

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

John C. Depp, II,

Plaintiff,

v.

Amber Laura Heard,

Defendant.

Civil Action No.: CL-2019-0002911

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL
DEFENDANT TO PROVIDE HIPAA RELEASES**

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INTRODUCTION

Plaintiff John C. Depp, II (“Mr. Depp”) seeks an Order from this Honorable Court requiring Defendant Amber Laura Heard (“Ms. Heard”) to execute and provide Mr. Depp with a Health Insurance Portability and Accountability Act (“HIPAA”) waiver, thus to allow him to discover those of her medical records that are relevant to this proceeding. Ms. Heard’s medical and psychological condition is directly at issue in this action, which centers on the truth or falsity of her claims to have suffered domestic abuse. Notably, *Ms. Heard herself demanded—and long ago received—a full HIPAA waiver from Mr. Depp* by Order of the Court. In response to Mr. Depp’s request for a similar HIPAA waiver, Ms. Heard has unreasonably refused.

This refusal, which is no doubt based in the fact that her medical records are likely to expose the falsity of her claims of abuse, deprives Mr. Depp of vital evidence. Ms. Heard’s medical and psychological condition is at least, if not more, relevant to the claims in this case than that of Mr. Depp. Just as Mr. Depp has provided a waiver, Ms. Heard should be required to do so also. Ms. Heard has asserted that she suffered physical and emotional abuse resulting in physical and mental injuries. She has further asserted that she received physical and/or psychological treatment for such injuries. The nature and scope of any such treatment is directly at issue in this proceeding. Similarly, if records of such treatments are absent from her medical records, that absence would further undermine her claims, as did the testimony of Officers Saenz and Hadden who testified they saw no injuries to Ms. Heard and no disarray at the condominium after the key incident at issue. As such, the subject matter of this case, the Court should allow Mr. Depp access to Ms. Heard’s medical records, or their absence.¹

¹ While Mr. Depp contends that a blanket HIPAA waiver is appropriate in this case, at a minimum, a complete set of relevant records include any relating to (1) Ms. Heard’s medical and

Mr. Depp has made every effort to resolve this issue without burdening the Court with an unnecessary motion, and has been requesting that Ms. Heard provide a reciprocal waiver since at least November of 2019, culminating in a recent, final telephonic meet-and-confer on May 29, 2020. In the face of Ms. Heard's stonewalling, Mr. Depp now seeks appropriate relief from the Court.

ARGUMENT

1. **Ms. Heard's medical condition and treatments (or lack thereof) are directly at issue in this action, and are critical to the effective prosecution of Mr. Depp's claim for defamation.**

The Court should require Ms. Heard to provide a HIPAA release because her medical condition is directly at issue, and Mr. Depp should be permitted to explore her treatment(s) (or lack thereof). Virginia Code § 8.01-399 provides, in pertinent part, as follows:

B. If the physical or mental condition of the patient is at issue in a civil action, the diagnoses, signs and symptoms, observations, evaluations, histories, or treatment plan of the practitioner, obtained or formulated as contemporaneously documented during the course of the practitioner's treatment, together with the facts communicated to, or otherwise learned by, such practitioner in connection with such attendance, examination or treatment *shall* be disclosed but only in discovery pursuant to the Rules of Court or through testimony at the trial of the action. In addition, disclosure may be ordered when a court, in the exercise of sound discretion, deems it necessary to the proper administration of justice. (Emphasis added).

"The plain language of the statute places within the scope of discoverable and admissible information the diagnosis or treatment plan of the treating physician as documented in the patient's medical record." *Pettus v. Gottfried*, 269 Va. 69, 77 (2005). "Also within the scope of discoverable and admissible information are the facts communicated to the treating physician and any other facts learned by that physician in connection with his care of the patient." *Id.* Here, Ms. Heard's physical and mental condition are directly at issue, as the case centers on the

psychological treatment stemming from any alleged abuse; (2) Ms. Heard's treatment stemming from her abuse of alcohol or drugs; and (3) Ms. Heard's mental health records.

truth or falsity of Ms. Heard's claims to have suffered abuse, both physical and emotional, in the course of her marriage to Mr. Depp. Ms. Heard publicly filed in this action on April 11, 2019 a declaration in which she set forth a litany of false and scandalous allegations and supposed physical injuries that she claims to have suffered. *And Ms. Heard has identified in responses to Mr. Depp's Second Set of Interrogatories at least six medical professionals that she contends "provided treatment or services relevant to the claims or defenses in this action."* See Exhibit A. Any treatment Ms. Heard claims to have received in connection with such alleged abuse is directly relevant to the central question in this case, *i.e.*, whether her claims of abuse are pure fabrications or not. Mr. Depp should be allowed to explore any claims that Ms. Heard sought or received such treatment.

