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CLERK, CIRCUIT COURT  
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,  
Plaintiff and Counter-defendant,

v.

AMBER LAURA HEARD,  
Defendant and Counter-plaintiff.

Civil Action No.: CL-2019-0002911

**NOTIFICATION OF JUDICIAL NOTICE  
OF ADJUDICATED FACTS AND LAW IMPACTING THIS MATTER**

THE COURT WILL PLEASE TAKE JUDICIAL NOTICE, pursuant to Rules 2:201, 2:202, and 2:203 of the Rules of the Virginia Supreme Court, of the following adjudicated facts, law, official publications, and rulings of the United Kingdom’s High Court of Justice – Queen’s Bench Division and the United Kingdom’s Court of Appeal (Civil Division) in the related matter of *John Christopher Depp II v. News Group Newspapers Ltd., et al.*, QB-2018-006323, which impact this matter:

1. Approved Judgment dated November 2, 2020 (Att. A). The trial took place on July 7-10, 13-17, 20-24 and 27-28, 2020. Mr. Depp filed his Particulars of Claim (the equivalent of a Complaint) on June 13, 2018, which alleged that statements in an article published in The Sun in online and print versions, and authored by Editor Dan Wootton, were libelous. The article called Depp a “wife beater” and also noted that “Depp has been slapped with a restraining order after ex-wife Amber Heard produced evidence of domestic abuse,” and that “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. . .” The Particulars of Claim alleged

that Depp was not a wife beater, and that there was not “overwhelming evidence, of serious domestic violence against his then wife, causing significant injury and leading to her fearing for her life...” (Att. 1 to Supplemental Plea in Bar).

The burden of proof was on the Defendants to prove these statements were true. Att. A. The United Kingdom’s High Court of Justice Queen’s Bench Division (the trial court) found in favor of the Defendants, and dismissed Mr. Depp’s case, holding that Mr. Depp “has not succeeded in his action for libel. Although he has proved the necessary elements of his cause of action in libel, the Defendants have shown that what they published in the meaning which I have held the words to bear was substantially true.” Att. A.

2. Order dated November 16, 2020 (Att. B). The United Kingdom’s High Court of Justice Queen’s Bench Division (the trial court) refused Mr. Depp permission to appeal. Justice Nicol opined:

I have refused the Claimant permission to appeal. In substance the Claimant disagrees with my findings of fact, but for the reasons summarised by Mr Wolanski the findings of fact by a first instance tribunal (particularly one, such as myself, who has heard oral evidence) are rarely open to challenge on appeal. In any event, I do not consider that the proposed grounds of appeal have a reasonable prospect of success (and that is also the case so far as the grounds of appeal suggest that I erred in principle or in law) and there is not some other compelling reason why permission to appeal should be granted.

3. Approved Judgment dated March 25, 2021 (Att. C). A hearing took place on March 18, 2021 before the United Kingdom’s Court of Appeal (Civil Division), on Appeal from the High Court of Justice Queen’s Bench Division, before Lord Justice Underhill and Lord Justice Dingemans. The Court dismissed Mr. Depp’s application for permission to appeal, opining that 1) the grounds for appeal do not show that the proposed appeal has any real prospect of success; and 2) Mr. Depp’s argument that the results of the trial, which have “wider repercussions’ for alleged victims of domestic violence or those accused of it constitute a compelling reason for the

appeal proceeding irrespective of the prospects of success . . . cannot, whether separately or together, justify the exceptional course of allowing the appeal to proceed even if it has no real prospect of succeeding.”

4. During this same hearing, the Court of Appeal heard argument on Mr. Depp’s application for permission to adduce further evidence related to the question of whether Ms. Heard donated her entire \$7 million divorce settlement to charity, suggesting that it would influence the Judge’s assessment of Ms. Heard’s overall credibility. In its written opinion, the Court opined, “We do not accept that there is any ground for believing that the Judge may have been influenced by any such general perception as Mr Caldecott relies on,” noting that the charitable donation is not mentioned in the context of the Court’s central findings, and “It is pure speculation, and in our view very unlikely, that he [the Judge] gave any weight to general considerations about her character of the kind suggested by Mr Caldecott.”

We would accordingly dismiss both Mr Depp’s application for permission to adduce further evidence and his application for permission to appeal. As we have said, it is not easy to persuade this Court to overturn the findings of a trial judge on purely factual questions. We do not believe that there is a real prospect of it being prepared to do so in this case. The hearing before Nicol J was full and fair, and he gave thorough reasons for his conclusions which have not been shown even arguably to be vitiated by any error of approach or mistake of law.

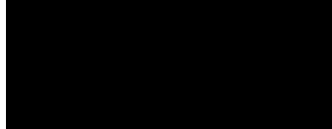
5. Order dated March 31, 2021 (as Amended April 6, 2021) (Att. D). A hearing took place on March 18, 2021 before the United Kingdom’s Court of Appeal (Civil Division), on Appeal from the High Court of Justice Queen’s Bench Division, before Lord Justice Underhill and Lord Justice Dingemans, with judgment handed down on March 25, 2021. The Court of Appeal dismissed Mr. Depp’s application for permission to adduce further evidence and refused his permission for appeal.

FOR THESE REASONS, Amber Laura Heard respectfully requests the Court take judicial notice of Atts. A-D pursuant to Rules 2:201, 2:202, and 2:203 of the Rules of the Virginia Supreme Court.

Dated this 13<sup>th</sup> day of April 2021

Respectfully submitted,

Amber L. Heard



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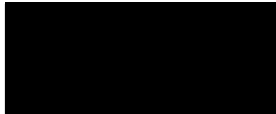
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**CERTIFICATE OF SERVICE**

I certify that on this 13<sup>th</sup> day of April 2021, a copy of the foregoing was served upon counsel for Plaintiff by email, as agreed upon by the parties, addressed as follows:

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Elaine Charlson Bredehoft

# ATTACHMENT A



Neutral Citation Number: [2020] EWHC 2911 (QB)

Case No: QB-2018-006323

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 02/11/2020

**Before :**

**MR JUSTICE NICOL**

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**Between :**

**John Christopher Depp II**  
**- and -**  
**(1) News Group Newspapers Ltd.**  
**(2) Dan Wootton**

**Claimant**

**Defendants**

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**Eleanor Laws QC, David Sherborne and Kate Wilson (instructed by Schillings) for the**  
**Claimant**

**Sasha Wass QC, Adam Wolanski QC and Clara Hamer (instructed by Simons Muirhead**  
**and Burton) for the Defendants**

Hearing dates: 7<sup>th</sup>-10<sup>th</sup> July 2020; 13<sup>th</sup>-17<sup>th</sup> July 2020; 20-24<sup>th</sup> July 2020; 27<sup>th</sup>-28<sup>th</sup> July 2020  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**MR JUSTICE NICOL**

**Mr Justice Nicol :**

1. This is the trial of a libel claim brought by the American actor commonly known as Johnny Depp.
2. The 1<sup>st</sup> Defendant is the publisher of *The Sun* newspaper and also the owner and publisher of the associated website [www.thesun.co.uk](http://www.thesun.co.uk) ('the website'). The claim concerns an article first published on the website on 27<sup>th</sup> April 2018 with the headline, 'GONE POTTY How Can J K Rowling be "genuinely happy" casting wife beater Johnny Depp in the new Fantastic Beasts film?'
3. The article was written by the 2<sup>nd</sup> Defendant who is described as the Executive Editor. The full text of the article (as it first appeared on the website) is set out in the Appendix to this judgment (numbers have been added to paragraphs and photo captions for ease of reference).
4. From about 7.58am on 28<sup>th</sup> April 2018 the headline of the website article was changed to, 'GONE POTTY How Can J K Rowling be "genuinely happy" casting Johnny Depp in the new Fantastic Beasts film after assault claim?' ('the amended headline'). The online article was otherwise the same as it had been.
5. On 28<sup>th</sup> April 2018 the hard copy edition of *The Sun* included a substantially article under the amended headline.

**Procedural history**

6. The claim form was issued on 1<sup>st</sup> June 2018 by the Claimant's then solicitors, Brown Rudnick LLP. Particulars of Claim followed on 13<sup>th</sup> June 2018.
7. The natural and ordinary meaning attributed to each of the articles was as follows,

'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 restraining order; and for that reason is not fit to work in the film industry.'
8. Since the Claimant has referred collectively to 'the articles', I shall do so, too, save where it is necessary to distinguish between them.
9. The Particulars of Claim plead that the publication of the articles has caused serious harm to his personal and professional reputation. He asks the court to draw this inference from:
  - i) The seriousness of the allegations;
  - ii) The huge extent of publication;
  - iii) The effect of accusations of violence against women in the context of the widely known #Me Too / Time's Up movements;



- iv) The inclusion of quotes or purported quotes from women described as victims of Harvey Weinstein (the subject of high profile and serious criminal allegations);
  - v) The very likely intended effect of the articles was to finish the Claimant's career.
10. The Particulars of Claim also plead these matters in support of the claim for damages:
- i) The restraining order referred to in the articles was only a temporary restraining order (a 'TRO') and Ms Heard's application for Restraining Orders had been dismissed with prejudice on 16<sup>th</sup> August 2016, as the Defendants knew.
  - ii) The articles failed to include any denials by the Claimant of Ms Heard's allegations, although the Defendants were aware of them.
  - iii) The Defendants had previously reported that the police had attended the home of the Claimant and Ms Heard on 21<sup>st</sup> May [2016] but had concluded that no crime had been committed. That matter had been omitted from the articles which instead gave a 'one-sided and unfair account' of the evidence.
  - iv) The articles had misquoted and/or taken out of context remarks by Katherine Kendall, a #Me Too/Time's Up victim, and failed to correct the website article when Ms Kendall objected to being misquoted.
11. The Defendants served the original version of their Defence on 11<sup>th</sup> July 2018. The most recent version is the Re-Amended Defence ('RAD') served on 6<sup>th</sup> March 2020. Unless indicated otherwise, references to the Defence are to the RAD.
12. A notable feature of the RAD is that the Defendants rely on the defence of truth in Defamation Act 2013 s.2 in the following meaning,
- 'the Claimant beat his wife Amber Heard causing her to suffer significant injury and on occasion leading to her fearing for her life.'
13. The Defendants plead in paragraph 8a,
- 'The Claimant and Ms Heard began living together in or about 2012 and married on 3 February 2015. They separated on or around 22 May 2016. Throughout their relationship the Claimant was controlling and verbally and physically abusive towards Ms Heard, particularly when he was under the influence of alcohol and/or drugs.'
14. There then follow particulars of 14 incidents (or sometimes a series of incidents). It will be necessary to return to these in due course.
15. There is a confidential schedule to the RAD which pleads further details of violence against Ms Heard by the Claimant.
16. The Claimant initially served a Reply on 20<sup>th</sup> July 2018. The current version, responding to what was then a draft of the RAD, was served on 25<sup>th</sup> February 2020 (the 'RAR'). Unless otherwise indicated when I refer to the Reply, I am speaking of the

RAR. It is sufficient at this stage to note that the Claimant denies ever assaulting Ms Heard. On the contrary, he contends that it was she who assaulted him.

17. As is mentioned in the RAD, Ms Heard and the Claimant separated on or around 22<sup>nd</sup> May 2016. They subsequently divorced in California, Los Angeles County. The parties reached an agreement which was embodied in a ‘marital settlement agreement’ dated 15<sup>th</sup> August 2016.
18. On 29<sup>th</sup> November 2018 the Defendants applied for a stay of the present action on the grounds that they wished to rely on the evidence of Ms Heard but she was inhibited from assisting them because of confidentiality restrictions in the divorce agreement.
19. On 18<sup>th</sup> December 2018 Ms Heard wrote an article in the *Washington Post* with the headline, ‘I spoke up against sexual violence – and faced our culture’s wrath. That has to change.’
20. As a result of this, in March 2019 the Claimant sued Ms Heard for libel in the court of Fairfax County, Virginia, USA (‘the Virginia libel action’). That litigation is ongoing. I was told that the trial of the Virginia libel action is not likely to take place before January 2021.
21. On 27<sup>th</sup> February 2019 Nicklin J. refused the Defendants’ application for a stay of the present action (see [2019] EWHC 1113 (QB)).
22. On 11<sup>th</sup> February 2020 the Claimant changed his solicitors. Thereafter, they have been Schillings LLP. The Claimant served notice of this change on 11<sup>th</sup> February 2020.
23. I heard a pre-trial review (‘PTR’) on 26<sup>th</sup> February 2020. At that stage the trial was due to start on 23<sup>rd</sup> March 2020 with a 10-day time estimate. The principal issue which was debated before me was the Defendants’ application for disclosure. A number of categories of documents was sought including documents produced by either side in the Virginia libel action. I reserved my decision.
24. I handed down judgment on 6<sup>th</sup> March 2020 (see [2020] EWHC 505 (QB)). I ordered the Claimant to give disclosure of certain documents. So far as the Virginia libel action was concerned, I recognised that the judge in Virginia had made a ‘protective order’ on 25<sup>th</sup> September 2019 which had allowed either party to designate documents as confidential. The protective order had allowed the party concerned to permit documents to be used for purposes other than the Virginia libel action. My disclosure order said, in relation to documents in the Virginia libel action, that, if Ms Heard gave such a release, then (see paragraph 3 of my disclosure order),
  - i) Within 48 hours the Claimant had to make a witness statement personally confirming that he had provided all the Virginia libel documents to Schillings.
  - ii) Within 72 hours of (i) Schillings were required to confirm that they had conducted a review of the Virginia libel action documents to ascertain which of them fell within CPR r.31.6.
  - iii) Within the same time any of the Virginia libel action documents which had not so far been disclosed, but which came within r.31.6, were to be disclosed.

25. I made two orders on 6<sup>th</sup> March 2020. One concerned disclosure ('the 6<sup>th</sup> March 2020 disclosure order'). The other concerned other directions ('the 6<sup>th</sup> March 2020 directions order'). So far as the precise terms of these orders had not been agreed, I gave the reasons for my decision in writing (also dated 6<sup>th</sup> March 2020).
26. I gave a further judgment on 18<sup>th</sup> March 2020 regarding the Defendants' application for disclosure of certain medical records (see [2020] EWHC 1149 (QB))
27. On 10<sup>th</sup> March 2020 I heard an application by the Claimant (issued that day) for an extension of time within which to make disclosure of the documents from the Virginia libel action and which came within r.31.6. By my order of that day, I granted a short extension (until 13<sup>th</sup> March 2020), but, since the trial was still at that stage due to start on 23<sup>rd</sup> March 2020, I said (in paragraph (10) of the order) that the claim would be struck out if that, and a number of other parts of my order of 6<sup>th</sup> March 2020, were not complied with.
28. On 20<sup>th</sup> March 2020 I vacated the trial date of 23<sup>rd</sup> March and said the trial would instead take place in July 2020 with an estimated length of 15 days (instead of the previous 10-day estimate). I also made provision for the costs of the Defendants' disclosure application to be determined in writing on the basis of written submissions. I gave my reasons for vacating the trial date in an unreserved judgment (see [2020] EWHC 1150 (QB)).
29. On 8<sup>th</sup> April 2020 I heard an application that parts of the trial should take place in private (and for other associated orders). I granted the application for reasons which I gave in an unreserved judgment (see [2020] EWHC 1618 (QB)).
30. I determined the costs of the Defendants' application for disclosure in my order of 15<sup>th</sup> June (sealed on 16<sup>th</sup> June 2020).
31. On 13<sup>th</sup> May 2020 I heard another pre-trial review. The particular issue of controversy was whether the Claimant should have permission to rely on the evidence of a mechanic, David Killacky, and Kate James, who had been a personal assistant for Ms Heard until she had been dismissed in February 2015. For reasons which I gave in my reserved judgment (see [2020] EWHC 1237 (QB)) I refused permission in relation to Mr Killacky and allowed it in relation to parts of Ms James' statement.
32. The Defendants applied for a declaration that the claim was struck out because of what was said to be the Claimant's incomplete compliance with my disclosure order regarding the Virginia libel action. In particular, it was said that the Claimant had failed to disclose a series of texts between him and his assistant, Nathan Holmes, which were referred to as 'the Australian drugs texts'.
33. In my judgment on 29<sup>th</sup> June 2020 I found that the Claimant had been in breach of my disclosure order, but, since Mr Sherborne, the Claimant's counsel, had indicated his wish to apply for relief against sanctions, I did not make the declaration which the Defendants had sought (see [2020] EWHC 1689 (QB)).
34. That same day, the Claimant issued his application notice for relief against sanctions. I reserved my decision which I gave on 2<sup>nd</sup> July 2020 (see [2020] EWHC 1734 (QB)). I

granted the Claimant relief against sanctions and did not therefore make the declaration which the Defendants had sought.

35. On 29<sup>th</sup> June I had also heard an application by the Claimant that Ms Heard should make third party disclosure pursuant to CPR r.31.17. In my judgment of 2<sup>nd</sup> July, I refused this application.
36. The Claimant sought a direction that Ms Heard should be excluded from the court room until she gave her evidence. I dealt with this matter on the basis of written submissions which I received on 3<sup>rd</sup> July 2020. On 4<sup>th</sup> July 2020 I gave a written decision (with reasons) refusing the request.
37. The parties had arranged for transcribers to prepare a daily transcription of the proceedings. It was convenient for the transcribers to be located at two sites away from the Royal Courts of Justice. On the transcribers giving appropriate undertakings to the court, I agreed that a feed from the RCJ could be passed to these two addresses (which were both in England) and I designated them as additional places where the trial should be regarded as taking place.

#### **The statutory defence of truth**

38. At common law it was a defence to a claim for libel to prove that the libel was 'justified'. The common law defence was modified by the Defamation Act 1952, but it was abolished by s.2(4) of the Defamation Act 2013. The 2013 Act substituted a statutory defence of 'truth'. This is defined in Defamation Act 2013 s.2(1) which says:

'(1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.'

39. There is further elaboration in s.2(2) and (3) which say,

'(2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.

(3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation.'

#### **The defence of truth: the burden and standard of proof**

40. As Defamation Act 2013 s.2(1) makes clear, it is for a defendant to prove that the libel was substantially true. The burden of proof therefore rests on the defendant. That was also the case when the common law defence of justification existed.
41. As for the standard of proof, the starting point is that these are civil proceedings and in civil proceedings the standard of proof is the balance of probabilities i.e. is it more probable than not that the article was substantially true in the meaning that it bore? In this case, is it more likely than not that the claimant did what the articles alleged? The common law knows only two standards of proof: beyond reasonable doubt (or, as it is now put, so that the decision maker is sure) which applies in criminal cases and certain other immaterial situations and the balance of probabilities (which applies in civil

cases) – see *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, 586. The ‘balance of probabilities’ simply means, as Lord Nichols said in *Re H*, that,

‘a court is satisfied an event occurred if the court considers, on the evidence, the occurrence of the event was more likely than not.’

42. Although there is a single and unvarying standard of proof in civil proceedings, the evidence which is required to satisfy it may vary according to the circumstances. *In Re D* [2008] 1 WLR 1499 at [27] Lord Carswell approved what had been said by Richards LJ in *R (N) v Mental Health Review Tribunal (Northern Region)* [2006] QB 468 at [62] who had said,

‘Although there is a single civil *standard* of proof on the balance of probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.’ [emphasis in the original]

43. Simon J. also quoted the same comments by Richards LJ when considering the defence of justification in the course of his judgment on a libel claim – see *Hunt v Times Newspapers Ltd.* [2013] EWHC 1868 (QB). He said (at [76]),

‘Where the allegation is one of serious criminality (as here) clear evidence is required.’

44. Simon J’s judgment concerned the common law, but neither party before me suggested that a different approach was required in this regard in consequence of the replacement of the common law defence of justification with the statutory defence of truth and see *Bokhova v Associated Newspapers Ltd* [2018] EWHC 2032 (QB), [2019] QB 861 at [28].

#### **The defence of truth: the Particulars on which the Defendants rely and the Claimant’s reply**

45. Paragraph 8.a of the RAD reads

‘The Claimant and Ms Heard began living together in or about 2012 and married on 3 February 2015. They separated on or around 22 May 2016. Throughout their relationship the Claimant was controlling and verbally and physically abusive towards Ms Heard, particularly when he was under the influence of alcohol and/or drugs.’

46. As to this, the Claimant responds in the RAR,

‘2.1 The first and second sentences of paragraph 8a are admitted.

2.1A In relation to the incidents alleged in the Re-Amended Defence, it is the Claimant's case that he has never hit or committed any acts of physical violence against Ms Heard. He has never done more than grab her arms to prevent her punching him in the face.'

In what follows I have numbered the incidents and sometimes included a short identifier for ease of reference.

***Incident 1: early 2013 Los Angeles***

47. The Defendants plead,

'In early 2013 Ms Heard and the Claimant were in Los Angeles when he first hit her. The Claimant had, until that point in their relationship, been sober. It subsequently became apparent to Ms Heard that he had probably started drinking and using drugs again around this time. During a conversation about a tattoo, Ms Heard laughed at something the Claimant had said as she thought he had made a joke. The Claimant responded by repeatedly slapping Ms Heard across the face. The third hit knocked Ms Heard to the floor. After hitting her, the Claimant cried, apologised and tried to explain his behaviour, saying he snaps sometimes into something he called "the monster" and promised he would not do it again.'

48. The Claimant replies in 2.2.A of the RAR

'Early 2013

Save that the Claimant does not recall ever having a conversation with Ms Heard about a tattoo and is therefore unable to admit or deny whether the conversation as described therein took place, paragraph 8a.1 is denied. It is expressly denied that the Claimant slapped or hit Ms Heard. In early 2013 (as the Defendants now advance their case) the Claimant confined himself to drinking wine and using marijuana (having been sober from around December 2011 to August 2012).'

***Incident 2: The painting incident 8<sup>th</sup> March 2013 Los Angeles***

49. The Defendants say in RAD paragraph 8.a.2

'On or around 8 March 2013, Ms Heard and the Claimant were in her home in Los Angeles. The Claimant was getting drunk and high on drugs and was angry that Ms Heard had hung up a painting given to her by someone she had formerly dated. At one point during this incident, which went on overnight and into the following day, the Claimant tried to set fire to the painting. The Claimant hit Ms Heard so hard that blood from her lip ended up on the wall. At various points the Claimant grabbed Ms Heard hard, shook her and shoved her into a wall. Someone asked Ms Heard's sister to come over to try to intervene with the Claimant, which she did. The Claimant subsequently sent Ms Heard a text message referring to that evening as a 'disco bloodbath' and a 'hideous moment'.

50. The Claimant replies in paragraph 2.2.B of the RAR,

‘2.2B.1 The first sentence is not admitted because the Claimant does not recall whether he was at Ms Heard’s home on the 8 March 2013.

2.2B.2 The second sentence is denied. The signed painting by Ms Heard’s former wife, Tasya Van Ree, was hanging by Ms Heard’s bed. On a date the Claimant cannot now recall the Claimant asked Ms Heard, as a courtesy, if she would move the painting somewhere else.

2.2B.3 The third sentence is denied. The Claimant accepts that Ms Heard’s extreme reaction to his request did continue into the following day. The Claimant did not attempt to set fire to the painting, either on the morning after the alleged incident or at all.

2.B.4 The fourth and fifth sentences are denied. The Claimant did not hit Ms Heard at all, nor did he grab, shake or shove her into a wall.

2.2B.5 The sixth sentence is not admitted; the Claimant does not recall Ms Heard’s sister being asked to come over.

2.2B.6 As to the seventh sentence: it is admitted that the Claimant had an exchange of texts with Ms Heard on 12 March 2013 containing the words quoted therein. The words were used to placate Ms Heard; it is denied that the texts relate to any alleged physical abuse of Ms Heard (which is denied).’

***Incident 3: June 2013 Hicksville***

51. This paragraph reads,

‘In June 2013, Ms Heard and the Claimant were in Hicksville, USA with a group including Raquel Rose Pennington, Kristina Sexton, Kelly Sue, Nathan Holmes, and Ms Heard’s sister. The Claimant was taking drugs. When Kelly Sue hugged or touched Ms Heard, the Claimant became enraged and jealous, grabbed Kelly Sue’s wrist, and threatened and hurt her. The Claimant threw glasses at Ms Heard, smashed glass, ripped Ms Heard’s dress, and caused damage to the cabin in which they were staying. Further details of this incident are contained in the Confidential Schedule to the Re-Amended Defence.’

52. The Claimant replies in paragraph 2.2.B of the RAR,

‘2.2.B.a As to paragraph 8.a.2.A, it is admitted that the Claimant was in Hicksville in or around June 2013, with Ms Heard and some of her friends. It is further admitted that the Claimant took mushrooms and alcohol. Ms Heard and her friends also took mushrooms and alcohol, along with MDMA. The Claimant did not know the girl the Defendants refer to as being called Kelly-Sue. It is admitted that this girl was touching Ms Heard, but it was in an extremely sexual manner. It is denied that the Claimant became enraged, grabbed her wrist, threatened or hurt her in any way.

2.2B.b The Claimant did speak with this girl, to explain that while he understood that she was high, she should stop touching Ms Heard in such a sexual manner. It is denied that the Claimant threw or smashed glasses, or ripped Ms

Heard's dress. The Claimant did knock a wall sconce with his hand in the cabin, following an extended barrage of loud and nasty verbal abuse by Ms Heard. The Claimant approached the person managing the Hicksville site the following morning to address replacing the wall sconce, which was arranged without issue. The Claimant's position as to the new alleged incidents raised in the Confidential Schedule to the Re-Amended Defence are contained in the Confidential Schedule to this Re-Amended Reply.'

***Incident 4: May 2014 incident on private plane flying from Boston to Los Angeles***

53. The Defendants plead in paragraph 8.a.3 and 8.a.4,

'a.3 On or about 24 May 2014, Ms Heard and the Claimant were travelling on a private aeroplane from Boston to Los Angeles. After drinking heavily, the Claimant threw objects at Ms Heard causing her to retreat to a different seat. The Claimant then provocatively pushed a chair at her as she walked by, yelled at her, and taunted her. The Claimant slapped Ms Heard in the face. When Ms Heard stood up, the Claimant kicked her in the back, causing her to fall over. The Claimant threw his boot at her while she was on the ground. The Claimant continued to scream obscenities until he went into the bathroom of the aeroplane and passed out.

a.4 Shortly afterwards, on May 25, the Claimant was apologetic and appalled at his behaviour during the flight, and cried when his assistant told him he had kicked Ms Heard. He sent Ms Heard a text message admitting, "Once again, I find myself in a place of shame and regret. Of course, I am sorry ... I will never do it again ... My illness somehow crept up and grabbed me ... I feel so bad for letting you down."

54. The Claimant replies in the RAR paragraph 2.2.C and 2.2.D,

'2.2.C Save that the first sentence is admitted, paragraph 8a.3 is denied. Specifically it is denied that the Claimant behaved in any of the ways alleged during the flight on 24 May 2014. The Claimant and Ms Heard were seated at the central table in the cabin. As the Claimant drew sketches in his notebook, Ms Heard began to harangue him. This quickly progressed to the continuous verbal barrage on her part, with which the Claimant did not engage but continued sketching. Ms Heard stood up. In the hope of calming her, the Claimant stretched his leg out to playfully tap her on the bottom with his foot, but did not reach her. Ms Heard took great offence at this harmless act, and continued to verbally berate the Claimant. It is denied that the Claimant slapped Ms Heard in the face or at all. Eventually, Stephen Deuters and Jerry Judge intervened to calm Ms Heard down, and the flight continued to LA without incident. The Claimant took himself to the plane's bathroom, locked the door and slept on the floor with a pillow.

2.2.D The first sentence of paragraph 8a.4 is denied: paragraph 2.2C above is repeated. It is admitted that Stephen Deuters had a text exchange with Ms Heard on 25 May 2014 in which Mr Deuters said that the Claimant had cried when he had been told that he "kicked" Ms Heard. However, Mr Deuters



only used this word because it was a word Ms Heard had used and he wished to mollify her as was the Claimant's specific instruction. It was not because the Claimant had in fact "kicked" Ms Heard. As to the second sentence: it is admitted that the Claimant sent Ms Heard a text message containing the words quoted therein, but it is denied that the said text amounted to an admission that the Claimant had behaved in the way alleged.'

***Incident 5: Bahamas August 2014***

55. Paragraph 8.a.5 pleads,

'On or around 17 August 2014 Ms Heard and the Claimant were in the Bahamas on a trip to try to help the Claimant reduce his dependency on prescription painkillers and other drugs. During this trip the Claimant had several manic episodes requiring medical attention, as a result of which Dr David Kipper, the Claimant's private doctor, was flown in to help assist. The Claimant became angry and kicked and pushed Ms Heard to the ground, slapped her with an open hand, and grabbed her by the hair. During this attack, the Claimant kicked a door so hard that it splintered.'

56. The Claimant replies at RAR paragraph 2.2E,

'The first sentence of paragraph a.5 is admitted save that the purpose of the trip was for the Claimant to cure his dependence on painkillers and not other drugs. The second sentence is denied. Ms Heard was only present because she had insisted on going on the trip and taking the place of Nathan, the Claimant's assistant. The Claimant required 24 hour medical care and was frequently sedated because of the physically painful process of withdrawal. The Claimant was being treated by a nurse, Debbie Lloyd, but Ms Heard intervened and withheld medicine from the Claimant causing him to have spasms and withdrawals. As a result, Dr David Kipper was flown in to attend to the Claimant and they returned earlier to Los Angeles than planned. The Claimant then asked Ms Heard to leave him alone and paid for a suite for her and her friends at the Beverley Hills Hotel for five days so he could recover undisturbed. The third and fourth sentences are denied; the Claimant did not assault Ms Heard, nor did he kick or splinter a door. The photograph that Ms. Heard presented, which was purported to be a damaged door from the property in the Bahamas is in fact a door at one of the Claimant's properties in Los Angeles.'

***Incident 6: Los Angeles December 2014***

57. Paragraph 8.a.6 says,

'In Los Angeles on 17 December 2014, after the Claimant had been violent towards Ms Heard the Claimant sent Ms Heard text messages apologizing for his behaviour and calling himself a "fucking savage" and a "lunatic".'

58. The Claimant replied in paragraph 2.2.F of the RAR,

‘As to paragraph 8a.6 without prejudice to the fact that the Defendants have failed to provide any particulars of the alleged violence, it is denied that the Claimant had been violent towards Ms Heard on 17 December 2014 or that the text messages sent on that date were an apology for any alleged violence on the part of the Claimant.’

***Incident 7: Tokyo January 2015***

59. Paragraph 8.a.7 of the RAD says,

‘On or around 25 January 2015 Ms Heard and the Claimant were in a hotel room in Tokyo. The Claimant shoved Ms Heard, slapped her, and grabbed her by her hair. When she tried to stand up, the Claimant muscled her back to the floor. He stood over her and yelled and she cried on the floor.’

60. The Claimant replies at RAR paragraph 2.2G,

‘Save that it is admitted that the Claimant and Ms Heard were in Tokyo on or around 25 January 2015, paragraph 8a.7 is denied.’

***Incident 8: March 2015 Australia***

61. The RAD paragraphs 8.a.8 - 8.a.11 plead,

‘a.8 On or around 3 March 2015 Ms Heard and the Claimant were in Australia. The Claimant subjected Ms Heard to a three-day ordeal of physical assault which left her with injuries including a broken lip, swollen nose, and cuts all over her body. On the first day, there was an argument about the Claimant’s drug use after the Claimant took out a bag of MDMA (ecstasy) and Ms Heard confronted him about his drug-taking. The Claimant argued that MDMA was not on his “not allowed” list, which Ms Heard disputed. The Claimant pushed Ms Heard, slapped her, and shoved her to the ground and slapped her again before she retreated to a locked bedroom. The Claimant stayed up all night taking around eight MDMA (ecstasy) pills and drinking alcohol.

a.9 The following morning, the Claimant became physically abusive towards Ms Heard the Claimant swallowed more pills and chased them down with liquor. Ms Heard, concerned about the interaction of the various drugs the Claimant was taking, asked him what else he had taken that day. The Claimant grabbed Ms Heard by the neck and shoved her against the fridge. He said he could crush her neck and told her how easy it would be to do so. The Claimant held Ms Heard by the hair and hit and slapped her in the face. The Claimant screamed at her and grabbed her by the wrist as she tried to leave the room, then violently dropped it and said words to the effect of “leave anyway”. She left the room. The Claimant barged in and attacked Ms Heard. During the course of the day, the Claimant hit Ms Heard multiple times, shoved and pushed her to the ground, choked her, and spat in her face. The Claimant then handed her a liquor bottle that he was drinking from and asked her, “What are you going to do?” When Ms Heard threw the bottle on the floor, the Claimant responded by throwing unopened glass bottles at her.

a.10 That night, the Claimant shoved Ms Heard into a ping pong table, threw bottles through window panels of a glass door, then grabbed Ms Heard and tore off her nightgown. The Claimant grabbed Ms Heard by her neck and choked her against the refrigerator in the kitchen. The Claimant mocked her, touched and grabbed her by her breasts, and repeatedly shoved her up against the refrigerator. The Claimant then grabbed Ms Heard by the neck and collarbone, slammed her against the countertop, and strangled her. The Claimant shook and hit Ms Heard and banged her head against the countertop. Ms Heard's arms and feet were slashed by the broken glass on the kitchen countertop and floor. She was scared for her life and told the Claimant, "You are hurting and cutting me". The Claimant ignored her and continued to hit her with the back of one closed hand. At one point the Claimant slammed a hard plastic telephone against a wall with his hand until it smashed. Further details of this incident are contained in the Confidential Schedule to the Re-Amended Defence. The following morning, Ms Heard saw that the Claimant had severely injured his finger, cutting off the tip and believed the injury had probably occurred while the Claimant was smashing the telephone. Once Ms Heard had managed to escape from the Claimant, she barricaded herself in a bedroom.

a.11 The following day, Ms Heard found numerous messages that the Claimant had written to her around the house, on the walls, and on her clothes, written in a combination of oil paint and the blood from his finger. The Claimant also urinated all over the house in an attempt to write messages.'

There are further allegations in the Confidential Schedule to the RAD.

62. The Claimant replied at paragraphs 2.2.H and 2.2.I of the RAR,

'2.2H Save that it is admitted that the Claimant and Ms Heard were both in Australia in March 2015, paragraph 8a.8, 8a.9 and 8a.10 are denied. There was only the one incident referred to below:

2.2H.1 Immediately before 8 March 2015, Ms Heard had a conversation with the Claimant's then lawyers, Bloom Hergott who explained the Claimant's intention to enter into a post-nuptial agreement. On 8 March 2015 this caused Ms Heard to go into a prolonged and extreme rage. The Claimant had been retreating from Ms Heard throughout the day, seeking refuge in locked bathrooms in the house. Ultimately, the Claimant, who had not had a drink in over a year, sought to avoid Ms Heard by going to the downstairs bar in the house. She followed him, screaming at him abusively. The Claimant did not grab or hurt Ms Heard in any way. He did not threaten her, hold her by the hair or the neck, slap her or otherwise attack her in any of the ways described in paragraphs 8.a.8 - 8.a.10. The Claimant simply sought to remove himself to other parts of the house consistently throughout the day.

2.2H.2 The Claimant poured himself a number of glasses of vodka and drank them. Ms Heard took a bottle and threw it at the Claimant's head, narrowly missing him. The bottle flew past his head, smashing into the mirror and bottles behind him. The Claimant poured and had another drink of vodka. Ms Heard took another bottle and threw it at the Claimant. The Claimant's hand was resting on the marble top of the bar, the bottle smashed against his finger, severing the top of his finger and

fracturing multiple bones in it. Ms Heard then put a cigarette out on the Claimant's right cheek.

2.2H.3 The Claimant was first taken to the home of one of his security guards, Malcolm Connelly. The Claimant's injury to his finger was assessed and considered to be too serious to be treated there. The Claimant was then taken promptly to hospital for treatment to his hand no later than 4.30pm on 8 March 2015, according to the hospital records.

2.2H.4 For the avoidance of doubt, it is expressly denied that the Claimant took MDMA, that Ms Heard found a bag of MDMA pills or that there was any conversation about MDMA.

2.2H.5 The further incidents set out in the Defendant's Confidential Schedule to the Re-Amended Defence are responded to in the Confidential Schedule to this Re-Amended Reply.

2.2I As to paragraph 8a.11: it is admitted that the Claimant wrote on a mirror and walls in blood and oil paint. The Claimant was in shock. It is denied that the Claimant urinated over the house as alleged.'

***Incident 9: Los Angeles March 2015 (the staircase incident)***

63. Paragraph 8.a.12 of the RAD pleads,

'In March 2015, Ms Heard, her sister and the Claimant were in Los Angeles. After becoming enraged, the Claimant began to destroy personal property in the house, including Ms Heard's belongings in her closet. The Claimant also hit Ms Heard hard and repeatedly. When the Claimant then lunged to hit Ms Heard again, Ms Heard's sister placed herself between them to try to interrupt the fight. The Claimant then turned his attention to Ms Heard's sister, who was standing at the top of a flight of stairs. The Claimant reached out and shoved Ms Heard's sister, causing Ms Heard to believe that the Claimant was about to push her sister down the stairs. The Claimant grabbed Ms Heard by the hair with one hand and hit her repeatedly in the head with the other hand.'

64. The Claimant replies in the RAR paragraph 2.2J,

'Paragraph 8a.12 is denied. It is denied that the Claimant destroyed the personal property as alleged. It is further denied that the Claimant was violent in any way towards Ms Heard or her sister. The Claimant was attempting to leave the house. Ms Heard tried to prevent him, berating him in a rage. The Claimant summoned help from Debbie Lloyd and Travis McGivern (a security guard) prompting them to arrive on the scene to intervene. Ms Heard threw a can of Red Bull at the Claimant, striking him in the back. Ms Heard then threw another object at him, which McGivern blocked from hitting him. Mr McGivern tried to protect the Claimant by standing between him and Ms Heard, but she lunged at him, punching him in the face with a closed fist causing him visible swelling and injury. The Claimant did not retaliate but simply left the premises.'

***Incident 10: Southeast Asia August 2015***

65. RAD paragraph 8.a.13 says,

‘In August 2015, Ms Heard and the Claimant were travelling on the Eastern Oriental train in Southeast Asia. The Claimant picked a fight with Ms Heard, hit her, and pushed her against a wall by grasping her throat and holding her there, causing her to fear for her life.’

66. The Claimant replies at RAR paragraph 2.2K,

‘Save that it is admitted that the Claimant and Ms Heard travelled on the Eastern Oriental train in August 2015, paragraph 8a.13 is denied.’

***Incident 11: Los Angeles November 2015***

67. The RAD pleads at paragraph 8.a.14,

‘On 26 November 2015, Ms Heard and the Claimant were in Los Angeles. The Claimant ripped her shirt and threw her around the room. He threw a wine glass and a heavy glass decanter at her, which missed her. The Claimant also pushed Ms Heard, causing her to fall over the back of a lounge chair and hit her head against a brick wall which resulted in a lump on the back of her head and a split lip.’

68. The Claimant’s reply is at RAR paragraph 2.2L,

‘Save that it is admitted that the Claimant and Ms Heard were in Los Angeles on 26 November 2015 for Thanksgiving, paragraph 8a.14 is denied.’

***Incident 12: Los Angeles December 2015***

69. The RAD paragraphs 8.a.15 - 8.a.20 plead,

‘a.15 On 15 December 2015, Ms Heard and the Claimant were in their penthouse in Los Angeles. The Claimant threw another decanter at her, knocked items around the room and punched the wall. He slapped her hard, grabbed her by her hair, and dragged her through the apartment. In the process, the Claimant pulled large chunks of hair and scalp out of Ms Heard’s head.

a.16 Ms Heard tried to escape the violence by going upstairs. The Claimant followed Ms Heard, hit her in the back of her head, again grabbed her by her hair, then dragged her by her hair up the last few steps. At the top of the stairs, the Claimant shoved her twice, which made her fear that she would fall. Ms Heard told the Claimant that he had broken her wrist in an attempt to get him to stop.

a.17 The Claimant repeatedly hit Ms Heard, knocking her to the floor. Each time Ms Heard was knocked down, she stood back up. The Claimant responded by yelling, “Oh, you think you’re a fucking tough guy?” He then head-butted her in her face, bashing her nose, which immediately began bleeding and caused her searing pain. When a few days later, on 20 December 2015, Ms Heard said to

the Claimant, “You head-butted me”, he responded, “I just gave you a little knock with my head”. The Claimant then said what a “fuck up” he was and left the room. Later during the evening of 15 December 2015, Ms Heard told the Claimant that she wanted to leave him, and that she would call the police if he ever touched her again. When she then began to walk away towards the guest apartment, the Claimant pushed her. He then grabbed her and pulled her from one room to the next, gripping her by her hair.

a.18 By the time the Claimant had dragged Ms Heard into the upstairs office, she had told him she was leaving him as she could not put up with his behaviour any longer. The Claimant reacted by grabbing Ms Heard by her throat, pushing her down to the ground, and punching her in the back of her head. The Claimant grabbed Ms Heard by her hair, slapped her in the face, and screamed at her, “I fucking will kill you – I’ll fucking kill you, you hear me?” or similar words.

a.19 The fight continued onto a bed. The Claimant got on top of Ms Heard and placed his knee on her back and the other foot on the bedframe while repeatedly punching her in her head. The Claimant screamed, “I fucking hate you” over and over again. The bedframe splintered under the weight of the pressure of the Claimant’s boot. The Claimant hit Ms Heard with his closed fists, pushed her face into the mattress, and pulled out chunks of her hair. Ms Heard screamed and feared for her life. She suffered severe headaches and other pain for at least a week after this incident.

a.20 During this incident, the Claimant also wrote a message on the kitchen countertop in gold pen that said, “Why be a fraud? All is such bullshit”.

70. The Claimant replied at RAR at paragraph 2.2M which says,

‘Save that the first sentence is admitted, paragraph 8a.15 and paragraphs 8a.16, 8a.17, 8a.18 and 8.a.19 and 8.a.20 are denied. Ms Heard fabricated the alleged violence and, as part of that pretence, falsely claimed that the blonde hair on the floor was her hair that had been pulled out by the Claimant. The only violence committed on that date was by Ms Heard; she violently attacked the Claimant, leaving him with scratches and swelling around his face. The day after the alleged incident, Ms Heard had no visible injuries on her face.’

***Incident 13: Birthday celebration Los Angeles 21<sup>st</sup> April 2016***

71. The RAD paragraphs 8.b - 8.c say,

‘8.b On 21 April 2016 Ms Heard had a birthday celebration with friends at the couple’s property at 849 South Broadway, Los Angeles (“the South Broadway apartment”). The Claimant arrived, drunk and high on drugs. After the guests had left the Claimant and Ms Heard had a conversation about his absence from the celebration. This deteriorated into an argument. The Claimant threw a magnum sized bottle of champagne at Ms Heard which missed and hit a wall and threw a glass of wine over Ms Heard, which smashed.

8.c The Claimant then grabbed Ms Heard by the shoulders, pushed her onto a bed, and blocked the bedroom door when she tried to leave. The Claimant then

grabbed Ms Heard by the hair and violently shoved her to the floor. The Claimant screamed at and threatened Ms Heard, taunting her to stand up and saying “You really think you’re that tough, huh? Tough guy” and similar words. When she stood up, the Claimant shoved her down again. Ms Heard eventually escaped from the bedroom and walked through the office, at which point the Claimant pushed Ms Heard and grabbed her by the back of her hair. Ms Heard then returned to the bedroom and the Claimant pushed her again. When Ms Heard lifted her arms to defend herself, the Claimant pushed them down and bumped his chest into hers, causing her to fall back onto the bed. Ms Heard tried to walk past the Claimant to leave the bedroom, but he pushed her to the floor. After this he stormed out of the apartment, tossing aside and smashing items as he left. The Claimant left Ms Heard a note which said, “Happy Fucking Birthday”.’

72. The Claimant’s reply is at paragraphs 2.3 – 2.7B of the RAR which say,
- 2.3 ‘The first sentence of paragraph 8b is admitted.
  - 2.4 Save that it is admitted and averred that the Claimant arrived at the party just under two hours late, having been at a meeting with his recently hired business manager and his accountants, the second sentence of paragraph 8b is denied. Earlier that day, the Claimant had told Ms Heard about this important meeting and, during the meeting itself, texted Ms Heard to let her know that he was likely to get out of the meeting far later than the birthday dinner was scheduled to start. The Claimant was not drunk or high on drugs; he was shocked from what he had learnt at the meeting about his business affairs. Despite the Claimant having told Ms Heard the reason why he was unable to make the birthday dinner on time, and had kept her updated by text, Ms Heard was cold towards the Claimant when he arrived.
  - 2.5 As to the third and fourth sentences of paragraph 8b: it is admitted and averred that after the guests had left, Ms Heard began criticising the Claimant for being late. The Claimant got into bed and began reading, and Ms Heard, who had been drinking heavily, became aggressive and violent towards the Claimant, punching him twice in the face as he lay in bed. The Claimant stood up and asked Ms. Heard if she wanted to hit him again. She did so, punching the Claimant twice in the face. The Claimant defended himself by grabbing Ms Heard’s arms to stop her punching him again and told her to stop. He pushed her away from him onto the bed and told her he was leaving and that she should not follow him.
  - 2.6 The Claimant called Sean Bett (a member of his security team, and an 18 year veteran detective of the LA Sheriff’s Department), who was stationed in a penthouse apartment next door, and asked to be driven home, explaining that Ms Heard was “*at it again*”, or words to that effect. The Claimant was taken by Mr Bett to the Claimant’s house in West Hollywood. The Claimant did not toss aside or smash items as he left. Mr Bett took a photograph of the injury to the Claimant’s face.
  - 2.7 The fifth and sixth sentences of paragraph 8b, and paragraph 8c in its entirety are denied, save that, the Claimant cannot recall whether he left a note saying “*Happy fucking Birthday*”. Paragraphs 2.5 and 2.6 above are repeated.
  - 2.7A The following morning, Ms Heard (or possibly one of her friends) defecated in the Claimant’s and Ms Heard’s bed. On 12 May 2016, Ms Heard told the

Estate Manager, Mr Murphy, that leaving the faeces in the Claimant's bed had been "*just a harmless prank*" thereby effectively acknowledging that she had been responsible.

