictures showing her injuries and on-the-record accounts by other witnesses?*
3. *Why did Depp agree to pay £5million as a settlement, including a confidentiality agreement, if there was no truth to the allegations?*
4. *You admitted last year there were "legitimate questions" about Depp's casting. What were these and how did you overcome them?*
5. *Heard appeared to suggest on Instagram you had taken her divorce statement "out of context" to defend Depp's casting. Have you spoken to her directly?*

[23] *Warner Bros releases the Depp-fronted film in November.*

[24] *While Rowling has an inability to ever admit she's made a mistake, it is not too late for a last-minute recasting. It would cost millions, but Rowling has the money.*

[25] *I believe it is the only decision that would show she's a woman of true character and principle, even when her famous friends are involved."*

9. The Hardcopy Article was read by millions of readers in this jurisdiction. The first sentence of paragraph 2 above is repeated.

### **Meaning**

10. In their natural and ordinary meaning the words in both the Online and Hardcopy Articles meant and were understood to mean that:

the Claimant was guilty, on overwhelming evidence, of serious domestic violence against his then wife, causing significant injury and leading to her fearing for her life, for which the Claimant was constrained to pay no less than £5 million to compensate her, and which resulted in him being subjected to a continuing court restraining order; and for that reason is not fit to work in the film industry.

### **Serious Harm/Damage**

11. The publication of the words complained of in the Online and Hardcopy Articles has caused serious harm to the Claimant's personal and professional reputation. In addition to relying on the seriousness of the meaning and the huge extent of publication, the Claimant will rely on the effect of accusations of violence against women in the context of the widely known #MeToo/Time's Up movements. The inclusion of quotes, or purported quotes from women described as victims of Harvey Weinstein, (the subject of high profile and serious criminal allegations) demonstrate that the very likely intended effect of the Articles was to finish the Claimant's career.
12. In addition to the reputational harm caused to the Claimant, the Claimant has been caused significant distress and embarrassment by the publication of the words complained of.
13. In support of his claim for damages the Claimant will rely on the following matters



13.1. The "restraining order" referred to in the Online and Hardcopy Articles consisted of Temporary Restraining Orders obtained ex parte. The Temporary Restraining Orders were terminated and Ms Heard's Request for Restraining Orders was dismissed with prejudice on 16 August 2016. The Defendants knew or should have known about the fact that the Restraining Orders had been terminated because the First Defendant published an article on the Website on 17 August 2016 reporting the fact that Ms Heard's Request had been dismissed with prejudice and included in that article a photograph of the Order terminating the Temporary Restraining Orders.

13.2. The Online and Hardcopy Articles failed to include any denial by the Claimant in relation to Ms Heard's allegations, notwithstanding that previous articles published by the First Defendant had reported those denials, including an article dated 28 May 2016 written by the Second Defendant.

13.3. The First Defendant had previously reported that the police who attended an alleged incident at the Claimant's and Ms Heard's home, issued the following statement:

*"On May 21, police responded to a domestic incident radio call.*

*"The person reporting did not insist on a report nor was there any evidence provided by the victim that warranted a report.*

*"Officers conducted an investigation and determined that a crime did not occur. The officers cleared the scene and left a business card."*

13.4. However, rather than including this information, or any reference to the police testimony which contradicted the evidence of Ms Heard and her witnesses in the Online and Hardcopy Articles, the Defendants chose to omit it and present a wholly one-sided and unfair account of the evidence.

13.5 The Online and Hardcopy Articles contained misquoted and/or out of context "quotes" from Katherine Kendall, a #MeToo/Time's Up victim. Following publication, Ms Kendall contacted the journalist who had interviewed her, asserting that she had been misquoted and stating *inter alia*: "*I'm telling you that you misquoted me and intentionally took things I said out context in what I now realize was your purpose in defaming Johnny Depp. I told you I have heard Amber had hit him, which is why as you know I don't condone "any" violence". You have improperly tried to use the #metoo movement for your purposes by using me in this way.*" The Defendants failed to correct the Online Article in light of Ms Kendall's objections to being misquoted.

14. Unless restrained the Defendants and each of them will further publish the words complained of or similar words defamatory of the Claimant.

**AND the Claimant claims:**


- (1) Damages for libel.
- (2) An injunction to restrain the First Defendant whether by its directors, servants or agents or otherwise howsoever and the Second Defendant whether by himself, his servants or agents or otherwise howsoever from publishing or causing to be published the said or any similar words defamatory of the Claimant.

JAMES PRICE QC  
VICTORIA JOLLIFFE

**STATEMENT OF TRUTH**

The Claimant believes that the facts stated in these Particulars of Claim are true.

I am duly authorised by the Claimant to sign this statement.

Signed  .....

Name: OLGA BISCHOF  
Position: Partner of Brown Rudnick LLP  
Dated: 13 June 2018

Served this 13<sup>th</sup> day of March 2018 by Brown Rudnick LLP Solicitors on behalf of the Claimant