VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

John C. Depp, II,	
Plaintiff,	
v.	**Civil Action No.: CL-2019-0002911**
Amber Laura Heard,	
Defendant.	

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO CERTIFY AUGUST 17, 2021 ORDER FOR INTERLOCUTORY APPEAL

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Plaintiff John C. Depp, II, by and through his undersigned counsel, hereby opposes Defendant Amber Laura Heard's Motion to Certify August 17, 2021 Order for Interlocutory Appeal (the "Motion").[1]

PRELIMINARY STATEMENT

The Motion represents yet another baseless attempt by Ms. Heard to escape the consequences of her lies. As was the case with Ms. Heard's previous attempts to avoid at trial of Mr. Depp's defamation claims on the merits, Ms. Heard has failed to satisfy her burden of showing entitlement to the relief she seeks – here, an interlocutory appeal of the Court's well-reasoned August 17, 2021 letter opinion (the "Letter Opinion") denying Ms. Heard's supplemental plea in bar (the "Supplemental Plea").

In denying Ms. Heard's Supplemental Plea, the Court observed that the Supplemental Plea was "misguided and only thinly supported by preexisting law." Ms. Heard's Motion seeking an interlocutory appeal of the Letter Opinion denying this "misguided" and "thinly supported" plea in bar is even more misguided in light of her recidivism. Under Virginia law, Ms. Heard is not entitled to an immediate interlocutory appeal of the Letter Opinion unless all ***four statutory criteria are satisfied***. Ms. Heard, however, satisfies ***none of the requisite conjunctive criteria***. Ms. Heard's Motion is, thus, doubly frivolous. The Court should, accordingly, reject Ms. Heard's latest delay tactics and sanction her for yet again wasting the Court's and Mr. Depp's time and resources addressing frivolous arguments propounded only to delay and add to Mr. Depp's expense.

BACKGROUND

Mr. Depp commenced this defamation suit on March 1, 2019 to clear his name after Ms.

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[1] Ms. Heard's Memorandum in Support of Motion to Certify August 17, 2021 Order for Interlocutory Appeal, dated September 8, 2021, shall be cited herein as "Mot."

Heard accused him of domestic abuse in a December 2018 op-ed Ms. Heard prepared and placed in the *Washington Post* with the assistance of the American Civil Liberties Union (the "ACLU"). Since that time, Ms. Heard has filed successive pleadings and motions designed to thwart the discovery process and avoid a trial of Mr. Depp's claims on the merits.

First, in April 11, 2019, Ms. Heard filed her first motion to dismiss and plea in bar seeking dismissal of Mr. Depp's claims based on *forum non conveniens*. In his Letter Opinion, dated August 8, 2019, the Honorable Bruce D. White, Chief Judge, denied Ms. Heard's motion. Less than a month later, after replacing her first set of counsel, Ms. Heard sought and was granted leave to file a new demurrer and plea in bar. Again, this Honorable Court, largely denied Ms. Heard's demurrer and plea in bar, finding that four out of five of the statements Mr. Depp alleged to be defamatory were actionable, and that his defamation claims were not barred by the applicable statute of limitations. Thereafter, Ms. Heard again replaced her (second) legal team and filed her Answer and Counterclaims against Mr. Depp, seeking $100 million in damages for defamation, violation of Virginia's computer crimes act, and declaratory judgment. By a Letter Opinion dated January 4, 2021, this Court dismissed all of Ms. Heard's counterclaims, with the exception of the portion of her defamation claims based on three statements made by Mr. Depp's attorney within the one-year statute of limitations.