2.7B The Claimant then resolved to divorce Ms Heard.'

***Incident 14: Los Angeles 21<sup>st</sup> May 2016***

73. Paragraphs 8.d – 8.o of the RAD plead,

- 'd. The next time Ms Heard saw the Claimant was on 21 May 2016. He arrived at the South Broadway apartment at around 7.15 pm. He was drunk and high. Ms Heard was present together with Elizabeth Marz, Raquel Rose Pennington and Ms Pennington's fiancé Joshua Drew who were in neighbouring penthouse apartments in the same building at the time of the Claimant's arrival. Ms Pennington and Mr Drew lived in a neighbouring apartment, and Ms Pennington kept a key to the South Broadway apartment.
- e. During a conversation with Ms Heard the Claimant became very angry. Ms Heard tried to calm him down by telephoning one of his trusted employees and asking him to intervene, but this was unsuccessful.
- f. The Claimant became increasingly enraged. Ms Heard became concerned for her safety and texted Ms Pennington who was by now in her apartment next door, asking Ms Pennington to come back over.
- g. The Claimant insisted that Ms Heard call their friend iO Tillet Wright, which Ms Heard attempted to do. The Claimant ripped the phone from Ms Heard's hand and began screaming profanities and insults. The Claimant then tossed the phone away and stormed upstairs. Ms Heard picked it up and iO Tillet Wright yelled over the phone to Ms Heard to get out of the house. After a short period upstairs, The Claimant came back down the stairs then grabbed the phone again and this time threw it at Ms Heard, striking her cheek and eye. Ms Heard sustained an injury to her right eye. Ms Pennington and/or Mr Drew subsequently took photographs of the injury as well as of items which the Claimant smashed.
- h. Ms Heard covered her face and was crying with pain. The Claimant charged at her. He forcibly pulled back her hair and Ms Heard attempted to get up from the sofa. Ms Heard called out "Call 911", hoping this would be heard by iO Tillet Wright who was still on the phone. The Claimant shouted "I hit your eye? I hit your eye, huh? Let me see your eye. Let me see. Let me see your eye. What if I pulled your hair back? Let's see how hard I hit you", pulled Ms Heard's hair, struck Ms Heard and violently grabbed her face. The Claimant started to slap, shake and yank Ms Heard around the room while she continued to scream.
- i. Ms Pennington entered the flat, at which point Ms Heard escaped from the Claimant's grasp and moved to the other side of the room. The Claimant charged at Ms Heard again. Ms Pennington ran between them, extending her arms to separate them and begged the Claimant to stop. The Claimant then grabbed Ms Pennington's arms and continued to yell obscenities.
- j. Ms Heard then retreated to the couch. Ms Pennington came over and covered Ms Heard in a protective posture. The Claimant picked up the magnum size bottle and began drinking out of it and swinging it around, smashing everything he could.
- k. The Claimant then moved closer and closer to Ms Heard, acting in a threatening manner. By this time members of the Claimant's security team, including Jerry



Judge, had entered the flat. Ms Heard yelled at Mr Judge to help her and said that if the Claimant hit her again she would call the police. Mr Judge said, “boss, please”. The Claimant continued screaming and breaking things before leaving the apartment.

- l. As the Claimant walked down the hallway he smashed other items and kicked a hole in a door. He went into an adjoining apartment, which Ms Heard used as an office, painting studio and closet, where Ms Heard heard him smashing further items and screaming.
  - m. Mr Drew and Ms Pennington then took Ms Heard into their apartment to keep her safe from the Claimant.
  - n. Following this incident, Ms Heard filed a petition for the dissolution of her marriage to the Claimant on 23 May 2016 and on 27 May 2016 issued an application for a domestic violence restraining order against the Claimant. She sought an order preventing the Claimant from contacting her, or harassing, attacking, striking, threatening, hitting, following, stalking, molesting, keeping under surveillance, impersonating or blocking her movements, as well as disturbing the peace or destroying her property. She also sought an order requiring the Claimant to attend 52 weeks of anger management courses.
  - o. In support of her application she signed a declaration in which she truthfully described her ordeal at the hands of the Claimant, as set out above, and explained how she was “petrified” that he would return to the South Broadway apartment. She said she required protection from the Claimant. She described her fear that the Claimant would return to “terrorize [her], physically and emotionally” and said that she therefore needed the protection of the court. She said there had also been previous domestic violence incidents, including a severe one in December 2015 when she feared her life was in danger.’
74. The Claimant’s reply is at RAR paragraphs 2.8 – 2.12 which say,

‘2.8 As to paragraph 8d:

- 2.8.1 The first sentence of paragraph 8d is admitted, although in the meantime, Ms Heard repeatedly tried to contact the Claimant directly and through her sister, Whitney Heard, who pleaded for the Claimant to get back in touch with Ms Heard.
- 2.8.2 The second sentence of paragraph 8d is admitted save that the Claimant cannot recall the precise time he arrived at the South Broadway apartment, and accordingly no admission is made as to the time. The Claimant texted Whitney Heard on 21 May 2016 at 7.30 pm in response to a text he received from her at 7.15 pm, suggesting his arrival may have been later than 7.15pm.
- 2.8.3 The building has multiple penthouses, some of which are adjoining. Penthouse 3 is the location Ms Heard alleged the “abuse” occurred; Penthouse 5 is the penthouse across the hallway in which Ms Heard and Ms Pennington claimed Mr Depp “destroyed” items on that evening. Penthouse 4 adjoins Penthouse 3.
- 2.8.4 The third sentence of paragraph 8d is denied. The Claimant was not drunk or high when he arrived. The Claimant came to the South Broadway apartment with two of his security team, Mr Bett and Jerry Judge, to collect some of his belongings from Penthouse 3. The Claimant brought his security guards with him precisely because he

was concerned about what Ms Heard might do. The security guards waited immediately outside the door of Penthouse 3.

- 2.8.5 The fourth sentence of paragraph 8d is denied: to the best of the Claimant's knowledge at the time, Ms Heard was alone in Penthouse 3 when he arrived, although the Claimant now believes Ms Pennington must have been hiding in the Penthouse. The Claimant does not know who Elizabeth Marz is, but observed a woman in Penthouse 5 with Mr Drew.
- 2.8.6 It is admitted that Ms Pennington kept a key to the South Broadway apartment, and that a number of Ms Heard's friends including Ms Pennington and Mr Drew lived in and worked out of the Claimant's penthouse apartments rent-free for approximately 4 years.
- 2.9 Save that no admissions are made as to whether Ms Heard sent a text to Ms Pennington, or as to what iO Tillett Wright said to Ms Heard on the phone as this is outside the Claimant's knowledge, paragraphs 8e to 8l are denied:
- 2.9.1 When the Claimant arrived at Penthouse 3 his security guards waited just outside the door while the Claimant went in for approximately 10 minutes in total. Ms Heard was in the penthouse when the Claimant arrived.
- 2.9.1A The Claimant and Ms Heard called Kevin Murphy from downstairs. The Claimant asked Mr Murphy to repeat to Ms Heard what he had earlier told the Claimant about Ms Heard's admission that the defecation in the bed was "*just a harmless prank*." Mr Murphy repeated that Ms Heard had admitted to him that she was responsible. Ms Heard yelled and swore at Mr Murphy, repeatedly calling him "*a fucking liar*". The Claimant told Ms Heard not to speak to Mr Murphy in that way and that he wanted a divorce. As Ms Heard would not stop screaming, Mr Murphy hung up the phone.
- 2.9.1B The Claimant went upstairs to collect his belongings. Downstairs, Ms Heard telephoned iO Tillett Wright and began talking loudly on the phone in mocking and goading terms about the Claimant and the defecation incident.
- 2.9.2 The Claimant then went back downstairs, and took the phone in order to speak to iO Tillett Wright. The Claimant said to iO Tillett Wright "*you got what you want, you can have her [Ms Heard] ... I don't care, it's over*" or words to that effect. He then tossed the phone onto the sofa and crossed the room away from Ms Heard towards the kitchen which was some 20 feet away from Ms Heard who was sitting on the sofa. The Claimant did not scream profanities or insults. The Claimant did not "storm" upstairs or come back down and grab the phone for a second time.
- 2.9.3 The phone did not hit Ms Heard on the face or elsewhere. Nor did the Claimant pull Ms Heard's hair or strike her, or grab her face, or touch her, or slap, shake and yank Ms Heard around the room or say the words alleged in paragraph 8h. Two police officers who attended the apartment directly after the alleged incident and interviewed Ms Heard twice in good light, saw no injuries or bruising or swelling to Ms Heard's face (or elsewhere). When one of the officers asked Ms Heard what had happened she responded "*nothing*". When Ms Heard was asked if she was hurt, she shook her head. Ms Heard did not say

to the officers that she had been assaulted, and when asked if she had been injured in any way she said she wasn't injured and refused medical treatment. Ms Heard said she did not want to make a police report and there was nothing wrong. Ms Heard had no visible injuries the following day.

- 2.9.4 Both of these officers subsequently confirmed their evidence to this effect in separate depositions, which are attached to this Reply at Annex A. In the premises, if and to the extent that Ms Pennington subsequently took a photograph of Ms Heard's face (as pleaded in paragraph 8g and which is not admitted), it was not a photograph of any "injury" caused by the Claimant. In the subsequent proceedings brought by Ms Heard, hardcopy photographs were put in evidence, but neither the original images nor the associated metadata were produced.
- 2.9.5 As the Claimant was crossing the room away from Ms Heard towards the kitchen, Ms Heard began shouting. Upon hearing Ms Heard shouting, the security guards immediately, i.e. within one or two seconds, opened the door and rushed into Penthouse 3 via the kitchen where the Claimant was standing. Immediately upon opening the door, the security guards observed the Claimant standing in the kitchen area, far away from Ms Heard. Ms Heard was repeatedly screaming "*stop hitting me Johnny*" (or words to that effect) into the phone before and at the moment the guards entered. The Claimant was not hitting Ms Heard. He was standing in the kitchen, approximately 20 feet away from Ms Heard. Just before the security guards entered, Ms Pennington suddenly appeared from behind the Claimant, running past his right side towards Ms Heard shouting "*Don't do it, stop it, leave her alone*" (or words to that effect).
- 2.9.6 Ms Heard was visibly shocked to see the security guards enter, and attempted to feign crying, as did Ms Pennington. Ms Heard changed from the present tense to the past tense and said: "*he hit me with a phone*" and "*that's the last time you hit me Johnny*" and "*You better not hit me again*" (or words to the effect). The Claimant did not move but said: "*What are you talking about? You're crazy. I didn't hit you.*" Ms Heard screamed "*Call 911*" (presumably because iO Tillett Wright was still on the phone). One of the security guards, Mr Judge, said to Claimant: "*Let's just get out of here boss*" and took the Claimant immediately out of the door.
- 2.9.7 There was no interaction between the security guards and Ms Heard. The time between the security guards entering the apartment and leaving with the Claimant was less than a minute. The Claimant did not move from the kitchen from the time the security guards entered to the point he left the penthouse with them. The Claimant did not touch or approach Ms Pennington during the entire time she was there.
- 2.9.8 The Claimant did not smash any items in Penthouse 3, Penthouse 5 or elsewhere, nor did he kick a hole in a door. For the avoidance of doubt: the Claimant did not brandish a magnum sized, or any other sized bottle of wine, or any object at all. The Claimant did not use a bottle to, or otherwise, strike glass, fruit, cutlery, flowers, candles or

any other object. The police officers who attended shortly after the alleged incident, inspected the property and saw no smashed items, broken bottles, broken glass, destroyed cutlery, destroyed flowers, or spilled wine in either Penthouse 3 or 5, (as detailed in their depositions at Annex A). In the premises, if and to the extent that Ms Pennington subsequently took photographs of smashed items (as pleaded in paragraph 8g and which is not admitted), those items were not smashed by the Claimant.

- 2.9.9 After leaving Penthouse 3, the Claimant went with his security guards to check Penthouse 5 where he discovered Mr Drew, a woman (whom he now presumes was Elizabeth Marz) and a dog. It appeared they were using Penthouse 5 to operate their business (some kind of craft beading business). The Claimant ordered them to leave Penthouse 5 which they did and the Claimant and his security then left at about 8.30pm.
- 2.10 Save that the imputation that Ms Heard needed to be kept “safe” from the Claimant is denied, no admissions are made as to paragraph 8m because the Claimant does not know what Ms Heard did after he left Penthouse 3.
- 2.11 As to paragraph 8n: it is admitted that Ms Heard filed a petition for the dissolution of her marriage to the Claimant on 23 May 2016 and issued an application for a domestic violence restraining order against the Claimant on 27 May 2016 but it is denied that this was “following the incident” as described in the Defence. The second and third sentences are admitted.
- 2.12 It is admitted that Ms Heard’s declaration contained the matters set out in paragraph 8o of the Defence as originally filed; it contained none of the other alleged incidents added by amendment. As to the first sentence of that paragraph, the true facts are set out above. As to the second to fourth sentences, the Claimant does not plead further to the second to fourth sentences as it is not necessary to do so.’

#### **What the Claimant must prove to make out his claim in libel**

75. I can take this briefly since by the close of the trial there was little dispute. A libel claimant must, in brief, prove that defamatory material has been published by the defendant of and concerning him and in a form that has a degree of permanence. The common law meaning of ‘defamatory’ has now been supplemented by Defamation Act 2013 s.1. For an individual, such as Mr Depp, s.1(1) provides that

‘(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.’

76. Although the RAD did not admit that the articles which the Defendants had published had had or was likely to have this effect, in her written closing submissions, Ms Wass Q.C. accepted that it had.

#### **Meaning of the articles**

77. I have set out above the meaning which the Claimant alleged the articles bore. Since the Defendants rely on the defence of truth, they, too, were obliged to set out the meaning which they alleged was true and they did so.

78. The principles to be applied in determining the meaning of a publication were summarised by Nicklin J. in *Koutsogiannis v Random House Group Ltd.* [2019] EWHC 48 (QB) at [12].
79. I have already noted that neither party sought to distinguish between the articles. The notable difference was that the original online article in its headline referred to the Claimant as a 'wife beater'. The amended online article and the print version instead referred to the 'assault claim'. However, as I have said, neither party treated the differences as material.
80. As the Defendants submitted in their skeleton argument, it was therefore common ground that the words meant:
- i) The Claimant had committed physical violence against Ms Heard
  - ii) This had caused her to suffer significant injury; and
  - iii) On occasion it caused Ms Heard to fear for her life.
81. It is worth emphasising that the Defendants therefore accepted that the words meant that Mr Depp had done these things. In the vernacular of libel actions, there was no dispute that these were *Chase* level 1 meanings (imputing guilt of the wrongdoing) and not merely *Chase* level 2 (reasonable grounds to suspect) or *Chase* level 3 (grounds to investigate) or some other intermediate meaning.
82. The Defendants analysed the remaining differences between the parties as follows:
- i) Whether the words imputed that the Claimant was guilty of domestic abuse against Ms Heard 'on overwhelming evidence'.
  - ii) Whether the words imputed that the Claimant was constrained to pay no less than £5 million to compensate Ms Heard for the physical violence he had inflicted on her.
  - iii) Whether the words imputed that the Claimant had resulted in him being subjected to a continuing restraining order.
  - iv) Whether the words imputed that due to the Claimant's physical violence against Ms Heard he was not fit to work in the film industry.
83. I agree that this is an accurate distillation of the differences in the competing meanings.
84. Understandably, these subtle differences in meaning did not feature large in oral submissions at trial. So far as they are significant, I accept the Defendants' submissions and I find that the words complained of in the articles had the meanings for which the Defendants contend. Thus,
- i) I agree that the Claimant's reference to 'overwhelming evidence' makes no difference to the meaning which the Defendants must prove. They accept that the words alleged Mr Depp was violent to Ms Heard. If they establish the substantial truth of that sting to the necessary standard of proof, it will be immaterial whether or not the evidence was 'overwhelming'.

- ii) I agree that the published words do not state or suggest that Mr Depp paid Ms Heard £5 million as compensation for his violence. I agree that there is no reference to Ms Heard having sought damages for his violence. Nor would a reasonable reader treat the words as implying that this was why the Claimant had paid her that sum. Amber Heard is described as his 'ex-wife'. I agree that an alternative explanation for the payment would be understood as having been part of a divorce settlement.
- iii) I agree that there is no reference in the articles to the restraining order continuing.
- iv) I also agree that the criticism for casting the Claimant in the 'Fantastic Beasts' film is directed at J.K. Rowling and not at the Claimant. As to this last point the Defendants added in their skeleton argument at paragraph 37 'If the court were to find that this is a comment about the Claimant's fitness to work in the film industry, the Defendants have informed the Claimant that they will rely on the statutory defence of honest opinion under s.3 of the Defamation Act 2013.' Had it been necessary I would have found that such a defence ought to have been pleaded; it was not; and there was no application to amend the RAD to do so. As it is, the issue does not arise because I agree with the Defendants that the words complained of do not include such a comment about the Claimant.

### **The trial**

- 85. As I have explained, the trial was originally scheduled to take place in March 2020. It had to be adjourned, principally because of the coronavirus pandemic. It was re-scheduled for July.
- 86. In July, the pandemic still caused restrictions. In particular, government advice was that in enclosed spaces people should be at least 2 metres apart. That meant that in the court room where I sat (court 13), even with the opening of the public gallery, there was not sufficient space for all the parties and lawyers who wished to attend. For them, an additional court room was made available. Three further additional court rooms were made available for the press and public to attend (all but the parts of the trial which I had decided should be in private). I therefore had the use of five courtrooms in all. Each of these was linked to court 13 so that in the spill over courtrooms what took place in court 13 could be seen and heard. In addition, some of the witnesses gave evidence via video-link from Los Angeles, Chicago, the Bahamas and Australia. I was very grateful to Her Majesty's Court and Tribunal Service for the very considerable efforts which all of this entailed. That was in addition to work undertaken by the parties to arrange for the witnesses to give evidence in this manner. Again, the court is grateful for their assistance.
- 87. The following people gave evidence on the Claimant's behalf: Mr Depp himself (in person), Melissa Saenz (an officer with the Los Angeles Police Department) (via video-link from Los Angeles), Stephen Deuters (formerly the Claimant's personal assistant, presently the European President of his production company, Infinitum Nihil) (in person), Edward White (one of the Claimant's accountants) (via video-link from Los Angeles), Trinity Esparza (the owner of the company which provided concierge services at the Eastern Columbia Building, South Broadway, Los Angeles) (via video-link from Los Angeles), Malcolm Connolly (one of the Claimant's security guards) (in

person), Tara Roberts (the Claimant's estate manager for his property in the Bahamas), (via video-link from the Bahamas), Samantha McMillen (stylist for the Claimant and Ms Heard) (via video-link from Los Angeles), Hilda Vargas (housekeeper for the Claimant) (via video-link from Los Angeles and through a translator), Ben King (a Freelance house manager who worked periodically for the Claimant) (in person), Kevin Murphy (formerly the Claimant's estate or house manager) (via video-link from Chicago), Kate James (formerly Ms Heard's assistant) (via video-link from Los Angeles), Sean Bett (one of the Claimant's security guards) (in person), Starling Jenkins III (one of the Claimant's security guards) (via video-link from Los Angeles), Isaac Barruch (a longstanding friend of the Claimant) (via video-link from Los Angeles), Alejandro Romero (formerly part of the concierge team at the Eastern Columbia Building) (via video link from Los Angeles), Travis McGivern (one of the Claimant's security guards) (via video-link from Los Angeles), Laura Divinere (an interior designer and friend of Ms Heard's) (via video-link from Los Angeles), Katherine Kendall (an actor and activist) (via video link from Los Angeles).

88. In addition, the Claimant had served hearsay notices so as to rely on the following: depositions by Officer Saenz and her colleague Tyler Hadden which had been given in the course of the divorce proceedings and the proceedings for a restraining order in California between the Claimant and Ms Heard (I have already noted that officer Saenz gave oral evidence); and a draft declaration which had been prepared by Jerry Judge in the divorce proceedings (Mr Judge has since died). Hearsay notices had also been served in respect of the declaration of Ms Divinere in the Virginia libel proceedings and on which she had been cross-examined in the course of her evidence. Cornelius Harrell was a colleague of Ms Esparza's. He was due to give evidence, but he was ill and so the Claimant served hearsay notices in respect of his deposition on 28<sup>th</sup> July 2016 in the California divorce proceedings, his deposition on 31<sup>st</sup> January 2019 in the Virginia libel proceedings and his witness statement in these proceedings dated 12<sup>th</sup> December 2019.
89. The Claimant had served witness statements from various other people whom he did not call to give evidence. They included his former partner, Vanessa Paradis, and an earlier girlfriend, Winona Ryder. Ms Wass indicated that, had they been called, she would have wished to cross examine them as to their statements, but that was immaterial. Since the Claimant had not called them, he was unable to rely on the evidence they might have given (see CPR r.32.5(1)). The Claimant having chosen not to call these witnesses, it would have been open to the Defendants to put in their witness statements as hearsay evidence (see r.32.5(5)) but that was not something which the Defendants wished to do.
90. A separate issue arose in consequence of the Claimant's decision not to call these witnesses. PA Media (formerly the Press Association) applied for copies of the witness statements of Ms Paradis and Ms Ryder. By r.32.13(1),
- ‘A witness statement which stands as the evidence in chief is open to inspection during the course of the trial unless the court orders otherwise.’
91. However, that rule was not engaged. Since the witnesses had not been called, their witness statement did not stand as their evidence in chief. However, Sam Tobin, on behalf of PA Media, submitted that the statements had been referred in open court. On that basis, it was argued, they should be open to inspection. Neither Mr Sherborne nor Ms Wass opposed the application and neither of them asked me to distinguish between

those paragraphs which had been read out and those which had not. Accordingly, I acceded to the request and copies of those witness statements were provided.

92. The Defendants called the following witnesses: Amber Heard (in person); Josh Drew (who was the fiancé of Ms Heard's friend Raquel Pennington, who later married Ms Pennington but who is now divorced from her. In 2016 he and Ms Pennington lived in Penthouse 1 in the Eastern Columbia Building) (via video-link from Los Angeles); Melanie Inglessis (who is a professional makeup artist) via video-link from Los Angeles); Whitney Henriquez (who is the younger sister of Amber Heard) (in person); Kristina Sexton (a friend of Amber Heard) (via video-link from Australia); Raquel Pennington (a friend of Amber Heard) (via video-link from Los Angeles); iO Tillett Wright (a friend of Amber Heard) (via video-link from Los Angeles). There were 14 days of evidence and two further days of closing submissions.
93. I also had some 13 lever arch files of documents. There were many late additions to the bundles which explains why finding the correct document was sometimes challenging. Where it is necessary to give a reference to a document it is as bundle number/tab number/page number. There are multiple copies of some documents. Where this is the case, I give a reference to only one.
94. I was greatly assisted by, and am very grateful for, the oral and written submissions by counsel for the Claimant (Ms Laws QC, Mr Sherborne and Ms Wilson) and for the Defendants (Ms Wass QC, Mr Wolanski QC and Ms Hamer). The solicitors for the Claimant (Schillings) and for the Defendants (Simons Muirhead and Burton) also did a formidable job, not least of managing the voluminous and regularly increasing number of documents. I am very grateful to them as well.

#### **An introduction to the relationship of the Claimant and Ms Heard**

95. The Claimant and Ms Heard met in 2009. He was making a film called 'The Rum Diary' which was based on a book by Hunter S. Thompson, who was a writer he very much admired. Consequently, the film was a special project for the Claimant. He had casting approval for the film. Ms Heard applied successfully for a part in the film. At the time she was 23. The Claimant at that time was 46.
96. At that stage, the Claimant was in a relationship with Vanessa Paradis with whom he had two children, Lily-Rose (born on 27<sup>th</sup> May 1999) and her younger brother, Jack. Before Ms Paradis and Mr Depp began their relationship, Mr Depp was very friendly with Winona Ryder. When he was with Ms Ryder he had a tattoo on his arm saying 'Winona forever'. After he and Ms Ryder separated he had changed the tattoo to read 'Wino forever'.
97. When Ms Heard met Mr Depp, she was then in a relationship with another woman, called Tasya van Ree, who was an artist.
98. In their correspondence with each other, Ms Heard would sometimes refer to Mr Depp as 'Steve' and he would call her 'Slim'. That was an allusion to characters in the film 'To Have and Have Not' starring Humphrey Bogart and Lauren Bacall. The character played by Bogart was about twice the age of the character played by Bacall and that was the reason that these nicknames were chosen.



99. Mr Depp described a troubled childhood. His home life, he said, was not stable or safe. He had been beaten as a child and for trivial matters. He said that had turned him against violence of any sort, but he was prepared for violence if he thought something was unjust or someone had been physically attacked. He said in his trial witness statement,
- ‘I am from a Southern family and rules were instilled in me from birth by my mother: you would be a southern gentleman or it would be beaten into you. ... Integrity, dignity, honesty and respect for women: these were the characteristics that I was always expected to have.’
100. His mother had been taking ‘nerve pills’ and on one occasion he had taken one. He found that it calmed his pain. He accepted that he had had a history of using or over-using alcohol and controlled drugs which included cocaine, ecstasy (MDMA), magic mushrooms and cannabis as well as certain prescribed drugs (notably Oxycodone, Roxicodone or Roxies). He much admired some of those who had extolled the virtues of psychedelic drugs of whom Hunter S. Thompson was one. Keith Richards and the musician Marilyn Manson were others with whom he was close friends. Another friend with whom he shared an interest in drugs was Paul Bettany. They dabbled in cocaine, alcohol, Xanax and Adderall together. One of the Claimant’s doctors was Dr Kipper. In an email to the Claimant’s sister, Christi Dembrowski, of 18<sup>th</sup> August 2014, Dr Kipper said of the Claimant (file 4/126/F745) he
- ‘actually romanticizes the entire drug culture and has no accountability for his behaviours.’
101. Ms Heard also gave an account of a troubled home life. She said that both her parents had been alcoholics. She said that her father (David Heard) had been violent to her mother (Paige). Paige died on 1<sup>st</sup> April 2020. Amber Heard’s younger sister was Whitney Heard (now Whitney Henriquez).
102. When the Claimant and Ms Heard were first together, Ms Heard still had a home of her own on Orange Avenue, Los Angeles where she lived with her sister, Whitney. Later when Mr Depp and Ms Heard lived together their home was one of the penthouses (PH3) which Mr Depp owned in a building called ‘Eastern Columbia’ in downtown Los Angeles.
103. Mr Depp owned five penthouses in the Eastern Columbia Building. He allowed Ms Heard’s sister, Whitney Henriquez, to live for periods in one of the others. Ms Heard’s friend Raquel (‘Rocky’) Pennington came to live in another. She shared that penthouse with her then fiancé, Josh Drew. Ms Pennington and Mr Drew later married but they are now divorced. Isaac Barruch, a long-standing friend of the Claimant’s, lived in another of Mr Depp’s penthouses in the Eastern Columbia Building. None of these were charged rent by Mr Depp for the use of the penthouses.
104. Mr Depp also owned another property or properties in Los Angeles on Sweetzer Avenue, West Hollywood (‘Sweetzer’).
105. Mr Depp and Ms Henriquez were on good terms with each other. He sometimes called her ‘sis’ which reflected that he felt she was part of his family.

106. Mr Depp and Ms Heard were married in February 2015. They separated in May 2016 in circumstances which I shall have to discuss. On 27<sup>th</sup> May 2016 Ms Heard obtained a TRO against Mr Depp. Mr Depp was not present or represented at that hearing. It was what in England would be referred to as an order obtained after hearing only from Ms Heard's lawyer (although on notice to Mr Depp's lawyer, who filed a response on 26<sup>th</sup> May 2016). A hearing date at which Mr Depp would have the opportunity to be heard was originally fixed for 17<sup>th</sup> June 2016. On 16<sup>th</sup> June 2016 that hearing was adjourned to 15<sup>th</sup> August 2016. That hearing never took place because the couple reached agreement on all outstanding matters that day or the following day (16<sup>th</sup> August 2016). One of the terms of the settlement was that the Restraining Order proceedings would be 'dismissed with prejudice'. Ms Heard and Mr Depp are now divorced. Before the marriage they did not have an agreement as to the division of their financial affairs if there was a divorce (a 'pre-nuptial agreement'), nor did they make one afterwards (a 'post-nuptial agreement') although as part of their divorce settlement, as Edward White set out in his second witness statement, Ms Heard received \$7 million. She was also relieved of any liability incurred with Mr Depp jointly and a payment of about \$500,000 was made for her legal fees.

**The approach I will adopt to the fact-finding exercise**

107. I have already explained the law as to the burden and standard of proof. I will, of course, apply those to my task. I shall start with some of the general submissions made by Mr Sherborne which transcended the individual incidents and which he submitted should lead me not to believe Ms Heard's account of domestic violence. I shall consider the alleged past incidents of violence by Mr Depp to people other than Ms Heard (as relied on by Ms Wass) and the alleged past incidents of violence by Ms Heard (as relied upon by Ms Laws and Mr Sherborne other than those parts of the pleaded incidents). I shall then consider individually each of the incidents on which the Defendants rely. I shall then step back and consider whether any different conclusion is required when the evidence is considered in a more global sense.
108. There is a great deal of detail in this case, but I must not lose sight of the overall purpose of the task which is to decide whether the Defendants have proved the substantial truth of their articles in the meanings which I have found them to bear.

**The Claimant's challenge to the credibility of Ms Heard independent of particular allegations of abuse**

***i) Alleged lie to the Department of Homeland Security regarding the status of Savannah McMillan***

109. On 28<sup>th</sup> September 2014 a letter was written to the Department of Homeland Security in these terms,

'My name is Amber Heard. I am a proud lawful American citizen.

I am writing this letter in response to a fraudulent report made against my English friend, Savannah Mcmillen. It has come to my awareness that while spending time visiting me in the United States someone made a false claim against her stating, without any proof or corroboration, that she was unlawfully working for me.

As her friend, I can say truthfully and unequivocally that this allegation is entirely false. It was clearly made from the safety of anonymity in order to satisfy a personal vendetta. This allegation absolutely bears no merit, worth or truth.

I would like to go on record as saying that Savannah McMillen is a personal friend and to my knowledge has never worked unlawfully or otherwise in the United States. Or for me. I regret that the precious time of our immigration agencies has been bastardized on such a petty personal matter, made out of malice, not truth.

I would like to request that this fraudulent report be removed pending the confirmation of its baseless and false stance. I expect the same standards that we hold as pillars in our great justice system, be allied [sic] to immigration policies, as they serve at the forefront in representing the United States and her values. Since I expect further investigation to reveal the statements made above as true, I hope that your agency will see to it that no further inconvenience will befall my friend in her attempts to continue discovering our beautiful country.

Thank you for your time,

Sincerely,

Amber Heard'

110. This letter was said to be a lie because, in truth, Savannah McMillan was working in the United States as Ms Heard's assistant. *Savannah* McMillan is not to be confused with *Samantha* McMillen who was a witness for the Claimant. In this section I shall refer to Savannah without, of course, intending any disrespect to Ms McMillan.
111. Ms Heard's response was that Savannah had worked as her assistant during filming in the U.K., although she had then been hired by the production company for the film she had then been making, 'London Fields', not by Ms Heard herself. Savannah was similarly hired by other production companies for films that Ms Heard was making outside the USA. Savannah had accompanied Ms Heard to the USA, but she did so as Ms Heard's friend, not as an employee. Savannah had been detained by US immigration authorities on her arrival in the USA and it was this experience which led to the letter being written to the Department of Homeland Security. Ms Heard said that she had not drafted the letter, but she had signed it because she agreed that its substance was correct. There was no lie.
112. Kate James had been Ms Heard's assistant in the USA. Ms James' witness statement said that the letter from Ms Heard 'falsely claimed that Savannah was just a friend, and not an employee.' I am afraid that I did not find Ms James a satisfactory witness. She had been dismissed by Ms Heard in February 2015 and the circumstances of her termination still appeared to be a cause of rancour with Ms James. She did exhibit to her witness statement a cheque for \$1625 made out to 'Savannah McMillian'. In her 5<sup>th</sup> witness statement, Ms Heard said,

'Since Savannah did not have much money, I occasionally gave her money. I would sometimes refer to the money I gave to Savannah as "payments" to minimize the discomfort and embarrassment to Savannah for receiving this money from me. The payments were partly to cover expenses for both of us, like shopping and errands.

The money I gave Savannah was not related to any amounts I paid to Kate James as my Assistant.’

113. I accept Ms Heard’s evidence in this regard. I do not consider that the letter to Homeland Security was a lie. Erin Boerum acted as Ms Heard’s nurse on occasions. On 21<sup>st</sup> April 2016 Ms Heard had a dinner to celebrate her 30<sup>th</sup> birthday (the following day). Ms. Boerum was one of the guests. In a note which she wrote of the occasion, Ms Boerum referred to arriving with ‘client’s UK assistant, Savannah’. However, Ms Boerum did not give evidence before me and there is nothing in the documentation to explain the source of her information that Savannah was then acting as Ms Heard’s assistant (if indeed Ms Boerum intended to convey that by her note). In cross-examination, Ms Heard said that Savannah was ‘on and off her assistant’, but not in the USA. Ms Boerum’s note does not alter my conclusion that Ms Heard did not lie to the Department of Homeland Security. Nor do the emails which Kevin Murphy exhibits to his second witness statement, none of which demonstrate that Savannah was employed by, or for the benefit of, Ms Heard while Savannah was in the USA. The allegation that she did, therefore, has no bearing on whether Ms Heard is to be believed in relation to her allegations that she was assaulted by Mr Depp.
114. A subsidiary issue in this regard ventilated at trial was whether Savannah had drafted the letter (as Ms Heard said in her evidence). Mr Sherborne in his closing speech observed that the letter contained two different spellings of her surname: Mcmillen in the second paragraph; and McMillen in the fourth paragraph. Mr Sherborne submitted that Savannah was unlikely to have made these errors, both of which were inconsistent with the spelling of her surname in the email address which she appeared to use. Mr Sherborne further observed that Ms Heard had spelt Savannah’s surname as ‘McMillen’ in her affidavit of 17<sup>th</sup> April 2016 in relation to her prosecution in Australia in relation to bringing the dogs into that country (see further below).
115. While there may be some force in Mr Sherborne’s observations, in my view it takes the matter no further. Whoever had drafted the letter, it had been signed by Ms Heard who thereby accepted responsibility for its contents as she accepted in her evidence. When Ms Heard was cross-examined the discrepancy in the spelling of Savannah’s surname was not put to her (in cross-examination Ms Heard agreed that the language of the letter was overblown. She said that ‘The language was Savannah’s’. She said, ‘I signed it because it represented the truth.’). In any case, the identity of the drafter of the letter does not assist in resolving whether the Department of Homeland Security was lied to by Ms Heard. Besides, the drafter of the letter was not the only person to be challenged by the spelling of Savannah’s surname. Whoever wrote the name of the payee on the cheque which Ms James exhibits has given her surname as ‘McMillian’, another error.

***ii) Conviction in Australia for knowingly making a false declaration regarding the importation of dogs to Australia***

116. In March 2015 Mr Depp had been filming one of the ‘Pirates of the Caribbean’ films in Australia. Ms Heard had joined him. This was the occasion of incident 8 in the RAD. It was also the occasion when Mr Depp’s finger was injured. As a result of the injury to Mr Depp, the filming was disrupted. It was due to start again in April 2015.
117. At that stage, Ms Heard was making a film in the UK and then had to attend a promotional event for another film in New York. She flew from New York to Los

Angeles where she met the Claimant. The two of them then flew by a private charter plane to Brisbane, Australia on 21<sup>st</sup> April 2015. They were accompanied by two dogs: Pistol and Boo. Pistol belonged to Ms Heard; Boo had originally belonged to Mr Depp's mother but was by then owned by him.

118. The plane was met at Brisbane Airport by quarantine and customs officers. Ms Heard completed an incoming passenger card which included the question, 'Are you bringing into Australia animals, parts of animals etc?'. Ms Heard answered this question 'no'. That answer was false, since Ms Heard was accompanied by Pistol and Boo. She knew that it was false since she knew that she was accompanied by the dogs.
119. In May 2015 there was media coverage of the presence of the dogs in Australia. On 13<sup>th</sup> May 2015 the dogs were ordered into quarantine and an order was made that they be re-exported within 72 hours. On 15<sup>th</sup> May 2015 the dogs were taken out of Australia.
120. On or about 8<sup>th</sup> July 2015 Ms Heard was charged with three offences. I do not have the details of two of them, but the third offence was under s.137.2(1) of the Commonwealth Criminal Code 1995 because she had produced a document, namely an Incoming Passenger Card, to Cara Burgess, an Australian Customs and Border Protection Officer, knowing that the said document was false.
121. On 13<sup>th</sup> October 2015 Ms Heard provided an unsworn statement to the prosecution regarding her actions and state of mind. On 3<sup>rd</sup> November 2015 there was an indication that she would plead guilty to the charge of knowingly making a false statement, on the basis that the other two charges were discontinued. That was acceptable to the prosecution and the court therefore treated the guilty plea as timely.
122. On 17<sup>th</sup> April 2016 Ms Heard swore an affidavit which, *inter alia*, set out her belief that the necessary documentation for the dogs' entry into Australia had been provided separately and, accordingly, it was not necessary for her to declare their presence at the customs entry.
123. Ms Heard was dealt with for this offence by B. Callaghan, sitting at Southport Magistrates' Court on 18<sup>th</sup> April 2016. A report in *The Guardian* for 18<sup>th</sup> April 2016 said that the Magistrate was Bernadette Callaghan.
124. In the course of her sentencing remarks, Ms Callaghan said this,

'at the time of Ms Heard's departure for Australia in April 2015, Ms Heard was unaware the documentation for the dogs' importation into Australia had not been completed. She relied on staff to organise this, along with other travel arrangements. Just prior to Ms Heard leaving for Australia, her assistant, one of the staff responsible for that documentation had been dismissed from her employment in acrimonious circumstances [This was a reference to Ms James]. There were difficulties associated with this, and that had repercussions on the preparation of the documentation concerning the importation of the dogs.

Further to this, Ms Heard had a belief that, at the time of arriving - that the form she filled out did not cover her pets. She believed the relevant paperwork had been completed for the dogs and provided to the Australian authorities separately. I

accept that she did not deliberately set out to deceive the Australian authorities. I also accept that it's not a question of a person believing she's above the law.

In pleading guilty, she accepts responsibility for the offence. Her actions indicate that she is truly remorseful for incorrectly filling out that form. ...

First of all, I say at the outset that this is not a trivial offence. Ms Heard comes before the court without any criminal history. References provided speak of her generosity and kindness as I've already spoken about. She's employed as an actor, and this requires a great deal of international travel. Sometimes she travels with her dogs, sometimes not. She's always complied with the various rules and regulations concerning such travel ...

There's genuine remorse and a high degree of cooperation. Ms Heard has returned to this country to have the matter dealt with, and her and her husband have provided a video with regards to not making a false declaration. This video no doubt will be quite useful for the department.'

125. Ms Callaghan dealt with the offence by finding that it was sufficient to require Ms Heard to enter into a recognisance supported by a security of \$1000 to be of good behaviour for one month.
126. The offence to which Ms Heard pleaded guilty involved knowingly making a false statement. As Ms Callaghan said, that was not a trivial offence, but its nature is so far removed from the evidence which Ms Heard gave in this trial that its relevance for her credibility is marginal at most.

***iii) Allegation that Ms Heard sought to procure false evidence by Kevin Murphy and Kate James for the purpose the criminal proceedings in Australia***

127. Of potentially greater significance is the suggestion advanced by the Claimant that Ms Heard was willing to solicit Kate James to give untruthful evidence, and put pressure on Kevin Murphy to give untruthful evidence in her support. I will take these separately.
128. I take first the allegation regarding Kate James. Mr Sherborne relies on a series of emails between (a) Ms Heard (b) Karl Austen, Ms Heard's entertainment lawyer, and (c) Marty Singer, one of Mr Depp's American lawyers.
129. On 9<sup>th</sup> October 2015 Ms Heard wrote to Karl Martin and Marty Singer in the course of which she said,

'The only thing we are missing is evidence of the process being initiated however not completed and therefore the dogs weren't taking [sic] on the trip. That is obviously harder to prove since it involves documenting something that DIDN'T happen. However, since I know we attempted to bring them at least once before the Australian trip, I can ask Kate to include that in her statement if that would be helpful?'

130. On the same day Mr Singer wrote,

'That would be great.'

131. On 11<sup>th</sup> October 2015, Ms Heard wrote to Mr Murphy. She forwarded the email chain above (It may be that Ms Heard also forwarded the emails from Marty Singer – below, as well) and said,
- ‘Kevin, what do you think???? Could you possibly reach out for us?? Do you think you could get her to do it?’
132. On the same day, Mr Singer wrote an email to Ms Heard which included the following,
- ‘I don’t know what your relationship with her [Kate James] is at this time since you fired her. You have to be careful that she will cooperate and will not go public if you ask her not to be truthful.’
133. Ms Heard responded the same day saying,
- ‘Marty – I’m waiting to hear back from you before I reach out to Kevin to liaise with Kate.’
134. I had no evidence that Ms James was ever, in the event, actually asked to sign a statement of any kind and, in any event, no evidence that she was asked to sign an untruthful statement. Mr Murphy said in his re-examination that he had refused to ask Ms James to make a statement. In any event, as Ms Wass submitted, the suggestion that Ms James might be asked to make a statement that was not truthful came from Marty Singer.
135. As I have said, Marty Singer was one of Mr Depp’s American lawyers. Mr Sherborne submitted that, for this purpose, he was representing Ms Heard. It was, after all, Ms Heard who was prosecuted in Australia, not Mr Depp. Ms Heard’s account was that she was willing to accept responsibility for the offence because a conviction of Mr Depp might prejudice his future ability to gain a visa for Australia. While it was not open to either of them to decide unilaterally who was to be prosecuted, it meant that Mr Depp had a very real interest in the prosecution and there was also a very good reason why Marty Singer should continue to be involved as Mr Depp’s lawyer.
136. I accept Ms Heard’s evidence in this regard. It is also supported by the video which Mr Depp and Ms Heard jointly made in which they apologised and underlined the importance of observing Australian restrictions on the importation of animals. As I have shown, Ms Callaghan was influenced by this video to sentence Ms Heard in the way that she did.
137. A further piece of evidence in this regard is a deposition which was given by Mr Depp on 12<sup>th</sup> December 2018 in the course of litigation in Los Angeles in a case which he and others brought against Bloom Hergott and others. Mr Depp said (see File 3/72(a)/F6.7),
- ‘Jake was involved, Marty Singer was involved. I also went to a couple of friends who had connections in the sort of upper echelon of Australian government and I was – ultimately that was the - - I was paying the lawyer lawyers here - - I was paying lawyers in Australia to deal with the case, and got it whittled down - - she was facing two misdemeanours or something.’

138. A yet further indication that Mr Depp felt personally involved, although it was not him who was being prosecuted, is a text which he sent to Ms Heard on 20<sup>th</sup> April 2016 (two days after Ms Callaghan's decision), in which he said (see file 6 /119/F697.145),

'... I've been by your side, for every drama, illness and ugly situation.!!! How do you think the goddam felony charges went away???'

139. I turn to Mr Murphy. He did sign a statement for the Australian proceedings, on 13<sup>th</sup> October 2015. In the course of this he said,

'Although Mrs Depp [Ms Heard] initially instructed me to make arrangements for the dogs to travel to Australia in April 2015, it was Ms James, an Australian citizen, who assumed the primary responsibility for preparing the necessary travel-related paperwork to permit the dogs to travel with Mrs Depp to Australia. However, prior to the trip to Australia, Mrs Depp terminated Ms James' employment. Nevertheless, I was under the impression that prior to her termination, Ms James had arranged for all necessary travel-related paperwork for the dogs to legally travel to Australia. Ms James never indicated otherwise.'

He added,

'Per the household policy, Mr Depp and Mrs Depp would not have travelled with the dogs to Australia if they didn't believe all the necessary travel-related paperwork had been completed and approved.'

140. In his second witness statement for the present proceedings, dated 23<sup>rd</sup> June 2020, Mr Murphy says that his declaration contained statements 'that were not entirely true'. He says that it was untrue that Ms James had responsibility for the paperwork and had not completed it and that this was the reason why Ms Heard travelled with the dogs to Australia without the necessary paperwork. Mr Murphy added,

'The true position is that I was responsible for the paperwork which I could not obtain in time and that Ms Heard was fully aware of this in advance of travelling to Australia with the dogs.'

141. Mr Murphy says that Ms Heard was aware of the difficulties regarding the dogs' paperwork. He exhibits a series of emails between him and Ms Heard from 28<sup>th</sup> March 2015 – 1<sup>st</sup> April 2015. On 31<sup>st</sup> March 2015 Mr Murphy emailed Ms Heard to ask whether he should discontinue the travel paper process. He had said earlier that the dogs would not be allowed 'to fly commercial in the passenger compartment to Australia' and he had asked whether Ms Heard would be content for them to fly as cargo. Ms Heard had said she was not willing to let them fly cargo to Australia. The last email in the chain was from Ms Heard who wrote on 1<sup>st</sup> April 2015,

'Yeah [presumably discontinue the travel paper process] – unless there's another way to get them there or get them on the plane with J. I can't send them cargo. It's too dangerous.'

142. Mr Murphy said that he made his untrue statement for the Australian proceedings because of pressure that Ms Heard put him under. He said that when he expressed discomfort at making a false statement Ms Heard had said to him,



‘Well I want your help on this .... I wouldn’t want you to have a problem with your job.’

143. Mr Murphy says that he was relieved when the Australian proceedings were ‘settled’ without him having to go to Australia to give false evidence in accordance with his witness statement. He says that he nonetheless felt uncomfortable about the statement which he had made. After Ms Heard filed for a divorce from Mr Depp, Mr Murphy instructed a Los Angeles law firm Huang Ybarra Singer and May to seek advice on retracting his declaration in the Australian proceedings. Mr Murphy says further,

‘Through [the Los Angeles law firm], I then retained an Australian barrister, Robert Ranken, on 14 July 2016 for specialist advice concerning my potential criminal liability. I sought advice as to the implications in Australia arising from the false statement provided by me in a statutory declaration tendered in criminal proceedings in Queensland, the prospect of avoiding prosecution by making a disclosure as to the falsity of such statements and the steps I would need to take to make a voluntary disclosure. I very much wanted to understand the process and to explain the pressure that I had been under to sign a statement that Ms Heard knew to be false.’