For instance, in her own Memorandum of Points and Authorities in support of her Expanded Motion to Compel discovery from Mr. Depp, filed on September 27, 2019, Ms. Heard claimed that "Dr. Kipper... witnessed or learned about injuries that Ms. Heard suffered at Mr. Depp's hand." See Exhibit B at 5. Yet despite having made such assertions, Ms. Heard refuses to allow Mr. Depp to conduct the basic discovery necessary to adequately evaluate her claims. Instead, Ms. Heard has continued to assert objections to discovery of her medical records, including objections to the disclosure of any treatment for drug or alcohol abuse, despite the fact that records bearing on her mental health and claims of abuse are crucially relevant and discoverable.

Mr. Depp has attempted to obtain an appropriate release from Ms. Heard for several months. For instance, by letter dated November 14, 2019, Mr. Depp's counsel reiterated an earlier request for a "HIPAA waiver similar to the one that Mr. Depp executed" and noted that any refusal to provide one was facially inconsistent with the wide scope of discovery into Mr.

Depp's medical history that Ms. Heard had sought. Exhibit C at 3. In the intervening months, Mr. Depp has repeated this request on multiple occasions, including, most recently, during a telephonic conference with Ms. Heard's counsel on or about May 29, 2020. Ms. Heard continues to resist these requests, asserting that Mr. Depp should simply trust that Ms. Heard has produced medical records that she believes relevant, without the need for obtaining a HIPAA waiver.² See Exhibit D.

But a HIPAA waiver is necessary to allow Mr. Depp to evaluate the full scope of responsive records, and to determine whether any records support Ms. Heard's claims to have suffered physical or mental injuries. Just as critically, the Court should allow Mr. Depp to determine *absence* of such records, which would belie Ms. Heard's false claims of abuse. Furthermore, a HIPAA waiver will be critical in enabling Mr. Depp to take informed depositions of any medical providers that Ms. Heard contends have relevant knowledge of her injuries and mental condition. In short, given the nature of this case, Ms. Heard's months-long refusal to provide a HIPAA waiver is untenable, and the Court should grant this Motion and order Ms. Heard to execute an appropriate waiver.

2. Granting this motion is necessary to the proper administration of justice.

As noted above, Ms. Heard's mental and physical condition is at the heart of this case. The Court has broad authority to order the disclosure of medical records when appropriate. In addition to circumstances where the physical or mental condition of a patient is at issue (as is plainly the case here), "disclosure may be ordered when a court, in the exercise of sound discretion, deems it necessary to the proper administration of justice." The Court has already

² Notwithstanding the fact Ms. Heard claims to have produced relevant medical records, she has produced only incomplete and handpicked records from two of the six medical providers she identified in discovery.

ordered Mr. Depp to execute HIPAA waivers, and he has done so. It is unfair for Ms. Heard to hold herself to a different standard, especially when her own physical and mental condition is even more relevant to the claims in this case.

3. The Court should order Defendant to provide a HIPAA waiver without further delay.

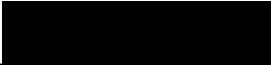
Given the ease with which Ms. Heard can execute a HIPAA waiver, the Court should require Ms. Heard to provide one to Mr. Depp immediately. The delays caused by Ms. Heard's intransigence on this issue pose a genuine risk of prejudice to Mr. Depp, who is set to commence trial in a related action against a British publication in London on July 7, 2020, in which Ms. Heard's false abuse claims are also directly at issue. Mr. Depp's need for Ms. Heard's complete medical records in connection with that litigation, as well as the present action, is thus time-sensitive.

CONCLUSION

Based on the foregoing, Mr. Depp respectfully requests that the Court grant his motion and order Ms. Heard to execute appropriate HIPAA waivers to allow Mr. Depp to explore any and all treatments that Ms. Heard contends she has received as a result of Mr. Depp's alleged actions.