While discovery was ongoing on Mr. Depp's claims and Ms. Heard's counterclaims, Mr. Depp's defamation suit against the author and publisher of an article calling Mr. Depp a "wife beater" proceeded to trial in the United Kingdom (the "UK Action"). Ms. Heard submitted multiple witness statements in the UK Action, including a witness statement which addressed Mr. Depp's theory that Ms. Heard had married him and falsely accused him of domestic abuse for financial gain, in which Ms. Heard falsely testified that she had donated her entire divorce

settlement from Mr. Depp to charity, including half to the ACLU. After a sixteen-day trial of the UK Action, Justice Nicol, the factfinder in the UK Action, rendered a decision dismissing Mr. Depp's defamation claims against the UK defendants (the "UK Judgment"). In rejecting Mr. Depp's theory that Ms. Heard's claims of abuse were a "hoax" and "insurance policy" to protect her financially in the even that their marriage broke down, Justice Nicol cited Ms. Heard's testimony that she had donated her entire divorce settlement to charity, finding that "is hardly the act one would expect of a gold-digger."

After the UK Judgment was rendered, Mr. Depp obtained discovery in this action showing that Ms. Heard had lied about donating her entire divorce settlement to charity. Discovery in this action has also revealed that Ms. Heard does not appear to be covering her own litigation expenses in connection with this action. Ms. Heard's tax returns, which she produced in this case, show no deductions for business expenses that would be associated with this case. Mr. Depp, accordingly, believes that Ms. Heard's litigation expenses are being covered by a third party or parties.

In February 2021, this Court continued the jury trial in this case from May 2021 to April 11, 2022, thus extending the discovery cut-off from April 2021 to March 2022. On April 13, 2021, Ms. Heard filed her motion for leave to file an amended answer and grounds for defense and a supplemental plea in bar arguing that the UK Judgment barred Mr. Depp's defamation claims in this action, and to stay discovery. A hearing on Ms. Heard's motion was held on May 28, 2021. At this hearing, although the Court granted Ms. Heard leave to file an amended answer and plea, the Court denied Ms. Heard's request to stay discovery and cautioned Ms. Heard that her proposed arguments on the Supplemental Plea appeared futile and could be sanctionable.

Ms. Heard, nonetheless, filed her Supplemental Plea in bar on June 14, 2021. In her Supplemental Plea, Ms. Heard argued that the UK Judgment barred Mr. Depp from relitigating whether Ms. Heard's claims of domestic abuse were false in this action under principles of res judicata, collateral estoppel, and comity. On June 28, 2021, Mr. Depp filed his opposition to the Supplemental Plea and requested that Ms. Heard be sanctioned for filing the futile plea. In his opposition, Mr. Depp cited controlling Virginia authority holding that mutuality of parties is a requirement for the application of res judicata and collateral estoppel and argued that the UK Judgment could not have preclusive effect in this action because, *inter alia*, of the lack of mutuality among the parties to this action and the UK Action. On August 17, 2021, the Honorable Penney S. Azcarate issued her Letter Opinion overruling Ms. Heard's Supplemental Plea, finding that UK Judgment should not be afforded preclusive effect because mutuality of parties was a requirement for the application of res judicata and collateral estoppel under Virginia law. Although the Court denied Mr. Depp's request for sanctions, the Court found Ms. Heard's Supplemental Plea was "misguided and only thinly supported by preexisting law." By her Motion, Ms. Heard now seeks to certify the Court's Order for interlocutory appeal.

ARGUMENT

I. The Court Should Decline to Certify the Order for Interlocutory Appeal

A. Legal Standard

Interlocutory appeals are strongly disfavored under Virginia law because they "often result in inefficiencies and unnecessary delay and expense." *de Haan v. de Haan*, 54 Va. App. 428, 441 (Va. App. 2009). "By their nature, interlocutory appeals are disruptive, time-consuming, and expensive." *Id.* (quoting *Waste Mgmt. Holdings, Inc. v. Mowbray*, 2018 F.3d 288, 294 (1st Cir. 2000)). The general rule prohibiting interlocutory appeals "preserves the [trial] court's independence and protects parties from the harassment of separate appeals of

individual rulings." *Id.* at 440 (quoting *Commonwealth v. Lancaster*, 45 Va. App. 723, 733 (2005)). Accordingly, an interlocutory appeal is only permitted where the order "involves a question of law to which (i) there is substantial ground for difference of opinion, (ii) there is no clear, controlling precedent on point in the decisions of the Supreme Court of Virginia or the Court of Appeals of Virginia, (iii) determination of the issues will be dispositive of a material aspect of the proceeding currently pending before the court, *and* (iv) it is in the parties' best interests to seek an interlocutory appeal." Va. Code § 8.01-670.1 (emphasis added). Applying this authority, the Court should deny Ms. Heard's Motion.