144. Mr Murphy exhibits a letter from the Los Angeles law firm confirming that they had represented him in 2016 in connection with

‘Johnny Depp and Amber Heard’s criminal case then-pending in Australia. That represented [sic] concluded in August 2016.’

The letter says nothing about the nature of the advice which was given to Mr Murphy.

145. In her 5<sup>th</sup> witness statement made on 26<sup>th</sup> June 2020, Ms Heard says:
- i) Mr Depp wanted Pistol and Boo to come to Australia in April 2015. He knew they were on the plane with him and Ms Heard. It was not true, as Mr Murphy had said, that he wanted the dogs to remain in Los Angeles.
  - ii) Mr Depp’s staff were responsible for arranging the paperwork for the trip, including for the dogs.
  - iii) Mr Depp filled out the same form as had Ms Heard on entry into Australia at Brisbane.
  - iv) Mr Depp was anxious that he should not be held personally responsible for importing the dogs because of the implications which this might have for his ability in the future to obtain a visa for Australia.
  - v) Ms Heard pleaded guilty to the charge of knowingly making a false declaration.
  - vi) It was not true that she asked Kate James or Kevin Murphy to lie for her. In any event, it would make no sense, because of her plea of guilty. It was untrue that she had threatened Mr Murphy with the loss of his job, if he did not make a false statement for the Australian proceedings.

- vii) Mr Depp's lawyer, Marty Singer, was always his lawyer and he and Mr Depp 'called the shots'.
146. In her evidence Ms Heard was asked whether she agreed that she had been told that she could not take the dogs into Australia. She said that she had been told many things and it had been confusing. Her experience had been that if Mr Depp wanted something it could happen. She had been filming in London. She then went briefly to New York. She had only been in Los Angeles for a few hours before joining Mr Depp, members of his staff and the two dogs on the chartered plane to Australia. She said, 'Before I left for Australia, I thought it had all been taken care of.' She was travelling to Australia to be with Mr Depp while he continued with his film. Mr Depp was the boss. It was his plane, his staff and his crew. There was no attempt to conceal the dogs. She had not sought to get Mr Murphy to make an untrue statement. Mr Murphy did have primary responsibility for seeing to the necessary travel arrangements, although Kate James was also involved until she was dismissed in February 2015. Ms Heard said she had pled guilty to the one remaining charge.
147. I do not accept that Ms Heard sought to pressurise Mr Murphy into making a false statement for the Australian proceedings.
- i) Although there had been email correspondence between Mr Murphy and Ms Heard regarding the difficulties of taking the dogs to Australia, the last in that chain had been 1<sup>st</sup> April 2015, some 20 days before the flight to Australia.
- ii) I accept the evidence of Ms Heard that the journey to Australia was essentially for Mr Depp's benefit. His staff were responsible for making the travel arrangements. She herself was in Los Angeles for only a short time before the plane took off with her, Mr Depp and the dogs. In those circumstances, I accept her evidence that she believed whatever difficulties there might have been had been overcome. I do not accept Mr Sherborne's submission that it was apparent from Ms Heard's cross-examination on the topic (Transcript Day 12, not Day 14 pp.1901-4) that she did know the difficulties remained unresolved. Mr Sherborne refers also to correspondence between Mr Murphy and Mr Deuters, but there was no evidence that Ms Heard was party to these communications.
- iii) In his evidence in this trial, Mr Murphy accepted that he did have primary responsibility for making the travel arrangements.
- iv) On his own account, Mr Murphy was prepared to give false evidence to the Australian court. That is not an encouraging starting point for the submission that his evidence is now to be believed.
- v) Mr Murphy did not mention in his first statement in these proceedings, nor in his declaration of 13<sup>th</sup> May 2019 in the Virginia libel proceedings, that he had actually made a statement in the Australian proceedings brought against Ms Heard.
- vi) Mr Murphy says that he was pressurised by Ms Heard into making a false statement, however he felt able to refuse to ask Kate James to make a statement.

- vii) Mr Murphy was an enthusiastic supporter of Mr Depp. As he wrote in an email to Mr Depp on 30<sup>th</sup> May 2019,

‘I’ll always have your back ... anytime/anywhere ... Continued relentless exposure of the fraud and the scammer bandits is key ...’

Mr Depp replied expressing appreciation for Mr Murphy’s loyalty. He said on the same date,

‘And bless your heart for being such a warrior for me and for your passion to join me in this battle!!!! I will never forget it ... It speaks volumes about who you are ... And I’ve always known who you are, pal ...’

- viii) I do accept that it is not sufficient for Ms Heard to refer to her plea of guilty to the single charge. Mr Murphy’s statement in the Australian proceedings was dated 13<sup>th</sup> October 2015. The magistrate said that it was on 3<sup>rd</sup> November 2015 that Ms Heard had indicated a willingness to plead guilty to this charge if the other two charges were discontinued. Mr Murphy’s evidence to the Australian court together with the affidavit of Ms Heard were plainly material in the magistrate taking the lenient course that she did.

- ix) The letter from the Los Angeles firm of attorneys is bland and tells me nothing of the advice which they gave to Mr Murphy. Such advice would, of course, be privileged but, at least as far as the present proceedings are concerned, such privilege could be waived.

148. Accordingly, I do not consider that the allegations regarding either Ms James or Mr Murphy impinge on the credibility of Ms Heard.

***iv) Allegation that Ms Heard tried to ‘grease’ a vet to procure necessary travel documentation for the dogs***

149. Ms Kate James exhibits to her witness statement an email which she received from Ms Heard dated 21<sup>st</sup> September 2013 which said,

‘Can you maybe help Kevin procure a slightly altered health doc that has their shots recorded as two days before so they can all leave together on the 25<sup>th</sup>?? Do we have a vet we could grease? Connection?’

150. This did concern the dogs, although it was a separate occasion than the entry into Australia in April 2015.

151. In her 5<sup>th</sup> witness statement, Ms Heard says of this,

‘I think this was about Johnny wanting Boo to have the shots to be able to travel - “grease” is Johnny’s language, not mine and, although I cannot specifically remember, I would likely have written it at Johnny’s request.’

152. Ms Heard maintained that account in her cross-examination.

153. In my view, this was a tangential issue. Whether or not the suggestion of ‘greasing’ a vet originated with Mr Depp, I take Ms Heard’s denial that it originated with her as final. This does not, therefore, impinge on her credibility.

***v) The growth in number and seriousness of the allegations of domestic violence by Ms Heard***

154. The Claimant observes that the incidents of alleged violence by Mr Depp have grown in number and seriousness. In support of her application for a temporary restraining order, Ms Heard relied on only incidents 12, 13 and 14. The number had grown by the time Ms Heard was deposed in the divorce proceedings, and had increased again in Ms Heard’s 1<sup>st</sup> witness statement for the present proceedings.

155. I do not consider that this argument undermines Ms Heard’s credibility. Paragraph 4 of the declaration in support of her application for a temporary restraining order said,

‘During the entirety of our relationship, Johnny has been verbally and physically abusive to me. I endured excessive emotional, verbal abuse from Johnny which has included angry, hostile and humiliating and threatening assaults to me whenever I questioned his authority or disagreed with him.’

156. The three incidents to which the Claimant’s submission refers appear under the heading ‘Recent events supporting the basis of the instant DVRO request’.

157. Paragraph 21 said,

‘There have also been several prior incidents of domestic violence with Johnny, in particular there was one severe incident in December 2015 when I truly feared that my life was in danger.’

158. Further, in her evidence, Ms Heard said that she had been told by her Californian divorce lawyer that three incidents were sufficient. While it is the case that Ms Heard did not waive her privilege and I had no evidence from the lawyer to this effect, it is consistent with the other parts of the declaration which I have already quoted. I also note that the letter which Ms Spector (Ms Heard’s attorney) wrote to Mr Depp’s lawyers said (after referring to Incident 14),

‘Unfortunately, this is not the first incident of domestic violence. In fact, there have been two other incidents *in the past six months*’. [my emphasis].

159. Overall, I conclude that this is not a reason to doubt Ms Heard’s allegations that she was assaulted by Mr Depp as she has alleged.

***vi) Ms Heard’s enthusiasm to meet with Mr Depp in July 2016 despite the restraining order***

160. Incident 14 occurred on 21<sup>st</sup> May 2016. On numerous occasions on 24<sup>th</sup> May 2016 Ms Heard texted Mr Depp urging him to get in touch with her. She also texted Jerry Judge, Mr Depp’s head of security, to ask him to persuade Mr Depp to call her.

161. In her deposition in the divorce proceedings on 13<sup>th</sup> August 2016, Ms Heard said that she wanted to speak to Mr Depp to alert him in advance to her intention to file for a divorce.

162. As I have said, the Restraining Order which Ms Heard obtained on 27<sup>th</sup> May 2016 was temporary. Originally it was due to continue until 17<sup>th</sup> June 2016, but it was extended by agreement until 16<sup>th</sup> August 2016. It therefore remained in force in July 2016.
163. Ms Heard nonetheless contacted Mr Depp and proposed that they meet in San Francisco. Mr Depp agreed to the meeting which he said took place in a hotel in that city with just the two of them. Ms Heard recorded the conversation which they then had. Mr Depp said he was unaware of the recording.
164. Mr Depp said that during the meeting, Ms Heard at one stage asked him to embrace her. He refused. He said that she had accused him of assaulting her and of being a horrible monster. He could not understand why she would then want him to hug her. The discussion continued for some time. Mr Depp said that Ms Heard complained of feeling unwell. Mr Depp suggested that she take a nap in the bedroom. She got into bed and asked if he was going to join her. Mr Depp declined. He said that at no time during this meeting did Ms Heard seem scared.
165. When Ms Heard was cross-examined on this topic, she said that her feelings towards Mr Depp were confused. She loved the side of him that was charming. She was terrified of the other side of him; what she called 'the Monster'. It was put to her that, if there was even one aspect of the Claimant which terrified her, she would not have met him. Ms Heard denied that was so.
166. In re-examination she said that she had arranged for a mutual friend called Christian Carino to be present at the meeting and for him to remain in shouting distance so that it was not just Mr Depp's security who were within reach.
167. Mr Depp was asked about Christian Carino. He agreed that Mr Carino was keen to be his agent and Mr Carino did succeed in that regard. Mr Depp said that Mr Carino was attempting to be a mediator between himself and Ms Heard. Mr Depp also agreed that Mr Carino had been present at the first meeting in July 2016.
168. I do not find that any of this assists me in determining whether Ms Heard is to be believed in her allegations of violence by Mr Depp. She certainly would not be the first woman to have equivocal attitudes towards her partner, even if he had been abusing her. In my view, Ms Heard could still have wished to meet with Mr Depp because of her past or present affection for him (or one side of his character) even if on other occasions he (or a different side of his character) had terrified her. Mr Depp's answer that Mr Carino had been present for the 'first' of the July meetings left an ambiguity as to which meeting or meetings in July Mr Carino had not been present. That might have usefully been explored, though, by that stage in her cross-examination Ms Heard was under considerable time pressure. In any event, even if a third party was not present for every meeting between Mr Depp and Ms Heard in July 2016, my view remains the same: it does not assist me in deciding whether Ms Heard is to be believed as to her allegations that Mr Depp assaulted her.

***vii) Ms Heard's admission to violence in recorded conversations contrasted with her evidence in which she denied being the violent party***

169. In her witness statements and in her evidence, Ms Heard maintained that it had always been Mr Depp who had been the aggressor. She said that the only occasion when she

had hit him back had been in the course of incident 9 (the staircase incident) when, in defence of herself and her sister, Whitney, she had struck Mr Depp.

170. The Claimant argued that this was inconsistent with admissions which Ms Heard had made in various of her conversations with Mr Depp in which she admitted being the, or a, violent party.
171. Thus, in one recording, referred to as ‘Argument 2’, Mr Depp and Ms Heard had the following exchange (file 4/154/F922):

JD: It’s not true. It’s not true. I’m not the one who fucking throws fucking pots and whatever the fucking else at me.

AH: That’s different. That’s different. That’s one ... does not negate the other. That’s irrelevant. It’s a complete *non sequitur*. Just because I’ve thrown pots and pans does not mean you can come and knock on the door.

JD: Vases and fucking ...

AH: Just because there are vases does not mean you come and knock on the door.

JD: Relationships should let you throw ...

AH: I’m not saying that. You’re saying that. You’re putting words in my mouth and then making *non sequiturs*.

...

JD: You punched me

AH: ... hit you across the face in a proper slap, but I was hitting you, it was not punching you. Babe, you’re not punched.

JD: Don’t tell me what it feels like to be punched.

AH; I know you’ve been in a lot of fights, you’ve been around a long time. I know, yeah.

JD: No, when you fucking have a closed fist –

AH: You didn’t get punch. You got hit. I’m sorry I hit you like this. But I did not punch you. I did not fucking deck you. I fucking was hitting you. I don’t know what the motion of my actual hand was, but you’re fine. I did not hurt you. I did not punch you. I was hitting you.

...

AH: You’re a fucking baby.

JD: Because you start physical fights?

AH: You’re such a baby. Grow the fuck up.

JD: Because you start physical fights?

AH: I did start a physical fight.

...

AH: But I do ... and I can't promise you that I'll be perfect, I can't promise you that I won't get physical again. God, I fucking sometimes get so mad I lose it. I can fucking promise you I'm ... I'll do everything to change...'

172. On another occasion (file 5/161n/F1009.23) there was this exchange:

'JD: I don't want a divorce, I never wanted a fuckin' divorce. I didn't want you to fuckin' go to Coachella [presumably a reference to the fact that Ms Heard and a group of friends went to the Coachella music festival after incident 13] without fuckin' talking to me because I left you because you were fuckin' ... you fuckin' hay-makered me, man. You came around the bed to fuckin' start punching on me.

AH: I'm so sad. I love you so much.'

173. A 'hay-maker' is a particularly violent punch. Mr Sherborne submitted that there was no hint of denial in Ms Heard's response.

174. In her evidence, Ms Heard said that she did sometimes throw pots and pans at Mr Depp but only to try and escape him and as a means of self-defence. She also said at times in Argument 2 she was being sarcastic.

175. In my view no great weight is to be put on these alleged admissions by Ms Heard to aggressive violent behaviour. It is trite to say, but nonetheless true, that these conversations are quite different to evidence in court. A witness giving evidence in court does so under an oath or affirmation to tell the truth, the whole truth and nothing but the truth. Questioning can be controlled by the judge. Questions which are unclear can be re-phrased. If a question is not answered, it can be pressed (subject to the court's control) and if still unanswered may be the proper object of comment. None of those features applied to these conversations which, in any event, according to Ms Heard had a purpose or purposes different from simply conveying truthful information.

176. I take the same view of the recording whose transcript is at file 7/ 155/F969 & F972 which, from its context, appears to be a recording made in late May 2016.

***viii) Ms Heard's invention of 'the monster' in an attempt to portray the Claimant as a 'Jekyll and Hyde' character***

177. Mr Sherborne submitted that 'the Monster' was a fiction created by Ms Heard. He was no 'Jekyll and Hyde character'.

178. In his evidence, Mr Depp said that 'the Monster' was a term invented by Ms Heard. That was what she called him, if he disagreed with her in the course of their arguments.

179. Ms Wass referred me to Mr Depp's own references to 'the Monster' in his communications with people other than Ms Heard. I agree with Mr Sherborne that some of these are jokey allusions to a monster which were not meant to be taken seriously.

An example of this was the exchanges which Stephen Deuters had with Adam Gough in January 2015. Another example was the reference to the term ‘monster’ in a home-made film of a Thanksgiving Dinner.

180. However, that is not a sufficient explanation of Mr Depp’s use of the term ‘the monster’ on other occasions. Thus, for instance, on 26<sup>th</sup> April 2015, Mr Depp’s then head of security, Jerry Judge, had sent him a text message commenting on how pleased Mr Judge had been to see Mr Depp and Ms Heard getting on so well. The same day, Mr Depp replied (file 6/119/F697.70),

‘Thank you, my dear Jerry!!! Very very kind mate!! All I had to do was send the monster away and lock him up!!! We’ve been happier than EVER!!! Love you brother JD’

181. Similarly, on 28<sup>th</sup> June 2015 Mr Depp sent a text to his doctor, Dr Kipper which said (file 10/147(a)/O149),

‘... By the way Amber and I have been absolutely perfect for 3 fuckin’ months solid!!!! I have locked my monster child away in a cage deep within and it has fuckin’ worked!!! We’re goddam best friends now!!! Amazing!!! Big love to you, my brother... JD’

182. On 14<sup>th</sup> May 2015 Mr Depp texted Stephen Deuters and said,

‘Need to discuss the News Helicopters hovering outside the house this morning ... I’m ready to shoot a motherfucker!!! But don’t worry ... The Monster is not involved.’

183. On 4<sup>th</sup> October 2014 Mr Depp sent a text to an unidentified number in which he said (see file 6/119/F697.43),

‘I am going to, quite gracefully, glide into a massage of my broken back and neck ... I shall exit in one hour, a MONSTER!!! Shall we swallow an E each (or perhaps it’s MDMA) at around 8pm and go to dinner with A few of my wee team at a wonderful Peruvian spot ... ??? Let us enjoy this night my brother!!! Let us reward ourselves for the hard work and the misery of the heat that we push ourselves to conquer every goddam day!!! The Shatter’

184. On 22<sup>nd</sup> March 2012 Mr Depp wrote an email to Elton John, referring to the fact that he had then been sober for 100 days. His email said (file 8/62(d)/I0.7),

‘100 fucking days of clarity for an old reprobate twat like me ... no one would have believed it possible, but a very select few. Most importantly YOU!! So today I am fucking celebrating you!!! ...

I would have been swallowed up by the monster, were it not for you. That is a simple fact.’

185. In his evidence Mr Depp said that by ‘the monster’ in his email to Elton John he was referring to ‘death’. While that is a possible meaning of that email in isolation, read in the context of the other evidence, it seems to me more likely to be a reference to ‘the monster’ term which Ms Heard said Mr Depp himself used to describe his alter ego.



186. In any event, I do not accept that Ms Heard invented the expression, still less that her use of it is a reason to disbelieve her evidence about her allegations of violence by Mr Depp. I find that Ms Heard's use of the expression was not, as Mr Sherborne submitted, an example of 'retro-engineering'.

#### **Mr Depp's record or non-record for violence**

187. There is no evidence that Mr Depp has any convictions for violence in the UK, in the USA or in any other jurisdiction.

188. In the course of his evidence he was questioned about a number of episodes when he was said to have been violent, either to property or to people. I shall refer to these briefly, but I can say that I did not find any of them to be of any great assistance in my task.

i) An incident in 1989 when Mr Depp was arrested on suspicion of assault. There is not sufficient evidence that he was ever charged with an offence, let alone convicted of one as a result of this incident. It seems that this was the incident referred to in a 2003 broadcast interview when the Claimant said,

'It was a bad day. You know you have bad days. And you know, some guys go play golf, some guys you know smash hotel rooms.'

It may be that part of this broadcast was a voice-over insert. Mr Depp did not deny the remark just quoted and which had been attributed to him. He said he was trying to be humorous. It may be that the reference was to the incident in (ii) below. It is unnecessary to resolve this.

ii) In 1994 there was an incident in New York when a hotel room was damaged. A press article at the time said that Mr Depp had agreed to pay \$10,000 compensation to the owner of the hotel. When asked about the amount of compensation which he had had to pay, Mr Depp said that it was too long ago and he could not recall. He denied this was symptomatic of a general anger management problem.

iii) In 1998 Mr Depp made a film based on the book by Hunter S. Thompson 'Fear and Loathing in Las Vegas'. One of the actors in the film was Ellen Barkin. On 22<sup>nd</sup> November 2019 Ms Barkin was deposed as part of the process of discovery in the Virginia libel action. She said that there had been an argument between Mr Depp and his assistants and a wine bottle had been thrown in her direction.

iv) An incident in 1999 when Mr Depp was having dinner with his then partner, Vanessa Paradis who was then pregnant. A group of about 14-15 paparazzi photographers tried to take their picture. Mr Depp agreed that he picked up a piece of wood, about 12-15 inches long and hit them with it. He said he thought they were being rude and aggressive, and he was protecting something sacred to him.

v) In 2018 he was making a film called 'City of Lies'. A member of the crew called Greg Rocky Brooks brought a civil claim for assault alleging that Mr Depp had punched him twice. Mr Depp was contesting the claim. He said that Mr Brooks

had behaved nastily and aggressively to one of the extras who was an African-American woman. There had been verbal exchanges, but he had not assaulted Mr Brooks. The claim is ongoing.

189. In my view all of these incidents are of very limited value. None led to a conviction. Many were of considerable vintage. The incident involving the paparazzi photographers did involve some violence, on Mr Depp's admission, but its nature was far removed from the allegations made by Ms Heard. Mr Brooks' claim is outstanding.
190. That said, I was shown an exchange of texts between Mr Depp, Ms Paradis (who, Mr Depp said, was referred to in his records as 'marino') and possibly others which said (see file 6/119/F697.4),

'JD; I will bring some cash over and tip the bitch!!

VP:: Yeah sloppy slut.

JD: Fucking ugly fat whore!!!

VP: Bring the cash and the whore

JD: For the idiot cow!!!

JD: Will do!!! I'll smack the ugly cunt around before I let her in, don't worry ...

JD: Did that worthless hooker arrive???'

Mr Depp said that this was a jokey exchange, although he struggled to explain the nature of the joke or why it was funny. Elsewhere in his evidence he described his sense of humour as 'niche'. Mr Depp did agree that the views he was expressing in this exchange were not those of the Southern Gentleman he aspired to be.

#### **Ms Heard's record or non-record for violence**

191. It may be asked why Ms Heard's record or non-record for violence is of any relevance at all. It may be said that the libel which the Defendants are alleging is true is that Mr Depp was violent towards Ms Heard. Why then is it of any relevance to investigate whether Ms Heard was violent towards Mr Depp? Mr Sherborne offered two answers to this. First, it was integral to the defence of truth that the violence used by Mr Depp had been unlawful or unjustified. If, for instance, the only violence which Mr Depp had used had been in defence of himself it would hardly assist the Defendants in establishing the substantial truth of their allegation that he was a 'wife-beater'.
192. Second, it was Mr Depp's case that it was not he, but Ms Heard who had been the violent party. She denied this was so, but, if his account was correct, that would reflect adversely on her credibility.
193. Like Mr Depp, there was no evidence that Ms Heard had convictions for violence against people or property in the UK, the USA or anywhere else in the world.
194. There was it seems an occasion in 2009 when Ms Heard was arrested on suspicion that she had assaulted her then partner Tasya van Ree. No charge followed the arrest.

195. I had some further information about the circumstances that led to that course. On 26<sup>th</sup> October 2009 the King County Prosecuting attorney (in Washington state) wrote to the Seattle police (who, I assume, had carried out the arrest). The Prosecutor thanked the officer for the report but said that no further action would be taken (see file 5.1/199/F1212),
- ‘In order to convict Amber van Ree of Assault, the state would have to prove beyond a reasonable doubt that van Ree deliberately assaulted [name redacted]. Although the state does not have to prove that an injury resulted from the assault, the state would have to show that the contact was offensive to the victim. In this case, there is no signed statement from [redaction] indicating that she was offended by Van Ree grabbing her arm not [? nor] that the contact caused her pain. In addition, due to the minimal nature of the assault and the fact that both victim and suspect are residents of California, we are declining to file charges at this time.’
196. A further letter of 3<sup>rd</sup> January 2012 (file 5.1/199/F1213) gave another reason for not prosecuting Ms Heard which was that there had been a delay in reviewing the file and the 2-year period of limitation had in the meantime expired.
197. In November 2011, an attorney on behalf of Ms Heard wrote to the Seattle Police Department asking that the record of her arrest should be deleted. 7 days later the police agreed to this course (file 5.1/199/F1216).
198. Nonetheless, this arrest of Ms Heard was referred to in the press shortly after she filed for divorce from Mr Depp and she was granted the temporary restraining order. That publicity, in turn, led Tasya van Ree to write to Jodi Gottlieb, Ms Heard’s publicist, in terms supportive of Ms Heard. Ms van Ree also alleged that the arresting officers had been homophobic. In my view all that can be said of this incident is:
- i) No conviction of Ms Heard took place in consequence.
  - ii) It seems that Ms Heard took lawful and proper steps to delete the record of her arrest.
  - iii) Notwithstanding the allegation, Ms van Ree remained supportive of Ms Heard.
  - iv) In consequence this incident has little bearing on the issues I have to decide.
199. It was also put to Ms Heard that, while she had been living with Ms van Ree in Puerto Rico, neighbours had complained of loud screaming arguments. Ms Heard denied this was the case or that she had had a volatile relationship with Ms van Ree. This allegation is of no significance at all.
200. In her cross-examination Whitney Henriquez denied that her sister had ever been violent to her. I gave permission for the cross examination to be continued so that a piece of film out-take could be put to Ms Henriquez. She said that the film did not change her evidence. She said that the filmmakers had been trying to manufacture a story out of nothing. It was not the case that she had had a physical fight with Ms Heard who had got the better of her or caused her any injury. Ms Henriquez had simply wanted to shut down that topic of conversation. In my view, the film added nothing of value to the issue of whether Ms Heard had a violent record.

201. In his closing submissions, Mr Sherborne referred to a text from Mr Depp to Malcolm Connolly on 5<sup>th</sup> April 2016 which said (file 10/147(a)/O17),

‘Please get her out of this room NOW!!! She’s struck me about 10 times ... Can’t take any more!!! ...

Mr Connolly replied several hours later,

‘Amber gone through, no problems! Are you ok? Do you need anything mate? Anything I can do?’

202. However, 5<sup>th</sup> April 2016 was not the date of any of the incidents. Ms Heard was not asked about these texts in her evidence. While I have recognised that the parties were under time pressure which could excuse some failures to put points to opposing witnesses, I regard this as in a different category. Without Ms Heard having had the opportunity to comment on these texts I consider that it would be unfair to her and the Defendants to hold them against them.

203. There was evidence that Ms Heard could have a quick temper. Thus, for instance, Dr Connell Cowan, her psychotherapist noted on 27<sup>th</sup> August 2014 (file 9/101A/K4),

‘she has insight into her short temper and insecurities ... She has no effective self-soothing techniques other than to engage JD in reassurances.’

I accept that shortness of temper is not the same as recourse to violence.

204. The bottom line therefore is that neither Mr Depp, nor Ms Heard has any previous convictions for violence. I bear that in mind when considering the allegations that Mr Depp was violent to Ms Heard (or, indeed, that she was violent to him).

205. In a criminal trial where a defendant has no relevant convictions or cautions and does not admit any criminal conduct, a jury should be directed (as the ‘Crown Court Compendium’ updated version July 2020 advises) as follows:

‘You have heard that D has no previous convictions. Good character is not a defence to the charge(s) but it is relevant in two ways. First, the defendant has given evidence. D’s good character is a positive feature which you should take into account in his/her favour when considering whether you accept what D told you. Secondly, the fact that D has not offended in the past may make it less likely that D acted as the prosecution alleges in this case.

What importance you attach to D’s good character and the extent to which it assists on the facts of this particular case are for you to decide. In making that assessment you may take account of everything you have heard about D.’

Although this is a civil, not a criminal case, I shall follow this guidance.

#### **Incident 1: the tattoo incident**

206. I have quoted the respective parties’ pleadings about this incident in the RAD and RAR above (see paragraphs 47 and 48 above). It will be recalled that Mr Depp used to be in

a relationship with Winona Ryder. He had a tattoo at the time which said, 'Winona Forever'. After he and Ms Ryder separated, he changed that to 'Wino Forever.'

207. Mr Depp had realised that he had a problem with alcohol. He had tried to stay sober with the encouragement of friends such as Elton John. However, by March 2013 he accepted that he had broken his sobriety or, as he put it, he had 'fallen off the wagon'. He was drinking whiskey and wine. He agreed that he was disappointed with himself and that it was not kind of Ms Heard to laugh at his failure.
208. On this occasion an argument ensued which, Ms Heard says, for the first time led to Mr Depp assaulting her. According to Ms Heard, he later blamed his behaviour on 'the monster' i.e. his alter ego.
209. While Ms Heard had probably seen the tattoo many times before this incident in early 2013, that does not eliminate the possibility that a combination of factors (particularly Mr Depp's consumption of alcohol and drugs) led him to react violently to a perceived slight by Ms Heard. I have already said that I accept that Mr Depp did refer to 'the monster'. That expression was not a figment of Ms Heard's imagination. I accept her evidence that Mr Depp used the term to refer to that part of his personality when, affected by drink and/or drugs he would do things which he would not otherwise do and of which he might have no recollection afterwards.
210. Seen in isolation, the evidence that Mr Depp assaulted Ms Heard on this occasion might not be sufficient. However, taken with the evidence as a whole, I find that it did occur.

#### **Incident 2: the painting incident**

211. I have quoted what is said in the RAD and the RAR about this incident above (see paragraphs 49 and 50 above). It will be seen that (a) the incident regarding Mr Depp's attempt to set fire to the painting was alleged to have been on the same occasion that he allegedly assaulted Ms Heard for the second time (b) that both incidents were alleged to have taken place on 8<sup>th</sup> March 2013 and (c) it is only a single painting of Tasya van Ree which the Claimant was said to have defaced.
212. Ms Heard exhibited to her 1<sup>st</sup> witness statement (dated 15<sup>th</sup> December 2019) an exchange of messages which she had had with Mr Depp all of which were on 12<sup>th</sup> March 2013 and which said (file 2/60/E44),

'JD: Just thought you should know that there exists a book titled "Disco Bloodbath". That's all.

AH: We need that book! Is it about last Friday night by any chance?

JD: How can you make me smile about such a hideous moment??? Yes, it is... Funny bitch. I fucking love, you cunt!!!!.'
213. Ms Heard said that she had originally assigned 8<sup>th</sup> March 2013 to incident 2 on the basis of this exchange and counting back 4 days from 12<sup>th</sup> March.
214. In her 5<sup>th</sup> witness statement (dated 26<sup>th</sup> June 2020) Ms Heard said at paragraph 41,

‘On 10<sup>th</sup> March 2013 I told Kate [Kate James, Ms Heard’s then assistant] about Johnny hitting me after being upset about Tasya. The day after the painting incident (9<sup>th</sup> March 2013) I sent a text to Kate telling her “There was long drama last night and I’ll tell her about it later”.’

215. In her 6<sup>th</sup> witness statement (dated 4<sup>th</sup> July 2020) Ms Heard said,

‘During the course of reading through these materials, I have now realized I cannot be sure that the painting incident took place on 8 March 2013. There were numerous incidents of violence in March 2013 and many fights over that month about the painting. While the incident I have described in my statement was around that time, I cannot say for certain it was on 8 March 2013.’

216. In her 7<sup>th</sup> witness statement made on 6<sup>th</sup> July 2020 (the day before the trial started), Ms Heard said this,

‘As I explained in my earlier statements, there were numerous incidents of violence in March 2013 which coincided with Johnny’s drug use. I now realize that the incident I had initially described as having taken place on 8 March 2013 took place on 22 March 2013. There was a separate incident on 8 March 2013. The incident I describe involving the painting took place on 22 March, which is apparent from the photographs now at tab 148(f) (which show Johnny’s cocaine in my kitchen at my house in Orange) and was on one of the days Johnny was due to be filming a documentary with Keith Richards.’

217. In relation to this incident, the Defendants also relied on the evidence of Whitney Henriquez, Ms Heard’s sister. Although she did not claim to have seen the assault on her sister, she, too, said in her statement that there had been an incident where Mr Depp had been drinking heavily and snorting cocaine. There had then been difficulty in persuading Mr Depp to attend the filming with Keith Richards. Ms Henriquez, like her sister, had dated all of this as occurring on or about 8<sup>th</sup> March 2013. She saw her sister had a split lip. She also spoke of Mr Depp scratching out Ms van Ree’s signature on the painting and replacing it with ‘Tasya van Pee’. In her witness statement, she, too, dated the defacement of the painting, the difficulty of getting Mr Depp to the Keith Richards filming and seeing her sister’s split lip as 8<sup>th</sup> March 2013.

218. In evidence in chief, Ms Henriquez said (a) the incident when she saw her sister’s split lip was later in March 2013 than 8<sup>th</sup> (b) the painting on which Mr Depp had altered the signature was a different painting to the one he had tried to burn (though both had been by Ms van Ree). Ms Henriquez said in her evidence that her memory had merged into one the two separate incidents regarding Ms van Ree’s paintings.

219. In cross-examination Ms Henriquez was asked about an exchange of messages with Mr Depp on 11<sup>th</sup> February 2014. Ms Henriquez had sent Mr Depp a photo of the painting with the altered signature. On 24<sup>th</sup> February 2014 she said (file 7/2(b)(ii)/H23.4D),

‘WH: By the way! You never responded to my other text! The “van Pee” painting earned you twenty points in my book cunado.

JD: Subtle, eh??? Made me laugh as I was doing it!!! Thanks, sweetheart!!! Can’t stand that fucking hovering vulture!!!’

220. As I have said, Ms Henriquez moved into the Eastern Columbia Building in 2014. She moved out in 2015, but she came back from time to time from January 2016. Ms Henriquez denied that she would never have done that if there had been any truth in her allegation that Mr Depp had injured her sister (at least) in 2013 and again (in Incident 9 - the staircase incident) in March 2015.
221. It was put to Ms Henriquez and Ms Heard that they had altered the day of the alleged assault in Incident 2 because a photo had been taken of Ms Heard, Keith Richards and others on 21<sup>st</sup> March 2013 and it could be seen that she had no injury to her face. They both denied that was the reason for the new dating of the assault.
222. Mr Depp agreed that there were two paintings by Ms van Ree in the documents before me: the one with the altered signature (file 7/2(b)(i)/H23.4A) and the one referred to in the course of the trial as 'flamingos' (file 7/2(b)(ii)/H23.4B) . He agreed that a painting by Ms van Ree had hung in Ms Heard's bedroom in Orange Avenue and it had been there since the beginning of their relationship.
223. Initially in his cross examination, Mr Depp denied that he had been addicted to cocaine at this time or that he had a small 2-inch square box which was his special box for his cocaine. However, when shown the photograph at file 6/148f/F894.263 showing a box about 2 inches square with a skull and crossbones and, in raised letters, 'property of JD', he accepted that was his and that it probably contained cocaine on this occasion. The metadata for the photograph showed that it was taken on 22<sup>nd</sup> March 2013 at 1.37pm.
224. Mr Depp was shown a photograph which Ms Heard had taken of herself in a mirror (6/148/F894.001) and which appears to show a bruise on her arm. In her 6<sup>th</sup> witness statement Ms Heard said of this photograph, 'I took this photo of my injuries after a spate of attacks by Johnny in March 2013.' Mr Depp denied that he had caused the bruise. The metadata shows the picture to have been taken on 23<sup>rd</sup> March 2013. On that day Ms Heard sent a copy of this photograph by text to her mother under the heading 'From 2 weeks ago today.' If that is correct, it could not have been a bruise caused by Mr Depp on 22<sup>nd</sup> March 2013.
225. My findings in relation to incident 2 are as follows:
- i) Mr Depp was drinking whiskey on this occasion. That was the evidence of Ms Heard and Ms Henriquez. The photograph that I have referred to includes a large glass of what Mr Depp agreed was whiskey. Of course, one cannot tell from the photograph whose drink it was, but I accept that Ms Heard did not drink spirits (as opposed to wine). Mr Depp said that he had fallen off the wagon by March 2013 and he did recall sitting drinking whiskey in the morning after a nasty argument which had occurred the previous evening.
  - ii) Mr Depp admitted, eventually, that the box marked 'Property of JD' was his and that it contained cocaine. Ms Henriquez explained that the cylindrical blue object in the photograph was a tampon applicator which she had given to Mr Depp for the purpose of snorting cocaine. I accept her evidence in this regard.
  - iii) Thus, I accept the evidence of Ms Heard and Ms Henriquez that Mr Depp had been drinking heavily on the evening of 21<sup>st</sup>/22<sup>nd</sup> March 2013. Although Mr

Depp did not recall taking cocaine on that occasion, I find that he had been taking cocaine as well, as Mr Depp later admitted in his cross-examination. That also accords with a text which Ms Heard sent to Christi Dembrowski at 17.14 on 22<sup>nd</sup> March 2013 in which she said of Mr Depp (file 7/1(f)/H21A.23),

‘He’s another person when he’s like this. He’s fuelled up on booze and coke ... He finds something to jump on and then uses it as an excuse to dose himself up. Which is where he is now. Wasted.’

- iv) As a result of consuming so much alcohol and cocaine Mr Depp was late for filming the Keith Richards documentary, called ‘Happy’, at Mr Depp’s property on Sweetzer Avenue. Mr Depp’s evidence was that his presence was not necessary. That accords with a text which he sent to Stephen Deuters at an uncertain time on 22<sup>nd</sup> March 2013 which said (file 7/56(c)/H206.8),

‘GO GODDAMIT!!! I AM BUT A FLY ON THE WALL!!! Com-mence!!! There is nothing I can add to whatever magic is already there!!!GO!!! You make whatever calls you need to make!!! I am on my way ...’

But a contrary impression is given by the text exchanges between Ms Heard and Nathan Holmes and between Ms Heard and Ms Dembrowski (see file 7/1(e) and 1(f)). Ms Dembrowski was not only Mr Depp’s sister, but also the producer of the Keith Richards documentary, according to the script notes for the film (see file 11/151/P4). I conclude that Mr Depp’s presence at Sweetzer Avenue was either required or desirable, but he was unable to be there on time because of his consumption of alcohol and cocaine the night before.

- v) Mr Depp was jealous of Tasya van Ree. He admitted in the course of his cross-examination that he could be jealous. His views towards Ms van Ree are also apparent from his text exchange with Ms Henriquez in which he admitted changing Ms van Ree’s signature to ‘van Pee’ and in which he referred to Ms van Ree as a ‘fucking hovering vulture’. The fact that Ms van Ree was a woman who had had a relationship with Ms Heard may have exacerbated Mr Depp’s feelings towards her. Shortly after this incident on 9th July 2013 he castigated her attitude towards him as that of a ‘lesbian camp counsellor’ (file 7/2(b)/H23.3). I also accept the evidence of Ms Heard and Ms Henriquez that, on a previous occasion, Mr Depp had tried to set fire to another of Ms van Ree’s paintings, the one referred to at trial as ‘Flamingos’. Ms Heard said that there had been minimal damage to the back of the painting. I accept the evidence of Ms Henriquez that, in her original witness statement, she had merged the damage to the two paintings.
- vi) Ms Heard had a series of text exchanges with her mother (Paige Heard). At 19.02 on 22<sup>nd</sup> March 2013 she wrote (file 7/1(b)/H21A.2),

‘He’s nuts mom. Violent and crazy. I am heartbroken that THIS is who I love.’

At 20.14 her mother replied,

‘You should tell your dad and be honest. JD will listen best chance.’



At 20.37, Ms Heard responded

‘I can’t tell dad.’

In her re-examination Ms Heard explained that she feared her father would react violently towards Mr Depp if she told him that Mr Depp had assaulted her.

At 20.42 (on 22<sup>nd</sup> March) Ms Heard wrote to her mother,

‘It’s OK mom. He’s not being violent with me. He’s just even raging in general. And the crazy mood swings and binges are really difficult for me to handle.’

In her evidence Ms Heard said that she had not told her mother the truth (that Mr Depp had indeed been violent towards her). She said that her father had been violent to her mother when she was growing up and continued to be until her mother had died. She had alluded to this in her later text on 23<sup>rd</sup> March 2013 at 11.42 when she wrote (file 7/1(b)/H21A.4),

‘He [Mr Depp] makes dad look like a saint when he falls off the wagon.’

At 21.11 (on 22<sup>nd</sup> March 2013) Ms Heard texted her mother to say,

‘No - my heart is broken. I’m OK physically. JD didn’t hit me or anything last night. I told him that would be if he did and it worked last night. But I’m scared by who I see now. It’s Dr Jekyll and Mr Hyde - on a binge.’

- vii) There is a photograph of Mr Depp, Ms Heard, Keith Richards and Ms Henriquez at file 9/94(a)/J10.1. There does not appear to be any metadata to establish when the picture was taken. In Ms Heard’s cross-examination it was suggested that her face appears to be uninjured. However, the filming of the Keith Richards documentary began on 21<sup>st</sup> March 2013. If the picture was taken then, as Ms Heard said it was, in the course of her re-examination, that would have been before the alleged assault took place. In the absence of clear evidence that the photograph was taken after the alleged assault, it does not assist me in deciding whether Ms Heard was assaulted on the evening of 21<sup>st</sup>/22<sup>nd</sup> March. Ms Heard was asked about a different picture (file 9/86(e) (i)/J48.14) which showed her and one of the musicians associated with Keith Richards called Ian McLagan. Although a copy of the photograph at file 7/86(e)/J48.16) has a date 7<sup>th</sup> April 2013, it was put to Ms Heard that travel documentation (file 11/148/P1) and the shooting script for the documentary (file 11/153/P20) showed that Mr McLagan was on the set of the documentary only on 23<sup>rd</sup> March 2013. It was put to Ms Heard that in this picture her face seems uninjured. She disputed that and said her bottom lip appeared to be swollen. It is unclear whether the photograph was taken on 23<sup>rd</sup> March as opposed to 7<sup>th</sup> April 2013, but, in any case, in my view, the photograph is not sufficiently clear for me to make a decision one way or the other in this regard.
- viii) Mr Sherborne submitted that it was significant that Ms Heard had originally given a different date for Incident 2 and that she and her sister had been caught out in a lie which had led them to change their story and split Incident 2 into two

separate incidents (three in the case of Ms Henriquez). He submitted that I should therefore conclude that there was no assault by Mr Depp on Ms Heard as she had alleged in Incident 2. Mr Sherborne in his closing submissions referred to other alterations in the details of this incident. I was not persuaded by this submission. I accept Ms Heard's explanation for how she originally came to give the date of 8<sup>th</sup> March. Ms Heard said that Mr Depp inflicted a number of assaults on her in March 2013. Only one is pleaded, but I accept that is why in some respects Ms Heard's account was confused. I accept Ms Henriquez's explanation that she had merged the two different incidents regarding Ms van Ree's paintings.

- ix) There was an allegation in Ms Heard's original statement that on the drive to Sweetzer, Mr Depp held the dog Pistol out of the window and joked about dropping her. It is not possible to conclude, one way or the other, whether this happened, but it is immaterial to the substantive allegation that Mr Depp had assaulted Ms Heard the night before.
- x) Overall, I conclude that Mr Depp did assault Ms Heard as she and the Defendants have alleged in Incident 2.

### **Incident 3: Hicksville June 2013**

226. I have set out the allegations of the Defendants in relation to this incident and the Claimant's reply at paragraphs 51 and 52 above.

227. The Hicksville incident took place in late May or early June 2013. On 11<sup>th</sup> June 2013 Ms Heard wrote an email to herself (rather in the nature of a diary entry). Although in parts it was addressed to Mr Depp, it was never sent to him. Part of this email said (see file 8/64/12),

'I just don't know if I can do this anymore.

It's like Dr Jekyll and Mr Hyde half of you I love. madly. the other half scares me. I can't take him. I wish I could but I can't the problem is, I never really know/ understand which one I'm dealing with until it's too late.

The drinking assures me that I am dealing with the monster the abused scared insecure violent little boy. I just can't tell where the line starts Also drugs seem to guarantee I will be forced to deal with the monster as well once again it's knowing what/how much/ and when – which makes all the difference. sometimes the hangover, the morning after is just as bad as the full on disco bloodbath I've come to expect you live in a world of enablers you cut out and resent (whether you realize it or not) everyone who isn't an enabler I can make a clear distinction as to who falls into which category with complete ease. ...

I myself watch you pass out cold on the floor after drinking yourself sick one of these times you cut yourself so badly that you needed stitches.'

228. When Mr Depp was asked about this email, he said that this was a hoax. He said that Ms Heard was building up a dossier, as an insurance policy for later.

229. I do not accept Mr Depp's characterisation of this and the other documentary evidence on which the Defendants relied.

- i) This email was written in June 2013 and so some 3 years before Mr Depp and Ms Heard separated. That would have been a very long time for Ms Heard to concoct a plot. While theoretically possible, I do not accept that was the case.
- ii) As I have said previously, I do not accept that the term 'the monster' to describe one side of Mr Depp's character was a fiction invented by Ms Heard.
- iii) I have accepted that incidents 1 and 2 involved violence by Mr Depp against Ms Heard as the Defendants have alleged.
- iv) In a text which Mr Depp had sent to Stephen Deuters on 12<sup>th</sup> May 2013 he had said (see file 6/119/F697.7),

'Might need some Hydrogen Peroxide and some butterfly bandages ... Cut my hand last night.'

And a few minutes later another text from Mr Depp said,

'Might require stitches'.

In his evidence Mr Depp said that he could not recall the incident when he cut his hand, but this also fits with what Ms Heard said in her June 2013 email. I find it more probable than not that Mr Depp cut his hand at a time when he was under the influence of drink or drugs but was so oblivious because of his intoxication that he did not realise what he had done until shortly before his texts to Mr Deuters. That also accords with what Ms Heard said in her 11<sup>th</sup> June email to herself, 'I myself watched you pass out cold on the floor after drinking yourself sick. One of these times you cut yourself so badly that you needed stitches.'

- v) It was also 11<sup>th</sup> June 2013 when Mr Depp had a particularly striking exchange of texts with his friend Paul Bettany which included the following (see file 6/119/F697.8):

'JD: Let's burn Amber!!!

PB: Having thought it through I don't think we should burn Amber – she's delightful company and easy on the eye, plus I'm not sure she's a witch. We could of course try the English course of action in these predicaments – we do a drowning test. Thoughts?

JD: Let's drown her before we burn her!!! I will fuck her burnt corpse afterwards to make sure she's dead.

PB: My thoughts entirely! Let's be CERTAIN before we pronounce her a witch.'

- vi) In the email to herself which I have already quoted, Ms Heard commented that Mr Depp surrounded himself with 'enablers', people whom he paid for instance

‘to prevent your feet having to hit the rock bottom’ and who turned a blind eye when he passed out or vomited. As I comment later, that appears to have been the case with many employees of Mr Depp.