Dated: June 12, 2020

Respectfully submitted,


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EXHIBIT A

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**DEFENDANT AMBER LAURA HEARD'S RESPONSES AND OBJECTIONS TO
PLAINTIFF'S SECOND SET OF INTERROGATORIES**

Pursuant to Rule 4:8 of the Rules of the Supreme Court of Virginia ("Rules), Defendant Amber Laura Heard, by and through her attorneys, submits these responses and objections (the "Responses") to Plaintiff John C. Depp's Second Set of Interrogatories dated November 4, 2019 (the "Interrogatories").

GENERAL OBJECTIONS

The following general objections and responses (the "General Objections") are incorporated into each specific objection and response (the "Specific Objections") as if fully set forth therein:

1. Defendant objects to the Interrogatories to the extent they are duplicative, cumulative, or seek information that has been or will be provided through other means of discovery.
2. Defendant objects to the Interrogatories to the extent they are vague, ambiguous, overly broad, unduly burdensome, seek information not relevant to the claims or defenses of any party, or are not proportional to the needs of the case.

RESPONSE TO INTERROGATORY NO. 3

Subject to and without waiving the foregoing objections, Defendant states that ESI that relates to the claims or defenses in this case may reside on the following devices: one cell phone, one iPad, two laptops, and two iCloud accounts. Additional information responsive to this Interrogatory may be contained in Defendant's document productions.

INTERROGATORY NO. 4

Identify all email addresses, social media accounts, and Chat Applications that You have used to communicate in relation to this Action or the claims and defenses therein.

RESPONSE TO INTERROGATORY NO. 4

Subject to and without waiving the foregoing objections, Defendant states that she may have used the email addresses [REDACTED] and [REDACTED] to communicate in relation to this Action or the claims and defenses therein.

INTERROGATORY NO. 5

Identify each mental and/or physical health care provider (including drug and/or alcohol addiction/dependency care or treatment providers, counselors or therapists) that You saw from January 1, 2010 to the present and state the reason and duration You saw or consulted or received treatment or services from each identified provider. The answer to this Interrogatory should include visits to emergency rooms; and addiction, drug or alcohol treatment or therapy session(s); and visits with or physical or mental health treatment from any doctor, surgeon, psychiatrist, nurse, psychologist, therapist, counselor, medical advisor, specialist, or other provider.

RESPONSE TO INTERROGATORY NO. 5

Defendant objects to Interrogatory No. 5 on the grounds that Defendant is not alleged to have any alcohol, addiction or dependency issue or treatment that are in dispute in this action, and therefore, Plaintiff's request for information related thereto is wholly irrelevant and not likely to lead to the discovery of admissible evidence. Defendant objects to this interrogatory on the

grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant to either party's claims or defenses and is disproportionate to the needs of this case because it is not reasonably limited to treatment for physical and/or mental injuries or conditions Defendant suffered as a result of Mr. Depp's abuse. Defendant further objects to this interrogatory to the extent it calls for disclosure of expert witnesses or testimony prior to Defendant's expert disclosure deadline. Subject to and without waiving the foregoing objections, Defendant identifies the following mental and/or physical health care providers who provided treatment or services relevant to the claims or defenses in this action:

Provider	Treatment Type
Dr. [REDACTED]	[REDACTED]
Dr. [REDACTED]	[REDACTED]
Dr. [REDACTED]	[REDACTED]
Dr. [REDACTED]	[REDACTED]
Dr. [REDACTED]	[REDACTED]
Dr. [REDACTED]	[REDACTED]

INTERROGATORY NO. 6

For each prescription drug You have been prescribed to take since 2010 or that you currently take: (a) identify the physician and/or health care provider who wrote the prescription; (b) state the name of the drug and the dosage to be taken; and (c) identify each pharmacist who filled the prescription and such pharmacist's pharmacy and/or place of employment.

RESPONSE TO INTERROGATORY NO. 6

Defendant objects to Interrogatory No. 6 on the grounds that Defendant is not alleged to have any addictions or dependency issues that are in dispute in this action, and therefore, Plaintiff's request for information related thereto is wholly irrelevant and not likely to lead to the discovery

CERTIFICATION

I, Amber Laura Heard, certify under penalty of perjury that the foregoing answers to Plaintiff John C. Depp's Second Set of Interrogatories are true and correct to the best of my knowledge, information and belief. I reserve the right to make any changes in these answers if it should appear at any time that omissions or errors have been made or that additional or more accurate information has been obtained.