B. Defendant Cannot Satisfy Any of the Four Requisite Criteria, All Four of Which Must Be Satisfied for Interlocutory Appeal

Ms. Heard's Motion to certify the Court's Order denying her Supplemental Plea in bar should be denied because none of the four requirements set out in Virginia Code § 8.01-670.1 is satisfied.

1. *It is Not in Mr. Depp's Best Interest to Seek Interlocutory Appeal*

As a threshold and dispositive matter, Ms. Heard cannot take an interlocutory appeal of the Letter Opinion because it is decidedly not in Mr. Depp's best interest to do so. As the Court is aware, Mr. Depp filed this action in March 2019 and in the ordinary course of events a trial on his claims would have taken place in the Spring of 2020. However, because of the coronavirus pandemic and related orders from the Governor's office and Supreme Court of Virginia, the trial of this case has been repeatedly continued and is now set for a four-week jury trial in April 2022.

The delays associated with the coronavirus pandemic have only been exacerbated by Ms. Heard's scorched earth litigation tactics. Over the course of this litigation, Ms. Heard has hired and fired three sets of legal counsel, in Virginia, California, and New York, and has been bolstered by a phalanx of counsel from the ACLU, who appear to be serving as adjunct counsel

for Ms. Heard notwithstanding the fact that Ms. Heard failed to make good on her $3.5 million pledge to the organization. Ms. Heard's successive counsel have used the additional time to file increasingly frivolous dispositive motions and repetitious motions to compel, many of which have already been addressed and denied by the Court prior to the transition of the case from Chief Judge White to Chief Judge Azcarate after the former's retirement earlier this summer. Granting Ms. Heard's Motion would open a new front of litigation before the Supreme Court of Virginia and almost inevitably lead to Ms. Heard seeking a stay of the litigation, as she has done in the past, which, if successful, would result in yet another continuance of the trial date, as much discovery, including Ms. Heard's deposition (set for three days), has yet to occur.[2]

All of these delays and Ms. Heard's specious litigation tactics have come *almost entirely at Mr. Depp's expense*, as Ms. Heard does not appear to be paying for her own counsel but rather having a third party or parties foot the bill. Ms. Heard's tactics have increased Mr. Depp's legal expenses and delayed the vindication he seeks against Ms. Heard's false claims of abuse. Moreover, the events at issue took place years ago and the memories of witnesses to these events will not improve with time. These expenses and delays associated with an interlocutory appeal are precisely why interlocutory appeals are disfavored under Virginia law and should be denied where, as here, it is not in a party's best interest to incur these expenses. Ms. Heard's Motion for interlocutory appeal can and should be denied because it is diametrically opposed to Mr. Depp's best interests.

In support of her Motion, Ms. Heard speculates that an interlocutory appeal would, actually, be in Mr. Depp's best interest because a ruling in Ms. Heard's favor would save Mr. Depp "millions of dollars . . . in not pursuing the next nine months of expensive . . . discovery

[2] Mr. Depp's three-day deposition was concluded several months ago in Reston, Virginia.