230. Both Mr Depp and Ms Heard agreed that there had been an argument at Hicksville between the two of them over the behaviour of a woman called Kelly-Sue. Mr Depp said that he believed she had taken MDMA and had begun to behave in a sexualised way towards Ms Heard. When asked in cross-examination whether Ms Heard could not object for herself if she thought Kelly-Sue’s behaviour was inappropriate, Mr Depp said, ‘I was being a gentleman.’ He said that he rebuked Kelly-Sue by saying to her, ‘That’s [i.e. Ms Heard] my girl’ and he told Kelly-Sue that she was being ‘rude and invasive’.
231. When they got back to the trailer where he and Ms Heard were staying, he agreed that the argument over Kelly-Sue’s behaviour continued. He commented, ‘I was very upset at yet again being treated as, pardon the expression, the turd in the punchbowl. That was not something I deserved for doing what I thought right and correct.’
232. Mr Depp agreed that in his anger he had punched an art deco fixture, a bathroom sconce. He denied that the trailer was badly damaged or that there was mess everywhere. The following morning, he had gone to the manager of the trailer park and apologised for damaging the light fixture.
233. He denied that he had hit Ms Heard in the course of the argument in the trailer.
234. One of the other people present in Hicksville was Kristina Sexton. She had known Ms Heard since 2009 and, since 2010, had been Ms Heard’s acting coach. She continued in that capacity until 2016. Ms Sexton said that she had heard screaming and shouting the night the group stayed in Hicksville. She recognised Mr Depp’s voice. The following morning, she went to the trailer being used by Ms Heard and Mr Depp. She said that the trailer was pretty messed up and the damage was more than just a broken wall light. There was broken glass strewn everywhere. There was also torn fabric, which looked like window coverings, strewn around. Ms Sexton said that everything was in disarray.
235. Another of the people present at Hicksville was Raquel (‘Rocky’) Pennington who was another friend of Ms Heard. She said that Kelly-Sue had been her friend. When Kelly-Sue hugged Ms Heard, Mr Depp had said words to the effect of ‘get off my woman’ which is close to the remark which Mr Depp admitted he had made in his evidence.
236. Ms Pennington says that Ms Heard reported to her the following morning that Mr Depp had been in a rage and had trashed their trailer.
237. Malcolm Connolly, one of Mr Depp’s security team, was the only member of the team at Hicksville. Mr Connolly said that Mr Depp dealt with the owner of the trailer on his own. Although Mr Connolly was present at Hicksville, the evidence which he could give regarding this incident was of limited value: his witness statement made no mention of it. He did not go inside the trailer after the damage had been done.
238. My findings in relation to Incident 3 are as follows:

- i) Mr Depp had been angry with the attention which Kelly-Sue appeared to be paying to Ms Heard. He regarded Ms Heard as 'his girl' and her behaviour sparked his jealousy. Rather as with his feelings towards Tasya van Ree, the jealousy may have been aggravated rather than diminished because Kelly-Sue was a woman.
- ii) When Mr Depp and Ms Heard retired to their trailer, their argument continued, as Ms Sexton could hear. There was shouting and screaming.
- iii) In the course of the argument, Mr Depp caused significant damage to the trailer. Ms Sexton could see that the damage was more than a broken light fixture which Mr Depp admitted damaging. I accept her evidence.
- iv) The argument and the damage to property are symptomatic of Mr Depp's manner when 'the monster' side of his personality was dominant.
- v) I also accept the evidence of Ms Heard that another aspect of 'the monster' was that Mr Depp physically assaulted her as she described.
- vi) I address another aspect of this incident in the Confidential Annexe to this judgment in which I do not accept the further allegation made by Ms Heard in relation to this incident.

#### **Incident 4: the plane journey from Boston to Los Angeles**

239. The RAD sets out the Defendants' case (see paragraph 53) relating to this incident and the RAR sets out the Claimant's reply (see paragraph 54).
240. Ms Heard gave her account of this incident in her first witness statement paragraphs 65-83. She was not cross-examined about this incident.
241. In about May 2014 the Claimant was making a film in Boston. Ms Heard was making a film called 'The Adderall Diaries' in New York. One of the other actors in her film was James Franco. Mr Franco was considerably younger than Mr Depp. Mr Depp said that he could not understand why Ms Heard had agreed to appear in another film with Mr Franco since, when they had been together in a previous film, she had accused Mr Franco of making sexual advances to her. He said that she described said Mr Franco's behaviour as 'creepy' and 'rapey'. Ms Heard had also expressed the wish to move away from parts which objectified her. Mr Depp thought this was inconsistent with her accepting a part in another film with James Franco. He agreed that Ms Heard might be concerned that he would become jealous of Mr Franco. There is some other evidence that Ms Heard was apprehensive about this. On 10<sup>th</sup> May 2014 Ms Heard sent an email to her assistant Kate James, asking her to ensure that the Claimant did not see the 'one-liner' of her schedule. She was concerned that, if he did, he would see the romantic nature of the scenes she was playing with Mr Franco and the Claimant's jealousy would be further inflamed.
242. The Claimant chartered a private plane to fly him and Ms Heard to Los Angeles. The flight was on 24<sup>th</sup> May 2014.

243. Two days before the plane journey, on 22<sup>nd</sup> May 2014, Mr Depp had his first consultation with Dr Kipper. As Dr Kipper recorded in his notes (file 4/123/F736),

‘Mr Depp is a 50 year-old male who has had a life-long history of self-medicating behaviours involving multiple substances of abuse. These include alcohol, opiates, benzodiazepines, and stimulants (cocaine)... Impression ... Chronic substance abuse disorder. Plan: ... Maintain current dosing of Roxycodone and Klonopin. Discussed the withdrawal of these two drugs once patient is back in Los Angeles. I would not recommend withdrawal until he completes his current work. ... Psychological counseling after he returns home from Boston and his medications have been properly adjusted.’

244. The Claimant did not recall whether he was under the influence of alcohol and/or drugs during the plane journey. However, in a text sent on 30<sup>th</sup> May 2014 to his friend, Paul Bettany, and which he agreed was about this flight, he said (file 6/119/F697.34),

‘I’m gonna properly stop the booze thing, darling ... Drank all night before I picked Amber up to fly to LA this past Sunday ... Ugly, mate ... No food for days ... Powders ... Half a bottle of Whiskey, a thousand red bull and vodkas pills, 2 bottles of Champers on plane and what do you get ... ??? An angry, aggro injun in a fuckin blackout, screaming obscenities and insulting any fuck who gets near... I’m done. I am admittedly too fucked in the head to spray my rage at the one I love. For little reason I’m too old to be that guy But, pills are fine!!!.’

245. The Claimant agreed that the reference to ‘powders’ in this text referred to cocaine. He agreed that he had been incorrect earlier in his evidence when he said he had not taken cocaine at the time of this flight. He said,

‘I did not remember that flight being such a nightmare.’

246. He thought the reference to ‘pills’ in his text to Mr Bettany was to Roxies to which he was then addicted. Having been reminded of the text, he accepted that he had consumed alcohol and cocaine both before and on the flight. He denied that he could not remember the flight at all, but, he said, parts of the flight were blacked out, as he had also said to Mr Bettany, and he probably would not have said that had it been untrue. Mr Deuters, who was also on the plane, said of the Claimant that ‘his memory was not solid all the way through’.

247. Mr Deuters supported the account in the RAR that the Claimant had not during the flight assaulted Ms Heard. He said that the Claimant had never kicked her. The configuration of the seats and tables in the plane would not have allowed him to do so. The Claimant may have playfully moved to tap Ms Heard on her bottom with his shoe, but he was not sure that this connected. He said that the Claimant had been quiet and focussed on his sketching. Eventually the Claimant had gone to the bathroom.

248. Mr Deuters sent Ms Heard a series of texts beginning at 21.13 on 24<sup>th</sup> May 2014 which he accepted must have been after Ms Heard had disembarked from the plane. These said (see file 6/119/F697.28),

‘He’s up. In the bathroom. Moving slowly. Will [let] you know when on route and how he is in the car ... He’s in some pain, as you might guess ...’

249. Mr Deuters explained that the Claimant had fallen asleep in the bathroom. He was potentially hungover, or it might have been indigestion because of the opiates the Claimant was taking.
250. Then a little later he sent a further series of texts,  
  
‘We’re on our way to [Sweetzer Avenue] ... He’s been sick. We’re gonna get him straight to bed.’
251. The following morning (so 25<sup>th</sup> May 2014) Mr Depp sent a text to Ms Heard which said (file 6/119/F697.29),  
  
‘Once again, I find myself in a place of shame and regret. Of course I am sorry. I really don’t know why or what happened. But I will never do it again. I want to get better for you. And for me. I must. My illness somehow crept up and grabbed me. I can’t do it again. I can’t live like that again. And I know you can’t either. I must get better. And I will. For us both. I love you. Again I am so sorry. So sorry. I love you and [f]eel so bad for letting you down. Yours.’
252. Mr Depp was asked why he had apologised if he had not behaved badly. He said that he apologised because Ms Heard was unresponsive to him. She would not let go of her beliefs and so he used words which she would find pleasing. He said he spoke of being in a place of shame and regret to take the poison out of her quill and because, in the course of a verbal argument, he might have said ugly words. The illness to which he had referred was to his excessive drinking.
253. He agreed that he and Ms Heard had screamed at each other. Ms Wass played a tape which she submitted had been made on the plane and on which a male could be heard moaning or making animal noises. The Claimant said he was not sure that it was his voice or that the recording had been made on that plane journey. The Defendants applied in the course of the trial for permission to adduce expert evidence on this topic. The application related to other items as well. I shall return to consider that application in the context of Incident 14. It is sufficient to say at this point that I refused the application.
254. The Claimant said that he had instructed Mr Deuters to try to placate Ms Heard which, Mr Deuters said, explained the series of texts he sent to Ms Heard starting at 15.45 on 25<sup>th</sup> May 2014. These said (see file 6/119/F697.29 The time was 13.19 according to the copy at 7/1/H13)),  
  
‘Hey. He’s up. He’s much better. Clearer. He doesn’t remember much, but we took him thru all that happened. He’s sorry. Very sorry. And just wants to get better. Which allows us to make him follow up on that promise. ... He’s teary. He doesn’t want to be a fuck-up any more – his words. He’s got bad indigestion this morning but otherwise alright. He’s gone back to sleep for a bit.’
255. Then a little later at 17.25 (or 10.25),  
  
‘There feels like a sea change in him this morning. He just spoke about how bad he feels and he wasn’t talking physically ... He’s incredibly apologetic and knows that

he has done wrong. He wants to get better now. He's been very explicit about that this morning ... Feel like we're at a critical juncture.'

256. At 20.47 (or 13.47) Ms Heard texted Mr Deuters,

'Obviously he has no idea what he did or to the extent that he did it. If someone was truly honest with him about how bad it really was, he'd be appalled. The man johnny is would be humiliated. And definitely wouldn't say to me that he doesn't deserve it. I'm sad he doesn't have a better way to really know the severity of his actions yesterday. Unfortunately for me, I remember in full detail everything that happened.'

257. A few seconds later Mr Deuters responded,

'He was appalled. When I told him he kicked you, he cried ... It was disgusting. And he knows it.'

258. Again, Mr Deuters said that he was saying to Ms Heard what he thought she wanted to hear. He had done what the Claimant instructed him to do: try to placate Ms Heard.

259. On 27<sup>th</sup> May 2014 Ms Heard sent a text to Mr Depp in which she declared her love for him. She added, however (see file 6/119/F697.33),

'I know you have a sickness – I know you're suffering Johnny. I'd do anything to be able to take that away from you ... if only I could.'

260. In his trial witness statement, Mr Depp exhibited a text which he sent to his sister, Christi, on 27<sup>th</sup> May 2014 (so three days after the flight). Mr Depp wrote (see file 2/38/D66),

'No reason for her to speak to anyone, let alone a doctor ... I'm out. I'm done. Her actions have added more drama than necessary and when was I unhealthy, exactly??? When I was not sober for a day??? Hmm ... I guess that's what people call falling off the wagon ... It's happened to a lot of my friends. ... Their wives don't stop calling them.'

Mr Depp's response to his sister does not sit easily with Dr Kipper's notes which I have already quoted above and which Mr Depp agreed in evidence must have come from information he provided to Dr Kipper.

261. Mr Deuters had been in touch with Christi (see his text of 25<sup>th</sup> May 2014 at 16.06 or 20.47). She sent sympathetic texts to Ms Heard.

262. In his trial witness statement Mr Depp also says,

'I remember the flight from Boston to Los Angeles in detail'.

That, too, does not accord with his evidence in cross-examination when he said that 'parts of the flight are apparently blacked out', which is also what Mr Deuters described.

263. Mr Deuters denied that Mr Depp had shouted obscenities at Ms Heard or had assaulted her. At most Mr Depp had playfully tapped her back or bottom.



264. On 8<sup>th</sup> June 2014 Mr Depp sent a text to a woman called Patti Smith or Lee which included the following (file 6/119/F697.34),

‘I’ve been so busy with film here in Boston then back to L.A. for kiddies ... When I was in NYC ... They were brief visits, and fucked and charged by horrific flights with Amber ... I fucked up and drank and got shitty. Was so disappointed in myself ...’

265. My conclusions regarding Incident 4 are as follows:

- i) Before and/or during the flight Mr Depp consumed substantial quantities of alcohol. He also took cocaine.
- ii) Mr Depp was jealous of Mr Franco who was much younger than Mr Depp and closer to Ms Heard’s age. Mr Depp suspected that Mr Franco and Ms Heard were having an affair. Ms Heard denied that was the case, but whether it was true or not is immaterial. It could not (and Mr Depp did not suggest it could) justify any abuse of Ms Heard or what followed.
- iii) As had happened previously when Mr Depp became drunk and high on illegal drugs, he insulted Ms Heard and screamed obscenities at her. In his closing submissions, Mr Sherborne submitted that Mr Depp would not have done this in the presence of Mr Deuters, Mr Jerry Judge (Mr Depp’s head of security) and the flight crew. However, I prefer the evidence of Mr Depp’s text to Mr Bettany in which after recounting what he had consumed he asked rhetorically, ‘What do you get?’ Mr Depp’s answer to that question was,  
  
‘a fuckin’ blackout, screaming obscenities and any fuck who gets near.’
- iv) These verbal insults became, in the course of the flight, physical abuse. Whatever the configuration of the furniture on the plane, Mr Depp managed to kick Ms Heard on her back or bottom. This was more than a ‘playful tap’, contrary to what he and Mr Deuters said in their evidence. Mr Sherborne submitted that Mr Deuters (and Mr Judge) would not have allowed that to happen. I do not accept that submission. Their first loyalty was to Mr Depp.
- v) At some stage, because of his consumption of alcohol and drugs Mr Depp passed out. I do not accept that he simply chose to sleep in the toilet to get away from Ms Heard. Her account that he passed out is more in keeping with Mr Deuters’ text, after they landed and Ms Heard had disembarked, that Mr Depp could not leave immediately because he was ill.
- vi) His consumption of alcohol and drugs was also the reason he was ill when the plane arrived in Los Angeles.
- vii) Mr Depp did not, as he said in his trial witness statement, remember the flight in detail. On the contrary, as he agreed in cross-examination, there were times when he blacked out. That also accords with the evidence of Mr Deuters.
- viii) It was perhaps because of his patchy memory that he did not recall kicking Ms Heard until he was reminded of this by Mr Deuters. He was then tearful and

apologetic. I do not accept his and Mr Deuters' explanation that Mr Deuters' text communicating this and Mr Depp's text of apology were an insincere attempt to placate Ms Heard.

- ix) I have reached my conclusions regarding this incident without reliance on the tape played by Ms Wass. It was not sufficiently established by the evidence that this was a recording of the same flight.

**Incident 5: Bahamas August 2014**

266. In August 2014 Mr Depp visited the island he owned in the Bahamas in order to try and rid himself of his addiction to Roxies. Ms Heard went with him. So, too, did a Registered Nurse, Debbie Lloyd, though Ms Lloyd stayed on a separate part of the island with the rest of the staff. There came a point where Dr Kipper flew out to the Bahamas to assist Nurse Lloyd in helping Mr Depp cope with the withdrawal symptoms. The Defendants allege that Ms Heard was physically assaulted by Mr Depp while they were in the Bahamas (see paragraph 55 above where the relevant passage from the RAD is quoted). The Claimant denies that he assaulted Ms Heard (see the quotation from the RAR at paragraph 56 above).

267. Mr Depp said that Ms Heard behaved cruelly towards him at this time and withheld drugs from him that he was allowed or were intended to contribute to his recovery process. I have no doubt that the process of trying to rid himself of the addiction to Roxies was extremely stressful and painful for Mr Depp. However, I have seen notes made by Ms Lloyd. It is apparent from these that Ms Heard (referred to in the notes as 'patient's fiancée') was keeping in close contact with Ms Lloyd and, after his arrival on the island, with Dr Kipper. There is no evidence that she did attempt to withhold from him any medication that he was supposed to have. In his text to Paige Heard, Ms Heard's mother, on 19<sup>th</sup> August 2014 Mr Depp said (see file 6/119/697.41),

'I couldn't have made it without her ... I would have gone for a swim and swallowed a big drink of ocean without her to be honest ... It was a hell of my own doing that your little girl walked through with me step by step ... I know you're already proud of her, but if you'd seen her in action ... Amazing!!! It was an exercise of monumental patience and instinct. I wouldn't be alive, sweetheart ... There were more than a few times when I thought it would be more simple to take that route. It was Amber and Amber only that got me through this ... And it was not easy ...'

268. On 17<sup>th</sup> August 2014 Ms Heard sent a text to Ms Lloyd and Dr Kipper which said (See file 6/119/f697.38),

'Issue has arisen again. He took the meds about 30 mins ago (which seems to be the trend) as I reckon they haven't kicked in yet – all of a sudden he's flipping again. Just started screaming – he was so mad he pushed me and I asked him to get out. Don't know what else to do. Sorry to keep at you guys.'

269. Mr Depp said that he had been in no condition to push or attack Ms Heard in any way. He said the text from Ms Heard could be explained as part of her 'insurance policy'.

270. It was Mr Depp's evidence that Ms Heard was withholding drugs that he was supposed to have or allowed to have, although he said that she did not do this all of the time and at other times she was very helpful.
271. In the context of this incident, Mr Depp accepted that there were times when he experienced blackouts. He said in his evidence,
- ‘there were blackouts, for sure, but in any blackout there are snippets of memory, and in recalling those memories, you see images that you saw and images that you went through, but you do not see the whole picture.’
272. Tara Roberts manages Mr Depp's property on the island. She never saw Mr Depp behave violently towards Ms Heard. In her declaration in the Virginia libel proceedings, Ms Heard had alleged that a door had been splintered as a result of a kick from Mr Depp. Ms Heard had exhibited a photograph of the door. Ms Roberts said that no door had been broken. As the estate manager she would have known if it had been. In her evidence in these proceedings, Ms Heard accepted that she had made a mistake and the door in the photograph was not in the Bahamas.
273. Ms Roberts never saw Mr Depp assault Ms Heard. She never saw any bruises on Ms Heard.
274. My findings regarding Incident 5 are as follows:
- i) The process of detoxification was extremely painful for Mr Depp.
  - ii) His feelings towards Ms Heard vacillated wildly. At times he was extremely fond of her and grateful to her. At other times he imagined that she was the cause of his pain and that her actions increased his torment. I say ‘imagined’ because there is no evidence that Ms Heard was anything other than solicitous and following strictly the regime prescribed by Nurse Lloyd and/or Dr Kipper.
  - iii) I find it more likely than not that Mr Depp did push Ms Heard on at least one occasion (as reflected in her text of 17<sup>th</sup> August 2014). I am not able to conclude whether there was more than this one assault.
  - iv) That Ms Roberts never saw Mr Depp assault Ms Heard takes the matter no further. The staff (including Ms Roberts) lived in a different part of the island. In any event, Ms Heard's account is that she was generally assaulted by Mr Depp only when no one else was present. That is a common feature of domestic abuse.
  - v) Ms Heard acknowledged that she had made a mistake about the location of the door which was splintered. That is a peripheral matter and I do not find it causes me to doubt her account of being assaulted by Mr Depp.

**Incident 6: Los Angeles December 2014**

275. The Defendants plead this in the RAD (see paragraph 57 above). The Claimant denies it (see the quotation from the RAR at paragraph 58 above).

276. Ms Heard says that an incident of violence took place shortly before 17<sup>th</sup> December 2014. She dates this from a text message which Mr Depp sent her on that date and which said (See file 6/119/F697.48),

‘It’s away... I’ve let it go...Went too far ... We/I tend to do that ... I always regret it when I jump, or worse ... when you jump!!! I don’t want to be conditioned to continue that behaviour ... therefore I’ll put in heavy work with Shrank [Mr Depp said this should be ‘shrink’]. I’m sorry for being less ... For your disappointment in me ... For my behaviour. I’m a fucking savage ... Gotta lose that!!! The Devil is all around right...?? I wish I were able to bring just a glimmer of a smile to the pretty face of my most gorgeous of dreams and darkest nightmares ...’

Ms Heard could not recall the incident of violence itself.

277. Mr Depp’s text is contrite, but he said that he often described himself in derogatory ways. While earlier in his evidence he had said that a man who hit a woman would be described as a ‘savage’, I regard the use of the same term in this text as too slender a basis for the inference that he was apologising for hitting Ms Heard. Since Ms Heard was unable to be specific as to the behaviour of Mr Depp which had prompted his apology, I am not persuaded that his apology was not, for instance, caused instead by a particularly heated verbal argument.
278. In conclusion I am not persuaded that Incident 6 constituted a physical assault of Ms Heard by Mr Depp.
279. Mr Sherborne submitted in his written closing submission that no allegation of violence was included in paragraph 8.a.6 of the RAD. In response to this draft judgment, the Defendants drew attention to the terms of paragraph 8.a.6 (quoted at paragraph 57 above) which they argued did plead violence. Whatever the position regarding the pleading, the point remains that the allegation was not put to Mr Depp.

#### **Incident 7: Tokyo: January 2015**

280. The RAD pleads that on this visit to Tokyo in January 2015 and while in a hotel Mr Depp shoved Ms Heard, slapped her and grabbed her by the hair (see paragraph 59 above). The RAR admits that the couple were in Tokyo at this time, but denies the assaults (see paragraph 60 above).
281. In her 1<sup>st</sup> witness statement Ms Heard said that Mr Depp was using pills and other drugs at the time. He flew into a rage as alleged. He was screaming. She was crying.
282. In his evidence, Mr Depp said that they were travelling with his children. He denied that he would have taken cocaine or marijuana into Japan when the children were with them. He repeated his denial that he had assaulted Ms Heard, especially when the children were in adjoining rooms.
283. If he again blamed his behaviour on ‘the monster’, that was part of his effort to placate Ms Heard. It was what she liked to hear.
284. Mr Deuters and Adam Gough had an exchange of texts regarding monsters at about this time and in reference to the visit to Japan. I have accepted their evidence that these were

jokey references, not to be taken seriously. I have, though, already explained my view that in other messages Mr Depp did refer to 'the monster' as a way of describing a dark side of his personality which, when it prevailed, could lead him to assaulting Ms Heard.

285. Ms Heard agreed that they were in Tokyo for the premiere of one of Mr Depp's films. She thought the premiere took place about 2 days after the assaults. She wore a backless dress for the event, but that was because she had no injuries on her back as she checked obsessively in the mirror.
286. So far as Incident 7 is concerned, my conclusions are as follows:
- i) I have found that on other occasions, not long before Incident 7, Mr Depp was adversely affected by drink and/or drugs, whether prescription or controlled drugs.
  - ii) During those incidents, Mr Depp assaulted Ms Heard.
  - iii) I do not accept that the presence of his children would have inhibited Mr Depp from doing so again. They were staying in another room.
  - iv) Nor do I find that the presence of his children would have prevented Mr Depp from gaining access to controlled drugs. After all, a short time later in February or March Nathan Holmes was helping Mr Depp to acquire controlled drugs in Australia (see Incident 8 below).
  - v) I conclude that Mr Depp did assault Ms Heard as she and the Defendants have alleged in Incident 7.

#### **Incident 8: Australia March 2015**

287. In March 2015 the Claimant was due to film another in the 'Pirates of the Caribbean' series. Mr Depp was in a gloomy state of mind about his work as can be seen from his text of 6<sup>th</sup> March 2015 in which he said (see file 6/119/F697.58),

'Honestly I will not again be doing anything that involves this discussion of furthering my embarrassment of having whored for all these fucking wasted piece of shit nothing years on characters that I so ignorantly started to think of as my legacy .. Every cuntin' fight!!! Every fucking time!!! I held my ugliness and rage deeper down and get in check when there was still room in my head to do such a thing!!!!'

288. Mr Depp admitted that when Ms Heard arrived in Australia a few days later he was unhappy with the production and also about his relationship with Ms Heard.
289. A house was rented for the Claimant and Ms Heard in Queensland. They were to have the house to themselves. Mr Depp said that a team of security guards was hired by the production company for him and Ms Heard.
290. The Claimant flew out on 11<sup>th</sup> February 2015 with Nurse Debbie Lloyd and Mr Deuters. In advance of their arrival, Nathan Holmes, another assistant of the Claimant's, had gone ahead in order to stock the fridge in the house that was being rented. If there was alcohol in the house, Mr Depp said, it was of no interest to him. He denied that he had

asked for it to be there. He said that he had been teetotal for about 18 months, though, when reminded of the text to Paul Bettany in which he said that he had consumed 2 bottles of champagne in May 2014 on the flight from Boston to Los Angeles, he accepted that the period had been not longer than about 9 months.

291. I have quoted the assaults which the Defendants allege took place in Incident 8 in the RAD (see paragraph 61 above). A further allegation is made in the confidential schedule to the RAD. I have quoted the Claimant's reply (see paragraph 62 above). In the confidential schedule to the RAR he also denies the further allegation in the confidential schedule to the RAD.
292. Ms Heard's witness statements provide evidence in support of the allegations in the RAD.
293. I was shown a number of texts between Mr Holmes and the Claimant. These were referred to as 'the Australian drugs texts' which I have mentioned previously. The Claimant agreed that he had asked Mr Holmes to get (illegal) drugs. He said they were for both him and Ms Heard. He wanted cocaine for himself. He said the MDMA which he also asked Mr Holmes to get was for Ms Heard. He said that MDMA did nothing for him (although his text of 4<sup>th</sup> October 2014 (see above) suggests otherwise. So, too, does Mr Depp's text to Nathan Holmes on 8<sup>th</sup> March 2015 (see below)).
294. Ms Heard's evidence was that she had only taken MDMA (Ecstasy) once with Mr Depp and that had been on a flight to Moscow. There had only been one other occasion when she had taken Ecstasy and Mr Depp had not been present (that had been at Coachella). She was asked about a note by Dr Kipper (which appears to be part of an email or text) in which Dr Kipper said (see file 9/101A/K76),
- 'Also I am confused. If you are convinced that all problems between the two of you stem from his drug abuse, why would you have participated with mushrooms on the island during the wedding and Ecstasy in Australia?'
- Ms Heard denied that Dr Kipper's note was correct regarding the Ecstasy in Australia. The information in his message had not come from her. It must have come from Mr Depp, who was Dr Kipper's client or patient.
295. On 27<sup>th</sup> February 2015 Mr Depp texted Mr Holmes (see file 10/O265)
- 'Disappearer!!! We should have more happy pills!!!!? Can you???'
296. Mr Depp was asked what he was referring to as 'happy pills'. He said they were the pills which Dr Kipper was prescribing: Xanax for his anxiety; and Adderall because his body was not producing the required serotonin. He said he did not know that Ecstasy was sometimes referred to as 'happy pills'. He said that he had not directed the request through Nurse Lloyd because she was not on the set the whole time.
297. Mr Holmes replied 2 minutes later,
- 'Yes we can!! I'm giving them to Stephen to give you ... Yay.'
298. Mr Depp was asked if Mr Holmes was also taking prescription drugs. He said he was not. The use of the first person plural had been a royal 'we'.

299. On 28<sup>th</sup> February 2015 Mr Depp texted Mr Deuters to ask about a ‘wee baggage’ he had been given by ‘Ryan (Munson’s)’ and ‘where the package resided’ (see file 6/119/F697.57). Mr Deuters replied a few minutes later giving the location of the ‘wee package’ in one of Mr Depp’s bags. When it was put to Mr Deuters that he had been involved in passing controlled drugs from Nathan Holmes to Mr Depp, he said that he could not recall the specifics, but it was perfectly possible. At first Mr Deuters said the ‘wee package’ was most likely of marijuana. Later in his cross-examination he accepted that it was more likely a reference to happy pills. Mr Deuters understood ‘happy pills’ to be a reference to Ecstasy or MDMA.

300. On 3<sup>rd</sup> March 2015 Mr Holmes sent a text to Mr Depp saying,

‘Good afternoon, I just picked a little something from set, I am about to bring it up to you. Is that OK?’

301. Mr Depp replied on 7<sup>th</sup> March 2015,

‘Also ... may I be ecstatic again??? Helps... Color me deceased’

302. There is evidence that Mr Holmes was also supplying Mr Depp with cocaine at the time of this Australia. There is, for instance, his text of 25<sup>th</sup> February 2015 at 07.19 or at 01.19 on 25<sup>th</sup> February 2015 in Queensland). On 2<sup>nd</sup> March 2015 Mr Holmes texted Mr Depp (see file 10/O266),

‘There was two G in that jar ... Are you out? The guy only carried 2 a day and more tomorrow ... He said it’s because if he’s caught with more than 2 it’s 20 years in prison. I can try another guy and get one more for when you pick Malcom up.’

This was plainly a reference to illegal drugs measured in grams. The obvious inference is that Mr Holmes was offering to supply cocaine.

303. Prior to Ms Heard joining Mr Depp in Australia, she was making a film in London called ‘London Fields’. One of the other actors in that film was Billy Bob Thornton. Mr Depp suspected that Ms Heard was having an affair with Billy Bob Thornton.

304. Mr Deuters was clearly a huge admirer of Mr Depp. An indicator of this is a text which he sent to Mr Depp on 6<sup>th</sup> March 2015 (Mr Deuters was responding to Mr Depp’s text which I have quoted above and in which Mr Depp expressed gloom about his legacy). Mr Deuters said (see file 6/119/F697.58),

‘When I was a kid I loved my writers, my directors, my musicians ... But there was only one actor I loved. ONE actor whose films I would go and see every single one of, at the cinema. And I was not alone. Nor am I now. You are a MAVERICK. An ARTIST. A bona fide FUCKING LEGEND. One of the ALL TIME GREATS ... ALL TIME!!! You are LOVED out there in the world and all anybody wants to see on the screen is the Johnny Depp they know and LOVE. That said you DESERVE some time off - take a break, look after yourself for a while – then we can discuss other stuff, you need to be less harsh on yourself and remember and salute all that you have accomplished in life. No one has achieved what you have managed to achieve from critical hero to box office juggernaut, all the while managing to retain the people’s touch. A phenomenal, unprecedented, never to be repeated feat!!!

You've inspired MUTIPLE generations of young artists, from actors to musicians, to wannabe writers ... In fact similar to Keith in that respect, you've transcended all genres – you're the one who everybody loves, been accepted by every niche. So, as I've told you before, to call it an honor to work for you, doesn't do my feelings on the topic any justice whatsoever. But safe to say, I wouldn't work for anyone else. You're the reason I'm in this business, and by fuck does this business need you.'

305. Mr Deuters confirmed that this text represented his true feelings both at the time and now.

306. Mr Deuters was not alone in his loyalty to Mr Depp. Nathan Holmes had the following exchange with Mr Depp on 2<sup>nd</sup> March 2015 (see file 10/O268),

'JD: I don't need you for that ... no more

NH: I'm sorry you feel that way.

JD: No, you're not Why?? That is not part of the job description. And I'm telling you now ... Any ONE of ANY of you guys start to lecture me ... I just do not want to hear it ... No stupid bullshit about sappy bollocks.

NH: I am not and never would lecture you ... Have I not been helping, I'm trying to keep the supply coming ... But it's not the same here. Sorry.

JD: I am a grown fucking man and I will NOT BE JUDGED.

NH: I have never judged you and never will!! I fucking love you and do everything I can to make you happy.

JD: AND I WILL NEVER ... EVER ... LIVE... IN THIS WORLD CAGE ANY LONGER.

NH: Do you honestly think I ever want to upset you!! You have been nothing but good to me for my entire career ... It is because of you that I am still in this industry!! I only want you to be happy.

JD: I'll do whatever I damn well please.

NH: I would encourage you to do it!! You are my legend!! Fuck Disney ...

I know you will ... And I will never stop you from doing whatever you please

JD: That's very sweet and you know I love you

NH: I know you do!! That's why it upsets me when you get like this ... You know I would die for you ... For your kids!! I will do anything in my power ever to make you happy ... ANYTHING!!!'

307. Mr Depp confirmed that Dr Kipper flew out to Australia on 5<sup>th</sup> March 2015.



308. Some indication that trouble was brewing can be seen in a text which Mr Deuters sent to Mr Depp's sister, Christi on 7<sup>th</sup> March 2015 (in cross-examination Mr Deuters appeared to regard this text as having been sent after Mr Depp injured his finger, but that does not accord with time and date of the text – 5.12am on 7<sup>th</sup> March 2015, even allowing for the time difference in Australia The text is UTC+0 which, for reasons I give at paragraph 340 below, I take to be 3.12pm local time). Mr Deuters wrote (see file 6/119/F697.59),

'Hi C. Not sure how much you are aware of right now, but I am at the house with Kipper and Debbie [Lloyd] who are speaking with JD and Amber respectively, separately. Obviously, things have not been calmed over the last day or so – apparently there he has been making calls to LA but I am not aware of the particulars there as well there has been fighting between the two here – so Kipper is now talking to JD, hoping to get thru to him, and explain to him that “this period” needs to end now before we get into real trouble. I'll keep you posted on the outcome. The good news thus far is that JD did not cancel this mtg and that he is engaging in conversation. We'll see how that goes and will do whatever else we need to do ...'

309. Three hours later, Mr Deuters sent a further text saying (see file 6/119/F697.60),

'well conversations seem to be going well ... JD is agreeing to all that Kipper is requesting he do in order to turn himself around ... of course we've heard that before, so we'll see ... they are now sat with Amber as well, but look to be wrapping up soon ... more shortly.'

310. Despite that last comment, there does not appear to have been a further text from Mr Deuters that day.

311. Prior to Ms Heard's arrival in Australia, Mr Depp's American lawyers had been encouraging her to enter into a 'post-nuptial' agreement. Ms Heard had not agreed to this by the time she arrived in Australia. The Claimant said that Ms Heard was angry at the suggestion. Mr Depp exchanged texts with his sister, Christi, on the subject of Ms Heard's supposed resistance to signing a 'post-nuptial' agreement.

312. Another indication of Ms Heard's resistance to an agreement was an email which Dr Kipper sent to Dr Connell Cowan on 27<sup>th</sup> January 2015 (see file 4/130/F755) which included,

'Amber and JD have been fighting non-stop since he confirmed his need for a pre-nup on the way to the airport (going to Japan to promote his movie). She tried to push up the date of the wedding to avoid all this, but the reality is he will need a pre-nup. If she fails to sign, they won't get married. Both behaved like super triple DD types, complete with thrown coffee, attempts by him to storm the cockpit, attempts by her to leave the plane while they were over the fuckin ocean, etc.'

313. In her 1<sup>st</sup> witness statement, Ms Heard denied that she had been unwilling to sign a 'pre-nup'. She said that she had instructed a lawyer to draft one, but Mr Depp had said he did not want one and had threatened to rip up any draft. Neither Mr Depp nor Ms Heard waived privilege in relation to this matter and I did not see any correspondence or statement from the lawyers themselves.

314. Mr Depp said Ms Heard was not angry with him because she thought he was drinking to excess and taking drugs. It was not the case that he had a bag of Ecstasy pills or that he would take a handful of such pills to make a point that he could do what he pleased.
315. He denied the accusations that he had been physically violent to Ms Heard as the Defendants alleged and as she had said in her statements. It was not the case that he had threatened to put out a cigarette on his own face. He was not off his face with drink and drugs. Ms Heard had not stormed upstairs or barricaded herself in her room. When she came down, he was not drinking Jack Daniels straight from the bottle and Ms Heard had not tried to take the bottle from him. He had not broken a window in the house. He said he had possibly accused Ms Heard of having affairs including with Billy Bob Thornton.
316. It is plain that at some point in the argument, part of one of the Claimant's fingers was sliced off. The Claimant said this had occurred when Ms Heard threw a vodka bottle at him. He denied that he had cut his finger accidentally on a broken bottle or on a plastic wall mounted telephone which was broken. I return below to consider the evidence as to how this occurred. Mr Depp also said that Ms Heard also put out a lit cigarette on his cheek.
317. The damage to the Claimant's hand was serious and painful. The Claimant denied that he had delayed seeking medical help. He did agree, however, that he had written graffiti on the wall with his injured finger. At first, he used blood from the finger. He then dipped his injured finger into paint. There are in evidence photographs of some of the graffiti which the Claimant drew. Part of this read, 'starring Billy Bob Thornton Easy Amber'. Mr Depp agreed that he wrote that. He also wrote on a lampshade 'Good luck and be careful at the top'. He agreed he had done so at a time when he was severely injured. It was put to Mr Depp that he did not know what he was doing. He replied,
- 'I knew exactly what I was doing.'
318. Malcolm Connolly was part of Mr Depp's security team with him in Australia. He and most of the team were staying at an apartment block in Broad Beach. In his statement made on 25<sup>th</sup> February 2020. Mr Connolly recalled getting a call in the middle of the afternoon of 8<sup>th</sup> March 2015 from Jerry Judge to say that they were needed urgently to get Mr Depp. They sent texts reporting their progress. The journey took about 40 minutes.
319. When they arrived, Mr Depp was distraught but coherent. He did not appear drunk to Mr Connolly and he didn't appear to have taken any drugs. Mr Connolly said that Dr Kipper was not present.
320. Malcom Connolly said that when he arrived Mr Depp was outside the house and Mr Depp said to him words to the effect of,
- 'Look at my finger. She's cut my fucking finger off. She's smashed my hand with a vodka bottle.'

Mr Connolly also said that Mr Depp told him that Ms Heard had also put a cigarette out on his cheek. Mr Connolly could see a mark on Mr Depp's face. Mr Connolly agreed

that Ms Heard was saying that Mr Depp had burnt himself with the cigarette, although she did not say that in his presence.

Mr Connolly was shown a photograph of Mr Depp lying in hospital. He identified the mark to which he had referred on the right side of Mr Depp's face.

Mr Connolly did not recall Mr Depp coming out with a variety of explanations for the injury to his finger. On the way to the hospital other explanations were discussed for how the injury could be said to have occurred. These included that it had happened when Mr Depp was slicing onions. Mr Connolly himself said he suggested that they should say that the finger had been injured in a folding door in the house. There was such a door in the house, though Mr Connolly said that could not have been how the injury occurred because the door had a safety device. Mr Connolly said that these other explanations were thought up to protect the abuser (Ms Heard).

321. Mr Connolly said that Dr Kipper was not at the house at the same time as him. If he did arrive, Mr Connolly said it must have been after he left.
322. Mr Connolly saw no scratches on Ms Heard's arms. She was with him for about 30 minutes, although he only saw her from a distance. He did not see a bruise on her.
323. When help arrived, the record function of a mobile phone was left on and, as a result, there is a recording which lasts about 5 hours. Two partial transcripts have been prepared: one by the Defendants and one by the Claimant. Although much of the recording is indistinct, it is a useful record of those who first encountered the scene.
324. At one point (according to the Claimant's transcript), Jerry Judge, Mr Depp's head of security, and Ben King, the house manager, can be heard saying (see file 5/156a/F978.80 and following),

'JJ: And honestly, he wrecked this place. I mean wrecked. Windows broken. The TV -- she did it. There was a cup thrown it missed [indiscernible] There's been bottles thrown and she admits to me she threw the first -- she threw a bottle [indiscernible] She [indiscernible] first ....

She has scratches on her left arm ... and I've seen those scratches before on a lot of people and as far as I am concerned they're self-inflicted. I'm convinced it was self-inflicted ... And she admitted that she hit him first. He has a small [Burn?] on the right hand side of his face, which she says I've seen that yesterday. But she didn't say -- she said on Friday he put a cigarette and burnt his own face with a cigarette ... There's blood everywhere... these two are covered in blood [indiscernible] down in the bar, he drank everything in the past week [indiscernible] and within two hours he'd taken 10 -- 10 ecstasy tablets [indiscernible] not the time to talk about it. If someone keeps supplying him, he's going to O.D. on this. ... I am not going to say that she did or he did it [indiscernible] sink, but yesterday, she is stone cold sober. She doesn't smell of booze ... We need to get this house before anybody sees it, we need to get it cleaned up ...

BK: Speaking of cleaning up, how much do you owe? I would safely say we've lost the deposit on this one.

JJ: Lost the deposit [indiscernible] ... Between me and you, I'm looking at \$50 – 75 k ... That's what it's going to cost for this [indiscernible]. Carpets and all.

BK: Oh easily. Probably more. This floor will need re-doing because that's paint, isn't it? It will probably need a complete sanding ...

JJ: What I'm most concerned with now is that if the owner sees the house he'll kick us out and go to the newspapers ... The TV, they tell me the TV is about 10 grand, 15 grand on its own. There are two pictures here [indiscernible] standing very sexy, the same picture, in a bikini with her hands on her breasts. And what he did with one of them - - he drew or painted a fake dick on her pussy. ... And we're trying to keep a lid on this. One of the windows leading to the outside of the house has been broken.'

325. Mr Deuters agreed that a lot of money had to be spent to compensate the owners for the damage to the house, although he was not aware of the exact amount.

326. At another point in the accidental recording, Ms Heard is talking with Jerry Judge and says that she called her sister. A woman's voice continued,

'Yeah I called and said I just need to come home and she said, whatever you need I love you, I'm here.'

In her evidence Ms Heard said that she did not recall phoning her sister, though she did not dispute that she had said that on the day.

327. In his evidence Mr Depp said he did not remember a window being broken. However, a photograph exhibited to Mr King's 2<sup>nd</sup> witness statement clearly shows a broken window-pane (see file 2/59(f)/D249).

328. Mr Depp said that Ms Heard had thrown two bottles at him, one of which had severed part of his finger.

329. Mr Depp said Ms Heard had been responsible for most of the damage. He said she had been in tears and upset by the suggestion that she should enter into a post-nuptial agreement. Nobody had come into the house because the sound of breaking glass was hard to hear from outside. Mr Depp was asked about the defacement of the painting to which Mr Judge had referred. He said he could have done it but could not remember specifically.

330. Mr Depp said that he recalled ripping a phone off the wall. That occurred after he had injured his finger. By then, Mr Depp said he was suffering trauma from his injury.

331. Part of the graffiti written on a mirror in red said, 'Call Carly Simon, she said it better babe (smiley face)' – see the photograph in file 6/148B/F894.049 (2545). Mr Depp said that he believed this was a reference to the Carly Simon song 'You're so vain'. Mr Depp said that he had not been responsible for writing that. It was not his handwriting. He believed that those words had been written by Ms Heard after he had left the house. He said that she regularly had to have the last word.

332. Mr Depp agreed that had been responsible for the writing in black in that photograph. He did not agree that the writing in black covered the writing in red.

333. Mr Depp accepted that he had also written what appeared in a different shade of red. He had written that in the blood that came from his injured finger.
334. Mr Depp was asked about a different photograph (file 6/148B/F894.050 (2546)). He agreed that he had written the graffiti shown in this picture. It said, 'Starring Billy Bob [Thornton] Easy Amber'.
335. Another photograph (file 9/87(h)(ii)/J1.4B) showed a lampshade with graffiti which said, 'Good luck and be careful at the top'. Mr Depp agreed that he had written this and at a time when he was severely injured. He agreed that he was in considerable pain, but he said he knew exactly what he was doing.
336. Mr Depp denied urinating outside the front door and doing the same thing inside the house. Mr King, the house manager, said that he smelt no urine inside the house during his cleaning operations.
337. Mr King, who was also summoned to the house which he was managing on behalf of Mr Depp and Ms Heard, said in his 1<sup>st</sup> witness statement,

'When I arrived, I found a significant amount of damage, particularly to the bar area on the lower ground floor. The mirror behind the bar was heavily cracked and there was broken glass and other debris strewn on and around the bar.'

338. Mr King's 2<sup>nd</sup> witness statement elaborates on this. He says,

'I was in charge of arranging the clean-up and replacing things or getting damage repaired. The immediate physical damage was tidied up, such as broken glass, paint, liquid spillages and broken china where a cup had struck a TV. I also cleaned the graffiti from the mirrors. I was there for several hours. ... I came back around a week later to deal with the larger clean-up work, such as organising for the floors to be sanded, the curtains cleaned, paintwork and plasterwork, and chipped stone on the counter-top in the bar area and on the staircase down to the bar, where a flower vase had been launched from the floor above.'

Mr King said, however, that he saw no sign of a broken telephone.

339. Dr Kipper was in Australia by 8<sup>th</sup> March 2015. Mr Depp sent him a text that day which said (see file 7/5(b)/H30.6),

'Hi ... Fucked man ... Had another one ... I just cannot live like this ... She is as full of shit as a Christmas Goose!!! I'm done. NO MORE ... !!!

The constant insults, the demeaning, belittling, most heartbreaking spew that is only released from a malicious, evil and vindictive cunt!!!! But, you know what ...?? FAR MORE hurtful than her venomous and degrading endless "educational" ranting ... ??? is her hideous and purposely hurtful tirades and her goddam shocking treatment of the man she was meant to love above all ... Here's the real deal, mate ... Her obsession with herself .... ?? Is far more important ... she is SO FUCKIN' AMBITIOUS!!!! She's so desperate for success and fame ... That's probably why I was acquired mate... !!Although she has HAMMERED me with what a sad old man, has been I am... Cowan has done me the most cruel of favors ... I'm so very

sad ... I cut the top of my middle finger off ... What should I do Except, of course, go to a hospital ... I'm so very embarrassed for jumping into anything with her ...'