—

Dated this 25th day of November, 2019

Respectfully submitted,

Amber L. Heard

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CERTIFICATE OF SERVICE


I certify that on this 25th day of November 2019, a copy of the foregoing was served by email, upon:

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EXHIBIT B

VIRGINIA:
IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

John C. Depp, II,
Plaintiff,
v.
Amber Laura Heard,
Defendant.

Case No. CL2019-02911

FILED
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CLERK, CIRCUIT COURT
FAIRFAX, VA

**DEFENDANT'S MEMORANDUM IN SUPPORT
OF HER EXPANDED MOTION TO COMPEL PLAINTIFF TO
PRODUCE DOCUMENTS AND RELEASE MEDICAL RECORDS**

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Counsel to Defendant Amber Laura Heard

Defendant Amber Laura Heard, by counsel, hereby files this Memorandum in Support of her Expanded Motion to Compel Plaintiff to produce documents and release his medical records.

PRELIMINARY STATEMENT

“Mr. Depp has nothing to hide.” (Tr. of Hearing, Sept. 13, 2019, at 18:22). So said his counsel in court only two weeks ago, but it appears Mr. Depp has *plenty* that he actually wants to keep hidden—including key documents in the case he himself initiated.

Mr. Depp, for example, refuses to produce evidence about his drug and alcohol abuse, even though he purports to challenge statements by Ms. Heard that his substance abuse is inextricably intertwined with his violent conduct. He refuses to produce certain communications with his doctor about abuse, including medical records relating to an injury that he claims Ms. Heard caused. He refuses to produce evidence of payments to key witnesses, even though such payments bear directly on their motives and veracity. And he refuses to produce evidence of violence, abuse, or destruction of property with his other romantic partners, even though he asserts that his (supposed) history of never abusing his partners is a central reason to doubt what Ms. Heard has said.

All of this evidence bears directly on Mr. Depp’s (false) claims that Ms. Heard made everything up; it is likely to lead to the discovery of evidence that explains shifts in Mr. Depp’s behavior, bears on his memory of events at issue, and identifies witnesses who observed his violence or helped cover it up. This evidence is thus important to Ms. Heard’s defense that her statements—which did not even contain any defamatory implication—are shielded from liability because they are true. Mr. Depp should not be permitted to initiate litigation about Ms. Heard’s allegations of abuse and then conceal the critical evidence needed to prove that they were true.

ARGUMENT

Parties may obtain discovery of “any matter, not privileged, which is relevant to the subject matter . . . whether it relates to the claim or defense.” Va. S. Ct. R. 4:1(b)(1). Evidence is relevant

if it “tends to cast any light upon the subject of the inquiry,” *Bunch v. Artz*, 71 Va. Cir. 358, 2006 WL 2411428, at *7 (2006), and discoverable if it is “reasonably calculated to lead to the discovery of admissible evidence.” Va. Sup. Ct. R. 4:1(b)(1). In other words, the question is not what may be introduced or relied upon at trial, but what evidence Ms. Heard can obtain in discovery.

RFP Nos. 4, 5. These requests seek documents and communications relating to Mr. Depp’s substance abuse. In a declaration filed in the Los Angeles Superior Court in May 2016, Ms. Heard testified that Mr. Depp’s violence towards her was intrinsically linked to his abuse of alcohol and drugs. (See Decl. of A. Heard, May 26, 2016 ¶ 5 (Ex. 34 to Decl. of A. Heard, Apr. 10, 2019 (“2019 Decl.”)); see also 2019 Decl. ¶¶ 3–4, 14–18, 34.)¹ Because Mr. Depp’s substance abuse was “very much a part of the setting in which the charged assaults occurred,” evidence about it is relevant. *State v. Woodson*, 551 A.2d 1187, 1192 (R.I. 1988); see also *Constand v. Cosby*, 232 F.R.D. 494, 497 (E.D. Pa. 2006) (in case involving battery/defamation, holding that “any alleged history of . . . use of prescriptions or controlled substances between plaintiff and defendant is core to this action” and allowing discovery).² Mr. Depp’s substance abuse may also tend “to cast . . . light” upon the facts by explaining his shifting patterns of behavior throughout his marriage to Ms. Heard, as well as his ability to recall the relevant events. See *Bunch*, 2006 WL 2411428 at *7.³