and motions practice, as well as trial preparation and four-week trial;" and, in any event, Mr. Depp would not be prejudiced by the delay if he were to prevail because, given his "litigious nature, the cost of briefing an appeal in this case will almost certainly be expended either way." *See* Mot. at 14-15. This argument, however, is self-serving obfuscation. First of all, Ms. Heard's contention that a ruling in her favor would save Mr. Depp "millions" in litigation costs ignores the fact that this action includes counterclaims by Ms. Heard against Mr. Depp, which, for the reasons set forth *infra,* Section I.B.2, would not be resolved by such a ruling. Second, Ms. Heard's argument that Mr. Depp would not be prejudiced if he were to prevail on appeal ignores the fact that this case is not just about money for Mr. Depp: Mr. Depp brought this action to clear his name against Ms. Heard's false claims of abuse, which have negatively impacted his reputation and professional opportunities. Any incremental delay in litigating this case on the merits caused by an appeal would further delay the vindication Mr. Depp seeks and, thereby, exacerbate the reputational and monetary damage Mr. Depp has suffered as a result of Ms. Heard's false claims. Finally, while it is likely that cost of litigating Mr. Depp's defamation claims through trial would exceed the "cost of briefing an appeal," Ms. Heard's argument ignores the fact that the "cost of briefing an appeal" is incremental – it is an *added* cost on top of the costs Mr. Depp will incur in litigating his claims through trial. Regardless of the outcome of the appeal Ms. Heard seeks, the appeal is not in Mr. Depp's best interests.

2. *Determination of the Issue of Whether the UK Judgement Precludes Mr. Depp's Defamation Claims is Not Dispositive of a Material Aspect of the this Action*

Ms. Heard's request for an interlocutory appeal should also be denied because the appeal would not be dispositive of a material aspect of this action. Ms. Heard's argument that the reversal of this Court's Order denying her Supplemental Plea would be dispositive of a material aspect of this case ignores the fact that Ms. Heard has a $100 million counterclaim pending

against Mr. Depp, which would not be resolved if the UK Judgement were afforded preclusive effect.

As Ms. Heard recognizes in her Motion, she could not use the UK Judgment *offensively* to bar Mr. Depp from defending against her counterclaim because the mutuality requirement should be strictly applied when offensive collateral estoppel is invoked. *See* Mot. at 4 ("For obvious reasons, it is far more important that mutuality apply to offensive collateral estoppel to prevent defendants who never had a day in court in one case from being adjudged liable in a latter case."); *see also Norfolk & W. Ry. Co. v. Baily Lumber Co.*, 221 Va. 638, 641-42 (1980). In any event, even if the UK Judgment precluded Mr. Depp from relitigating whether Ms. Heard's claims of abuse are false (which it decidedly does not), it would not resolve Ms. Heard's surviving counterclaim against Mr. Depp. Ms. Heard's surviving counterclaim is a claim for defamation, based on statements made by Mr. Depp's attorney, which are of a different nature than the statements which are the subject of Mr. Depp's defamation claims. The UK Judgment, accordingly, would not preclude the parties from litigating whether the statements which are the subject of Ms. Heard's defamation counterclaims are true or false. Moreover, although Ms. Heard alleges the purportedly defamatory statements were made by "Mr. Depp, thought his attorney," this is a hotly disputed fact which would still need to be litigated. In sum, even if Ms. Heard successfully appealed the Order, a material aspect of this action would remain pending before this Court.

3. *There is No Substantial Ground for Difference of Opinion on Whether the UK Judgment Precludes Mr. Depp's Defamation Claims and There is Clear, Controlling Precedent on this Point*

Finally, Ms. Heard's Motion to certify the Order interlocutory appeal should be denied because Virginia law is clear that this Court need not recognize the preclusive effect of the UK Judgment. The Court's Letter Opinion, which thoroughly addressed controlling Virginia

precedent, demonstrates the clarity of Virginia law on this issue. In addressing Ms. Heard's argument to abandon the mutuality requirement for collateral estoppel, the Court made this point patently clear:

> This not a matter of first impression, it is a matter of stare decisis. Based on the abundance of binding case law holding mutuality is still a requirement in Virginia, collateral estopped is not appropriate here.