340. Mr Depp had plainly damaged his finger by the time this was sent. The time of text is recorded as 1.00am but this is 'UTC + 0'. I consider that I can take judicial notice of the following facts (a) that UTC stands for Co-ordinated Universal Time and is effectively a successor to Greenwich Mean Time (b) that Australian Eastern Standard time ('AEST') is UTC + 10; (c) In 2015 Queensland did not observe Daylight Saving Time and adopted Australian Eastern Standard Time all year. Thus, the text to Dr Kipper was sent at 11.00am local time.
341. On 27<sup>th</sup> September 2020 I indicated to the parties that I was minded to take judicial notice of these matters but invited them to make any observations on that issue. Ms Laws on behalf of the Claimant observed in her response of 29<sup>th</sup> September 2020 that some of the records had been extracted in Los Angeles and, in those cases, the time was noted as 'UTC -8' because Los Angeles is 8 hours behind UTC. I take from this that I must be astute to note whether the recorded time is UTC+0, UTC -8, or some other time. I have in what follows striven to do that.
342. Dr Kipper's notes have an entry that he 'received a text message from client that he had been arguing with wife and that he had cut his finger. According to the patient his assistant and security were on their way to pick him up.'
343. The text message from Mr Depp did not say that say that Mr Deuters or Mr Depp's security team were on their way, but at 1.21 UTC (so 11.21 AEST) Dr Kipper had asked Mr Depp to call him and that information may have been communicated in that call.
344. I note that Dr Kipper's notes (a) record the date of the text message from Mr Depp as '3/7/15' i.e. 7<sup>th</sup> March 2015 and (b) its time as 11.30. Neither of these can be accurate. All the other evidence in the case shows that Mr Depp went to hospital on 8<sup>th</sup> March (not 7<sup>th</sup>). The timing of the text, as I have shown, was slightly earlier than Dr Kipper said in his note. While there may have been some delay in Dr Kipper reading the text, he must have done so by 11.21 AEST when he sent his text asking Mr Depp to call him. As I have already noted, Dr Kipper was in Australia by this time.
345. At 1.05 UTC (and so at 11.05 AEST) Mr Depp sent an instant message to Nathan Holmes. Mr Depp said (see file 10/O271),
- 'Need more whitey stuff ASAP, brotherman ... And the e business!!! Please ... I'm in bad bad shape ... Say NOTHING TO NOBODY!!!!'
346. It seems members of Mr Depp's security team arrived at the house at about 12.20. At around 1.0pm a message was sent to Dr Kipper asking him to come to the house. Dr Kipper's note records (see file 4/137/F844),
- '1300 Patient was having a hard time leaving the house so security suggested that the MD [i.e. Dr Kipper] and RN [presumably Debbie Lloyd] go to house to see patient.'
347. Dr Kipper dressed the wound to Mr Depp's finger and at about 3.30pm took Mr Depp to the Emergency Department of the Gold Coast University Hospital where he arrived

at 4.20pm. The hospital was told (see file 4/133/F761) that he sustained an injury to finger 'tonight after accidentally cutting it with a kitchen knife.' The emergency room doctor noted that the injury was 'more proximately suggestive [of] a crushing mechanism.'

348. Mr Depp was also seen by Dr Sawhney on 8<sup>th</sup> March 2015 (although Mr Depp was using the pseudonym Robert Wells). Dr Sawhney recorded (file 4/132/F759),

'unclear history of traumatic event and no witnesses. Patient under the influence and not coherent nor sure of mechanism.'

349. Mr Depp was due to discuss potential surgical procedures with Dr Sawhney the following day (9<sup>th</sup> March 2015). In fact, the operation on Mr Depp's hand took place in California, not in Australia. The bone was pinned, and a plaster cast was put over it. I was shown a photograph (taken on 18<sup>th</sup> March 2015) of the cast which had pictures of little dinosaurs on it.

350. Neither the hospital, nor Dr Sawhney, nor Dr Kipper made any mention of a cigarette burn to Mr Depp's cheek.

351. Very shortly after this, on 15<sup>th</sup> March 2015 Dr Kipper ceased to be Mr Depp's doctor. In an email to Dr Cowan, of the same date, Dr Kipper explained that he had taken this step (file 4/136/F764),

'after another night of broken promises to remain sober and compliant.'

352. It seems that Dr Kipper resumed his professional relationship with Mr Depp a short time later, since on 30<sup>th</sup> May 2015 he wrote a letter 'to whom it may concern' describing Mr Depp and Ms Heard as his patients.

353. Ms Heard was seeing a psychotherapist, Dr Connell Cowan. While she was in Australia she called him on 8<sup>th</sup> March 2015. His note of the conversation included the following (file 9/133/K255),

'They are fighting – relationship volatile and destructive to any sense of growing trust. Her coping skills seem minimal ... Big event that turned angry ... They are both volatile and she doesn't back down when confronted. I understand he badly injured his hand.'

354. Ms Heard flew back to Los Angeles on 9<sup>th</sup> March 2015 in the company of Ben King. Mr King's witness statement said that on the flight, Ms Heard asked him,

'Have you ever been so angry with someone that you just lost it?'

Mr King said he had never felt that way at which, he says, Ms Heard was incredulous and repeated her question.

355. Ms Heard said that she did not recall having that conversation with Mr King. She said if she had, she would have been referring to Mr Depp rather than to herself.

356. However, in the course of the recording known as 'Argument 2' Ms Heard says,

‘I can’t promise you that I’ll be perfect, I can’t promise you that I won’t get physical again. God, I fucking sometimes get so mad I lose it ...’

357. In his first witness statement, Mr King said that he saw no cuts or bruises on Ms Heard. In his second witness statement (made on 12<sup>th</sup> July 2020), he said that on one arm,

‘she had a couple of marks which looked like cuts in fairly uniform lines at a sort of diagonal angle downwards.’

358. Mr Connolly was absolutely sure that he did not see any injury to Ms Heard’s arms, although he only saw her from a distance.

359. There is a photograph (file 6/148B/F894.051 (2549)) which Ms Heard said showed her arm with the scars still apparent. Ms Heard said the photograph was taken, she thought, in 2019.

360. On 11<sup>th</sup> March 2015 Ms Heard saw Dr Cowan for a 1-hour session of individual psychotherapy. He recorded that she was ‘very anxious and distressed’ and Dr Cowan asked her to check in with Dr Kipper.

361. On 12<sup>th</sup> March 2015 Chad Oman sent a text. Mr Deuters explained that Chad Oman was one of the executive producers of the film that Mr Depp was making. Mr Oman’s text, which appears to be a press release was sent to Mr Deuters. It began (see file 6/119/F697.62),

‘Pirate steers off course! Johnny Depp injured his hand GO-KARTING with Mick Doohan at Australian motorbike champion’s luxury estate - forcing the star to fly home.’

Mr Deuters agreed that the statement was complete rubbish. Mr Deuters said that Mr Depp had told him that Ms Heard had been responsible for the injury to his finger.

362. In her evidence, Ms Heard confirmed her account that Mr Depp had put out a cigarette on his own cheek. He had done that in her presence. It appeared to be a deliberate act. He had said to her he was already in pain. She said Mr Depp was under the influence of cocaine and MDMA at the time.

363. She denied that she had been responsible for any of the damage to the house. She said a window had been broken and she had been startled by a bird who had flown through the damaged pane. There had been blood on the carpet and on the floor. There had been graffiti written on the walls, mirrors, and lampshades. A cushion appeared to have been set on fire. The carpet had been burned in the surrounding area. In various places there was food spread around. While this was being done, Mr Depp seemed out of his mind.

364. Ms Heard denied that she had been responsible for the injury to Mr Depp’s finger. She was asked at what stage it had occurred. She said that it was about 24 hours into his rage. She said that it was after Mr Depp had held her up against the fridge. According to her evidence, he said that she had ruined his life. He said that he wished he had never met her. He threatened to slice up her face. She said she pushed or punched him to get away or in defence of herself. She was asked how Mr Depp did injure his finger. She said that he punched the wall a few times. There was a wall mounted phone. He picked



up the phone and repeatedly punched the phone. The phone disappeared. She did not know at the time what had caused the injury to Mr Depp's finger, but she believed it must have been from his contact with the phone. She also said there had been a substantial delay between Mr Depp hurting his finger and help arriving – she estimated it as about 12 hours.

365. Kristina Sexton said that she met Ms Heard shortly after Ms Heard's return from Australia in 2015. Ms Heard had said that they had had a horrible time. Ms Heard had said that Mr Depp had gone on a 'bender' and they had been fighting the entire time (I note that the witnesses generally tended to use the expression 'fighting' to refer to verbal as well as physical arguments). Ms Sexton said it was in 2016, a few days after Ms Heard had filed for divorce that Ms Heard spoke about the physical violence which Mr Depp had subjected her to during the Australia trip. She said that he had tried to strangle her and attacked her with bottles – throwing bottles at her and breaking bottles against the wall. Ms Sexton gives further evidence about Ms Heard's account of Mr Depp's attacks in the Confidential part of her witness statement.
366. In her deposition for the Virginia libel proceedings on 18<sup>th</sup> December 2019, Ms Sexton said that she had understood from Ms Heard that Mr Depp had accidentally cut his finger on glass from a broken bottle.
367. Whitney Henriquez, Ms Heard's sister, saw Ms Heard when she returned to Los Angeles from Australia. Ms Heard relayed to her in headline terms what had happened. Ms Henriquez said,

'She sobbed telling me about the fight and what had happened. She was not hiding the abuse from me at this point. I also saw her injuries, so there was no hiding it. Her lip was swollen and busted up a bit, and she also had these horrible cuts on her arms – like gashes ... The she told me that the cuts on her arms were from the broken glass that was from him throwing bottles and smashing glasses all over the place.'

368. In her witness statement of 16<sup>th</sup> June 2020 Rocky Pennington said that Ms Heard visited her after her return from Australia. Ms Pennington said that she could see gashes on Ms Heard's arms from her wrists to her elbows. In cross-examination Ms Pennington said that one arm was cut worse than the other. Ms Heard told Ms Pennington that the soles of her feet were also cut. Ms Heard said that Mr Depp had thrown a bottle at her; there had been broken glass all over the ground which was how she had cut her feet. Ms Pennington also said that Ms Heard told her that Mr Depp had ripped off her nightgown as part of his assault. Ms Pennington said that Mr Depp had never suggested that Ms Heard had been responsible for the injury to his finger.
369. In his evidence, Mr Deuters agreed that the story of Mr Depp injuring his hand could have been a public relations disaster: it was not the image which Mr Depp's team wanted to be associated with him. That chimes with a text sent to Mr Deuters from an unidentified sender (but which may have been Christi Dembrowski) and which said (file 6/119/F697.61),

'Just make sure you say you aren't sure how he hurt his hand.'

It also accords with the false explanation put out by Mr Oman.

370. My conclusions on incident 8 are as follows:

- i) Mr Depp was jealous of Billy Bob Thornton and believed that he and Ms Heard were having an affair. Ms Heard had come out to Australia after filming 'London Fields' in which Billy Bob Thornton also starred. Mr Depp's belief that Ms Heard and Mr Thornton were having an affair is the obvious inference from the graffiti which Mr Depp scrawled on one of the mirrors. It also fits with his reactions to James Franco and Tasya van Ree. The sexual element of his ill temper is also apparent from what Mr Judge observed about the pornographic defacement of a picture.
- ii) Rightly or wrongly, Mr Depp also believed that Ms Heard was resistant to a post-nuptial agreement. That added to his anger.
- iii) A further cause of Mr Depp's stress was his dissatisfaction or concern about the 'Pirates of the Caribbean' series and with what he saw as his legacy, as shown by his text to Stephen Deuters.
- iv) Mr Depp did what he often did when subjected to stress: he drank alcohol excessively and used controlled drugs. I do not accept his evidence that the alcohol with which Nathan Holmes had stocked the fridge was only for visitors or Ms Heard. Nor do I accept that Mr Depp remained sober until he and Ms Heard argued on the night of 7<sup>th</sup>/8<sup>th</sup> March 2015.
- v) Nathan Holmes was available to supply him with cocaine and MDMA and he provided Mr Depp with both. There are two post-injury events which point in the same direction. The first is the first text which Mr Depp sent after texting Dr Kipper. This was to Nathan Holmes asking Mr Holmes to supply 'more' whitey (obviously cocaine) and E (obviously ecstasy). The second post-injury event is that Dr Kipper terminated his professional relationship with Mr Depp because of Mr Depp's continued 'broken promises to remain sober and compliant' (as Dr Kipper said in his email to Dr Connell Cowan of 15<sup>th</sup> March 2015). I recognise that allowance must be made for the injury itself to be a contributing cause. However, there is ample evidence of Mr Depp's excessive drinking and use of controlled drugs before he injured his finger so that these two events cannot simply be attributed to the injury itself.
- vi) I do not accept that the MDMA was for Ms Heard. I accept her evidence that she only rarely used MDMA and neither she, nor anyone on her behalf, asked Nathan Holmes to acquire it for her in Australia.
- vii) I reject Mr Depp's evidence that he was looking to Nathan Holmes to supply him with prescription drugs. Debbie Lloyd was with him and it would make no sense at all for Nathan Holmes to be the source of prescription drugs rather than she.
- viii) I accept Ms Heard's evidence that she was angered or concerned by Mr Depp's excessive drinking and consumption of controlled drugs. Her father had been an alcoholic and had physically abused her mother as a result. I accept her evidence that she feared Mr Depp was set on the same path. By the time of Incident 8, I

have found that she herself had been the victim of Mr Depp's violence. That would have been a further cause of her concern.

- ix) I accept that Ms Heard's anger or concern at Mr Depp's consumption of alcohol and drugs led her to remonstrate with him. I accept that she would have been alarmed that this was another manifestation of 'the monster' side of Mr Depp's character. Her remonstrations would have added further fuel to his rage.

Mr Depp did not take kindly to what he perceived as others lecturing him, as can be seen for instance from his exchange of texts with Mr Holmes on 2<sup>nd</sup> March 2015.

Nor was Ms Heard immune from this reaction because she was not one of Mr Depp's employees, as was apparent from a text which Mr Depp sent to his sister on 20<sup>th</sup> October 2013 and from his characterisation of her as a 'lesbian camp counsellor' (file 7/2(b)/H23.3). In his evidence, Mr Depp said (in the context of his exchange of texts with Paul Bettany, which I have quoted above),

'I was resentful of the fact that Ms Heard was very aggressive and quite insulting about my use of alcohol, or, if cocaine came into the picture, she did not like Mr Bettany, and I am afraid she did not really like me that much either, and she was constantly harping on things that did not even exist.'

At another point in his cross-examination, Mr Depp commented that he was twice the age of Ms Heard and her lectures were not appropriate.

- x) A very considerable amount of damage was done to the Queensland house. That is apparent from the accidentally recorded conversation of Mr Judge and others (though, their estimate of the cost of repairs may not be reliable) and the evidence of Mr King who was the house manager for the trip and who had to make a return visit to Australia to continue the clean-up operation. It does not appear that the damage included urine. I accept the evidence of Mr King to this effect.
- xi) I do not accept Mr Depp's evidence that it was Ms Heard who caused the damage or, at least, the great majority of the damage. It was he who had drunk excessively, not she. It was he, not she, who had arranged for Nathan Holmes to supply controlled drugs. It was he, not she, who suffered from jealousy. (There is in Erin Boerum's notes for 27<sup>th</sup> August 2014 (see file 9/132/K182) this comment, 'Client expressed concern to husband and Dr Kipper that she is nervous about being alone while husband is working (on movie set in London) and expressed that she has difficulty dealing with feelings of insecurity and jealousy when not in the presence of her husband.' Ms Heard disagreed with this note and said it was not she who had feelings of jealousy but Mr Depp. I accept her evidence in this regard. The provenance of the information obtained by Ms Boerum is unclear: it may have come from Dr Kipper and / or Mr Depp but Ms Boerum did not say in her note that it came from Ms Heard herself. Further, I have had evidence of Mr Depp's jealousy towards James Franco, Billy Bob Thornton and Tasya van Ree.). It was he, not she, who was concerned about his legacy. It was he, not she, who scrawled graffiti on the mirrors and lampshade.

- xii) I reject Mr Depp's evidence that it was Ms Heard who added the graffiti about Carly Simon. The writing in black (for which Mr Depp accepted responsibility) appears to have been added after the graffiti in red which mentions Carly Simon. In any event, whether or not Ms Heard liked to have the last word, it would in all the circumstances have been peculiar for her to add to Mr Depp's graffiti. I do not accept that happened.
- xiii) The damage clearly included a broken window-pane, as can be seen in the photograph which Mr King took.
- xiv) The damage also included a great deal of broken glass, as Mr King testified. Mr Depp said that Ms Heard had thrown bottles at him and this was the source of the broken glass. I do not accept that she threw more than the one bottle she admitted. For the same reasons as I have found that it was he, not she, who was responsible for the damage, I find that it was he and not she who was generally throwing the bottles.
- xv) Mr Depp admitted in his evidence ripping a telephone off the wall.
- xvi) I do not accept that Ms Heard was responsible for the injury to Mr Depp's finger. The first account appears to have been in Mr Depp's text to Dr Kipper. It is notable in that text that he says *he* cut his finger, not that *she* cut it. Mr Connolly said that Mr Depp told him on his arrival that Ms Heard had caused the injury to his finger, but that is not what Mr Depp said in his text to Dr Kipper. Nor did Mr Depp say that Ms Heard had been responsible for the injury to his finger in either of his two texts to sister Christi on 8<sup>th</sup> March 2015. What exactly caused the injury is uncertain. Mr King spoke of there being a great deal of broken glass around and it may well be that Mr Depp accidentally cut his finger on a piece of broken glass. As is apparent from Mr Connolly's evidence, there was much discussion on the way to the hospital as to what (false) explanation could be given. Mr Deuters is undoubtedly right that this was a potential public relations catastrophe for Mr Depp. It seems that the hospital was told that Mr Depp had cut his finger accidentally. I do not accept that this untrue account was given simply to spare Ms Heard as the real abuser.
- xvii) Quite how long an interval elapsed between Mr Depp's finger being injured and help being summoned is impossible to gauge. Ms Heard's estimate of 12 hours may not be accurate. The sense of timing by witnesses to traumatic events is notoriously unreliable, but it is notable that, according to Dr Kipper's note, even when Mr Depp's security team arrived, they had difficulty in persuading him to leave the house. Given that he had by then suffered the serious injury to his finger that speaks to his heightened emotional state and is supportive of Ms Heard's account that, despite that injury, he did not seek help at once.
- xviii) Ms Heard was in a distressed state when she was seen by Dr Cowan a few days later. She was also visibly distressed when seen by her sister, Whitney, on her return from Australia.
- xix) Ms Heard had cuts on her arms as seen by Mr Judge (as he said in the accidental recording) and by Mr King. The cuts were also seen by Ms Henriquez and Ms Pennington. The photograph of the scars to which I have referred was taken

many years later and is too indistinct to be of much value, but I accept that Ms Heard did cut her arms. I do not accept that the cuts were self-inflicted as Mr Judge speculated in the recording. His (non-expert) view that they were self-inflicted carries little, if any, weight. In any event, Ms Heard had no history of self-harming. A much more likely explanation (and one which I find to be the case) is that they were caused accidentally by the abundance of broken glass in the house. Ms Heard said that her feet were also cut as she also told Ms Pennington. That also is likely to have been the result of the abundant broken glass. Mr Judge also says in the accidental recording that he had seen a bruise on Ms Heard.

- xx) The injury to Mr Depp's cheek can be seen in the photograph of him on the hospital trolley. None of the doctors appear to have remarked on it. None of them gave evidence. For the hospital, the explanation may have been that the injury to his finger was what required immediate attention. The omission of Dr Kipper to comment on it is more notable. In any event, I do not accept Mr Depp's evidence that Ms Heard caused this injury by putting out a cigarette on his cheek. Quite how it happened and whether the cause was accidental or deliberate is not necessary for me to decide, but, given Mr Depp's heightened emotional state and his other actions that night, the possibility that he injured himself (whether deliberately or accidentally) is plausible.
- xxi) Ms Heard's description of the days in Australia as akin to a hostage situation was something of a hyperbole. She was not being kept in the house against her will. The house was set back on a long drive, but there were people around. Ms Heard had a mobile phone. She agreed in cross examination that she could have contacted anyone. In the accidentally recorded conversation she spoke of phoning her sister. Ms Heard could have left the house.
- xxii) Yet taking all the evidence together, 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.
- xxiii) I have also accepted the further allegation in the confidential annexe regarding this incident.
- xxiv) I accept that it is possible that Ms Heard made the remark which Mr King attributed to her. It certainly has an uncanny echo of exactly the same phrase which Ms Heard used in Argument 2. But, even if she did make that remark and intend it to refer to herself, rather than Mr Depp, my conclusions remain the same for all the other reasons I have given.

#### **Incident 9: the stairs incident 23<sup>rd</sup> March 2015**

371. I have set out the Defendants' allegations regarding this incident in the RAD (see paragraph 63 above) and the Claimant's reply in the RAR (see paragraph 64 above).

372. In her 1<sup>st</sup> witness statement Ms Heard said that the argument started because she discovered text messages which she said showed he had been cheating on her. Ms Heard said that she confronted him about it 'and he reacted badly'. He started smashing things up all around the apartment. Ms Heard says that she went to the next door apartment where her sister, Whitney, was staying. She says she and Mr Depp shouted at each other and 'at some point he started hitting me.' She says that Whitney stood between the two of them. She says that Whitney was standing at the top of the stairs. Ms Heard was afraid that her sister was going to fall down the stairs. She says that she lunged at Mr Depp to protect Whitney. Ms Heard said that Mr Depp grabbed her by the hair with one hand while repeatedly hitting her in the head with the other.
373. In her declaration dated 10<sup>th</sup> April 2019 in the Virginia libel proceedings (see file 3/101/F318), Ms Heard added that Mr Depp's hand was still in a cast following the incident in Australia (and the injury to one of the fingers of his right hand). Ms Heard said that at that point Mr Depp's security stepped in and separated them. She admitted that in the course of this argument, she struck Mr Depp in order, she said, to protect Whitney.
374. In cross-examination Ms Heard agreed that Mr Depp still had his hand in the plaster cast (with the pictures of the baby dinosaurs on it) when incident 9 took place. She said that Mr Depp hit both her and Whitney with the cast. She agreed that she had not mentioned the cast in her statement, but she had not included every detail about the incident. It was put to her that if Mr Depp had hit her with a cast on his hand, that would be a primary feature which she would wish to record. She denied that was the case. She said that Incident 9 occurred only a few weeks after her return from Australia. In comparison with what had occurred then, Incident 9 was not a big deal.
375. In her witness statement Ms Henriquez corroborated what Ms Heard had to say. She added the following:
- i) Mr Depp was drinking from a bottle of whiskey at the time even though Debbie Lloyd was there with him.
  - ii) Mr Depp threw a can of Red Bull at Ms Heard and herself. It missed them but hit Ms Lloyd.
  - iii) The security guards (who included Travis) had been at the bottom of the stairs, but they only intervened after Ms Heard had been assaulted.
  - iv) Ms Heard used Penthouse 5 to store her clothes. The following morning, Ms Henriquez went in to PH5 and found that the shelves where Ms Heard had kept her clothes had been pulled over. Things had been taken out of boxes and thrown around. Ms Henriquez took photographs which she sent to Kevin Murphy and exhibited to her witness statement.
376. In her cross-examination, Ms Henriquez also agreed that Mr Depp still had the cast on his hand at the time of Incident 9. Mr Depp had grabbed Ms Heard with the hand which was not in the cast and hit her with the hand which did have the cast on.

377. Ms Henriquez maintained in cross-examination that her sister had not thrown anything. It was late at night. Ms Heard was in her pyjamas. Ms Heard did not have her purse. Ms Heard did not drink Red Bull.
378. In his trial witness statement, Mr Depp agreed that there had been an argument at which both Ms Heard and her sister were present. This was around 22<sup>nd</sup> March 2015. He denied that he was violent to either of them. He said that he summoned help from Debbie Lloyd and Travis McGivern, one of his security guards. He said that they arrived while he and Ms Heard were in the middle of their (verbal) argument. He said that Ms Heard threw a can of Red Bull at him which struck him in the back. She also threw her purse at him which Mr McGivern intercepted. Ms Heard also managed to punch him which left him with visible swelling and injury. Shortly after this he left with Mr McGivern and Nurse Lloyd.
379. In cross-examination, Mr Depp denied that he had been responsible for the damage in PH5 that could be seen in the photos. He suggested that these were part of the dossier which Ms Heard was collecting as her 'insurance policy'.
380. Mr Depp also denied assaulting Ms Heard as the Defendants have alleged. The incident occurred shortly after the incident in Australia and while Mr Depp still had the cast on his hand. He said it would not have been physically possible for him to assault her as she alleged.
381. Travis McGivern corroborated Mr Depp's account of the incident in his trial witness statement. In his cross-examination, Mr McGivern said that on the night of 23<sup>rd</sup> March 2015 Mr Depp contacted him and asked him to bring Debbie Lloyd over to the Eastern Columbia Building. Mr McGivern said that he went to fetch Ms Lloyd from the hotel where she was staying. They met Ms Heard in the lobby of the building. Ms Lloyd and Ms Heard stayed downstairs, while Mr McGivern went up alone. In his statement he had said 'When Ms Lloyd and I entered his residence...' In cross examination he said that was inaccurate because he had gone up to PH3 alone. Ms Heard and Ms Lloyd followed him. He said that that was when the argument escalated. He recalled Mr Depp being very angry, but he did not recall the nature of the argument or whether it involved Ms Heard accusing Mr Depp of having an affair with a woman called Rochelle. He did not recall Mr Depp hitting Ms Heard with the hand that had the cast. Mr Depp did not hit her at all.
382. Ms Lloyd did not give evidence, but I was shown two texts sent on 23<sup>rd</sup> March 2015 (the time recorded for the first was 4.00pm (UTC+0)) which, since Los Angeles was 7 hours behind UTC would be equivalent to 9.00am Pacific Daylight Time) from her to Stephen Deuters. These said (see file 6/119/F697.64),

'Bad night last night. They got into it and it got violent again. I had to separate them and we are at 80 [Sweetzer Avenue] now. Jerry aware ... I was there at 1.30 to give him a shot. He said she was trying to start. He took his meds and went to bed but then she found the texts to Rochelle and all hell broke loose!! He had Travis get me back there around 4. Good thing he called or they would have hurt each other. We had to physically restrain both of them.'

383. Mr Depp maintained that he had done nothing violent to Ms Heard. Mr McGivern also maintained that there had been one-sided aggression (and that by Ms Heard). It was not correct that both Mr Depp and Ms Heard had had to be restrained.
384. Kevin Murphy did not refer to Incident 9 in either of his statements. However, in cross-examination he was asked about the photograph in file 6/148B/F894.071. This was part of a series of text messages. From file 6/119/F697.65 it can be seen that Whitney Henriquez sent the texts to Mr Murphy. The text exchange said (beginning at 6.57),
- ‘WH: Good morning sir ... So .... um Johnny destroyed Amber’s closet. And there’s some other damage to PH5 ... You’re the lucky person I should talk to about that - correct?’
- KM: I suppose so ... I’m up.
- WH: Insanity. Just fucking insanity.
- [WH then sent various photos of closet and home]
- WH: Juuuust to give you an idea.’
385. Mr Murphy agreed that he went to the apartment and cleared up the mess which could be seen in the photographs.
386. My findings as to Incident 9 are as follows,
- i) It is no part of my function to decide whether Mr Depp was having an affair with Rochelle (any more than it is my function to decide whether Ms Heard had affairs with James Franco, Billy Bob Thornton, Elon Musk or anyone else). Even if he or she had been unfaithful in this sense, it could not begin to excuse the use of violence in consequence. To be fair to Mr Depp and Ms Heard, neither suggested that it could.
  - ii) I regard the most reliable account of what took place as the texts sent by Ms Lloyd. They were written very shortly after the events she is describing and they are therefore a near-contemporaneous account. Ms Lloyd was also independent of both Mr Depp and Ms Heard.
  - iii) It is plain from these texts that this argument was not simply a verbal argument. She speaks of them ‘getting violent again’.
  - iv) It is also plain from what Ms Lloyd said in her texts that there was violence on both sides. Ms Heard has accepted that she punched Mr Depp, but it is clear from Ms Lloyd’s texts that she was not the sole aggressor. As Ms Lloyd said, ‘We had to restrain both of them.’
  - v) However, Ms Lloyd makes no mention of Mr Depp being struck on the back by a can of Red Bull. Either this did not happen, or the force of the blow was so minimal that it was not worth Ms Lloyd referring to it. Either way it is of no consequence.



- vi) All agree that Mr Depp still had a cast on his injured right hand, but in Ms Lloyd's account (which I find to be true) that did not stop him being one of those who was violent or having to be physically restrained.
- vii) While Ms Heard did not mention the cast in her 1<sup>st</sup> witness statement for these proceedings (nor, for that matter, was it mentioned in any of her subsequent statements) she did refer to it in her declaration for the Virginia libel proceedings. In any event, her omission to mention this aspect was, she said, because she did not in her witness statement include all the details. She said that in any event, this was a minor incident by comparison with what had taken place in Australia only a few weeks earlier. I accept these explanations for why in her statement she did not mention that matter. I also note that Ms Lloyd in her texts referred to Mr Depp being violent and needing to be restrained, but she did not mention that he was behaving in this way despite the cast on his hand. Ms Henriquez did not mention the cast either, but, when she was asked about this omission in her evidence, she explained that what was memorable about the occasion was that this was the first time she had seen Mr Depp be violent to her sister.
- viii) In short, I accept that Mr Depp did assault Ms Heard as she and the Defendants have alleged in Incident 9.
- ix) I find that Ms Heard was in her pyjamas as Ms Henriquez said (and as would be natural in the early hours of the morning). She did not have her purse with her (whether 'purse' for these purposes is as it would be understood in England or in the USA). I do not find that she threw a can of Red Bull at Mr Depp. As she admitted, she did punch him, but I accept that was in defence of her sister.
- x) Mr McGivern agreed that the account of the incident which he gave in cross-examination differed from the account in his statement. He did not have a satisfactory explanation for the difference. I find that the weight I can give to his evidence is consequently reduced.

#### **Incident 10: south east Asia train incident**

- 387. I have quoted the allegation regarding this incident (see paragraph 65) and the Claimant's reply (see paragraph 66).
- 388. In her 1<sup>st</sup> witness statement, Ms Heard says that Mr Depp held her by the neck. She thought he would kill her. She says she was in fear of her life.
- 389. In the course of the audio recording, referred to as 'Argument 2', Mr Depp said this (see file 4/154/F929),  

'Since Australia we've been on our honeymoon and we had a great time other than the fact that we had a fight on the train, which was physical...'
- 390. Ms Heard kept a diary from time-to-time. In her 5<sup>th</sup> witness statement, she refers to her entry dated July 27 Singapore. This included the following (file 5.1/196(b)/1207.5),

‘After 3 hours of sleep and terrible fight we got in last night, we are both walking zombies today ... A night that ended at 3.30 and was brutally interrupted by the train’s imminent arrival to the Singapore station too early this morning after 3 hours of sleep – it has felt like an even more brutal heart hangover. But last night was particularly bad. We finally fell asleep with one another smashed together in desperate child-like anger, fear and love finally succumbing to exhaustion and ultimately unavoidable futility.... Our fight was terrible. I [Mr Depp] finally at one point found himself with his shirt wrapped around my neck (amazing to think about the precision/coordination that required considering the circumstances). He hit me several times. I don’t even know how I wound up with this huge rather annoying knot on the back of my head? Fuck, I hate that it [indecipherable] there. I hate that I allow it to by never using that as a line for which I stand my ground. Where are my cones? Do I have any left?’

391. Based on this entry Ms Heard dated the attack in Incident 10 as 26/27 July, not August as she had said in her 1<sup>st</sup> witness statement.
392. In her cross-examination, Ms Heard was asked about a photograph at file 11/168/P80. She agreed that this picture was taken during the train journey. She denied that the photograph showed an injury to Mr Depp’s nose. She denied that, far from her being injured during the journey, it had been Mr Depp who was injured.
393. In his cross-examination, Mr Depp denied that he had hit Ms Heard around the face and tore off her tee shirt. In none of his witness statements, nor in his oral evidence, did Mr Depp say specifically that Ms Heard had been violent to him in the course of this incident.
394. Mr Connolly had not mentioned Incident 10 in his witness statement, but he was allowed to give further evidence in chief in which he said that he had been present. The train journey had been part of Mr Depp’s and Ms Heard’s honeymoon. He said that the party had not taken over the whole train (confirming what Mr Depp had said in this regard). He said that he had been in contact with the couple over dinner and on excursions. He said he would have noticed if Ms Heard had suffered injuries on the trip. She did not.
395. In cross-examination Mr Connolly said that he had been in the same carriage as Mr Depp and Ms Heard, but in a different cabin. His had been about 3-4 doors down from theirs. He agreed that if a fight had occurred between Ms Heard and Mr Depp at 3.30am, he would never have known about it. In re-examination he said he saw no injury on Ms Heard. She never complained that Mr Depp had hit her.
396. So far as Incident 10 is concerned my findings are:
  - i) Mr Depp did not mention in his trial witness statement that Ms Heard had assaulted him during this train journey (although he did allege that she had assaulted him on other occasions). There is no evidence that Mr Depp mentioned to Mr Connolly that he had been injured by Ms Heard on this occasion.
  - ii) I cannot see any injury to Mr Depp’s nose on the photograph to which I have referred.

- iii) I have quoted above what Mr Depp said in Argument 2 that their disagreements got physical on the train. Had he intended this to be a reference to violence by Ms Heard on him, I would have expected him to say so in his trial witness statement and/or to have pleaded that in his reply. He did neither.
- iv) I accept that Ms Heard's diary entry was written when it purports to have been. It is a near contemporaneous account of the assault in Incident 10. Of course, the diary entry is not independent of Ms Heard, but it is nonetheless supportive evidence.
- v) I accept that Ms Heard was assaulted by Mr Depp as she and the Defendants have alleged in Incident 10. I accept that she feared for her life on this occasion.

### **Incident 11 – Los Angeles 26<sup>th</sup> November 2015**

397. I have quoted what is alleged in the RAD (see paragraph 67 above) and what the Claimant says in Reply (see paragraph 68 above).

398. In her 1<sup>st</sup> witness statement Ms Heard said that Mr Depp was using a lot of drugs at this time, especially cocaine and weed (marijuana). She gave evidence in support of the Defendants' allegation in Incident 11. She said that the incident had been in two parts: the first was in the course of the dinner when she and Mr Depp had gone up and across to their bedroom in PH3 and he had thrown a bottle or decanter at her. It had missed but the glass had broken; the second part was later that evening, after the guests had left and he had assaulted her. She said that this had all occurred on Thanksgiving 2015. In 2015 Thanksgiving occurred on Thursday 26<sup>th</sup> November, although the holiday would continue for that weekend.

399. Mr Depp and Ms Heard did have a dinner party on 26<sup>th</sup> November 2015. Ms Heard invited her nurse, Erin Boerum to attend, which she did. Ms Boerum's note of the evening says (see file 9/132/K207),

'[Ms Boerum] visited client and client and husband /client JD's home. Client appears well groomed, calm, in good spirits. Client socialises well with peers and [Ms Boerum] and appears to be enjoying hosting her family and friends Client and husband JD. JD appeared calm and coherent. Client notified [Ms Boerum] that she will need refills on routine and PRN medications ...'

400. Some photographs were in evidence which were dated 27<sup>th</sup> November 2015, which Ms Heard said were not taken before she was assaulted by Mr Depp. She said her fights with him did not take place in front of everyone but in private.

401. I was also shown two videos which were taken over Thanksgiving 2015. In addition to Ms Heard and Mr Depp, others who were visible included David Heard, the father of Ms Heard and Ms Henriquez. Ms Pennington was another guest.

402. Ms Pennington said that, at one point, Ms Heard,

'went to look for Johnny and stayed up there a long time. When I asked Amber what had happened she told me Johnny had thrown a bottle of wine at her in the bedroom. I went to look and found that a full bottle of wine had hit and broken a

piece of art that Amber really loves above the bed and that broken glass was scattered all over the bed.’

403. Ms Pennington said that the dinner had not ended when this occurred. It had been a happy family gathering up to this point. Ms Pennington agreed that there was no bedroom in PH5 (where the dinner was taking place) but she said that she had gone upstairs and crossed over to the bedroom of PH3. Ms Heard had told her that Mr Depp had thrown the bottle. Ms Pennington said that on other occasions she had taken photographs. She didn’t on this occasion because she did not have her mobile phone (and its camera facility) with her.

404. In his closing submissions, Mr Sherborne commented that the allegation which constitutes Incident 11 had not been put to Mr Depp at all. In *EPI Environmental Technologies Inc v Symphony Plastic Technologies* [2004] EWHC 2945, [2005] 1 WLR 3456, Peter Smith J. said at [74(iii)],

‘Third, I regard it as essential that witnesses are challenged with the other side’s case. This involves putting the case positively. This is important for a judge to enable him to assess that witness’s response to the other case orally, by reference to his or her demeanour and in the overall context of the litigation. A failure to put a point should usually disentitle the point to be taken against a witness in a closing speech. This is especially so in an era of pre-prepared witness statements. A judge does not see live in chief evidence, thereby depriving the witness of presenting himself positively in his case.’

Peter Smith J added at [75],

‘None of the above or the helpful assistance provided by the reported authorities is necessarily determinative. All of them provide factors to enable a judge to come to a particular conclusion about the acceptance or rejection of a particular person’s evidence.’

405. In this case I agree with Mr Sherborne that the incident should have been put to Mr Depp so that I could have the opportunity of assessing his response. I accept Ms Heard’s comment that the arguments with Mr Depp tended to take place in the absence of others. The two videos of the meal show a convivial occasion, but that is not inconsistent with Mr Depp’s behaviour being different out of the sight and sound of others. Ms Heard’s description of his assaults on this occasion are in line with other of her allegations which I have accepted. On this occasion, Ms Pennington also saw the debris left over from the incident. I do not regard it as significant that Ms Pennington omitted to say in her statement that she crossed over to a different penthouse from the one where the dinner was taking place. However, the omission to put this incident to Mr Depp means that I do not accept that it is proven.

406. I add, for convenience at this point, that I do not accept the more general attack in Appendix A to Mr Sherborne’s written closing submissions regarding the Defendants’ omission to put particular details of other incidents to Mr Depp. In his cross-examination, Mr Depp made it clear that his case was that he had not hit Ms Heard at all (with a possible exception to which I shall come). In respect of those other incidents, I had sufficient opportunity to understand his answer to the Defendants’ allegations.

**Incident 12: 15<sup>th</sup> December 2015 (the day before Ms Heard's appearance on James Corden's Late Late Show)**

407. The Defendants' allegations regarding this incident are quoted in paragraph 69 above. The Claimant's reply is set out at paragraph 70 above.
408. In her 1<sup>st</sup> witness statement Ms Heard described this as 'one of the worst and most violent nights of our relationship.' Her witness statement gave evidence in line with the RAD which I have quoted. As well as grabbing her by the hair, she said that Mr Depp head-butted her, hitting her on the nose with his forehead as well as the other pleaded assaults.
409. She said that Rocky Pennington came in and they called a nurse to do a concussion check over the phone as she was suffering horrible headaches and continued to do so for a week.
410. She and Ms Pennington took photographs of the bed which had been splintered, Ms Heard's face, the clump of her hair which had been on the carpet and graffiti, which Mr Depp had written on the kitchen counter-top in gold pen and which said, 'Why be a fraud? All is such bullshit.'
411. Ms Heard was due to appear the following day (16<sup>th</sup> December 2015) on James Corden's 'Late Late Show'.
412. At 11.00pm Ms Heard sent a text to her psychotherapist, Dr Cowan saying (see file 9/114/K122),
- 'emergency can you please call me?'
413. On 15<sup>th</sup> December 2015 at 11.52 pm Ms Heard sent a message to her publicist, Jodi Gottlieb which said (see file 2/60/E76 ),
- 'I had an accident tonight Jodi. I'm really bruised and might have a black eye or two tmrw – same with my nose. Nurse on the way to make sure I don't have concussion. There's a chance I might not be fit for tomorrow. But I won't know how bad the bruising is until the morning. Giving you a heads up. I'll call tmrw to let you know -k?'
414. In her statement, Ms Heard said that she pretended she had had an accident because she didn't want to say what had happened to her.
415. At 00.44am on 16<sup>th</sup> December 2015 Ms Heard began a series of texts with her friend iO Tillett Wright which said (see file 7/14/H82 (time recalculated)),
- 'AH: I need you. ... J beat me up pretty good ... Rocks on the couch with me now ... When r u back ... I'm hurt. Don't know what to do. Need you.'
416. Ms Heard said that she decided to do the James Corden show because she could not cancel her appearance at the last minute. She said that she was in some pain. She said that a lot of make-up was put on her to cover up the bruises and red lipstick to cover up her bleeding lip.

417. At 2.49am Ms Heard sent a text to Jessica Kovacevic which said (see file 8/78(a)/I28.2),
- ‘I had an accident tonight Jessica. I’m really bruised and might have a black eye or two tmrw – same with my nose. Nurse on the way to make sure I don’t have concussion. There’s a chance I might not be fit for tomorrow. But won’t know how bad the bruising is until the morning. Giving you a heads up. I’ll call you tmrw to let you know – k? Can we push to my morning stunt appt to the next morning perhaps??’
418. Ms Heard said that a day or so later she went to Dr Kipper’s office and saw a nurse called Lisa Beane.
419. Ms Heard said that on 20<sup>th</sup> December she said to Mr Depp that he had head-butted her. Ms Heard said that Mr Depp responded by saying he was a Fuck up. She exhibited an exchange of messages with Ms Pennington in which she relayed this conversation.
420. In cross-examination, Ms Heard denied that she had manipulated the photographs taken on 16<sup>th</sup> December in any way. When Ms Boerum had visited her on the 17<sup>th</sup> December she had had 2 black eyes, bruises to her scalp and chin, clumps of her hair were missing. In her evidence Ms Heard denied that she had bitten on her lip to make it bleed.
421. She said that she had appeared on the James Corden show, but her injuries had been concealed by make-up applied by Melanie Inglessis. She said that Samantha McMillen had seen her only once the make-up had been applied by Ms Inglessis. Because of the make-up, the injuries to her face could not be seen in the stills from the show.
422. In re-examination, Ms Heard denied that she had photoshopped the pictures taken of her on 16<sup>th</sup> December or had asked anyone else to do so. She had worn heavy make-up for the James Corden show only to hide her injuries. She had not pulled out her own hair for the photos.
423. In her witness statement, Ms Pennington said that Ms Heard had asked her to come over. She could see that Ms Heard’s hair was bloody from where a chunk had been pulled out, her face was red and her nose was swelling up. Her lip was bleeding. She said that Mr Depp had head butted her. Ms Pennington said that they called for assistance from a private nurse who was part of the concierge medical services which Mr Depp and Ms Heard used. Ms Pennington took pictures of Ms Heard’s face (see file 6/148(c)/F894.107-F894.120 and F894.124) which the metadata shows were taken on the morning and afternoon of 16<sup>th</sup> December 2015) and of the apartment including the graffiti on the counter-top (file 6/148(c)/F894.095).
424. Ms Pennington said that Ms Heard gave an account of what had happened. This was broadly in line with her subsequent statement. Ms Pennington said that the next day she and Ms Heard were exhausted and Ms Heard was shaken, upset and trying to pull herself together for the show.
425. Samantha McMillen was styling her, Ms Inglessis was doing her make-up and someone called Adir was doing Ms Heard’s hair. Ms Pennington says that she remembered Adir saying that Ms Heard should not touch her hair because he had styled it to cover up where the clump had been pulled out.

426. Melanie Inglessis gave evidence pursuant to a witness summons. She had not provided a witness statement, but the Defendants had served a witness summary. CPR r.32.5(3) did not therefore apply and she gave evidence in chief in the traditional manner.
427. Ms Inglessis said that she was a professional make-up artist. She had known Ms Heard since April 2015. She had visited Ms Heard on 15<sup>th</sup> December 2015. She was able to see the graffiti. Ms Heard was in between sad and upset and furious. Ms Heard told her that she and Mr Depp had had a fight. He had tried to suffocate her with a pillow. She felt he had tried to kill her. He had dragged her by the hair.
428. On 16<sup>th</sup> December 2015, Ms Inglessis had applied make-up prior to Ms Heard's appearance on the TV show. Ms Inglessis said that Ms Heard had some bruising to her eyes, the left eye a little more than the right eye. The ridge of her nose was a little red and swollen. Ms Inglessis had tried with make-up to conceal the bruises. She had no choice but to use red lipstick to conceal the injury to Ms Heard's lip. These efforts successfully concealed Ms Heard's injuries which were not visible after the make-up had been applied. She agreed that she had been good friends with Ms Heard in 2015.
429. When Ms Heard met with Mr Depp in San Francisco in July 2016, the following exchange took place between them. The transcript of their conversation was not agreed. In what follows I am quoting from the Claimant's version (see file 5/161(n)/F1009.18),
- 'AH: You can't throw a punch but yet screaming's OK. You can head-butt somebody but don't scream huh?
- JD: I head-butted you in the fuckin' ...
- AH: I couldn't believe you did that.
- JD: ... forehead. That doesn't break a nose.
- AH: I don't know if you were aware, I don't think you did. I don't think you broke it.
- JD: Don't think I broke it, I didn't touch it!
- AH: Oh please, you didn't touch it? You don't know.
- JD: There's nothing wrong with your nose.'
430. Mr Depp denied that he had assaulted Ms Heard as alleged in the RAD. He agreed that there had been an argument between them that evening. He agreed that he had written graffiti in gold pen on the counter-top, 'Why be a fraud? All is such bullshit...' He had not been in the best of moods but he denied that he was under the influence of drink or drugs. Kevin Murphy had taken photographs of what Ms Heard said were clumps of her hair (file 6/148(c)/F894.06), but Mr Depp was not able to confirm whether that was what they were. He had not caused the damage which could be seen in one photograph (with a lamp on its side, a pile of books and some bottles (file 6/148(c)/F894.097). He agreed that another photograph appeared to show a splinter of wood missing from the bed (file 6/148(c)/F894.099), but he did not know how it had come off. He was shown a photograph of Ms Heard with what was said to be the beginning of two blackeyes. He

denied that he had caused that, nor was he responsible for what was said to be her cut lip.