RFP No. 15. This request seeks security footage from Mr. Depp’s principal residence in

¹ This is unsurprising since there is a “strong and well-documented correlation” between substance abuse and domestic violence. See, e.g., Lisa Lightman & Francine Byrne, *Addressing the Co-Occurrence of Domestic Violence and Substance Abuse Lessons from Problem-Solving Courts*, 6 J. CTR. FOR FAMILIES, CHILD. & CTS. 53, 53 (2005).

² Evidence of Mr. Depp’s substance abuse and related violence is also relevant to damages. Mr. Depp seeks \$50 million based on allegations of lost work, including his role in the *Pirates of the Caribbean* franchise. Yet it is equally if not more plausible that he lost this work as a result of his own escalating pattern of destructive behavior, separate and apart from any abuse of Ms. Heard.

³ Although Mr. Depp’s counsel appeared to oppose this in court, Ms. Heard would be amenable to allowing Mr. Depp to designate substance abuse-related or similar materials as “Confidential.”

Los Angeles from 2013 to 2016, which may reveal substance abuse, violence, or destruction of property by Mr. Depp. Virginia courts regularly find that the “content of [a] tape” is relevant when it depicts an event that “relate[s] to a matter properly at issue”—here, whether Mr. Depp abused Ms. Heard. *Sabur v. Commonwealth*, No. 0880-99-2, 2000 WL 781307, at *2-3 (Va. Ct. App. June 20, 2000).⁴ Having put the truth of Ms. Heard’s 2016 allegations about Mr. Depp’s drug- and alcohol-fueled abuse “at issue in the action,” Mr. Depp cannot now deny her video footage that bears on that question. *See City of Portsmouth v. Cilumbrello*, 129 S.E.2d 31, 34 (Va. 1963).

RFP Nos. 17-21, 40. As narrowed by Ms. Heard, these requests seek evidence of payments that Mr. Depp or anyone acting on his behalf made to key witnesses relating to substance abuse, destruction of property, violence, or abuse, as well as payments to hotels and other lodgings for property damage he caused. Depending on their nature and timing, Mr. Depp’s payments to key witnesses may corroborate Ms. Heard’s accounts of his violent behavior. Moreover, because the “credibility of each witness is relevant,” evidence of payments may “tend to convince the [fact finder] that the witness’[s] . . . veracity is questionable.” *Howard v. Commonwealth*, No. 0793-14-1, 2015 WL 1993341, at *6 (Va. Ct. App. May 5, 2015) (quoting *Via v. Commonwealth*, 590 S.E.2d 583, 592 (Va. 2004)). Payments to hotels or lodgings for property damage would also corroborate Ms. Heard’s accounts of Mr. Depp’s destructive cycles that coincided with abuse—especially because Mr. Depp’s destruction of property was “very much a part of the setting in which the charged assaults occurred.” *Woodson*, 551 A.2d at 1192.

⁴ Ms. Heard offered to narrow this request to include only footage of abuse or related conduct. But even as Mr. Depp claims that footage from another of his residences will prove he did not abuse Ms. Heard, Compl. ¶ 17, he refuses to provide information about the Sweetzer Avenue footage, including what exists and how it is maintained. If Mr. Depp will not provide information to indicate “whether some way to narrow the request may exist that will provide [Ms. Heard] with the information she wants while limiting the burden,” he should produce the footage in full. *Horne v. Potter*, No. 07 Civ. 61829, 2009 WL 10666885, at *7 (S.D. Fla. Jan. 27, 2009).

RFP Nos. 30-37, 39, 42. As narrowed by Ms. Heard, these requests seek documents and communications between Mr. Depp and third parties that either (1) refer or relate to Ms. Heard; or (2) refer or relate to Mr. Depp's other romantic partners and involve violence, abuse, fights, or destruction of property. [Ex. C at 2 n.2]. Mr. Depp refuses to produce materials covered by (1) that involve substance abuse or destruction of property. And he refuses to produce any materials covered by (2), even though Ms. Heard has agreed to produce equivalent documents (if any).

In a defamation case, prior acts that bear on a plaintiff's character and *modus operandi* are regularly deemed relevant. *See* Va. Sup. Ct. R. 2:404(b); 2:405(b). Mr. Depp contests allegations about his behavior and seeks to "recover compensation for damage to his . . . reputation," which means evidence of his "reputation and character scarcely can be avoided." *Schafer v. Time, Inc.*, 142 F.3d 1361, 1370-73 (11th Cir. 1998) (permitting inquiry into defamation plaintiff's felony and DUI convictions, parole violation, bad check arrest, and failure to file tax returns and pay alimony/child support). Ms. Heard seeks only those documents relating to the abusive conduct Mr. Depp has put at issue—his violence, substance abuse, and destruction of property. Mr. Depp's "abuse of his prior girlfriends" is also "relevant to [his] *modus operandi* of committing violence against women." *Hall v. Lashbrook*, No. 14 Civ. 2687, 2018 WL 6830326, at *5 (N.D. Ill. Dec. 28, 2018). And because it seems Mr. Depp intends to "offer evidence of his . . . character," Ms. Heard is entitled to "offer evidence of [his] bad character" in rebuttal. *Longmire v. Ala. State Univ.*, 151 F.R.D. 414, 419 (M.D. Ala. 1992).⁵

RFP No. 38. This request seeks communications with Mr. Depp's doctor (Dr. Kipper) that

⁵ RFP No. 42 seeks written agreements between Mr. Depp and other romantic partners. These agreements may shed light on whether Mr. Depp has obtained releases from his partners that suggest (and conceal) prior violence or abuse—and would explain the lack of other public allegations against Mr. Depp (which Mr. Depp has trumpeted).

mention Ms. Heard or any of Mr. Depp's other romantic partners. Not only was Dr. Kipper responsible for treating Mr. Depp's substance abuse, but he also witnessed or learned about injuries that Ms. Heard suffered at Mr. Depp's hand. (2019 Decl. ¶¶ 9–11 and Ex. 5.) Dr. Kipper also prescribed Mr. Depp powerful medications, including to treat him after he abused Ms. Heard. (2019 Decl. ¶ 11.) Those medications may have contributed to Mr. Depp's violent, erratic conduct. Communications with Dr. Kipper are thus relevant to the truth of Ms. Heard's 2016 allegations and will illuminate Mr. Depp's patterns of behavior and the link between his substance abuse and violence. *See* Va. R. Sup. Ct. 4:1(b)(1); 2:404(b); *Pettus v. Gottfried*, 606 S.E.2d 819, 824 (Va. 2005) (“facts learned by [a] physician” are discoverable (citing Va. Code Ann. § 8.01-399(B))).

RFP No. 41. This request calls for evidence in Mr. Depp's actual or constructive possession concerning his prior arrests. Mr. Depp has been arrested multiple times for acts of violence, and Ms. Heard has reason to believe that at least one arrest involved allegations that he assaulted a romantic partner. Again, evidence that Mr. Depp abused other partners may be relevant to refuting Mr. Depp's claims, establishing motive and *modus operandi*, illuminating the link between substance abuse and violence, and identifying witnesses. *See* Va. R. Sup. Ct. 4:1(b)(1); 2:404(b).

RFP Nos. 43-44: These requests seek documents relating to Mr. Depp's treatment for an injury to his finger, which he falsely says Ms. Heard caused. (*See* Compl. ¶ 28; *cf.* 2019 Decl. ¶ 16.). The records will reveal the injury's cause—and thus both the truth of what happened and Mr. Depp's ability to recall it. Although Mr. Depp refuses to execute HIPAA releases to allow Ms. Heard to subpoena these records, [Ex. C at 4]; *see* 45 C.F.R. § 164.502, he put his injury “at issue” and therefore cannot hide the records from Ms. Heard. Va. Code Ann. § 8.01-399(B).⁶

⁶ Dr. Kipper, who is not located in Virginia, objected to Ms. Heard's subpoena, claiming he cannot comply unless Mr. Depp executes a HIPAA release. [Ex. E]; *see* Va. Code Ann. § 8.01-399(B). The protective order jointly submitted to the Court nullifies any privacy objections.