431. He said he had been assaulted by Ms Heard. Sean Bett had taken photographs of a scratch to his nose and an abrasion and swelling under his left eye (file 6/148(c)/F894.092-F894.094). Mr Depp said that, at one stage, to try and restrain Ms Heard he had put his arms around her. It was possible that at that stage, their heads had come into contact with each other. If that had occurred, it had been accidental. He accepted that this account of the possible explanation for injuries to Ms Heard had not been given before. Mr Depp agreed that his admission that he had, or may have, head-butted Ms Heard was a very important detail. He was asked why then it was omitted from his witness statement. He responded that he had not noticed that it was not included in his witness statement. He said,

‘I am sure that I read some of [his witness statement]. I do not know that I read it all.’

432. Mr Depp also said that Ms Heard frequently had chapped lips. Scabs would form and she would bite them off with her teeth. If she was seen with a cut to her lower lip, that might be the explanation.
433. Ms Heard sent a text message to Kevin Murphy on 16<sup>th</sup> December 2015 in which she said (see file 7/15/H102),

‘... I just wanted to let you know that the maids will be needed down town today, even though Johnny didn’t sleep here last night. He left quite a dent on the place before he left.’

434. Mr Murphy went to the Eastern Columbia Building on 16<sup>th</sup> December. In his 1<sup>st</sup> statement he said that he found Ms Heard sitting on the edge of the bed crying. She complained to him that Mr Depp had hit her in the face several times and pulled out her hair. He said that he had been standing about 4 feet away from Ms Heard. He was suspicious as Ms Heard was not wearing any make-up and there were no marks, bruises, cuts, redness or swelling to her face. And there were no apparent areas on her head where her hair had been pulled out. She pointed to a tuft of hair and said that was what Mr Depp had pulled out. Mr Murphy photographed the tuft of hair to which Ms Heard had pointed. He also took a photograph of the splinter from the bed (file 2/42/D91-D93). Mr Murphy was also shown a photograph of Ms Heard’s face (file 6/148C/F894.103). He denied that that was how Ms Heard had looked when he saw her on 16<sup>th</sup> December. The metadata shows that this photograph was taken on 16<sup>th</sup> December 2015 at 14.39.
435. On the following day (16<sup>th</sup> December 2015) Ms Heard, as I have said, appeared as a guest on James Corden’s ‘Late Late Show’. Samantha McMillen is a stylist who, in 2015, worked as a stylist for Ms Heard. She continues to be (as she has been since 2002) a stylist for Mr Depp. She said that she spent much of the afternoon and early evening of 16<sup>th</sup> December with Ms Heard. She was with her in good light, at close range. Ms Heard was wearing no make-up. Ms McMillen said that Ms Heard did not have any visible marks, bruises, cuts or injuries to her face or any other part of her body. She was shown photographs said to have been taken of Ms Heard on 16<sup>th</sup> December. Ms McMillen said that was not how she remembered Ms Heard appearing that day.



436. Although Ms McMillen is a stylist, she did not apply Ms Heard's make-up before her appearance on the show. That was done by Melanie Inglessis. Ms McMillen said she was present when it was done. She did not recall the make-up being any heavier than usual.
437. Ms McMillen was shown a photograph of Ms Heard at file 6/148C/F894.103 (which, according to the metadata on the following page, had been taken on 16<sup>th</sup> December 2015). Ms McMillen said that was not how she remembered Ms Heard looking on 16<sup>th</sup> December. Her answer was the same when shown the photograph at file 6/148C/F894.107.
438. Ms McMillen said that after the show, Ms Heard approached her and said, 'Can you believe that I did that show with two black eyes?' This surprised Ms McMillen, she said, because Ms Heard appeared to be uninjured. She did not have black eyes.
439. Erin Boerum was, as I have said, a nurse whom Ms Heard consulted. She was also a friend. She had attended the Thanksgiving dinner on 26<sup>th</sup> November 2015 and would attend the dinner which Ms Heard gave to celebrate her 30<sup>th</sup> birthday on 21<sup>st</sup> April 2016.
440. On 16<sup>th</sup> December 2015 Ms Heard telephoned Ms Boerum and reported that there had been an argument the previous evening with her husband. Ms Boerum's note of the call reads (see file 9/132/K208),

'She states husband JD was inebriated. [Ms Heard] states the disagreement escalated and states JD used his forehead to hit her head. [Ms Heard] denies loss of consciousness. States she has headache and bruised eye. [Ms Boreum] encouraged [Ms Heard] to notify Dr Kipper and/or go to emergency room if she was injured or felt like she is in danger. [Ms Heard] declined and stated friend Rocky [Pennington] is with her and that husband JD will not be able to re-enter home.'

441. In the early hours of 16<sup>th</sup> December 2015 Ms Heard sent Ms Boerum texts which said (see file 2.1/71.3/E606.67),

'Just found a bunch of Coke ...Which explains it.'

442. On 16<sup>th</sup> December 2015 Stephen Deuters sent a text to Jenna Gates to say (file 6/119/F697.122),

'Between you and I JD and I were up all nite talking. Bad bust up re Amber. Everyone sleeping a few more hours!'

443. There is a note in the papers of Dr Cowan, Ms Heard's psychotherapist, that Ms Heard sent a text message on 16<sup>th</sup> December 2015. (Another copy of the text at file 7/13(a)/H81.1 supports the conclusion that this text was in fact sent on 15<sup>th</sup> December). The message said,

'Johnny did a number on me tonight. I'm safe with my support tonight but I need some real help. Can I come tomorrow. I called earlier because I thought I had a concussion and didn't know if I should have called police. But I have a nurse close to me – and rocky and a her [sic] have been here for me. Can I see you tmrw.'

Dr Cowan has noted a second text message from Ms Heard which said,

‘Connell, sorry haven’t called because rocky came over last night. Then dealt with Security and called nurse for medical help and went down to sleep ... Today has been filled with work (I’m shooting a late show appearance today – with two black eyes) In short? I need your help. But will have time tomorrow to get it. Can you please make time for me??’

444. The following day (so 17<sup>th</sup> December 2015) Ms Boerum noted (file 9/132/K208),

‘[Ms Boerum] in contact with [Ms Heard] to notify her that she would be able to deliver medications to her home. [Ms Boerum] waited at door for several minutes after knocking. [Ms Heard] greeted [Ms Boerum] at door looking dishevelled. Her hair appeared unbrushed. [Ms Heard] appeared weepy and sad. Posture is slouched. [Ms Heard] told [Ms Boerum] about argument with husband. [Ms Boerum] offered emotional support but reminded [Ms Heard] that [Ms Boerum] could not stay as on duty with another client. And was only visiting in order to deliver medication. Per [Ms Heard] she has not had contact with husband since altercation. [Ms Heard] had visible bright red blood appearing at center of lower lip. When [Ms Boerum] made [Ms Heard] aware that she was actively bleeding on her lip [Ms Heard] stated it was from the injury sustained in the argument between her and her husband, and that it continues to bleed actively. [Ms Heard] also states that her head is bruised and that she lost clumps of hair in the altercation. [Ms Boerum] briefly looked at her [Ms Heard’s] scalp but was unable to visualise the haematomas [Ms Heard] had described. [Ms Boerum] encouraged [Ms Heard] to be seen by physician Dr Kipper or go to emergency/Urgent care for thorough assessment.’

445. An exchange of messages with Ms Boerum on 17<sup>th</sup> December 2015 confirms that Ms Boerum was unable to stay long, but would only be able to drop off Ms Heard’s medication. Later that evening (17<sup>th</sup> December) the following exchange between Ms Boerum and Ms Heard took place (file 7/19(a)/H127.1-2),

‘EB: Just finished watching your appearance last night. I had recorded it. You looked and sounded great, and honestly, nothing looked wrong at all.

AH: That’s a miracle ... Hey, I have had a headache basically for the last couple of days ... my head is still really bruised. I still feel a lot of welts on it. I called Kipper’s office and Lisa said he was away until tomorrow but that Monroe could look at me. Do you think I should go and get checked out by him?

EB: I think if you are still hurting at this point then it wouldn’t hurt to get a full check up / assessment. Monroe is a really good guy and very smart nurse practitioner. ... Are you OK??? Did you go to the office?

AH: yes I did I saw Monroe. And went to therapists and lawyer’s office today. Just really sad.’

446. In her re-examination, Ms Heard said that she had not asked Ms Boerum to carry out a clinical examination of her on 17<sup>th</sup> December. Ms Boerum was in a rush and had only come by to drop off Ms Heard’s medication.

447. It seems that Ms Heard did see Dr Cowan on 17<sup>th</sup> December 2015. His note of their meeting included the following (see file 9/133/K277),

‘Some spark ignited an argument that escalated and got violent. Shoving and screaming. Amber related that he started the physicality – pushed her down. Amber got back up. Hard for her to de-escalate a fight. Her strategy (despite our conversations) is not to [indecipherable word] and fight back (not protective of self and very self-defeating)’

448. A number of further photographs were taken of Ms Heard’s face and scalp. The metadata shows them having been taken on 17<sup>th</sup> December 2015 (see file 6/148C/F894.132-F894.145A).
449. On 18<sup>th</sup> December Ms Boerum noted that Ms Heard stated that she had gone to Dr Kipper’s office and, in his absence, had been seen by NP [I assume Nurse Practitioner] Monroe-T.
450. There is a note of a phone consultation on 17<sup>th</sup> December 2015. The note has Dr Kipper’s signature, but from the context it cannot have been him whom Ms Heard saw. From the deposition of Lisa Beane, from Dr Kipper’s office, on 13<sup>th</sup> December 2019, it seems that Dr Kipper’s practice was to sign notes prepared by someone else and which he had seen and approved. Ms Beane said that Ms Heard would have been seen by Mr Monroe Tinker on 18<sup>th</sup> December 2015. The material parts of the note read (see file 9/117/K130),

‘Phone consultation: headache...

Amber Heard is a 29 year-old English speaking Caucasian female with a past history of insomnia, anxiety and attention deficit disorder. Today the patient reports a headache after she bumped her head while standing up 2 days ago. The patient reports no loss of consciousness, no nausea or vomiting. No change in mental state, or vision changes. Last seen in the office on 12/23/2015 [It is hard to understand this in a note written on 18<sup>th</sup> December] the patient has not experienced any cardiovascular events., Symptomatically she denies chest pain or dyspnea, PND, orthopnea and ankle edema she denies palpitations, syncope or pre-syncope....Neurological: At present the patient is awake, alert and fully oriented ... Assessment / Plan ... Reassurance. Dr Kipper is aware of the medical pan and is in agreement... The patient was told to contact Dr Kipper or Monroe AGACNP if there are any questions or changes to health. The patient was also instructed to go directly to the emergency room or dial 911 should she experience dizziness, extreme sleepiness, breathing problems, nausea and vomiting, confusion, difficulty walking, slurred speech, memory loss, poor coordination, seizures or numbness or paralysis in any part of her body.’

451. Mr Depp was in reasonably regular communication with Ms Heard’s father, David Heard. On 30<sup>th</sup> December 2015, Mr Depp sent a text which included the following (see file 10/147(a)/O124),

‘Below is a text that I never hit send on from a week or so again ...

[Mr Depp expresses his warm feelings for David Heard] Yes, I fucked up and went too far in our fight!!! I cannot and WILL NOT excuse my part inside these dramas!!! But, I can promise you, with all confidence, THEY WILL NEVER

HAPPEN AGAIN!!! My most sincere apologies if I've let you down ... Love you brother ... JD.'

In his cross-examination, Mr Depp said that he remembered sending the text, and that he had previously forgotten to hit the send button. He was apologising for his part in the argument with Ms Heard. He never said that he had hit her. He agreed that he did not say to Mr Heard that he had hit his daughter accidentally.

452. Later in December 2015 Mr Depp and Ms Heard went to his island in the Bahamas. Tara Roberts is the manager of the estate. She was shown the photograph at file 9/148/F894.132. She said that that was not how Ms Heard looked when she saw her at Christmas in 2015.
453. In his witness statement Sean Bett did not refer to Incident 12. In his re-examination, Mr Bett said that he had seen Mr Depp injured on 15<sup>th</sup> December 2015. He had taken photographs of Mr Depp then on his mobile phone (see file 6/148C/F894.092-F894.094 (298-300)). The photos are date stamped '15<sup>th</sup> December 2015'. On the photograph at F894.092 Mr Bett said there could be seen a scratch on Mr Depp's nose, which Mr Bett estimated at 1 ½ - 2 inches long. Mr Bett said that Mr Depp had told him that the injuries had been caused by Ms Heard slapping him in the face a few times.
454. This was another incident in relation to which the Defendants applied to rely on expert evidence. Again, I shall defer consideration of that application until incident 14. It is sufficient to say at this point that I rejected the application.
455. My findings in relation to Incident 12 are as follows:
  - i) There was an argument on 15<sup>th</sup> December between Mr Depp and Ms Heard. I find that it is more probable than not that on this occasion, as on others, Mr Depp was under the influence of alcohol and/or controlled drugs.
  - ii) The argument was not just verbal: it became physical.
  - iii) Mr Depp assaulted Ms Heard. This included head-butting her, as he admitted in the course of his cross-examination, but in my view, it was not the accidental blow which he admitted. That was not what he said in the San Francisco recording and, although I recognise that I must be careful not to attribute too much weight to such out of court remarks, the deliberate nature of the head-butt fits with the other evidence of what took place that evening. I also agree with the Defendants that it is of some significance that Mr Depp did not say to David Heard that he had headbutted his daughter, but accidentally.
  - iv) Mr Depp also tore out clumps of hair from Ms Heard's head. These were photographed later. If the photos show hair without roots (and I make no finding that that is the case), I am not in a position to consider the significance of that in the absence of expert evidence.
  - v) Ms Pennington and Ms Inglessis saw Ms Heard that night. I accept their evidence of her condition then. That supports Ms Heard's account of what had taken place.

- vi) I accept Ms Pennington's evidence that Ms Heard consulted a nurse who was part of the concierge services. She did so that night.
- vii) The first of the text messages which are in Dr Cowan's notes was, I find, sent on 15<sup>th</sup> December 2015 (not 16<sup>th</sup> December). As I have said, that is what appears from another copy of the text at file 7/13(a)/H81.1. That message, too, supports Ms Heard's account, as does Ms Heard's earlier message to Dr Cowan asking him to call her as an emergency.
- viii) Ms Heard sent a further text to Dr Cowan (which was on 16<sup>th</sup> December). And she saw him on 17<sup>th</sup> December, as she had urgently requested him so to do.
- ix) Ms Heard also saw someone (probably Nurse Practitioner Monroe Tinker) in Dr Kipper's office on 17<sup>th</sup> December. I do not attribute significance to the comment by Ms Heard that she had bumped her head (accidentally) while standing up. She had not, at that stage, decided to go public with her allegations against Mr Depp.
- x) Ms Heard was seen briefly by Erin Boerum on 17<sup>th</sup> December. Ms Boerum identified an injured lip. I do not find that this was caused by Ms. Heard biting her own lip, as the Claimant alleged. Ms Boerum did not see any sign of haematoma on Ms Heard's head, but it is apparent, from Ms Boerum's note of the encounter, that she was on her way to see another patient. This was a cursory inspection rather than a clinical examination. I do not draw any adverse conclusion against Ms Heard's account from Ms Boerum's omission to see anything more.
- xi) These consultations with medical professionals mark out these assaults from others which Ms Heard alleged she suffered from Mr Depp. Although the consultations show that she had not suffered long term or other significant injury (and her nose was not, it seems, actually broken) these assaults would, particularly in combination, have been extremely frightening. I accept that they put Ms Heard in fear of her life.
- xii) In addition, there was the property damage that can be seen in the photographs. I accept that this was done by Mr Depp. He admitted writing the graffiti in gold pen and, in that mood (which Mr Depp said was not his best) I find that he caused the other damage as well. That damage would have added to Ms Heard's alarm. It also speaks to Mr Depp's state of mind.
- xiii) Mr Bett's photographs of the alleged injuries to Mr Depp's face are not very clear. So far as I can judge, any scratch to Mr Depp's nose was considerably less than Mr Bett's estimate of 1 ½ -2 inches long. I cannot see any swelling or abrasion in the photographs. However Mr Depp came by the scratch to his nose, in my judgment it was not caused by Ms Heard.
- xiv) Ms Heard appeared on James Corden's TV show on 16<sup>th</sup> December. She had been anxious as to whether she could do this with her injuries, as she said in her messages to Jodi Gottlieb and to Jessica Kovacevic, but I accept her evidence that it was important for her to keep the commitment. Ms Inglessis was able to conceal Ms Heard's injuries with make-up and lipstick. I find that Ms McMillen

saw her after the make-up had been applied which was why the injuries were not apparent to her. For the same reason, the injuries cannot be seen on the still photographs from the show.

- xv) For all of these reasons, I accept that Mr Depp assaulted Ms Heard as she and the Defendants have alleged in Incident 12.

#### **December 2015 - Bahamas**

456. Mr Depp and Ms Heard spent Christmas 2015 on his island in the Bahamas. In Tara Roberts' statement of 11<sup>th</sup> May 2020 she spoke of this time. Ms Heard responded in her 5<sup>th</sup> witness statement (26<sup>th</sup> June 2020). In the course of that witness statement she alleged that Mr Depp had assaulted her again. In a Confidential Schedule to that witness statement she made further allegations as to what had taken place.
457. The Defendants did not apply to re-re-amend their defence. Nor did the Claimant apply to re-re-amend his reply. Some evidence was given about these matters by Ms Roberts and by Ms Heard in the course of their testimony and Mr Sherborne in his closing submissions referred to it. When I came to write this judgment, my preliminary view was that, since this was not a pleaded particular, it had no bearing on the issues I had to decide, but I gave the parties the opportunity to make written submissions on that issue. I received written submissions from each dated Tuesday 29<sup>th</sup> September 2020 and submissions in reply dated Friday 2<sup>nd</sup> October 2020. I had made no provision for any further submissions, but later, on 2<sup>nd</sup> October, Ms Wilson on behalf of the Claimant sent a further email to my clerk. I have taken all of these into account.
458. However, my preliminary view remains the same. What took place in the Bahamas at Christmas 2015 is not part of the pleaded case of either party, and it is not necessary for me to resolve the disputed evidence about what then occurred. The Claimant argued that the issues having been raised, fairness to him required them to be resolved by the court. I do not accept this. The function of pleadings is to delimit what the court needs to resolve. The truth or otherwise of each side's allegations regarding December 2015 in the Bahamas is neither necessary nor proportionate to address.

#### **Incident 13: 21<sup>st</sup> April 2016 (the birthday party)**

459. I have set out the allegations regarding this incident in the RAD (see paragraph 71 above) and the Claimant's reply in the RAR (see paragraph 72 above).
460. Ms Heard's birthday is 22<sup>nd</sup> April. In 2016 she was 30. She held a dinner to celebrate on the day before her birthday at the Eastern Columbia Building. Earlier that same evening, the Claimant had a business meeting with Edward White, his accountant; his sister, Christi Dembrowski; and others. The Claimant was given catastrophic news about his financial affairs. A former business manager had allegedly inadequately and/or dishonestly represented him and had lost him several hundreds of millions of dollars as a result. In addition, he was told that federal and state taxes had not been paid and, in consequence, he had a tax bill of several millions of dollars.
461. Mr White was also asked about the financial settlement which Ms Heard received on her divorce. He said that she received \$7 million dollars tax free. She was able to keep all her own earnings. In addition, Mr Depp paid legal fees of about \$500,000. She was

also relieved of various liabilities which the couple had jointly incurred and which amounted to about \$6,750,000. They would each be responsible for their tax liabilities arising out of the settlement. I have seen a copy of the deal memorandum recording their agreement (see file 4/116/F694.1-52).

462. In cross-examination, Mr White was also asked about the Claimant's continuing earnings (notwithstanding the losses to which I have referred). Mr White did not have those figures immediately to hand but offered to try and find them. After Mr White had concluded his evidence, there was discussion as to whether his offer should be taken up. I ruled that it should not. Ms Wass wished to establish that the amount which Ms Heard had received on her divorce was less than she would have been entitled to under California law. However, Mr White did not have the necessary expertise to give opinion evidence on California divorce law. Nor had the necessary permission been granted pursuant to CPR r.35.4(1) for such evidence to be adduced. Mr White would have been able to give evidence about Mr Depp's earnings, but that evidence would not have been relevant in the absence of expert evidence about its impact on her entitlement on divorce.
463. The business meeting finished about 9.00pm-9.30pm. The Claimant said that he probably smoked some marijuana after the meeting to calm his nerves. He arrived late at the dinner party at about 10.00pm. Sean Bett said that he drove Mr Depp to Ms Heard's dinner party after the meeting. There are texts from Mr Depp apologising for his delay and asking Ms Heard to go ahead with the meal anyway. Ms Heard was upset by his late arrival.
464. Ms Heard said that when Mr Depp arrived for her party, he was drunk and high on drugs. Erin Boerum, who was a guest at the dinner party wrote a note of the evening in which she recorded that when Mr Depp arrived he was 'coherent oriented and sociable' and he was affectionate towards Ms Heard. Ms Heard agreed with that description but said that Mr Depp was also inebriated and high.
465. She said that after they had gone to their bedroom Mr Depp picked up a magnum sized bottle of champagne and threw it at her. She said the bottle missed her but hit the wall. Other glass was broken. She said he grabbed her by the hair and pushed her to the ground where she scraped her knees on broken glass. Mr Depp further pushed and shoved her. She said he left a note for her saying, 'Happy Fucking birthday'.
466. Mr Depp said that, after the guests had left, he had been tired and had gone to bed. He said that he wanted to avoid a confrontation with Ms Heard. He denied that he had assaulted Ms Heard as the RAD alleged. He denied throwing a wine bottle in her direction. He said that Ms Heard had punched him in the face as he lay in bed reading. This was the 'haymaker' punch that he mentioned in the secretly recorded conversation in San Francisco in July 2016. He said he grabbed her arms to try to stop her hitting him again.
467. Mr Depp left the Eastern Columbia Building and was driven by Sean Bett to his house on Sweetzer Avenue. Mr Bett said that Mr Depp was visibly injured and he took a photograph of the left side of Mr Depp's face, a photograph he exhibited to his statement. In his evidence in chief, he corrected this: the photograph exhibited to his witness statement was not taken on 21<sup>st</sup> April 2015. He said the exhibited photo had not been taken by him, although it was similar to one he had taken.

468. In cross-examination, Mr Bett agreed that the photograph he had exhibited to his statement was the same as appears at file 9/87h(iv)/J1.4D. This version of the picture has a date stamp of 23<sup>rd</sup> March 2015. It could not have been taken after the birthday party on 21<sup>st</sup> April 2016. Mr Bett said that the photograph (without the date stamp) had been provided to him by Adam Waldman, one of the Claimant's US attorneys. He maintained that he had seen Mr Depp with a visible injury when he had collected him from the Eastern Columbia Building on 21<sup>st</sup> April 2016.
469. The following day (22<sup>nd</sup> April 2016), Ms Heard and some of her friends went to a music festival at Coachella. Ms Heard agreed she had taken MDMA during the weekend visit to Coachella. The drugs had disagreed with her and she had felt sick. She had not, however, vomited in a car park while at Coachella. Sterling Jenkins who had driven the party to the event and who said she had vomited in a car park must have confused her with her sister Whitney (who was pregnant at the time). Although Ms Boerum (who had been a member of their party) also said that Ms Heard had vomited, Ms Boerum was incorrect. Ms Heard said that she had felt awful and she had felt like vomiting. She had spent 24 hours in bed regretting taking the drugs she had.
470. In his closing submissions, Mr Sherborne submitted that the Defendants were willing to embrace Ms Boerum's observations when it suited them, but sought to disown them when it did not. That's as may be, but Ms Boerum was not always accurate in her notes. Her note of her first encounter with Ms Heard on 27<sup>th</sup> August 2014 said (see file 4/108/F622),
- 'Her fiance [Mr Depp] has a history of polysubstance abuse and completed a medical detox in July 2014. He has abstained from all substances since the detox period.'
- That cannot be correct. In August 2014 Mr Depp had just returned from his detox trip to the Bahamas. Either Ms Boerum meant August rather than July or she was referring to an earlier detoxification episode, but in that case the earlier episode could not have been completely successful because it had to be repeated in August 2014. Ms Heard also said in her evidence that Ms Boerum had incorrectly recorded that she had a history of eating disorders: Ms Heard said that she had never suffered from an eating disorder.
471. Ms Henriquez in her witness statement confirmed that she had been pregnant (which was why she had gone to bed early on the night of the birthday party). She had, though, taken part in the trip to Coachella. Ms Henriquez said that she had been sick as a result of her pregnancy and she had vomited several times that weekend.
472. Kristina Sexton was another of the guests at Ms Heard's birthday party dinner. She said that Mr Depp arrived 2-3 hours after Ms Sexton. She said he was clearly drunk. His speech was slurred and he could not hold himself up properly.
473. Ms Sexton had given a deposition for the purpose of the Virginia libel action on 30<sup>th</sup> August 2019. In the course of that she had said that Mr Depp had been upstairs in the apartment (see file 4/105/F506-507 (internal pages 88-90)). In her cross-examination in the present trial, Ms Sexton said that it had been her understanding that Mr Depp was upstairs in the apartment. She did not know that he had in fact been at a long business meeting.



474. The party was driven to Coachella by Starling Jenkins III, who had worked for Mr Depp for many years. In his witness statement he said that he saw no marks or bruises of any kind on Ms Heard's face or body. During the weekend Ms Heard had not made any allegations of domestic violence.
475. Ms Pennington was another guest at Ms Heard's birthday dinner. She did not witness any of the argument between Mr Depp and Ms Heard that night, but she heard Ms Heard's account of it the next day when they went to the Coachella festival.
476. My findings in relation to Incident 13 are as follows:
- i) Mr Depp had a meeting on the evening of 21<sup>st</sup> April 2016 at which he was given very grim news about his financial situation. Ms Sexton misunderstood the reason for Mr Depp's delayed arrival.
  - ii) In consequence Mr Depp took marijuana, as he admitted. I find it more likely than not that he also drank alcohol and took cocaine. This had been his practice on other occasions when he was faced with stress.
  - iii) As he accepts, he arrived late at the dinner party to celebrate his wife's birthday.
  - iv) He assaulted Ms Heard as he had done on previous occasions when he was stressed.
  - v) I do not accept that Ms Heard assaulted Mr Depp on 21<sup>st</sup> April 2016. Mr Bett's evidence that he saw an injury to Mr Depp's face, is considerably weakened because the photograph he initially said that he took of that injury was, in fact, taken on a different occasion (23<sup>rd</sup> March 2015), an occasion when Ms Heard accepts that she punched Mr Depp. I have explained already why my view on this remains the same notwithstanding the recorded conversation in San Francisco in July 2016.
  - vi) Ms Heard and her friends went the following day to the Coachella music festival. She admits that that weekend was a rare occasion when she took MDMA and magic mushrooms. She felt ill in consequence of one or other or both of the drugs. Whether or not she vomited in the car park as Starling Jenkins describes is not material, but I accept that one of the other members of the party was Whitney Henriquez, Ms Heard's sister, who is of similar appearance to Ms Heard. Ms Henriquez was pregnant at the time and agreed that she did vomit on more than one occasion. To the extent that it is material, I find that Mr Jenkins confused the two sisters. In any event he accepted in cross examination that he had identified Ms Heard by her clothes rather than any other feature.

#### **Faeces on the bed**

477. The day after the birthday dinner (22<sup>nd</sup> April 2016) Hilda Vargas, who has been a cleaner and housekeeper for the Claimant for many years, arrived at the Eastern Columbia Building to clean PH3 (where the Claimant and Ms Heard were living) as was her routine. Neither the Claimant nor Ms Heard was present. On the bed she was horrified and disgusted to find a pile of faeces. Ms Heard and the Claimant had two Yorkshire terriers called Pistol and Boo. It was the view of Ms Vargas that the dogs

could not have been responsible for the faeces in part because they were too small to climb on to the bed and in part because she had seen their mess before and what she saw on 22<sup>nd</sup> April was larger.

478. Ms Vargas took photographs of the faeces and reported it to Kevin Murphy who was effectively her line manager. Mr Murphy in turn gave the photographs to Sean Bett who passed them on to the Claimant. The Claimant said in his evidence that he regarded this incident as the final straw of his relations with Ms Heard and he resolved to divorce her. The Claimant thought that either Ms Heard or one of her friends had been responsible. Mr Murphy said that Ms Heard had told him that leaving the faeces on the bed had been ‘just a harmless prank’.

479. In his cross-examination, Mr Depp accepted that his sense of humour was ‘niche’. It also had a lavatorial streak. On 11<sup>th</sup> October 2013 he had sent a text to Stephen Deuters which said (see file 6/119/F697.14),

‘Will you squat in front of the door of the master bedroom and leave a giant coil of dookie so that Amber steps in it and thinks that one of the dogs, primarily Boo, has a major problem. It’ll be funny!!!’

480. Mr Depp’s *belief* that Ms Heard or one of her friends was responsible for leaving the faeces on the bed is relevant because (a) it led him to conclude that his marriage to Ms Heard could not continue and (b) it was the cause of part of the argument which subsequently took place on 21<sup>st</sup> May 2016. In my view, whether Ms Heard or one of her friends was *in fact* responsible is not important. It is remote from the central issue, namely whether Mr Depp assaulted Ms Heard. It is not even of significant relevance to whether Ms Heard assaulted Mr Depp. For what it is worth, I consider that it is unlikely that Ms Heard or one of her friends was responsible. Mr Depp had left that night for his property in Sweetzer. As long as he was away, it was Ms Heard who was likely to suffer from the faeces on the bed, not him. It was, therefore, a singularly ineffective means for Ms Heard or one of her friends to ‘get back’ at Mr Depp. Other evidence in the case showed that Boo (one of the two dogs) had an incomplete mastery of her bowels after she had accidentally consumed some marijuana. Ms Heard gave evidence that Boo had in the past defecated on the bed and that she herself had cleaned it up rather than leave that task to Ms Vargas. On 29<sup>th</sup> October 2014, Ms Heard wrote in a text message to Kevin Murphy that (see file 7/3(b)/H27.2),

‘Last night she [Boo] shit on Johnny. While he was sleeping. Like all over him. Not exaggerating.’

#### **Incident 14: 21<sup>st</sup> May 2016 Los Angeles**

481. The Defendants’ allegations in relation to Incident 14 are set out in the RAD which I have quoted at paragraph 73 and the Claimant’s Reply in relation to Incident 14 has been quoted at paragraph 74 above.

482. Ms Heard says in her 1<sup>st</sup> witness statement that she had not seen Mr Depp since her birthday dinner on 21<sup>st</sup> April 2016. He wanted to come and collect some of his things. His mother had died on 20<sup>th</sup> May 2016. He had been understandably upset about this. Ms Heard said that she had been in touch with him about this. She said that he arrived at about 7.15pm. She says she was alone in the apartment when he arrived drunk and

high. Ms Heard said that Mr Depp was angry about the faeces being left on the bed. She says they called Kevin Murphy and she challenged Mr Murphy over his suggestion that Ms Heard had admitted doing it and saying that it was just a prank. Ms Heard sent a series of texts to Kevin Murphy beginning at 8.02pm denying making any such admission.

483. Ms Heard said in her statement that she became worried for her safety. She texted Ms Pennington and asked her to come over immediately. Ms Heard said that Mr Depp was alleging that iO Tillett Wright ['iotw'] was responsible for the faeces. She phoned iotw and put him on speakerphone. iotw said that the allegation was ridiculous. Ms Heard said that Mr Depp became enraged, grabbed the phone, screamed insults at iotw, threw the phone to one side and went up to the upper level of the penthouse. She says he came back downstairs again, grabbed the phone again, and threw it at her (Ms Heard's) face as hard as he could. She says the phone hit her on the right cheek and her eye.
484. Ms Heard said that Mr Depp then grabbed her hair.
485. Ms Heard said that she called out, 'Call 911 [the emergency services number in the USA]', hoping that iotw would still be able to hear her. He did and called 911 from New York (where he was). The New York police recorded receiving a call from IO Wright who had had reported 'her friend called her from 849 South Broadway, Los Angeles CA 90014, that she was being assaulted by her husband' and 'her friend was hit with a phone and then she scream call 911' (see file 5.1/191(a)/F1197.4). The report is timed at 23.23, which, since New York is 3 hours ahead of California, would have been 20.23 in California. The metadata of one of the photographs of Ms Heard's right cheek (file 6/148(e)/F894.155 shows that it was taken on 21<sup>st</sup> May 2016 at 20.23.
486. Ms Heard said in her statement that she was still screaming when Ms Pennington entered the penthouse. She said that she had managed to get free from Mr Depp's grasp. She went over to the other side of the room. She says that Mr Depp ran at her, but Ms Pennington got in his way and put out her arms to separate her and Mr Depp. Ms Heard says that led Mr Depp to grab Ms Pennington's arms. She says Mr Depp shouted and swore at Ms Pennington.
487. Ms Heard said that she collapsed on to the sofa. Mr Depp came over, but Ms Pennington again stood between the two of them. Ms Heard said that Mr Depp picked up a magnum bottle of wine. She says he was swigging out of it and smashing things as he went.
488. Ms Heard said that at this point Jerry Judge and Sean Bett entered the room. She says that she yelled at them to help her and said she would call the police. She says that Mr Judge led Mr Depp away although Mr Depp smashed things as he went out. She says wine was spilled in the hallway and he damaged one of the doors in the apartment. She says that Mr Depp went into another apartment where Ms Heard used to store her things. She says that she could hear him destroying things in there.
489. Ms Heard said that by now Josh Drew was in her apartment and he and Ms Pennington took her to their (neighbouring) apartment.
490. Ms Heard said that Mr Drew and Ms Pennington took photographs of the damage in the apartments and the injuries to her face.

491. The New York Police Department contacted the Los Angeles Police Department. At 20.46 a police unit was dispatched to the Eastern Columbia Building (see file 5.1/191/1197.1). Ms Heard said that two police officers arrived: a man and a woman. She said that she was afraid to speak to the police at that point knowing that it would create a media storm and she was not ready to face that. Ms Heard said that the officers encouraged her to make a statement. She said that the officers added that they could not do anything if she did not make a complaint. Ms Heard says that she declined to make a complaint. The police record of the encounter (made at 21.22) states (see file 5.1/191/1197.1)

‘Met w/vict. Chckd Loc. Verified Husband left Loc. Vict advised verbal dispute and refused to give further info. Issue Bus Card.’

492. Ms Heard said that the police did a walk through the apartment. There was wine on the floor and things that Mr Depp had smashed. One of the officers gave Ms Heard a business card and encouraged her to call her if Ms Heard changed her mind about making a complaint.

493. Ms Heard said that later that night two other police officers arrived. They had wanted to walk through the apartment, but Ms Heard said that by then they had cleaned up. CCTV of the lift shows these officers arriving at 22.28 and leaving at 22.34.

494. Ms Heard said that later that night she texted Melanie Inglessis. Ms Inglessis replied asking if she was OK. Ms Heard responded as set out below (see paragraph 501).

495. Ms Heard sent her parents one of the photographs of her cheek and said in a text (see file 7/33/H151),

‘I think I’m done “being there” for Johnny, wouldn’t you agree “mom and dad”?’

A little later she added,

‘I called him again and said I was ready to talk. He was fucked up and delusional. Claiming some ridiculous shit I had no clue of or how to make sense of. Then he started hitting me with the phone and threw me down and hit me in the head. That’s when rocky and then Josh rushed in. Cops came right after he split. That’s all you need to know. If you text him or involve yourself anymore in his life I will never speak to you guys again. Dad either you understand that and respect that or you don’t. But if you go against my wishes I will never speak to you again.’

496. At some point Ms Heard says that she also phoned her attorney, Samantha Spector.

497. The following day (so 22<sup>nd</sup> May 2016) Ms Heard’s friend, Amanda de Cadenet, had a birthday party. Ms Heard says that her face was bruised but she did not want to let Ms de Cadenet down so she covered up the injuries on her face with make-up and wore sunglasses. As Ms de Cadenet had suggested in a text to her, she put arnica on her face to alleviate the bruising and swelling.

498. Ms Heard says that after this incident she decided to leave Mr Depp. She filed a petition for a divorce on 23<sup>rd</sup> May 2016 and, on 27<sup>th</sup> May, she applied for a temporary restraining order.
499. In her cross-examination, Ms Heard said:
- i) Mr Depp was about 6 feet away from her when he threw the phone at her face.
  - ii) When Ms Pennington entered their apartment, she and Mr Depp could hear the door opening. There was a long narrow hallway. She said that the grip on her hair loosened. She pushed him away, so that by the time Ms Pennington entered the room there was a few feet between them.
  - iii) When Mr Judge came in, she cried out, 'If he hits me again, I'll call the police.'
  - iv) She agreed that after Mr Depp left, she called her publicist as well as Ms Spector.
  - v) Mr Depp smashed the apartment he shared with Ms Heard (PH3). His security team let him into the neighbouring apartment where she kept her things (PH5) and he started causing damage to property there as well.
  - vi) The first pair of officers who attended Eastern Columbia Building (Officers Saenz and Hadden) would have been able to see the damage to the property.
  - vii) She denied that she, Mr Drew and Ms Pennington staged purported damage to the apartments.
  - viii) In the early hours of the following (Sunday) morning, Ms Heard said that she had tried to contact her friend Savannah McMillan who was in the UK. She sent Savannah a text which said, 'Sav! Shit is bad but I'm OK. Please don't text Rocky or anyone. It's OK. I'll explain later.'
  - ix) The photographs of her face were taken by either Ms Pennington or Mr Drew.
  - x) Apart from her court appearance on 27<sup>th</sup> May 2016, Ms Heard said that it was standard practice for her to wear make-up when she went out in Los Angeles. The reason was that she would often be photographed by paparazzi.
  - xi) One of the things that Mr Depp had destroyed had been some bead necklaces which had been made by Ms Pennington. The following day (22<sup>nd</sup> May 2016) Ms Pennington had a display of some of her necklaces. Ms Heard said that Ms Pennington fortunately had some necklaces in reserve. A photograph taken that day (file 6/148E/F894.224) showed Ms Heard with Ms Pennington. Ms Heard said that she was wearing some of the necklaces.
  - xii) At 23.52am on 21<sup>st</sup> May 2016 Ms Heard sent a message to Erin Boerum. She said (see file 7/28(a)/H144.5),  

'...he [Mr Depp] was completely delusional. Hit me in the face several times, while on the phone to iO. She [iow at the time identified as a woman. This was a reference to him] had dialled the cops, restraining order will be filed in

the am. Cops just left (Long after he did of course) Rocky and Josh were here too. It was horrible.'

Ms Heard denied that this was part of her effort to galvanise support from her friends.

- xiii) At 07.58 on 22<sup>nd</sup> May 2016 Ms Heard had an exchange of text messages with Mr Drew which included the following (file 7/35/H159),

'AH: Hey Josh, I hope you and Rocky got some sleep last night. I don't want to bother her on her big day but the lawyers asking for brief statements from you guys, as witnesses so that she can file the appropriate way for a restraining order ... Is there any way that you could just write a brief statement this would happen ... Doesn't have to be fancy or even well-written, nothing like that just a brief play-by-play of what you saw...

Josh Drew: No problem sweetheart. How are you doing ?...

AH: Thank you so much. I'm Okay. Just a little shaken up.'

- xiv) On 21<sup>st</sup> May 2016 iotw was in New York (which, as I have said, is 3 hours ahead of Los Angeles). Beginning at 20.16 on 21<sup>st</sup> May 2016 he had the following exchange of texts with Ms Pennington (see file 8/58/H420),

'iotw: Are you at Eastern ... JD attacking Amber ... She told me to call 911 ... I'm doing it .

RP: Call me

iotw: Does she have her phone with her?

RP: Yes, she's talking to her lawyer

Iotw: Ok, the cops have her number

RP: Are they indeed coming? ... Calling when they arrive?

Iotw: They are on their way they said

RP: OK

iotw: Probably not gonna call ... I told them penthouse 3 so maybe tell the door guy to call you when they are downstairs coming up.'

500. Later, on 22<sup>nd</sup> May 2016, Ms Heard and iotw had an exchange of messages which included the following (see file 7/38/H163),

'iotw: Are you OK? Did he get arrested? Are you taking out a restraining order?

AH: Yes restraining order. They didn't arrest him because I didn't make a statement.

iotw: Good!! That's gonna be the only thing that will get him arrested next time

AH: They said if I did they would be obliged to go arrest him.

iotw: Why didn't you

AH: Because it would have gone straight to TMZ [a celebrity news website] ... which will happen on Monday anyway

iotw: How are you feeling

AH: I'm suffering.'

501. As I have said, beginning at 10.24pm on 21<sup>st</sup> May 2016, Ms Heard had an exchange of texts with Melanie Inglessis which said (see file 2/60/E95),

'MI: u ok babe?

AH: No. Johnny came over "to talk". His mom just died. Then he went sideways. Convinced of some CRAZY shit. Beat on me. Cops were called. They just left. Filing a restraining order. Divorce goes through on Monday. My face looks stupid. Bad night.'

502. At some point that night Mr Depp sent a text to Ms Heard which said (see file 10/147(a)/O365),

'That was it. The last encounter forever. You were already ready to strike!!! Why did I even come there in the 1<sup>st</sup> place?? To be yelled at by you!!! I'm an idiot. PH5 is Rocky's studio?? You are shameless ... I tried to make it work and you just turned more and more into a spoiled brat. All you wanted was to make me fucking miserable. Well I'm finally there. I'll never be able to understand how I fell in love with you ... You're not her. I loved you more than anything ... I did everything I could. But you never fucking loved me ... I hope our divorce goes as quickly as possible and that it is as painless as possible. So sorry you were as unhappy with me as you were ... obviously the purity of whatever was, has been gone for a long time. I will miss the moments of beauty and truth ... Goodbye Amber ... What the fuck was I thinking??? I wish you all you merit ... The former Him'

503. Ms Heard had a vague recollection of seeing Cornelius Harrell on the front desk of the Eastern Columbia Building on 22<sup>nd</sup> May 2016. She denied that she had no marks on her face. She did not recall seeing Trinity Esparza on 23<sup>rd</sup> May. She had a vague recollection of seeing Isaac Barruch the same day. Ms Heard said that when she saw Hilda Vargas on 24<sup>th</sup> May and Samantha McMillen she was wearing make-up. She said that whenever she left the house, she wore make-up because of the chance that she would be photographed.

504. On 24<sup>th</sup> May 2016 Samantha Spector of Spector Law wrote on behalf of Ms Heard to Bloom Hergot Diemer Rosenthal LaVoilette on behalf of Mr Depp. Ms Spector referred to what had occurred on 21<sup>st</sup> May and said that there were photographs of the property damage and the injuries to Ms Heard. Ms Spector said that there had been two other incidents in the past 6 months. Ms Spector said that Ms Heard wanted, if possible, to avoid the media spotlight which was why she had not yet sought a TRO. In her cross-examination, Ms Heard was asked about the subsequent expansion of the number of

allegations of physical assault by Mr Depp. Ms Heard responded that her lawyer told her that this was a short application. If Mr Depp had hit her once, she would qualify for a restraining order. Ms Spector told her to give her the last couple of incidents. Ms Heard denied that the letter from Ms Spector was a form of blackmail.

505. Ms Pennington said she arrived on 2st May and comforted Ms Heard.
506. The guards came in. Ms Heard said, 'If he hits me again, I will call the police.' According to the Claimant and Mr Bett, at that stage Ms Heard and the Claimant were 20 feet apart.
507. Two police officers did attend that evening. They were officer Melissa Saenz (who had received training in domestic violence) and officer Tyler Hadden. They had no contemporary records of the attendance. Ms. Saenz could not say what time they arrived except it was the evening. An automated incident report (which I have quoted above) had been generated and they had each given evidence on deposition for the purpose of the divorce / restraining order proceedings on 18<sup>th</sup> July 2016. On their arrival, they had been met by two people, but the police officers had not noted their names. They also saw Ms Heard who was inside the man's apartment. She was crying and reluctant to speak to the police. That was not unusual in officer Saenz's experience. They had a clear view of Ms Heard. Ms Heard did not appear to have any sign of injury to her face. The apartment where they were was well lit. There was reddening to her cheek, but officer Saenz attributed that to Ms Heard crying. The officer asked Ms Heard if she wanted to talk in private, but she did not. She declined to make a complaint, but officer Saenz left her visiting card in case Ms Heard changed her mind. There was written on the visiting card,

'Radio call of dispute. Refused report. Adv'd can call @ later time if changes mind.'

The time on the card was 9.16pm and the card itself was photographed on 21<sup>st</sup> May 2016 at 9.19pm. The officers said they looked around the apartment. They said there did not appear to be any damage and no broken glass. Officer Saenz thought they were in the building for about 30-60 minutes. CCTV shows their arrival at 9.04 and their departure at 9.19. As I have said, the Incident Report is timed at 21.21

508. The second pair of police officers who came to the Eastern Columbia Building later that night have made no statements.
509. Ms Pennington said in her witness statement that she was aware that Mr Depp was intending to come over to meet Ms Heard on the evening of 21<sup>st</sup> May 2016. Ms Pennington counselled against the meeting, but Ms Heard decided to go ahead and meet Mr Depp anyway. She said she would check in regularly with Ms Pennington. At 8.06 pm Ms Pennington got a text from Ms Heard asking her to come to PH3 right away. A copy of that text is at file 7/13/H81. In any event, Mr Depp did not dispute this part of her evidence. Ms Pennington said that from outside the apartment she could hear Mr Depp shouting loudly. There was no answer to her knock. When she let herself in to the apartment Mr Depp was in the kitchen, Ms Heard was seated on the sofa. They were about 12 feet apart. Ms Heard was yelling for help and said that Mr Depp had hit her with the phone. Mr Depp was swearing and saying that Ms Heard was a liar. Mr Depp swore at Ms Pennington. He moved towards Ms Heard. Ms Pennington stood between



them. She put her hands up to restrain him. She says Mr Depp knocked her hands out of the way. She says that she sat next to Ms Heard on the sofa. Mr Depp came and stood over them yelling at Ms Heard to get up.