CONCLUSION

WHEREFORE, Ms. Heard respectfully requests that the Court (1) enter an order compelling Mr. Depp to produce documents responsive to Ms. Heard's Requests, as limited in the meet-and-confer process; (2) enter an order instructing Mr. Depp to execute HIPAA releases to allow Ms. Heard to subpoena Mr. Depp's medical records; (3) award Ms. Heard her attorney's fees and expenses; and (4) grant such other and further relief as the Court deems just and proper.

Dated this 27th day of September 2019

Respectfully submitted,
Amber L. Heard

By Counsel: 

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EXHIBIT C

901 15th Street, N.W., Suite 700 | Washington, D.C. 20005 | Tel: 202-737-7777

November 14, 2019

By Email

Ben Rottenborn
Woods Rogers PLC
10 S. Jefferson Street, Suite 1400
Roanoke, VA 24011
Email: brottenborn@woodsrogers.com

**Re: John C. Depp, II v. Amber Heard – Deficiencies in Defendant’s Document
Production and Related Discovery Matters**

Dear Ben:

I write regarding a number of deficiencies in Defendant Amber Heard's document production in the above-referenced matter, as well as our request that Ms. Heard sign a HIPAA waiver to allow for the production of her relevant medical records.

Document Production

As you know, even though Mr. Depp served his first set of document requests on July 9, 2019, Ms. Heard has made only one production, on October 8, 2019. That production is significantly inadequate. It contains a mere 539 pages of files, of which only three are emails and none are hard copy documents. There appear to be large gaps of documents that are missing from Ms. Heard's production. Specifically, we have found nothing responsive to the following requests:

RFP 1: All Documents and Communications by and between you and any person relating to the purported incident in Los Angeles, California in late 2012 or early 2013, as described in ¶ 5 of your Declaration.

RFP 2: All Documents and Communications by and between you and any person relating to the purported incident in Los Angeles, California on March 8, 2013, as described in ¶ 6 of your Declaration.

RFP 3: All Documents and Communications by and between you and any person relating to the purported incident occurring on a flight from Boston, Massachusetts to Los Angeles, California on or about May 24, 2014, as described in ¶¶ 7-8 of your Declaration.

RFP 4: All Documents and Communications by and between you and any person relating to the purported incident in the Bahamas on August 17, 2014, as described in ¶ 11 of your Declaration.

RFP 5: All Documents and Communications by and between you and any person relating to the purported incident in Los Angeles on December 17, 2014, as described in ¶ 12 of your Declaration.

RFP 6: All Documents and Communications by and between you and any person relating to the purported incident taking place in a hotel room in Tokyo, Japan on January 25, 2015, as described in ¶ 13 of your Declaration.

RFP 7: All Documents and Communications by and between you and any person relating to the purported incident in Australia on March 3 through March 5, 2015, as described in ¶¶ 14- 18 of your Declaration.

RFP 8: All Documents and Communications by and between you and any person relating to the purported incident in Los Angeles, California in March 2015, as described in ¶¶ 19-20 of your Declaration.

RFP 9: All Documents and Communications by and between you and any person relating to the purported incident in Thailand and Malaysia in August 2015, as described in ¶ 21 of your Declaration.

RFP 10: All Documents and Communications by and between you and any person relating to the purported incident in Los Angeles, California on November 26, 2015, as described in ¶ 22 of your Declaration.

RFP 12: All Documents and Communications by and between you and any person relating to the purported incident in Los Angeles, California on April 21, 2016, as described in ¶¶ 34-35 of your Declaration.

RFP 15: All Documents and Communications by and between you and any person relating to any domestic abuse incidents in which you assaulted Mr. Depp.

RFP 16: All Documents and Communications by and between you and any person relating to the incident between you and Tasya van Ree that occurred at the Seattle-Tacoma International Airport on September 14, 2009, which resulted in your arrest.

RFP 17: All Documents and Communications by and between you and any person relating to any other domestic abuse allegations against Mr. Depp not identified in Request Nos. 1 through 14.

RFP 28: All Communications concerning Elon Musk visiting you at any time at the Eastern Columbia Building, located at 849 South Broadway Los Angeles, CA 90014.

RFP 29: All Documents and Communications regarding the Op-Ed, including all drafts, notes, outlines, and communications with employees and agents of the Washington Post and American Civil Liberties Union ("ACLU").

RFP 30: All Documents and Communications concerning the events described in paragraph 54 of the Declaration.

Given the many months that have passed since these requests, and the upcoming discovery deadlines, we must insist that Ms. Heard produce the documents in her possession, custody and control, responsive to these requests, without further delay. If she has determined that she has no

such documents, please update your discovery responses to so state. Please confirm that Ms. Heard will complete her production and indicate her possession or lack thereof of responsive documents, by November 30, 2019.

Identities of senders and recipients in text messages.

In a number of instances, we are unable to determine from the face of the text messages that Ms. Heard has produced the identities of the senders and recipients. Please supplement your document production and interrogatory responses to identify these individuals and link their names to their text message accounts / numbers.

HIPAA waiver.

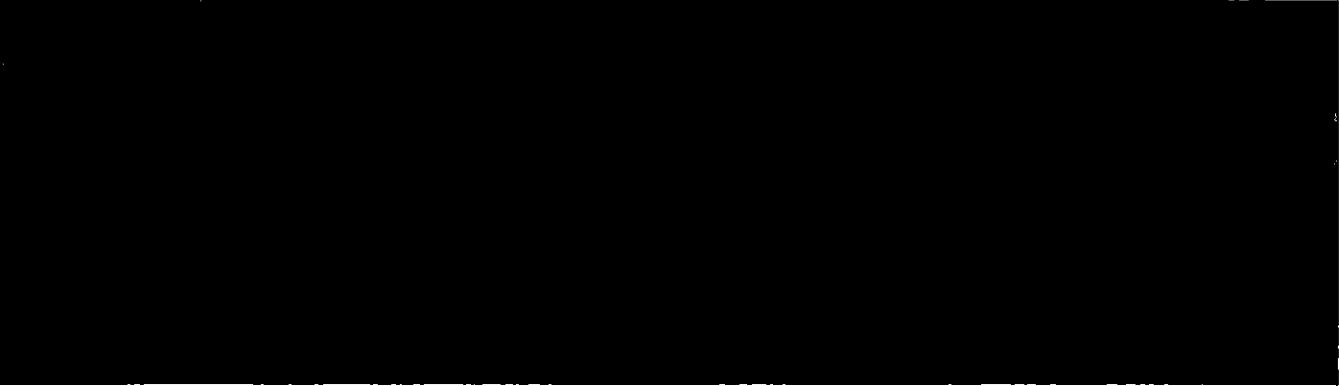
On Tuesday, November 12, 2019, we asked that you have Ms. Heard execute a HIPAA waiver similar to the one that Mr. Depp executed, but have not received a response. Given the scope of discovery that Ms. Heard has sought and persuaded the Court to order with respect to Mr. Depp's medical records, we cannot conceive of a basis for Ms. Heard to object to providing the HIPAA waiver and permitting similar discovery into her own records. If anything, given her allegations of abuse, which are at the core of this case, such records are far more relevant than Mr. Depp's. We ask that you confirm you will do so by the end of the day tomorrow; otherwise, we will seek relief from the Court.

Sincerely,

/s/ Robert B. Gilmore

cc: Counsel of record (by email)

EXHIBIT D



From: Rottenborn, Ben [mailto:brottenborn@woodsrogers.com]
Sent: Friday, May 29, 2020 1:47 PM
To: Chew, Benjamin G.; Vasquez, Camille M.
Subject: HIPAA Issue

External E-mail. Use caution accessing links or attachments.

Ben and Camille,

Good to speak to you this afternoon. One thought on the HIPAA issue for your consideration: when I asked for specific providers from whom you believe you don't have a full set of relevant documents, Camille mentioned the offices of Drs. Kipper and Cowan. As I said on the call, we've produced relevant and responsive documents that we've received from those offices and staff, but if your goal is making sure that they have produced everything that's relevant related to both of our clients, we share that goal. In short, I don't believe this is so much a HIPAA issue (because they didn't object to producing our client's documents to us, which we then properly produced) as it is an interest in making sure what they have produced is full and complete. Let us know if you'd like to discuss a way that both sides can ensure that (whether through a joint communication to the medical providers or some other way). That seems like it would address your concern.

If there are other specific providers about which you have questions, please let me know.

Thanks,
Ben

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