510. Ms Pennington says that Mr Judge and Mr Bett came in. Mr Depp denied that he had hit Ms Heard and threatened to call the police himself. Ms Pennington says that Mr Depp was smashing things. He had a wine bottle with him and was sloshing wine everywhere. Ms Pennington says that Mr Judge and Mr Bett did nothing to restrain Mr Depp. Ms Heard was telling her at this stage that iO Tillett Wright had called the police. Ms Pennington then took Ms Heard with her back to her apartment. Mr Depp left with his security team. Ms Pennington looked through PH3 and PH5 at the damage that Mr Depp had done. She discovered broken belongings, her (Ms Pennington's) beads thrown against the wall. Ms Heard's belongings had been ransacked, framed photographs had been smashed and glass broken. There were puddles of spilled wine on the floor and splashes on the walls. Ms Pennington's statement was broadly in line with the account which she had sent to Ms Heard by email on 22<sup>nd</sup> May 2016.
511. Ms Pennington said that Ms Heard had an injury to her right eye. They took photographs of her injury and the property damage. There is a copy of a photograph of the right side of Ms Heard's in the documents (file 6/148(e) / F894.155A) which the metadata shows, as I have said, was taken at 20.23 (and so before the police arrived).
512. Ms Pennington said that when the two police officers came the damage to the property was clearly visible. A little later a second pair of police officers came. They were told that the decision not to file a report remained the same. There has been no evidence at all from this second pair of police officers.
513. Further photographs were taken of Ms Heard's face timed, according to the metadata as follows: 6/E/F894.157A, F894.159A, F894.161A, F894.163A (all 21.22), F894.165A and F894.167A (both 21.24), F894.169A, F894.171A, and F894.173A and F894.175A (all 21.25). Other photos were taken of Ms Heard's face later that evening (around 11.30) and again on the following morning (22<sup>nd</sup> May). Photographs were also taken on the evening of 21<sup>st</sup> May of the damage to the apartments.
514. On the following day, as Ms Heard had requested, Ms Pennington wrote an account of what had taken place the night before and sent it to Ms Heard. She exhibited this account to her witness statement (see file 2.1/71(2)/E606.19).
515. In cross-examination, Ms Pennington denied that she had been hiding in one of the closets in PH3 waiting for Mr Depp to come over. She denied that she and Ms Heard spent the next few days taking photographs in support of Ms Heard's plan for a separation. It was completely false to suggest that she, Ms Heard and Mr Drew had caused the damage to the apartment themselves after the police had left. It was also completely false that they had used make-up to fake the injury to Ms Heard's face.
516. Joshua Drew in his witness statement said that his fiance, Ms Pennington, was apprehensive about Ms Heard meeting with Mr Depp and when Ms Heard texted at 8.06pm asking Ms Pennington to come, Ms Pennington had bolted across to PH3 from their apartment. Mr Drew could hear Mr Depp shouting and swearing at his security guards to let him in. He was cursing at Mr Drew. He came into PH5. Liz Marz was also in their apartment. She went upstairs. Mr Drew said that Ms Heard was in a state when

he located her and Ms Pennington. By that stage Mr Depp had left PH5. Mr Drew dead-locked the door.

517. Mr Drew found Ms Heard and Ms Pennington in PH1. Ms Heard had had Mr Depp's mobile phone which she said he had thrown at her. 5 minutes later Mr Judge called Mr Drew's mobile. Mr Judge said that Mr Depp had left his mobile and Mr Drew returned it to Mr Judge downstairs in the Eastern Columbia Building. Mr Drew said that Mr Judge asked if Ms Heard was OK. Mr Drew said he responded along the lines of, 'Are you fucking kidding me? He beat the shit out of her and you guys stood by and watched it.' Mr Drew said that Mr Judge started to demur and then said something along the lines of, it was not his business. They were husband and wife. He barely touched her. Mr Drew was dismissive of these comments.
518. Mr Drew said that Ms Heard spoke with Ms Spector, her lawyer, and her publicist, Jodi Gottlieb.
519. Mr Drew said that he met with the police about 15 minutes later and showed them around the apartments. He showed them the broken glass, the large wine stain in the hallway, the damage to property, the broken picture frames, smashed glass and Rocky's jewellery strewn across the floor of PH5. The female officer took Ms Heard aside to speak to her privately. While that was happening, Mr Drew spoke to the male officer and asked him what could be done. The male officer said that there was damage in the apartments and Ms Heard's face was red, so there was enough to arrest Mr Depp if Ms Heard filed a report.
520. Mr Drew said that they cleaned up the broken glass so that the dogs would not be hurt. Mr Drew greeted the second set of officers. He took them for a walk through the apartment and they spoke with Ms Heard.
521. Mr Drew said he remembered seeing a red mark and a small bruise on Ms Heard's cheekbone, red marks above her eyebrow and some swelling.
522. In cross-examination, Mr Drew confirmed that he had prepared an account of what had taken place on 21<sup>st</sup> May and sent it to Ms Heard on 22<sup>nd</sup> May 2016. His evidence was broadly in line with that account. He accepted that he had not seen Mr Depp strike Ms Heard. He confirmed that he had shown the police the damage to PH3 and PH5 and that Ms Heard had the injuries to which he referred in his statement.
523. IO Tillett Wright sent an email to Ms Heard on 22<sup>nd</sup> May with the subject 'What Happened'. The email read (see file 8/83/I40),

'At 8pm PST [Pacific Standard Time] Amber texted me and asked me to call her. When I called her, she explained that Johnny was convinced that we had defecated in his bed as some kind of prank. I started laughing at the absurdity of the situation, which he heard because Amber had put the phone on speaker phone. Johnny then walked away which she told me, and went upstairs. I asked her why she was in a house with someone who had previously attacked her. She explained that his mother had died and she was worried about him and he needed some items from the house before going on tour with his band. I then heard Johnny come back downstairs and he picked up the phone and started yelling expletives at me. Still on speakerphone, I told Amber that she should get out of the house because I could

tell that he was potentially going to get violent. At that point I heard the phone be thrown. Shortly thereafter Amber pick the phone back up and explained that he had thrown it directly at her face and hit her with it. At that point I heard Johnny say "Oh you think I hit you? What if I pull your hair back?" The phone then dropped. I heard Amber shriek, and she yelled at me to please call 911. At that point I hung up and texted Raquel that she needed to immediately go to penthouse 3 to intervene, and called the police.'

524. iO Tillett Wright said in his witness statement that he had been in New York on 21<sup>st</sup> May 2016 when he had a call from Ms Heard. She said that Mr Depp wanted to talk to her about a theory which he had. This was about the faeces in the bed incident. Mr Tillett Wright denied that he had anything to do with faeces. He could hear banging noises in the background. He advised Ms Heard to leave the apartment. She said that it was OK, Mr Depp had gone upstairs. She said he was collecting his things in order to go to Sweetzer. Mr Tillett Wright said that he could hear Mr Depp's voice, then Ms Heard yelled and she said that he had thrown the phone at her face. Mr Tillett Wright said that he was going to call the police. She said, 'Do it.' He said he called 911. He contacted Ms Pennington and asked her to go to the apartment right away. He also called a friend of his who was in Los Angeles and asked her to call 911 so that there would be a local call for police assistance.
525. A little while later, Mr Tillett Wright said that he heard from Ms Pennington that Mr Depp had left, the police had come and Ms Heard was OK.
526. On 8<sup>th</sup> June 2016 Mr Tillett Wright wrote an article for 'Refinery 29' describing the incident.
527. In cross-examination Mr Tillett Wright agreed that by May 2016 Mr Depp was unhappy with him in part because he had posted material on-line concerning Mr Depp's daughter, Lily Rose. He had called 911 in part because of what he could hear on the phone and in part because Ms Heard asked him to do so. Mr Tillett Wright agreed that he had written the Refinery 29 article at Ms Heard's request. She had been concerned that she was being characterised as a gold-digger. Before the article had been published, he had exchanged messages with Ms Heard. He was seeking a transcript of the 911 call. He agreed that Ms Heard was a very close friend of his and he considered her to be part of his extended family. He would do a lot to support her, but only in a way which was truthful and honest.
528. Whitney Henriquez was not present on 21<sup>st</sup> May 2016 but in her witness statement she said that she saw her sister on 22<sup>nd</sup> May and 'her eye was bruised and swollen, her lip was busted open and there was a chunk of her hair missing.' Ms Heard relayed an account to her broadly in line with her statement.
529. The Defendants served a hearsay notice relying on several documents which emanated from Elizabeth Marz. One was a deposition which Ms Marz had given in the course of the Depp divorce proceedings. Ms Marz had been deposed on 15<sup>th</sup> July 2016. Her evidence included the following:
- i) She had seen wine spilled on the floor (internal page 30);
  - ii) the side of Ms Heard's face was red, puffy and swollen (internal page 35)

- iii) she saw Mr Depp flailing around with a big bottle of wine and yelling (internal page 42).
530. Ms Marz had also prepared a draft declaration in the Virginia libel action (see file 3/103). This, too, was part of the Defendants' hearsay notice. She said that she had stayed with Ms Pennington and Mr Drew in February 2016 for two weeks. She had been with Ms Pennington on 21<sup>st</sup> May 2016 helping her prepare for her first jewellery show. She said that Ms Pennington received a text from Ms Heard asking Ms Pennington to come to her apartment. She and Mr Drew stayed in the apartment which was used as Ms Heard's office (PH5). Ms Marz said that they heard screaming and yelling. The door to their apartment then burst open and Mr Depp was there with two of his guards. Ms Marz said that Mr Depp was visibly intoxicated. He was carrying a magnum sized bottle of wine which he was spilling all over the place. Mr Depp screamed, 'Get your bitch out of here.' Ms Marz said that she ran upstairs to the pool area and stayed there until she heard from Ms Pennington that Mr Depp had left. She said that Ms Heard's face was visibly red and swollen. The declaration was only a draft but on 17<sup>th</sup> July 2019 Ms Marz indicated by email that she was happy with it.
531. Mr Depp's mother had been ill. She died, as I have said, on 20<sup>th</sup> May 2016. He denied that he had dealt with this tragedy and the strain of his financial difficulties by resorting to excessive drinking or illegal drugs. Mr Depp agreed that he was angry on account of what he had been told about the faeces on the bed. He visited Ms Heard on the evening of 21<sup>st</sup> May 2016 at the Eastern Columbia Building. He went with two members of his security team: Mr Judge and Mr Bett. He said he asked them to wait outside the front door of Penthouse 3 because he feared what might occur.
532. He said that he thought the visit had lasted about 30 minutes.
533. Mr Depp denied that he had assaulted Ms Heard or that any marks on her face had been caused by him throwing a phone at her.
534. Mr Depp agreed that Ms Heard had texted Ms Pennington, asking her friend to come over to the flat. He said that was part of Ms Heard's hoax. He denied that Ms Pennington put herself between him and Ms Heard. He said that he and Ms Heard were 20 feet apart at that point. He denied that he pushed Ms Pennington's hands out of the way. He denied that he was swinging a wine bottle and smashing things with it.
535. Mr Depp said that the series of texts sent by iO Tillett Wright to Ms Heard were part of the hoax concocted by Ms Heard.
536. Mr Depp agreed that he went to PH5 after he left PH3. He saw Mr Drew and a woman he did not know.
537. Mr Depp agreed that he was angry and upset when he left. He agreed that he had left his mobile phone behind and Mr Judge had collected it.
538. Mr Depp agreed that by 4<sup>th</sup> June 2016 he was feeling quite bitter towards Ms Heard. On that date he sent a text to his sister saying (see file 6/119/F697.188),

'I want her replaced on the WB film.'

He agreed that this was a reference to the Warner Brothers film 'Aquaman' in which Ms Heard had starred. Ms Heard hoped to appear in the sequel. He denied that he had orchestrated a petition seeking the same end.

539. The next day after Incident 14, on 22nd May 2016, the Claimant sent a text to Ms Heard (see file 7/47(a)/H188.3) saying,

'Sorry if I was a bit ... Please know that my hurt towards you is over ... My apologies are eternal and belong to you!!! Solid.'

The Claimant denied that he was apologising for hitting her in the face with the phone.

540. On 22<sup>nd</sup> May 2016 he had also texted Ms Heard and said (see file 7/28(b)/H144.9),

'Just let me know when you have a minute And I'll give you a call. ... Nothing I have to say to you should elicit anything, but a sense of ease. All my love and profound apologies ... J.'

541. Jerry Judge, Mr Depp's former head of security, has since died. Before his death he made a declaration for the purposes of the divorce proceedings in California (see file 3/83). He said that on 21<sup>st</sup> May 2016 he and Sean Bett had gone with Mr Depp to the Eastern Columbia Building. He said that Mr Depp was sober. He said that after the three of them entered the apartment, he and Mr Bett waited in the hallway. He said that about 30 minutes later, they heard raised voices (chiefly Ms Heard's) and entered the apartment. He said that Mr Depp and Ms Heard were standing about 10 feet apart. Ms Heard was screaming at Mr Depp. She was berserk. Mr Judge encouraged Mr Depp to leave. He said that he did not see Mr Depp break anything. He never saw Ms Pennington enter the apartment. He did not see any marks or injuries on Ms Heard's face or body. He was about 10 feet away from her. He never heard Ms Heard accuse Mr Depp of throwing a phone at her or threaten to call the police.

542. The Claimant relies on the evidence of a number of people who say that they saw Ms Heard in the following days and did not see any sign of her injuries (in addition to those already mentioned). Thus,

- i) Sean Bett was present that night. He said in his statement,

'I have quite good eyesight. I was able to see that Ms Heard was wearing little or no make-up, her skin was quite pale and she had no red marks or evidence of any bruises or abrasions to her face or body.'

- ii) Cornelius Harrell was the doorman on duty on Sunday 22<sup>nd</sup> May 2016 in the lobby of the Eastern Columbia Building. The Claimant had intended to call him to give evidence. He was unable to do so because of Mr Harrell's ill health. Mr Harrell's witness statement was therefore admitted as hearsay. Mr Harrell said that Ms Heard came to the front desk at about 1.0pm She wanted to pick up a delivery of wine. Mr Harrell took her to the mail delivery room They spoke for about 8 minutes. He says he was about 1 foot away from her. He says she appeared to be wearing minimal or no makeup He said,

‘I did not notice any bruises, cuts, swelling, red marks or any other injuries of any kind to Ms Heard’s face or body.’

- iii) Isaac Barruch is a very old friend of the Claimant. The Claimant allowed him to live rent-free in PH2 in the Eastern Columbia Building. The Claimant had been very generous to him. He described the relationship as one of ‘patronship’. He saw Ms Heard on 22<sup>nd</sup> May 2016. Ms Heard reported to Mr Barruch that the Claimant had thrown a phone at her and the phone had hit her in the face. Mr Barruch asked where she had been hit. She showed him. Mr Barruch in his statement says,

‘We were both standing in front of the open doorway to Penthouse 1. With lights from the hallway and the sunlight that came in through the windows from Penthouse 1, which filled the room and spread into the hallway, it was very easy for me to get an excellent view of Ms Heard’s face. I literally was around 12 inches from her inspecting her face and I did not see a single mark or evidence of any marks, bruising or swelling of any kind anywhere on her face. She also definitely did not seem to be wearing any makeup at this time of day that could cover any marks or swelling’.

Mr Barruch complimented her and said he could see no marks. She laughed.

Mr Barruch saw Ms Heard again on a number of occasions over the period 23<sup>rd</sup>-26<sup>th</sup> May 2016. He never saw her with any sign of injury.

Mr Barruch did notice on 22<sup>nd</sup> May, spilled wine and broken glass outside PH1.

In cross-examination Mr Barruch said that he was 100% certain that Ms Heard had no make-up on when he saw her on 22<sup>nd</sup> May 2016. He was shown the photographs taken on 21<sup>st</sup> May. He said that Ms Heard did not look like that when he saw her on 22<sup>nd</sup> May.

- iv) Samantha McMillen says that she saw Ms Heard on 24<sup>th</sup> May 2016. She says,

‘Ms Heard was not wearing make-up. There were no visible marks, bruises, cuts or injuries to her face or any other part of her body. I saw her by the kitchen door during daylight...’

Ms McMillen was shown the photograph purporting to show redness on Ms Heard’s cheek and she said that Ms Heard not looked like that when she saw her on 24<sup>th</sup> May. She said she had only noticed Ms Heard’s beautiful skin.

- v) Trinity Esparza, who was in charge of concierge services at the Eastern Columbia Building, was on the front desk of the building on 23<sup>rd</sup>, 24<sup>th</sup> and 25<sup>th</sup> May 2016 when Ms Heard passed through the lobby. On none of those occasions did Ms Heard have any sign of visible injury to her face. Ms Esparza said that Ms Heard only rarely wore make-up. When Ms Heard’s allegations of abuse began to be publicized, Ms Esparza reviewed the CCTV footage from the security cameras for each day of the week after 21<sup>st</sup> May She says,

'I did not see any bruises, cuts, swelling, red marks or any other injuries of any kind to Ms Heard's face or body on review of the security footage.'

Ms Eesparza claimed that the CCTV also showed Ms Henriquez throwing a fake punch in the direction of Ms Heard. In cross examination, Ms Heard denied that there had been any such fake punch, as did Ms Henriquez.

I was told that the CCTV footage is no longer available.

- vi) Hilda Vargas saw Ms Heard on 24<sup>th</sup> May 2016 at the Claimant's house on Sweetzer Avenue. She was with Rocky Pennington. Ms Vargas says of Ms Heard,

'Her face was pale and she did not appear to be wearing any makeup. I saw no bruises or marks of any kind.'

In her statement Ms Vargas says that Ms Heard told her on 24<sup>th</sup> May that the pictures Ms Vargas had taken of the faeces had destroyed her marriage. Ms Vargas said that she was very nervous, but did not believe that the marital problems of Mr Depp and Ms Heard were her fault.

- vii) Alejandro Romero in 2016 was one of the doormen on the Eastern Columbia Building. On 25<sup>th</sup> May at about 10.30pm he was on the front desk and had a brief conversation with Ms Heard. Ms Heard was standing about 3 feet away from him. He said in his statement, 'I did not notice any bruises, cuts, swelling, red marks or any other injuries of any kind to Ms Heard's face'. Ms Heard then asked him to search the penthouse to make sure that no one was there and that it was safe. Over about an hour Mr Alejandro searched PH1 and PH5. He was accompanied by Ms Heard and Ms Pennington.

Mr Alejandro was confused by dates. In his witness statement he said that he had first seen Ms Heard in 2015 'but I understand that she was not resident at Eastern until around 2016'. He did not agree that Ms Heard became resident in the Eastern Columbia Building in 2013. He accepted that he might be muddled by dates.

543. I have quoted part of the statement of Sean Bett. He said that he and Jerry Judge took Mr Depp to the Eastern Columbia Building on 21<sup>st</sup> May 2016. Mr Depp was sober and lucid. He expressed concern as to how Ms Heard might behave. Mr Bett said that he and Mr Judge waited in the hallway outside PH3. He says that they went back inside PH3 because they heard screaming. Ms Pennington did not come past them and she must therefore have been in PH3 when he and Mr Judge and Mr Depp arrived. When they did enter PH3, Mr Depp and Ms Heard were standing 20 feet apart. It was not the case that he and Mr Judge were waiting in PH5. He agreed that Mr Depp had left his mobile in PH3. Mr Drew brought the phone downstairs and handed it to Mr Judge. Mr Bett said he did not notice any smashed glass or broken bottles in the apartment.

544. In cross examination, Mr Bett agreed that what was known as the cubby hole or storage area was where the guards would remain while Mr Depp was in PH3. This was part of PH5. He denied that was where they waited on 21<sup>st</sup> May while Mr Depp was in PH3. He thought that Mr Depp was in the apartment for a short time, and not as long as 1 ½

hours. He was shown CCTV from the lift in the Eastern Columbia Building which showed that Mr Depp took the lift up at 19.02 and descended at 20.29.

545. Mr Bett was certain that Ms Heard had no injury. He saw none of the property damage in the photos later taken by Ms Pennington and Mr Drew.
546. On 26<sup>th</sup> May 2016, Mr Deuters sent a text to Paul Bettany which said (see file 6/119/F697.175),

‘That moment when everything comes home to roost and all the shit compounds itself into one monstrous steaming pile of catastrophe. Just trying to keep him upright at the moment. But at least the bitch is gone (yes I do mean Amber not the Mom). Poor Betty Sue has been on her way out for the last six months. It was a relief to, at most of all herself.’

Mr Deuters added (apparently in a text to himself),

‘Sociopathic show pony. Machiavellian overlord. Talentless cunt. Good riddance to bad shit. (Yes I do mean Amber not the Mom, even tho she was a devil herself.)’

In cross-examination, Mr Deuters said he regretted his language.

547. In support of his reply that he did not assault Ms Heard on this date, the Claimant also relied on the declaration made by Laura Divinere in the Virginia libel proceedings. The declaration had been made on 28<sup>th</sup> June 2019 (see file 3/86). It included (at paragraph 5) the following,

‘I was with Amber and interacted with her frequently on several days immediately following her abuse allegation of May 21 2016, including at least on May 23, 24 and 25. On those days I worked with Amber, retrieved packages for her, rode elevators with her, and saw her up close and in person. On none of those days immediately following the abuse claims did I observe any signs of physical abuse or injury, including any redness, swelling, cuts, bruising or damage of any kind. I never saw Amber injured in any way, although I am now aware that she has made many different abuse claims.’

548. The Claimant served a hearsay notice stating that he intended to rely on this declaration. The Defendants served a counter-notice stating that they wished to cross-examine Ms Divinere in relation to the statement. I understand that a California court issued a subpoena requiring Ms Divinere to attend for cross examination. She did and she was cross examined by Ms Wass QC on behalf of the Defendants.
549. Ms Wass put to Ms Divinere an iMessage which Ms Divinere had received on 22<sup>nd</sup> June 2019 (and so a few days before her declaration) from Adam Waldman (see file 4/120/F698). As I have said previously. Mr Waldman is one of the Claimant’s lawyers in the USA. Ms Wass also played a recording which Ms Heard had made (without the knowledge of Ms Divinere) of a conversation between herself and Ms Divinere. In cross examination Ms Divinere agreed with Ms Wass that she had felt pressured by Mr Waldman. She said that in the days following 21<sup>st</sup> May 2016 incident, Ms Heard had been clearly upset. Her face had been red and puffy although she did not recall seeing any injury.



550. In re-examination Mr Sherborne wished to put to Ms Divinere a series of emails (see file 8/86(d)/I48.10 and following).

***Whether the emails which Mr Sherborne wished to rely on in re-examination were privileged***

551. With Ms Divinere at the time of her evidence was Lee Sherman, who told me that he was a US attorney who represented Ms Divinere. I had ordered that any witness who gave evidence via video-link could be attended by a lawyer and this seemed to be how Mr Sherman came to be present. Mr Sherman objected to me seeing the email exchange on the grounds that it was a privileged communication between him and Ms Divinere. If it had found its way to the Claimant, that had been by accident, as should have been apparent.

552. I agree that Mr Sherman was entitled to raise the issue of privilege on his client's behalf. After all, if the email exchange was privileged and I ought not to rely on it, that would be an objection which could properly be taken by a witness and the witness was entitled to the assistance of a lawyer to do so. On its face, part of the email exchange was a draft of a response which Mr Sherman provided to Ms Divinere and which she could, if she wished, provide to Mr Depp's US lawyers.

553. Mr Sherborne submitted that any privilege in the exchange had been waived by Ms Divinere and it was therefore open to him to rely on the exchange. He referred me to an email in the chain which had been sent on 10<sup>th</sup> March 2020 at 6.36am by Ms Divinere to Mr Sherman in the course of which she had said,

'Please forward this letter to all counsel involved for Depp, Heard and the Sun newspaper (UK).'

554. On the same day at 1.16pm Ms Divinere herself had forwarded the email exchange to Kevin Murphy who was until 2016 an employee of the Claimant.

555. I said to Mr Sherman and Mr Sherborne that I would reserve my decision on the privilege issue and deal with it as part of the judgment in the case as a whole.

556. Although Ms Divinere was in California when she testified before me, I am conducting this trial in England and I consider that English law must be applied to issues such as privilege.

557. As a matter of English law, I agree with the following propositions advanced by Mr Sherborne:

- i) The privilege is that of the client (here Ms Divinere) not of her lawyer (Mr Sherman).
- ii) The privilege can be waived by the client.
- iii) By passing the exchange to Mr Murphy, Ms Divinere had waived her privilege.
- iv) In any event, it is only confidential documents in which privilege can be claimed. By passing the exchange to Mr Murphy, the exchange was no longer confidential.

v) Although Mr Sherman had submitted that any disclosure to Mr Murphy was accidental, I do not accept that was the case. Her statement that she wished her views to be communicated to various people, including Mr Depp, strongly indicates the contrary.

vi) Ms Diviniere herself had sent the email chain to Mr Murphy.

558. Accordingly, in my view, it was open to Mr Sherborne to rely on the exchange. In the exchange which was forwarded to Mr Murphy, there is a draft email from Mr Sherman to Alexander (I assume Alexander Rufus-Isaacs, one of the Defendants' US lawyers) in which Mr Sherman says,

'My client's position is that she voluntarily gave a truthful and accurate declaration in the other case based on her best recollection of the events and if compelled by the US District Court to testify; her testimony will be completely consistent with that position.'

559. In her email letter which she wrote on 10<sup>th</sup> March 2020 at 6.36am (and which she had asked to be forwarded to all counsel involved), Ms Diviniere had said

'My declaration is 100% truthful and that will not change. In retrospect where I may have thought I was unduly pressured to write and sign my declaration I now believe that was not the case. My declaration went through three iterations with my complete involvement and understanding. Again, I signed knowing that my declaration was truthful best to my recollection. I did the best I could do.'

560. However, while I agree with Mr Sherborne that he may rely on these statements, I have to decide what I make of Ms Diviniere's evidence taken as a whole. In my view her vacillation severely undermines the weight which I can give to her evidence.

***The Defendants' application for permission to adduce expert evidence***

561. I have said that the Defendants wished to adduce expert evidence. Their application notice was issued on Friday 17<sup>th</sup> July 2020 (day 9 of the trial). The application notice said that the expert evidence which the Defendants wished to adduce was

'as to the timing and authenticity of the metadata relating to images taken in May 2016 as disclosed to us by the Claimant in January 2020.'

562. The background to the application was explained by Jeffrey Smele in his 3<sup>rd</sup> witness statement, also of 17<sup>th</sup> July 2020. Mr Smele is a partner in the Defendants' solicitors, Simons Muirhead and Burton. Mr Smele explains that the photographs were taken in May 2016 and purported to show injuries to Ms Heard's face which she said had been caused by Mr Depp. Those photographs have always been in the trial bundles.

563. Mr Smele further explains that the May 2016 photographs had been disclosed to the Defendants by the Claimant on 29<sup>th</sup> January 2020 by the Claimant's previous solicitors, Brown Rudnick. The photographs had been accompanied by a spreadsheet which purported to give the date and time on which the photograph had been created. The spreadsheet said that the date of some of the photographs was 21<sup>st</sup> May 2016; the date of others was 22<sup>nd</sup> May 2016. In each case, however, the time was given as 00.00. Mr

Smele said that on 10<sup>th</sup> July 2020 Ms Heard had provided the Defendants with further copies of some of the same photographs, but this time accompanied by the metadata for the photographs. The metadata showed that the photographs had indeed been created on 21<sup>st</sup> and 22<sup>nd</sup> May but at various times. These copies were disclosed to the Claimant's current solicitors, Schillings, on 10<sup>th</sup> July 2020. Simons Muirhead and Burton asked Schillings to confirm that they agreed with the metadata. At that stage the Claimant was still giving evidence. Schillings said in an email on 16<sup>th</sup> July 2020 that they hoped to respond once his evidence was concluded (which it was, on Monday 13<sup>th</sup> July 2020). On 15<sup>th</sup> July 2020 Simons Muirhead and Burton asked Schillings to confirm,

'(a) You accept that date/time metadata (as extracted from the JPEG files) is accurate in respect of each image enclosed.

(b) You are not alleging that the May 2016 images have been falsified or otherwise manipulated; and if you are making any such allegation, in what respects you claim that the images have been manipulated.'

564. On 17<sup>th</sup> July 2020 Schillings replied,

'We do not dispute the accuracy of the accompanying date/time metadata to the May 2016 Images

We do not accept that the May 2016 images have not been edited or otherwise manipulated. The metadata you refer to does not address edits including where an image has been saturated or otherwise "photoshopped". Some files have "edited" in the filename.'

565. Mr Smele also said that the Defendants had instructed an IT expert called Timothy LaTulippe of iDiscovery Solutions to advise them. Mr Smele exhibited a letter dated 17<sup>th</sup> July 2020 from Mr LaTulippe which summarised his conclusions.

566. Mr Wolanski made the application that same afternoon (17<sup>th</sup> July 2020). Mr Sherborne, who represented the Claimant on this matter, objected that he had not had time to consider the application or respond to it. Since the application notice had only been issued that morning, I agreed that it would not be fair to the Claimant to consider the application until the Claimant had had such an opportunity. That said, the matter was plainly urgent. I arranged for the application to be considered at 9.30am on Monday 20<sup>th</sup> July 2020. Before we next sat my clerk received (a) a formal report from Mr LaTulippe (of the same date) (b) a note from Mr Wolanski; (c) a letter dated 19<sup>th</sup> July 2020 from KLDISCOVERY, who had been instructed on behalf of the Claimant and (d) a skeleton argument from Mr Sherborne. It seemed to me that 30 minutes (which was the Defendants' time estimate for the application) would be insufficient. I, therefore, said that I would consider the application on the basis of written submissions and I set a tight timetable for these. Mr Sherborne and Mr Wolanski both provided further submissions. On Wednesday 22<sup>nd</sup> July 2020 I announced that I would refuse the application for reasons which I would give in the reserved judgment after the trial. This I am now doing.

567. Mr Wolanski drew attention to CPR r. 32.19 which says,

‘(1) A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves a notice that he wishes the document to be proved at trial.

(2) A notice to prove a document must be served –

(a) By the latest date for serving witness statements; or

(b) within 7 days of disclosure of the document,

whichever is later.’

568. Mr Wolanski recognised that the rule does not address challenges to the authenticity of documents disclosed *by* the party who wishes to challenge their authenticity, but, he submitted, any such challenge ought still to be signalled promptly, to allow a proper investigation to take place including proper time for any application for expert evidence to be made. He submitted that principle had not been observed. Any difficulty created by the late notice of the Defendants’ application was therefore due to the Claimant’s delay in giving the Defendants notice that they were intending to allege that Ms Heard’s photos had been manipulated.

569. Mr Wolanski recognised that the application had expanded somewhat since Friday 17<sup>th</sup> July in that it now included expert evidence as to two further matters:

- i) The authenticity of images which had been taken of Ms Heard in December 2015 and which she had also produced to the Claimant in the course of the Virginia libel proceedings, and
- ii) The authenticity of a recording of part of the flight from Boston to Los Angeles (incident 4). This recording had been disclosed by the Defendants on 1<sup>st</sup> July 2020 as a digital file together with underlying metadata. Mr Wolanski submitted that the authenticity had not been challenged until, on Friday 10<sup>th</sup> July 2020, the Claimant questioned whether it was a recording made on that flight.

570. Mr Sherborne resisted the application to adduce expert evidence. He argued:

- i) As Schillings had made clear, there was no dispute that the timings in the Schedule to Brown Rudnick’s letter of 29<sup>th</sup> January 2020 were wrong and the Claimant accepted that the date and times of the metadata in the copies of the photographs which Simons Muirhead and Burton had sent on 10<sup>th</sup> July 2020 were correct.
- ii) Mr Smele’s witness statement said that Mr LaTulippe had been instructed ‘in order to put the metadata beyond doubt’, but that was unnecessary because the metadata was not challenged.
- iii) The formal report of Mr LaTulippe considerably expanded on the application notice which had been issued in that:
  - a) It addressed whether the May 2016 images had been manipulated (and not just their metadata).

- b) It considered the December 2015 images of Ms Heard and not just the May 2016 photographs.
- c) It considered the Boston plane recording.

Mr Sherborne submitted that the Defendants should not be allowed to shift their position in this manner.

- iv) It had to be remembered that the documents have originated from Ms Heard. They had come into the Claimant's possession as a result of discovery in the Virginia libel proceedings. The Claimant did not have access to the original devices on which they had been created. He did not challenge that they had been created by Ms Heard or the dates and times on which they had been created.
- v) By r.35.1 'Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.' - see also *British Airways v Spencer* [2015] EWHC 2477 (Ch) at [22]-[23]. The Defendants had not been able to show that test was satisfied here.
- vi) At [63] of *British Airways* Warren J. (after citing a passage from Warby J's judgment in *Mitchell v News Group Newspapers Ltd* [2014] EWHC 3590 (QB) had said,

'This, it seems to me, is saying something very different from the proposition that, because expert evidence may prove of assistance, it should be admitted. A judgment needs to be made in every case, and, in making that judgment, it is relevant to consider whether, on the one hand, the evidence is necessary (in the sense that a decision cannot be made without it) or whether it is of very marginal relevance with the court being well able to decide the issue without it, in which case a balance has to be struck and the proportionality of its admission assessed. In striking that balance, the court should, in my judgment, be prepared to take into account disparate factors including the value of the claim the effect of a judgment either way on the parties, who is to pay for the commissioning of the evidence on each side and the delay, if any, which the production of the such evidence would entail (particularly delay which might result in vacating the trial date).'

- vii) The application for permission to rely on expert evidence had been made extremely late which itself was a reason not to permit it (see White Book 35.0.2).
- viii) Mr LaTulippe had initially thought that five of the images had been altered, but, from access to Ms Heard's devices he could see that four of the five had not in fact been altered. This conclusion created further problems: first the devices in question appeared to have been acquired after the images had been created; and second the Claimant did not have access to the devices in question.
- ix) Mr Sherborne said (in paragraph 47 of his submissions made at 06.46 on 20th July 2020) that the Claimant's position,

'is not that Ms Heard went into the bathroom of the penthouse and took flawless photos of herself which she then photoshopped. While many of the

photos show little, if anything, the Claimant's case is that Ms Heard altered her appearance in a number of possible ways before taking photographs in an attempt to show some sort of marks. The selection of filters or subsequent editing may have been an attempt to highlight the effect of whatever she did – for example making her face redder. But, critically, an analysis of all the digital images will not yield much more, if anything, than what the Court can see from the images and decide from them and the surrounding evidence of eyewitnesses.'

- x) So far as the audio recording was concerned, the Claimant had asked for the metadata on 9<sup>th</sup> July 2020. Mr LaTulippe was apparently able to access the device on which it had been recorded.
  - xi) There was a practical problem to do with the location of the devices and the location of the Claimant's expert.
  - xii) In any event, there would not be time on the present trial timetable to address adequately this expert evidence.
571. Despite Mr Wolanski's submissions in response (dated 21<sup>st</sup> July 2020) I reached the clear conclusion that the Defendants' application should be refused for the following reasons.
- i) As Mr Wolanski accepted, r.32.19 does not, in terms, apply to the situation regarding the May 2016 photographs because they were disclosed *by* him, *to* the Defendants, not *by* the Defendants *to* Mr Depp.
  - ii) Mr Wolanski may be right that, by reference to some more general principle, ordinarily it would assist the court if advance notice was given of challenges to the authenticity of other documents. However, in this case the May 2016 images were disclosed by the Claimant because, in the Virginia libel proceedings, they had been disclosed to him by Ms Heard. In those circumstances there is force in Mr Sherborne's submission that the Claimant was not able to express a view as to whether they were authentic or not. In any event, as I have noted, all the times in the Brown Rudnick schedule were precisely midnight. That could not have been the correct time at which each of the several photographs had been taken. The Defendants would thus have been alerted at an early stage to the suspect nature of those times and, could, if they had wished, have investigated them at an earlier stage.
  - iii) The application has been made at a very late stage. There have been further delays while there have been discussions between the parties (and Ms Heard's own lawyer, David Price QC) as to whether the Claimant could have access to all the material and all the devices to which Mr LaTulippe had access. Plainly such access would be necessary for the Claimant to have an adequate opportunity to meet this evidence. From messages which I received after the submissions referred to above, it seems that this could have been arranged. Nonetheless, the time for the Claimant's expert to review the necessary materials would be very tight.

- iv) The normal process would be that, once the Claimant's expert had reported, the experts would meet to identify their areas of agreement and disagreement (see r.35.12 which gives the court power to direct that such a meeting shall take place). That is a valuable exercise, but time would not permit it if the experts were to give evidence in the current timetable. The Court would not, therefore, have that assistance.
- v) I shared Mr Sherborne's scepticism that the expert evidence could be heard within the current trial time estimate, particularly, but not exclusively if the experts had been unable to meet in advance of giving evidence. In March I had increased the time estimate for the trial from 10 days to 15 days. I had added a further day in the course of the present trial. It would not be right or proportionate to extend it yet again.
- vi) Schillings' letter of 17<sup>th</sup> July had accepted that the time and dates of the May 2016 were as disclosed in Ms Heard's July 2020 copies of the photographs. Mr Sherborne had said what his client's case regarding the photographs was going to be and what it was not going to be in paragraph 47 of his submissions of 20<sup>th</sup> July 2020 and which I have quoted above. In those circumstances the contribution which expert evidence could make is diminished.
- vii) In *British Airways Warren J.* had envisaged situations at either end of the possible spectrum. This case, like many others, is somewhere in between, but the principle of proportionality is in play as Warren J. said. In my view it would not be proportionate to grant the Defendants' application.

572. It follows that the expert evidence will play no part in this trial. The material which I have seen for the purpose of considering this application will be disregarded. That includes the proposed expert evidence in relation to incidents 4, 12 and 14.

#### **Conclusions on Incident 14**

573. Incident 14 is one where the conflict in evidence is particularly sharp. I have listed those who saw Ms Heard in the days following the incident and who said that her face had no sign of injury. On the other hand, there is evidence which I find compelling of witnesses who saw Ms Heard with injuries to her face and who took photographs of these. I prefer the evidence of the latter for several reasons:

- i) Some of their evidence is contemporaneous. Thus, for instance, Mr Tillett Wright heard Ms Heard yelp down the phone. He was sufficiently alarmed for her safety to call 911 even though he was in New York at the time. Other parts are near contemporaneous. Thus, the accounts given by Mr Drew and Ms Pennington were drafted on the following day. Mr Tillett Wright also sent his email (which I have quoted above and which broadly accords with his subsequent statement) on 22<sup>nd</sup> May 2016.
- ii) There are the photographs. The metadata is not disputed and shows that one of the photographs of Ms Heard's face was taken before the first pair of police officers arrived. I have quoted above what Mr Sherborne said was the Claimant's position. Since one of the photographs was taken before the arrival of the police it could not have been the product of later manufacture or fakery

of some kind. I appreciate that the photographs were taken in different lighting conditions and that is a good reason why what can be seen differs from one to another. I do not agree with the submission that they are valueless as evidence of Ms Heard suffering some injury to her face. They clearly show (at least) some reddening to her cheek, as Mr Depp in the course of his cross-examination admitted. There are also the photographs of spilled wine (file 6/148(e)/F894.185 and F894.187) which were taken, according to the metadata, on 21<sup>st</sup> May 2016 at 21.04, which was just before the police officers arrived in the apartment.

- iii) In my view Mr Drew was an impressive witness. He gave his evidence carefully and conceded some matters even when alternative answers would have better suited Ms Heard and the Defendants. I accept his evidence, including his account of what he saw of Mr Depp that night, the injury to Ms Heard's face, and his denial that the photographs of her face and the damage to the apartments was staged in any way.
- iv) While I accept that the views I have reached are in conflict with the evidence of Officer Saenz and Officer Hadden, I maintain them nonetheless. It is notable that the officers took no contemporaneous notes. While it is not for me to criticise the methods of another police force, the absence of contemporaneous notes means that their evidence does not carry the same weight as it would otherwise. Their first account appears to have been when they gave their depositions some two months later. The absence of contemporaneous notes means that they did not note the names of the man and woman they first encountered in the penthouses (although this was likely to have been Mr Drew and Ms Pennington). They significantly over-estimated the length of time that they were in the apartments. Officer Saenz said it was 30-60 minutes. I have noted above the times that they were captured on the CCTV in the lift going up and then going down from the apartment. While there is no evidence as to the accuracy of the timer on CCTV, that would not affect the interval between those two which was 15 minutes. The officers would have known that Ms Heard did not wish to make a complaint. While a visiting card was left with contact details in case she changed her mind, in the absence of a complaint the officers would have known that no further criminal action could be taken. Officer Saenz did observe reddening on Ms Heard's cheek. Although she attributed this to Ms Heard crying, an ambiguity remains. I accept that the officers said there was no damage to the property, no broken glass and no spilled wine, but that evidence has to be contrasted with the spilled wine which Mr Barruch did see and the photographs of wine stains which were taken just before their arrival. The officers' evidence of the absence of damage to property has also to be seen in the context of the very limited time they were in the apartment and their knowledge that no further action was likely to be taken in the absence of a complaint by Ms Heard. Only Officer Saenz gave oral evidence. I had the deposition of Officer Hadden. In view particularly of the limited time, I would not hold against the Defendants their decision not to require Officer Hadden to give oral evidence. To the extent that Mr Sherborne in his closing written submissions suggested that this course was not open to me, I do not accept his proposition. The Civil Evidence Act 1995 s.4(1) obliges the court to take into account 'any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence'. One of the factors which may



be taken into account is 'whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness' (Civil Evidence Act 1995 s.4(2)(a)). I have taken that into account, but maintain the view which I have expressed nonetheless.

- v) That night Ms Heard called her lawyer and her publicist. Since she was contemplating seeking a divorce from Mr Depp, it is unremarkable that she called her lawyer. Contacting her publicist might seem a little more surprising. However, given the prominence of Mr Depp and Ms Heard in Hollywood, Ms Heard was right to anticipate a media storm when the news of their divorce broke and, in those circumstances, I accept that a publicist may offer useful advice and therefore her contact with Ms Gottlieb is not a reason to doubt her account.
- vi) I reach the view that Mr Depp did assault Ms Heard as she alleges in Incident 14 despite the testimony of the witnesses who I have previously listed. In brief:
  - a) Sean Bett's first loyalty I find was to his employer, Mr Depp. I accept Ms Heard's evidence that he was not likely to intervene to protect her from Mr Depp. As was apparent when various explanations were given in Australia for the injury to Mr Depp's finger, his security team were acutely conscious of the potential for adverse publicity to harm Mr Depp's reputation. I do not accept Mr Bett's evidence to the extent that it conflicted with the evidence of Ms Heard, Ms Pennington, and Mr Drew.
  - b) The same may be said of Mr Judge. In any event, Mr Judge's evidence is unreliable in several respects; he said that Ms Heard did not threaten to call the police if Mr Depp hit her again, but Mr Depp heard her say that; Mr Bett and Mr Depp both agree that he went into PH5, Mr Judge says that Mr Depp did not; Mr Judge does not mention in his declaration that Mr Depp left his phone in PH3, yet this plainly did occur and Mr Drew had to bring it down to Mr Judge and Mr Bett. Had Mr Judge been still alive, he might have been able to address these matters, but I must decide the case on the evidence I have seen and read, not speculate as to what other evidence there might have been.
  - c) I accept Ms Heard's evidence that she usually went out of the apartment wearing makeup and she did so because of the enthusiasm of the paparazzi to try to photograph her. In particular I accept that she was wearing makeup on 22<sup>nd</sup> May when she went to Ms Pennington's exhibition, on 23<sup>rd</sup> May when she went to Ms de Cadenet's party (Ms de Cadenet had made a declaration in the Virginia libel proceedings explaining why she was not going to be a witness for Ms Heard in the current action. The Defendants wished to cross-examine Ms de Cadenet on this statement. I refused permission since I considered her evidence to be marginal at best and it would not have been proportionate to permit her cross-examination). I find that Ms Heard was wearing makeup when seen by Mr Harrell, Mr Barruch, Ms McMillen, Ms Esparza, Ms Vargas and Mr Romero. Since she was not at these stages willing to go public

with her allegations against Mr Depp, one purpose of the make-up would have been to do her best to conceal the injuries and marks.

- d) Mr Harrell had said that he and Ms Heard had spoken for about 8 minutes in total. That is an over-estimate. CCTV from the lift shows that the interval between Ms Heard exiting the lift and returning with her parcel was a little over 2 minutes.
  - e) I place no weight on the evidence of Ms Esparza regarding the fake punch. The CCTV to which she referred had never been produced and no explanation has been given for that omission. In any case, in the absence of that evidence, it is impossible to form a view as to what should be made of any incident of that kind.
  - f) So far as Mr Romero is concerned, his evidence as to dates was plainly unreliable.
  - g) I have explained already why I cannot place any weight on the evidence of Ms Devinere.
- vii) I do not accept that Ms Pennington had been hiding in a closet of PH3. She was plainly summoned by a text from Ms Heard. Ms Pennington herself says that she initially found the door to PH3 locked when the text came and she went back and got her own set of keys for PH3. I find that the reason her arrival was not seen by Mr Judge and Mr Bett was because they were waiting in the 'cubby hole', as was their usual practice.
- viii) Ms Marz's evidence was that she saw Ms Heard with a red, puffy and swollen face. She also said that Mr Depp had been flailing around with a wine bottle and that there was spilled wine on the floor.

#### **Stepping back and considering the evidence as a whole**

574. I have said above that, after considering the detail of the evidence regarding the individual incidents, I would step back and consider to what conclusion I should come in view of the evidence as a whole.
575. I have found that the great majority of alleged assaults of Ms Heard by Mr Depp have been proved to the civil standard (bearing in mind what has been said about the evidence necessary to satisfy that standard when serious allegations are in issue). The exceptions are Incidents 6, 11 and the additional confidential allegation regarding Hicksville. I do not regard the Defendants' inability to make good these allegations as of importance in determining whether they have established the substantial truth of the words that they published in the meanings which I have held those words to bear.
576. At several times in the course of this litigation, Mr Sherborne has suggested that there was unfairness to the Claimant because Mr Depp's effective opponent was Ms Heard and yet she was not a party. She had no obligation to make disclosure and she provided information to the Defendants at different times and at her choice. I am not persuaded that these comments carry any weight. It is, of course, right that Ms Heard is not a party to the proceedings. Because she is not a party, she was not obliged to make disclosure.

As a third party, the court can nonetheless order her to make disclosure but only if quite stringent conditions are satisfied (see CPR r.31.17). The Claimant did indeed apply for such third-party disclosure against Ms Heard. His application was unsuccessful. Mr Depp has not been short of legal advice. He would, I can assume, have been advised as to the consequence of suing the Defendants against whom the claim is brought, but not Ms Heard. It was a matter for him, with the benefit of that advice to decide, if he wished to pursue the claim against these defendants. The consequences of him doing so, are that they (and not Ms Heard) are subject to the obligations of a party to make disclosure. There has been no suggestion that the defendants have failed in that duty.

577. A recurring theme in Mr Depp's evidence was that Ms Heard had constructed a hoax and that she had done this as an 'insurance policy' – presumably in the event that the marriage broke down. Mr Sherborne commented in his closing submissions that Ms Heard had said that she recorded some of her conversations with Mr Depp to show him what he was capable of doing when the Monster prevailed and yet many of these were never played to or shown to Mr Depp. She was, according to this scenario, nothing more than a gold-digger. I have in the course of this judgment given reasons why I do not accept this characterisation of Ms Heard. Looking at the evidence as a whole, I come to the same conclusion. There is a multiplicity of emails, texts and messages and diary entries in the papers before me. I have quoted some. Some, but by no means all, are from Ms Heard. I recognise, of course, that previous statements by her are not independent evidence of the truth of the allegations, yet they are not, on the other hand, inadmissible or irrelevant for that reason. There are also as I have shown sometimes statements from third parties which do corroborate her. I had evidence as to what Ms Heard had received as a result of the divorce settlement. I have explained that there was no expert evidence to compare those figures with what she would otherwise have been entitled to under Californian divorce law. The principal element of that settlement was payment to her by Mr Depp of US \$ 7 million. Ms Heard's evidence that she had given that sum away to charity was not challenged on behalf of Mr Depp and the joint statement issued by Mr Depp and Ms Heard as part of the Deal Point Memorandum acknowledged that this was her intention (see file 9/139/L78). I recognise that there were other elements to the divorce settlement as well, but her donation of the \$ 7 million to charity is hardly the act one would expect of a gold-digger.
578. As Ms Wass said in her closing submissions, if Ms Heard had been constructing a hoax there are various measures which she might have taken, but which she did not (see paragraph 91 of the Defendants' closing submissions). I agree that those points add further force to the conclusion I would anyway have reached, which is to reject the 'hoax' or 'insurance policy' thesis.
579. I also accept that Ms Heard's allegations have had a negative effect on her career as an actor and activist. She said in her 4<sup>th</sup> witness statement (made on 19<sup>th</sup> March 2020) that her allegations had attracted considerable publicity and,

'Following this publicity, I have been subjected to a campaign of targeted online abuse on social media as well as online petitions calling for me to be removed from any future sequel to Aquaman and from my association with L'Oreal. This has not been limited to my professional and commercial projects. It has also been aimed at what is most important to me: my humanitarian work, including my partnership with the United Nations (UN) and other non-governmental organisations like the

American Civil Liberties Union (ACLU) and many others, and the important work these organisations do.’

This part of Ms Heard’s evidence was not challenged either. I accept it.

580. Something of Mr Depp’s feelings towards Ms Heard can be seen in a text that he sent to Christian Carino on 15<sup>th</sup> August 2016 in which he said (see file 6/119/F697.194),

‘She’s begging for total global humiliation. She’s gonna get it. I’m gonna need your texts about San Francisco brother ... I’m even sorry to ask ... But 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 flappy 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!!! Let’s see if Mollusk has a pair ... Come see me face to face ... I’ll show him things he’s never seen before ... Like the other side of his dick when I slice it off.’

581. I have said above that I did not regard it as necessary or proportionate to resolve the disputed evidence as to what occurred in the Bahamas in December 2015. For the avoidance of doubt, my views would have been the same even if I had taken that evidence into account.
582. Despite the excessive length of this judgment I have not been able to address every one of the submissions made on the Claimant’s behalf, but I have taken all of them into account.
583. For all of these reasons I accept that the Defendants have shown that the words they published were substantially true in the meanings I have held them to bear.

### **Conclusion and summary**

584. It follows that this claim is dismissed.
585. The Claimant has not succeeded in his action for libel. Although he has proved the necessary elements of his cause of action in libel, the 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. It has not been necessary to consider the fairness of the article or the defendants’ ‘malice’ because those are immaterial to the statutory defence of truth. The parties will have an opportunity to make submissions in writing as to the precise terms of the order which should follow my decision.

## **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 Crime 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 £22m 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.

# ATTACHMENT B



QB-2018-006323

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
MEDIA AND COMMUNICATIONS LIST  
MR JUSTICE NICOL

JOHN CHRISTOPHER DEPP II



-AND-

(1) NEWS GROUP NEWSPAPERS LTD.  
(2) DAN WOTTON

QB-2018-006323

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ORDER

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UPON

- (1) The trial of this action
- (2) The handing down or the reserved judgment on 2<sup>nd</sup> November 2020
- (3) Receiving the parties' written submissions dated 9<sup>th</sup> November 2020 and (in reply) 13<sup>th</sup> November 2020

IT IS ORDERED THAT:

1. The claim is dismissed.
2. The Claimant is to pay the Defendants' costs of the action to be subject to detailed assessment if not agreed on the standard basis.
3. The Claimant is to pay to the Defendants on account of costs
  - a. £520,000 by 7<sup>th</sup> December 2020; and
  - b. A further £108,235 by 22<sup>nd</sup> January 2021.
4. The Claimant is to pay the Defendants' costs of the application for a declaration that the claim was struck out on the standard basis, those costs to be subject to a detailed assessment if not agreed.
5. The Claimant is to pay to the Defendants' costs of the relief from sanctions application, those costs to be subject to a detailed assessment if not agreed.
6. The Claimant is to pay a further sum on account of the costs' orders in paragraphs 4 and 5. If that sum cannot be agreed it shall be determined in writing by Mr Justice Nicol on the basis of written submissions by 4.0pm on 18<sup>th</sup> November 2020 (and in reply by 4.0pm on 20<sup>th</sup> November 2020).

7. The costs of the Defendants' application for permission to adduce expert evidence shall be costs in the case.
8. The Claimant's application for permission to appeal is refused.
9. The time for an Appellant's Notice is extended until 4.0pm on 7<sup>th</sup> December 2020.

## REASONS

1. Following the handing down of my judgment on 2<sup>nd</sup> November 2020 I received written submissions from Kate Wilson on behalf of the Claimant and from Adam Wolanski QC on behalf of the Defendants on 9<sup>th</sup> November 2020 and from the same counsel in reply on 13<sup>th</sup> November 2020.
2. To some extent the parties have reached agreement on the orders which should follow my judgment. Thus, on that basis, paragraphs 1, 2 & 3 are agreed.
3. Paragraph 4 was disputed in the sense that Mr Wolanski argued that the Defendants costs should be summarily assessed and paid on the indemnity basis. Ms Wilson accepted that the Claimant would have to pay the costs, but argued that they should be subject to a detailed assessment and should be assessed on the standard basis.
4. It is well established that to justify a departure from the standard basis there has to be something which takes the case outside the norm – see *Excelsior Commercial and Industrial Holdings Ltd v Salisbury Hamer Aspden and Johnson* [2002] EWCA Civ 879, [2002] CP Rep.67. Despite Mr Wolanski's submissions, I am not persuaded that was the case here. Therefore, the standard basis is appropriate.
5. Although the hearing lasted less than a day, there will need to be a detailed assessment of other costs and it is convenient for there to be a detailed assessment of these costs as well.
6. Paragraph 5 of my order was also disputed. Ms Wilson submitted that the Claimant had been successful in being given relief against sanctions; costs should follow the event; and, therefore, he should have his costs of that disputed hearing. On this issue, I prefer the submissions of Mr Wolanski: the Claimant needed to apologise for his breach; I was influenced by the undertaking which Mr Sherborne, on the Claimant's behalf, offered at the hearing (see [26] and [30(ii)] of my judgment of 2<sup>nd</sup> July 2020); the application for relief from sanctions could have been more conveniently made (on a contingent basis) at the same time as the argument that there had been no breach of the disclosure order.
7. Although the parties have agreed that the Claimant should make a payment on account of the costs to be subject to detailed assessment, that was in advance of my decision as to the orders which I have made in paragraphs 4 and 5. By CPR44.2(8) it is usual to require a payment on account in advance of a detailed assessment. The parties will have a short opportunity to make submissions (or, of course, reach agreement) as to the appropriate amount of an additional payment on account and the timing of such a payment.
8. The parties are agreed that paragraph 7 is appropriate.
9. I have refused the Claimant permission to appeal. In substance the Claimant disagrees with my findings of fact, but for the reasons summarised by Mr Wolanski the findings of fact by a first instance tribunal (particularly one, such as myself, who has heard oral evidence) are rarely open to challenge on appeal. In any event, I do not consider that the proposed grounds of appeal have a reasonable prospect of success (and that is also the case so far as the grounds of appeal suggest that I erred in principle or in law) and there is not some other compelling reason why permission to appeal should be granted.
10. Ordinarily, the time for submitting a notice of appeal is 21 days from the lower court's decision - see CPR r.52.12(2)(b), but I have power to extend that time. The Defendants did

not respond to the Claimant's request that there should be an extension until 7<sup>th</sup> December and, where I have deferred dealing with consequential matters until this order, I regard the request for an extension to be reasonable.

Mr Justice Nicol  
16<sup>th</sup> November 2020

# ATTACHMENT C

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Neutral Citation Number: [2021] EWCA Civ 423

Case No: A2/2020/2034

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

**Nicol J**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25/03/2021

**Before :**

**LORD JUSTICE UNDERHILL**  
**(Vice-President of the Court of Appeal (Civil Division))**

and

**LORD JUSTICE DINGEMANS**

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**Between :**

**JOHN CHRISTOPHER DEPP II**  
**- and -**  
**NEWS GROUP NEWSPAPERS LTD**  
**DAN WOOTTON**

**Appellant**

**Respondents**

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**Andrew Caldecott QC, David Sherborne and Kate Wilson (instructed by Schillings International LLP) for the Appellant**  
**Sasha Wass QC, Adam Wolanski QC and Clara Hamer (instructed by Simons Muirhead & Burton LLP) for the Respondents**

Hearing date: 18<sup>th</sup> March 2021

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**Approved Judgment**

**Lord Justice Underhill (giving the judgment of the Court):**

**INTRODUCTION**

1. On 2 November last year Nicol J handed down judgment dismissing a claim for libel brought by Johnny Depp, the actor, against News Group Newspapers Ltd and one of its journalists (“NGN”). The claim arose out of an article in *The Sun* which accused Mr Depp of being a wife-beater. NGN’s defence was that the allegation was true because Mr Depp had on numerous occasions physically assaulted his then wife, Amber Heard: fourteen separate incidents were pleaded, covering a three-year period between early 2013 and May 2016. The Judge found that Mr Depp assaulted Ms Heard on all but two of those occasions. Ms Heard was the principal witness for NGN, and the Judge largely accepted her evidence. There are before us an application for permission to appeal against that decision and an application for permission to rely in support of the appeal on evidence which was not before the Judge but which is said to cast serious doubt on Ms Heard’s credibility.
2. The hearing before Nicol J lasted for over three weeks. He heard evidence from Mr Depp and Ms Heard but also from a large number of other witnesses. Both parties also put in evidence a wealth of more or less contemporaneous material which was said to support the accounts of one or other of the protagonists. This included texts, e-mails, photographs and tapes of conversations between Mr Depp and Ms Heard.
3. Nicol J’s judgment, which includes a short confidential annex, runs to some 130 pages. For the purposes of these applications we need do no more than summarise its structure and its overall conclusions: it can of course be read in full (with the exception of the annex) on the BAILII website, the citation being [2020] EWHC 2911 (QB). After dealing with various introductory matters, at paras. 109-186 the Judge examines a number of points relied on by Mr Depp, apart from the fourteen incidents, as reflecting badly on Ms Heard’s credibility (“the credibility issues”). His conclusion was that none of them carried substantial weight. At paras. 191-205 he found that neither Mr Depp or Ms Heard had a record of violent behaviour. He then proceeded, from paras. 206-573, to consider in turn each of the incidents relied on by the defence. In relation to each he summarised the evidence in great detail and reached a conclusion as to whether he found that Mr Depp had indeed assaulted Ms Heard (otherwise than in self-defence): as we have said, he made such a finding in all but two of the cases. At paras. 574-583 he stepped back and considered the evidence as a whole: that exercise confirmed the conclusions that he had reached about the individual incidents.
4. Although in one sense the Judge’s conclusion involved him accepting that Ms Heard was a credible witness, it is important to appreciate that he did not proceed by making some overall assessment of her credibility which he then fed into his conclusions on the individual incidents; indeed, as noted above, he found that various submissions made on behalf of Mr Depp challenging her general credibility did not assist him. Rather, in relation to each of the fourteen incidents he relied essentially on the evidence relating specifically to that incident. In most of the cases he did not have to rely only on choosing between the competing testimony of the two protagonists, because there was contemporaneous evidence of the kind to which we have referred at para. 2; also, Mr Depp made various admissions which were relevant to the overall probabilities. By way of illustration:

- (1) Throughout the period in question Mr Depp, as he admitted, frequently took quantities of illegal drugs and drank excessively. The Judge found, with considerable support from the contemporaneous evidence, that when under the influence of drink and drugs he was liable to moods of extreme anger and jealousy and could behave highly destructively. (The Judge found that Mr Depp himself often referred to this aspect of his personality as “the monster” – see paras. 177-186 of the judgment.) A particularly dramatic example of his behaviour under the influence of drink and drugs is incident 8, covered at paras. 287-370. The contemporaneous evidence shows that in that case Mr Depp did extensive damage to a house which he had rented and wrote offensive graffiti about Ms Heard (shown in photographs), some in paint and some in his own blood. While it does not necessarily follow that angry and jealous behaviour of this kind would involve physical violence against Ms Heard, the Judge evidently regarded it as making her allegations more likely to be true.
  - (2) There are several instances of Mr Depp acknowledging in contemporaneous texts, either to Ms Heard or to third parties, that he had been out of control through drink and drugs and had behaved very badly. He does not explicitly admit acts of assault against Ms Heard, but again the Judge regarded the admissions as making it more plausible that he did in fact commit such acts (and also that he might not be able to remember what he had done). Examples are the texts to Ms Heard and to his friend Paul Bettany following incident 4 (see paras. 251 and 244). As regards that incident, there were also texts from a member of Mr Depp’s staff to Ms Heard referring to how badly Mr Depp had behaved, including that he had kicked her (see paras. 254-258).
  - (3) In relation to incident 12 there was photographic and medical evidence of injuries suffered by Ms Heard: see para. 455 (iv) and (ix)-(xi).
  - (4) Although generally in his evidence Mr Depp maintained his position that on none of the pleaded occasions had he assaulted Ms Heard, he did in cross-examination accept that in incident 12 he had head-butted her (see para. 455 (iii)), though he claimed that he had done so accidentally.
  - (5) In relation to several of the incidents Ms Heard wrote about them near-contemporaneously to her family or friends or in a diary.
5. We emphasise that we are in the foregoing paragraph seeking only to show how the Judge made use of extensive contemporaneous evidence and admissions. We are not attempting a comprehensive summary of the evidence.

#### THE APPLICATION FOR PERMISSION TO APPEAL

6. Under this heading we will consider the application for permission to appeal without reference to the further evidence, which we will address separately. Before we turn to the grounds of appeal, we should make two preliminary points, which are well-known to lawyers but which not all readers of this judgment might otherwise understand.
7. First, the losing party in a civil appeal is not entitled to appeal as of right. They can only do so if they can show either that the appeal would have a real prospect of success or that there is some other compelling reason for it to be heard.

8. Secondly, on an appeal the Court does not hear the evidence again. That means that in a case like the present, where the decision is based on the judge's findings about disputed questions of fact, it is not easy to overturn those findings on appeal. That is not only because the trial judge has had the advantage of seeing the witnesses giving their evidence. As Lewison LJ put it at para. 114 of his judgment in *FAGE UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5:

“Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. ... The reasons for this approach are many. They include

- (i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
- (ii) The trial is not a dress rehearsal. It is the first and last night of the show.
- (iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
- (iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
- (v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
- (vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.”

9. The submissions made on behalf of Mr Depp acknowledge the difficulty which, for those reasons, he faces in challenging Nicol J's findings, but it is argued that there were fundamental flaws in his approach to the fact-finding exercise. Those flaws are expressed in a number of ways in the grounds of appeal (although there is a considerable degree of overlap). In the skeleton argument they are given the overall heading “lack of reasoned decision-making, failure to test evidence and failure to test the credibility of witnesses” and are developed in a number of individual complaints about particular aspects of the Judge's reasoning. Mr Andrew Caldecott QC, in his well-judged oral submissions on behalf of Mr Depp, focused on three of those complaints in particular as the best examples of what he said were the errors in the Judge's approach.

10. Mr Caldecott's first complaint concerned the treatment of what he said were clear admissions by Ms Heard, recorded in taped conversations, that she had more than once herself been the aggressor in incidents of physical violence between her and Mr Depp. He accepted that even if that were the case it would not necessarily mean that Mr Depp had not been the aggressor on other occasions. But he said that the admissions were



important because it was Ms Heard's evidence throughout that she never initiated any physical violence against Mr Depp (as opposed to responding to violence from him); if that was untrue it was bound to put in question the credibility of her evidence about what happened. He referred to two conversations in particular.

11. The first is a two-hour conversation between Mr Depp and Ms Heard which took place on 26 September 2015. Their relationship was by that stage in trouble, and by agreement they recorded some of their conversations to assist with therapy. The conversation was acrimonious, and it was referred to in the trial as "argument 2". In the course of the conversation Ms Heard appears clearly to acknowledge that she had started a physical fight the previous evening, when she says she gave Mr Depp a "proper slap" in the face. She also appears to accept that on one occasion she had thrown "pots and pans" and a vase at him, though not so obviously that she was the initial aggressor: Mr Caldecott said that this was a reference to incident 8, although we are not sure that that is clearly so. (The skeleton argument also relies on the fact that in argument 2 Ms Heard accuses Mr Depp of running away from fights; but, as Mr Caldecott accepted, it is clear that the parties used the term "fights" to refer to verbal rows and that Ms Heard's complaint was that Mr Depp tried to avoid conversations where she wanted to discuss their problems.)
12. The second conversation was covertly recorded by Ms Heard in San Francisco in July 2016, shortly after the end of the relationship. We do not have a full transcript, but the conversation was clearly emotional. Mr Depp refers in it to an incident when she "hay-makered" him, and she does not deny it. The incident which he was referring to was incident 13, which had occurred three months earlier. That incident, unlike the one on the night before argument 2, was one in which Ms Heard had alleged that Mr Depp assaulted her: the Judge accepted her account (see para. 476 of the judgment).
13. The admissions apparently made in these tapes were relied on in the closing submissions on behalf of Mr Depp at the trial as one of the general matters adversely affecting Ms Heard's credibility, and the Judge addressed the point at paras. 169-176 of his judgment. At paras. 174-175 he said:

"174. In her evidence, Ms Heard said that she did sometimes throw pots and pans at Mr Depp but only to try and escape him and as a means of self-defence. She also said at times in Argument 2 she was being sarcastic.

175. In my view no great weight is to be put on these alleged admissions by Ms Heard to aggressive violent behaviour. It is trite to say, but nonetheless true, that these conversations are quite different to evidence in court. A witness giving evidence in court does so under an oath or affirmation to tell the truth, the whole truth and nothing but the truth. Questioning can be controlled by the judge. Questions which are unclear can be re-phrased. If a question is not answered, it can be pressed (subject to the court's control) and if still unanswered may be the proper object of comment. None of those features applied to these conversations which, in any event, according to Ms Heard had a purpose or purposes different from simply conveying truthful information."

When he came to deal with incident 13 the Judge referred back in terms to these paragraphs: see para. 476 (v). If Ms Heard's apparent admission to throwing pots and pans and a vase does indeed relate to incident 8, the Judge does not expressly refer to it in that context; but he clearly had argument 2 in mind because he referred to it at para. 356, and it is clear that his observations in para. 175 would apply equally in the context of any admissions made in relation to that incident.

14. Mr Caldecott submitted that the reasoning in para. 175 showed a fundamentally flawed approach to fact-finding because it gave an unjustified special priority to the status of witness evidence. It is well-recognised in the case-law, and is in accordance with common sense, that it can be very difficult to choose between disputed versions of events given in court without the assistance of contemporary, or near-contemporary, documents (which would include tapes) showing what the witnesses in question said or did at the time. The tapes were, he said, valuable evidence of precisely that kind; yet the Judge was declining to attach weight to them simply because they did not constitute evidence given in court. He also said that the Judge's approach in this regard was inconsistent, because in many other instances he placed great weight on contemporaneous materials when making a finding against Mr Depp.
15. We do not believe that that is a correct understanding of what the Judge was saying in para. 175. He was plainly not advancing a general proposition that statements made in contemporaneous material should not be given any significant weight in assessing the truthfulness or reliability of the witness evidence simply because they do not themselves constitute evidence given in Court. Not only would that be contrary to established authority well-known to any judge but it is also contrary to his own practice elsewhere in the judgment, as we have noted at para. 4 above and as Mr Caldecott himself points out. In our view it is clear that the Judge was making a more specific point about the weight to be attached to these particular statements because of the particular circumstances in which they were made. What was relied on was admissions about past events (though in the case of argument 2 one was very recent). Argument 2 was a very long, unstructured and acrimonious conversation undertaken at least partly for therapeutic purposes. As the Judge points out, there is in that context no-one to intervene to clarify – for example – whether a remark is to be taken literally, as opposed to being made sarcastically, or whether a failure to respond to an accusation means that it is accepted, or to what incident a particular statement refers. That seems to me an entirely legitimate observation. The San Francisco conversation was not of the same character, but it was equally loose and emotional.
16. It does not follow that any admissions made in such a conversation should be ignored, but what to make of them in a particular case must be a matter for the trial judge, in accordance with his or her assessment of the witnesses and the totality of the evidence. We see no prospect that on appeal this Court would second-guess the Judge's conclusion that "no great weight" was to be attached to any admissions made, or arguably made, by Ms Heard in these two conversations. (We should mention for completeness that there was a third taped conversation referred to in the skeleton argument as containing a similar admission by Ms Heard that she had initiated a violent incident. It is very doubtful whether that is a fair reading of it, and Mr Caldecott did not refer to it in his oral submissions; but even if it does our conclusions above apply equally.)

17. We would add that, even if the Judge ought to have taken at face value Ms Heard's apparent admission that she had been the aggressor on the evening before argument 2 (contrary to her evidence that that had never been the case), we do not believe that that would have led him to take a different view of her evidence about the pleaded incidents of violence by Mr Depp. As we have said, his findings about those incidents were made on the basis of the evidence specifically relating to them, with special attention to the contemporaneous evidence. A judge will very often accept the substance of a witness's evidence without accepting every word of it. Nicol J was not uncritical about Ms Heard's evidence. For example, he found that she exaggerated as regards at least one aspect of incident 8, when she described herself as being "in a hostage situation" (see para. 370 (xxii)); and his findings about the details of some particular incidents do not seem always to correspond to her account of them. That approach is illustrated also by his treatment of evidence on which Mr Depp sought to rely about an incident which is said to have taken place in the Bahamas in December 2015 in which Ms Heard assaulted Mr Depp first, and without his responding in any way. The Judge excluded that evidence because it was unpleaded (see para. 458), but he said at para. 581 that it would not have affected his conclusions even if he had taken it into account. It is contended in the skeleton argument that that was unreasonable. We do not agree: it illustrates that the Judge recognised that the fact that Ms Heard might on occasion have assaulted Mr Depp did not preclude him from finding that he assaulted her on the numerous occasions relied on by the defence.
18. Mr Caldecott's second complaint refers to a finding which the Judge made in the confidential annex to his judgment about a particular assault by Mr Depp on Ms Heard in the course of incident 8. We will likewise deal with it in a confidential annex to this judgment. For the reasons that we give there, we do not believe that there was any arguable error in the Judge's approach.
19. Mr Caldecott's third complaint concerns incident 2, when Mr Depp is said to have assaulted Ms Heard after becoming angry at her for hanging in her home a painting by a former lover, Tasya van Ree. Ms Heard initially said that this occurred on 8 March 2013, and her sister, Whitney Henriquez, gave evidence supporting the same date. But she later said that the date must have been later in March: at one stage she said it was on the 21<sup>st</sup> but her eventual evidence was that it was the 22<sup>nd</sup>. She said that she had been confused because there had in fact been a number of assaults in March. There were associated discrepancies in her sister's evidence. In his closing submissions for Mr Depp at the trial his counsel, Mr David Sherborne, submitted a detailed schedule of the evolution of Ms Heard's and her sister's accounts and submitted that the only reasonable conclusion for the changes in them was that they were fabricated. He also, Mr Caldecott told us, made three particular points – (a) that although it was now being said that there had been a number of assaults in March only one was pleaded; (b) that only one assault in March had ever been put to Mr Depp in cross-examination, which was fundamentally unfair if it was now being said that there were more; and (c) that Ms Heard's new evidence of there having been a number of assaults undermined a crucial element in her original evidence, namely that the assault was particularly memorable "because it was unlike anything I had experienced with him until that point".
20. The Judge, having summarised the relevant evidence in painstaking detail, including the discrepancies, addressed Mr Sherborne's submissions at para. 225 (viii). He said:

“Mr Sherborne submitted that it was significant that Ms Heard had originally given a different date for Incident 2 and that she and her sister had been caught out in a lie which had led them to change their story and split Incident 2 into two separate incidents (three in the case of Ms Henriquez). He submitted that I should therefore conclude that there was no assault by Mr Depp on Ms Heard as she had alleged in Incident 2. Mr Sherborne in his closing submissions referred to other alterations in the details of this incident. I was not persuaded by this submission. I accept Ms Heard’s explanation for how she originally came to give the date of 8<sup>th</sup> March. Ms Heard said that Mr Depp inflicted a number of assaults on her in March 2013. Only one is pleaded, but I accept that is why in some respects Ms Heard’s account was confused. I accept Ms Henriquez’s explanation that she had merged the two different incidents regarding Ms van Ree’s paintings.”

21. Mr Caldecott submits that that paragraph fails adequately to address the points being made by Mr Sherborne. We do not accept that. The finding that the Judge made related to the pleaded assault, which was the one put to Mr Depp: he simply found it to have occurred on a different date. The fact that there were other assaults earlier in the month is not necessarily inconsistent with Ms Heard’s statement that the assault in question was unlike anything she had experienced before – that depends on how serious they were; but in any event errors of that kind are very common when even a truthful witness is recalling events which occurred some years previously, and it was not necessary for the Judge to say more than that she was confused.
22. Mr Caldecott submitted that the three complaints on which he focused all had a common element, namely that Ms Heard’s evidence had been accepted by the Judge “too glibly without proper forensic examination of the inherent probabilities and the contemporary documents”. For the reasons that we have given we do not believe that that is a fair criticism.
23. Those three complaints were only advanced as a selection of the examples given in the skeleton argument. We have read and considered all of those complaints, and in our view Mr Caldecott has indeed chosen the best examples for the case that he sought to advance. It would in those circumstances be disproportionate for us to go through the remainder: it is enough to say that they do not bear out the general criticisms made of the Judge’s approach. We should, however, briefly respond to the pleaded grounds.
24. Ground (1). This raises essentially the criticism made by Mr Caldecott which we have quoted at para. 22. We do not accept it. In relation to each incident the Judge sets out in scrupulous detail the evidence that supported the rival accounts. It was neither necessary nor possible that he perform a nice analysis of every disputed element in that evidence, but in relation to each incident it is always clear why he has reached the conclusion that he does.
25. Ground (2). It is said that the Judge did not make findings in relation to every detail of Ms Heard’s allegations as pleaded, and a schedule showing his supposed failings in this regard is attached to the skeleton argument. But that misunderstands the nature of his task. The issue that he had to determine in relation to each incident was whether Mr

Depp had (unlawfully) assaulted Ms Heard, which is what mattered for the purpose of substantiating the allegation that he was a wife-beater.

26. Ground (3). It is said that the Judge did not properly assess Ms Heard's credibility. To the extent that the complaint is that he did not start with an overall assessment of her credibility before considering the individual incidents, that is so but it is not a criticism: see para. 4 above. If the complaint is simply that he should have made a different assessment of the weight of this or that part of the evidence which was said to contradict her account, that is not a viable ground of appeal: see para. 8 above.
27. Ground (4). This is the same as Mr Caldecott's second complaint, which we have considered above.
28. Ground (5). This appears to raise essentially the same point as ground (3).
29. Ground (6). The complaint here is that although the Judge's rejection of the evidence of Mr Depp and many of the witnesses called by him meant that they must have been lying he does not say so in terms nor give reasons for his conclusion. As to that, there are many reasons other than deliberate dishonesty why a witness might have given evidence which the Judge was unable to accept, and it was not necessary for him to make specific findings in each case. What matters is that it is, as we have said, sufficiently clear in relation to each incident why the Judge reached the conclusion he did.
30. Ground (7). Unlike most of the other grounds, this relates to a single specific alleged error, relating to the Judge's rejection of the evidence of an LAPD officer who had attended the scene shortly after incident 14. A hearsay statement from him was put in under the Civil Evidence Act 1995 which contradicted the account of Ms Heard and another witness. At the request of the defence he was required to attend (by videolink) for cross-examination but in the end they chose not to cross-examine him. The Judge did not accept the officer's evidence. He gave his reasons in great detail at para. 573 (iv) of his judgment. He is said to have failed properly to apply section 4 (1) of the 1995 Act, which prescribes the approach to hearsay evidence. We can see no error. At the conclusion of para. 573 (iv) he expressly acknowledged that this was a case where the witness had been tendered for cross-examination, which is a relevant factor under section 4 (2) (a), but he said that that did not affect his foregoing reasoning, which had nothing to do with the hearsay character of the evidence but depended on what he regarded as substantive problems about it.
31. In conclusion, we do not believe that the grounds of appeal, as developed in the skeleton argument and in Mr Caldecott's oral submissions, show that the proposed appeal has any real prospect of success.
32. It is submitted in the grounds of appeal and skeleton argument, though the point was not developed by Mr Caldecott, that the facts that the trial was exceptionally high-profile, that the outcome was devastating for Mr Depp and that, it is said, the result has "wider repercussions" for alleged victims of domestic violence or those accused of it constitute a compelling reason for the appeal proceeding irrespective of the prospects of success. We are satisfied that those reasons cannot, whether separately or together, justify the exceptional course of allowing the appeal to proceed even if it has no real prospect of succeeding.

33. We would accordingly refuse permission to appeal, subject only to the application for permission to adduce further evidence.

#### THE FURTHER EVIDENCE APPLICATION

34. The background to the application for permission to adduce further evidence is the belief expressed by Mr Depp that Ms Heard had in the course of their marriage generated various pieces of evidence – texts, e-mails and photographs – showing him in a bad light so that she could deploy them in order to obtain a favourable financial settlement in the event of a divorce. In his witness statement and his oral evidence he referred to the evidence in question as a “hoax” and her motive as being to compile an “insurance dossier” (i.e. against the breakdown of the marriage): we will call that the “hoax/insurance thesis”. Underlying that thesis was a belief that Ms Heard had married him, as he put it in his witness statement of 12 December 2019, “with the agenda ... to progress her own career and/or to benefit financially” and “to take from me everything worth taking” – in short, that she was a gold-digger, which is how he described her to a friend in a contemporary text.
35. In her third witness statement, dated 26 February 2020, Ms Heard responded to the allegation in Mr Depp’s witness statement that she had married him for financial gain. One of the points that she made was that “the entire amount of my divorce settlement was donated to charity” (para. 4). Although those are the only details that she gives, it is accepted that the reference was to a sum of \$7m which was the cash element in the divorce settlement, payable in instalments between August 2016 and February 2018. Immediately following the settlement, Ms Heard had made a public announcement that “the amount received in the divorce ... is being donated” and that it would be divided equally between the Los Angeles Children’s Hospital (“the CHLA”) and the American Civil Liberties Union (“the ACLU”).
36. It is clear that Mr Depp believed from the moment that Ms Heard made her public announcement that she did not intend to give the \$7m to charity. In March 2019 he started defamation proceedings against her in the US, and in the course of those proceedings his US lawyers have made various attempts to obtain evidence about what payments she has in fact made: among other things, on 29 May 2020 they applied for subpoenas against the CHLA and the ACLU. It is clear also that he and his solicitors were interested in exploring the issue in these proceedings. An application by Ms Heard in the US for an extension of time for disclosure of documents relating to the donations was resisted by Mr Depp’s lawyers (albeit unsuccessfully) on the basis that the documents were needed for the purpose of the English proceedings; and his solicitors also required documents relating to Ms Heard’s claim to have donated the \$7m to be included in the trial bundle.
37. In the event, however, despite the scepticism of Mr Depp and his lawyers about whether the \$7m had been paid, Ms Heard’s evidence in her witness statement was not challenged in cross-examination. Further, Mr Sherborne told the Judge that it was not part of his case that she was a gold-digger. On day 6 of the trial there was a discussion about whether Mr Depp should give financial disclosure on the basis that it was relevant to the question whether the divorce settlement had been less than Ms Heard was entitled to: Ms Sasha Wass QC, who was NGN’s leading counsel (alongside Mr Adam Wolanski QC), said that that would “emasculate the claimant’s case for motive for the hoax and for the allegation that Ms Heard is a gold-digger”. Mr Sherborne in response

said that it was “not suggested by Mr Depp that that [i.e. “the insurance dossier”] was anything to do with being a gold digger”. A little later, he said:

“Your Lordship does not need to worry about this, because you only need to decide, did Mr Depp hit Ms Heard or not? How Mr Depp pieces that together after the event in his own mind is another matter.”

He went on to repeat that the issue of the “hoax” and of whether Ms Heard was a gold-digger were not connected.

38. At para. 577, after referring to the hoax/insurance thesis, the Judge said:

“[Ms Heard] was, according to this scenario, nothing more than a gold-digger. I have in the course of this judgment given reasons why I do not accept this characterisation of Ms Heard. Looking at the evidence as a whole, I come to the same conclusion. There is a multiplicity of emails, texts and messages and diary entries in the papers before me. I have quoted some. Some, but by no means all, are from Ms Heard. I recognise, of course, that previous statements by her are not independent evidence of the truth of the allegations, yet they are not, on the other hand, inadmissible or irrelevant for that reason. There are also as I have shown sometimes statements from third parties which do corroborate her. I had evidence as to what Ms Heard had received as a result of the divorce settlement. ... The principal element of that settlement was payment to her by Mr Depp of US \$7 million. Ms Heard’s evidence that she had given that sum away to charity was not challenged on behalf of Mr Depp and the joint statement issued by Mr Depp and Ms Heard as part of the Deal Point Memorandum acknowledged that this was her intention ... I recognise that there were other elements to the divorce settlement as well, but her donation of the \$7 million to charity is hardly the act one would expect of a gold-digger.”

He continued, at para. 578:

“As Ms Wass said in her closing submissions, if Ms Heard had been constructing a hoax there are various measures which she might have taken, but which she did not ... I agree that those points add further force to the conclusion I would anyway have reached, which is to reject the ‘hoax’ or ‘insurance policy’ thesis.”

39. The further evidence which Mr Depp now wishes to adduce goes to the question of whether Ms Heard had indeed given the \$7m to charity. The evidence consists of a witness statement from his solicitor, Ms Rich, exhibiting various documents obtained in, or generated by, the US proceedings since the judgment in this case – principally documents received from the CHLA on 18 December 2020 in response to the subpoena served on it and documents received from Ms Heard by way of discovery on 4 January 2021. We need not give the details because there is no dispute as to their overall effect. They show that while Ms Heard has pledged \$3.5m to the ACLU, payable over ten years from 2016, and appears also (though this is not quite so clear) to have pledged the same amount to the CHLA, most of that money has not so far been paid. The only

amounts that the evidence which we have seen clearly shows that she has paid are \$100,000 to the CHLA and \$450,000 to the ACLU. The documents refer to some other substantial payments associated with her, though not clearly donated by her; but even if these are taken into account the total is under \$2m. The evidence also contains a transcript of a hearing in the US proceedings on 18 December 2020 in which her lawyers state that she has pledged the full amounts to the CHLA and the ACLU; that “a significant proportion” of those pledges have been fulfilled; and that there is a “multi-year process” through which she can pay the balance, which she “certainly intends to do” although it may take some time. The lawyers appear to suggest that the process of making payment in full has been delayed by the costs that she has had to incur in defending Mr Depp’s claim against her in the US, although Ms Rich observes that those proceedings were not commenced until at least a year after Ms Heard had received full payment of the divorce settlement.

40. If the statement in Ms Heard’s witness statement that the \$7m “was donated” to charity (paraphrased by the Judge as that she “had given that sum away”) is to be understood to mean literally that the full \$7m had already been paid, that is clearly contradicted by the further evidence, and her statement was accordingly misleading. We need not decide whether that is in fact a fair reading of what Ms Heard says.
41. There was no dispute before us that, in accordance with the well-established “*Ladd v Marshall* principles” (as glossed in *Terluk v Berezovsky* [2011] EWCA Civ 1534), further evidence should only be admitted for the purpose of an appeal (a) if it could not have been obtained with reasonable diligence for use at the trial; (b) if it would probably have had an important influence on the result of the case; and (c) if it is credible. We will take limb (b) first.
42. The starting-point must be that whether Ms Heard had given a misleading impression about her charitable donations was in itself nothing to do with the case which the Judge had to decide. It was only relevant to the extent that it shed light on the question whether Mr Depp had committed the alleged assaults. As to that, the question of the charitable donations had only come up, fairly peripherally, in the context of the hoax/insurance thesis. The Judge makes clear in the first half of the passage which we have quoted from para. 577 of his judgment that he rejected that thesis for the reasons which he had already given in the course of his detailed consideration of the individual incidents: that is, he was satisfied that the various pieces of contemporary evidence generated by Ms Heard and which supported her account were genuine. He also at para. 578 accepted Ms Wass’s further reason for rejecting the thesis. That being so, the question whether Ms Heard was in any sense a gold-digger was irrelevant, which is of course entirely in accordance with the stance adopted by Mr Sherborne. That point is reinforced by the fact that Ms Heard was not cross-examined about this part of her evidence.
43. Mr Caldecott made it clear, however, that he was not seeking to adduce the further evidence on the basis that it would have directly affected the Judge’s rejection of the hoax/insurance thesis. Rather, his submission was that the apparent fact that Ms Heard had donated the entirety of her divorce settlement to charity was bound, or was at least very likely, to have influenced the Judge’s assessment of her overall credibility. At the most general level it suggested that she was a good person and was therefore unlikely to have made up a false story about the alleged assaults. More specifically, Mr Caldecott pointed out that in her public announcement Ms Heard had said that the



payment to the ACLU was “with a particular focus to stop violence against women”, which was calculated to reinforce the impression that she was herself a victim of such violence; but he was constrained to accept that although the text of that announcement was in the trial bundle no reference had been made to it at trial, and it was impossible to know if the Judge had read it (the bundle amounted to thirteen lever-arch files). He also emphasised that the question was not simply whether the Judge had been influenced by the evidence of Ms Heard’s apparent philanthropy but also whether he would have been influenced by discovering that she had made what he said were misleading statements, both in her evidence and in her public statements, about how much had in fact been paid.

44. We do not accept that there is any ground for believing that the Judge may have been influenced by any such general perception as Mr Caldecott relies on. In the first place, he does not refer to her charitable donation at all in the context of his central findings: on the contrary, he only mentions it in a very particular context, as explained above, and after he had already reached his conclusions in relation to the fourteen incidents. We appreciate, however, that that by itself is not a complete answer to Mr Caldecott’s submission. The real answer is that it is clear from a reading of the judgment as a whole that the Judge based his conclusions on each of the incidents on his extremely detailed review of the evidence specific to each incident. As noted at para. 4 above, in the case of many of the incidents there were contemporaneous evidence and admissions beyond the say-so of the two protagonists, which cast a clear light on the probabilities. In an approach of that kind there was little need or room for the Judge to give weight to any general assessment of Ms Heard’s credibility, which is notoriously a more difficult and uncertain basis for deciding on disputed facts. It is pure speculation, and in our view very unlikely, that he gave any weight to general considerations about her character of the kind suggested by Mr Caldecott.
45. Nor, to address Mr Caldecott’s further point, do we believe that the Judge would have reached a different conclusion if it had been established before him that Ms Heard had given a misleading impression about how much of the \$7m which she said that she had donated to charity had in fact been paid. Again, that is essentially because, as we have said, his focus was squarely on the evidence relating to the alleged assaults themselves. But we would add that he was already aware that Ms Heard was capable of exaggeration: see para. 17 above. We also note that he had, in the “credibility issues” section of the judgment found that Ms Heard had been convicted of making a false statement to the Australian customs authorities but decided that that was of marginal relevance to the determination of the issues before him (see paras. 116-126).
46. That conclusion means that it is unnecessary to decide whether, as Mr Wolanski submitted, the effect of the decision of this Court in *Braddock v Tillotson’s Newspapers Ltd* [1950] 1 KB 47 is to establish as a matter of law that fresh evidence going only to credit should not be admitted unless it “must” have led to a different conclusion.
47. It follows that the application to admit the further evidence must be refused on the basis of limb (b) of *Ladd v Marshall*. Accordingly we need not decide whether Mr Depp can satisfy limb (a) – that is, show that the evidence could not with reasonable diligence have been obtained for use at the trial. But we have to say that we doubt whether he can. Since the point is not determinative we will take it shortly.

48. Ms Rich's evidence about what had been done to obtain evidence that Ms Heard had not paid the full \$7m focused on the steps taken in the US litigation. Mr Caldecott submitted that we should only be concerned with the period beginning with Ms Heard's witness statement of 26 February 2020, because until then her claim to have donated the proceeds of her divorce settlement to charity had not arisen in the English proceedings. We are inclined to think that that is right, though we need not express a concluded view. On that basis the issue of the subpoenas against the CHLA and the ACLU on 29 May 2020 was reasonably prompt, and Ms Rich gave evidence about the difficulties in obtaining early answers to them. (It is not clear, however, how soon documents relating to this issue were first requested from Ms Heard herself.)
49. However, to our minds the real difficulty for Mr Depp as regards limb (a) is that Ms Heard was not asked anything about her donation to charity in the course of cross-examination. Even in the absence of the documents now obtained, there would have been nothing improper in Ms Heard being asked whether the totality of the \$7m had in fact been paid (as opposed to simply pledged). If she had said that it had not, and had given such figures as she was able to, it could then have been put to her that her witness statement, and the public statements that she had made (which were in the trial bundle), gave a misleading impression. No doubt she would have disputed that, and it would have been for the Judge to make up his mind (if he thought it relevant). We accept that if she had lied and said that the full amount had been paid (though that would have been an enormous risk) it would not have been possible to take the matter further without the documents. But what matters for present purposes is that the question was never put to the test because she was never asked. The situation is not on all fours with any of the *Ladd v Marshall* cases to which we were referred. However, the underlying principles are based on fairness, and we should take some persuading that it was fair of Mr Depp to seek now to pursue the question of her having made misleading statements about her charity donations when a decision had been made not to ask her about it at trial.

### CONCLUSION

50. We would accordingly dismiss both Mr Depp's application for permission to adduce further evidence and his application for permission to appeal. As we have said, it is not easy to persuade this Court to overturn the findings of a trial judge on purely factual questions. We do not believe that there is a real prospect of it being prepared to do so in this case. The hearing before Nicol J was full and fair, and he gave thorough reasons for his conclusions which have not been shown even arguably to be vitiated by any error of approach or mistake of law.

# ATTACHMENT D

D

WEDNESDAY 31ST MARCH 2021

**IN THE COURT OF APPEAL**

ON APPEAL FROM THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

QB2018006323

**BEFORE** LORD JUSTICE UNDERHILL VICE PRESIDENT OF THE COURT OF  
APPEAL, CIVIL DIVISION  
**AND** LORD JUSTICE DINGEMANS

**B E T W E E N**

JOHN CHRISTOPHER DEPP II

APPELLANT /  
CLAIMANT

- and -

1. NEWS GROUP NEWSPAPERS LTD
2. DAN WOOTTON

RESPONDENTS /  
DEFENDANTS

UPON the Appellant's applications (A) for permission to appeal dated 7 December 2020 and (B) for permission to adduce further evidence dated 14 January 2021

AND UPON hearing leading counsel for the Appellant and the Respondents on 18 March 2021, judgment being handed down on 25 March 2021:

**IT IS HEREBY ORDERED THAT:**

1. The application for permission to adduce further evidence is dismissed
2. Permission to appeal is refused
3. The Respondents' costs of the application to adduce further evidence, and also of the application for permission to appeal but only as regards attendance at the hearing, be summarily assessed; the Appellant to file written submissions as regards the amount claimed by the Respondents by no later than 4 pm on 12 April 2021, with liberty to the Appellant Respondents to file submissions in response by no later than 4pm on 19 April 2021

*By the Court*

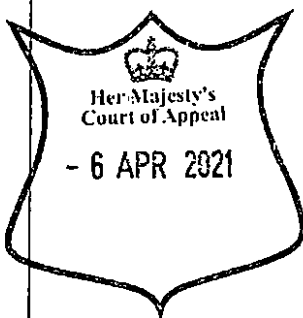


Her Majesty's  
Court of Appeal

31 MAR 2021

COURT 71  
Application No.

A2/2020/2034 AND  
A2/2020/2034 (A) AND  
A2/2020/2034 (B)



ORDER AMENDED  
UNDER THE SLIP  
RULE UNDERLINED  
IN RED THIS 6<sup>TH</sup>  
APRIL 2021

**WEDNESDAY 31<sup>ST</sup> MARCH 2021**  
**IN THE COURT OF APPEAL**  
ON APPEAL FROM THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

ORDER

Copies to:

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Simons Muirhead & Burton LLP  
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Soho Square 5  
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\* This order was drawn by Ms A Marie Smith (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to Ms A Marie Smith, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is