Letter Opinion at 5. Ironically, the even the authorities cited by Ms. Heard in support of her argument that Virginia law is not clear on the application of nonmutual collateral estoppel, and there is substantial ground for difference of opinion on this point, demonstrate precisely the opposite.

Ms. Heard contends that, in *Bates v. Devers*, 214 Va. 667 (1974), the Supreme Court of Virginia set forth a "clear exception" to the mutuality requirement for collateral estoppel. *See* Mot. at 3. The Supreme Court of Virginia, however, did no such thing. As the Court observed in the Letter Opinion, in *Bates v. Devers*, the Supreme Court of Virginia held that collateral estoppel was *not applicable* and addressed the mutuality requirement only in a single footnote. *See* Letter Opinion at 4 (quoting *Bates*, 214 Va. at 670 n.7). In that footnote, the Supreme Court of Virginia noted that "the mutuality doctrine should not be mechanistically applied when it is compellingly clear from the prior record that the party in the subsequent civil action against whom collateral estoppel is asserted has fully and fairly litigated and lost an issue of fact which was essential to the prior judgment." *See Bates*, 214 Va. at 670 n.7. This dicta, relegated to a single footnote, is not a "clear exception" to the mutuality requirement for collateral estoppel. As is clear from the precise language of the footnote, the Supreme Court of Virginia is merely noting that the mutuality doctrine need not be mechanically applied in a particular circumstance; it is not holding that there is no mutuality requirement at all in that particular circumstance. *See*

id.

Ms. Heard contends that the bounds of the "*Bates* exception" (which is no exception at all) "have not been fully explored by the Virginia Supreme Court or the Court of Appeals of Virginia." Mot. at 3. To the contrary, as set forth in the Letter Opinion, the Virginia Supreme Court has "reexamined the issue of mutuality" multiple times since the *Bates* decision and reaffirmed the mutuality requirement. *See* Letter Opinion at 4 (collecting cases). In both *Angstadt*, cited in the Letter Opinion, and *Rawlings*, cited by Mr. Depp's briefing in opposition to the Supplemental Plea, the Supreme Court of Virginia was presented with defensive collateral estoppel and held that the doctrine did not apply because of a lack of mutuality. *See Rawlings v. Lopez*, 267 Va. 4, 5 (2004); *Angstadt v. Atlantic Mut. Ins. Co.*, 249 Va. 444, 447 (1995). Ms. Heard argues that the decision in *Angstadt* is "not clear or controlling precedent" because the factual issues in the two litigations were not identical and, thus, the circumstances did not satisfy the "*Bates* exception." *See* Mot. at 8-9. Setting aside the fact that there is no "*Bates* exception" to satisfy, a difference in factual circumstances cannot not divest *Angstadt* of its status as controlling precedent – otherwise, there would be no "clear and controlling precedent" at all. In any event, in *Rawlings*, the factual issues in the two litigations – whether the defendant was negligent – *were the same*, thus satisfying the so-called "*Bates* exception" Ms. Heard has devised; and, even under those circumstances, the Supreme Court of Virginia declined to recognize nonmutual defensive collateral estoppel. *See Rawlings*, 267 Va. at 5 (holding that claims against defendant were not barred by collateral estoppel because there was no mutuality). Ms. Heard's contention that there is no controlling Virginia precedent on nonmutual defensive collateral estoppel is, like her claims of abuse, demonstrably false.

The only other authority Ms. Heard can cite to in "support" of her request for

interlocutory appeal are the two *dissenting* opinions in *Selected Risks Insurance Co. v. Dean*, 233 Va. 260 (1987). *See* Mot. at 3-8. *Selected Risks*, however, is yet another example of the Virginia Supreme Court addressing a plea of collateral estoppel, after *Bates*, and following "established precedent" resisting "the so-called 'modern trend' . . . to abrogate the mutuality requirement." *See Selected Risk*, 233 Va. at 264-65. The Supreme Court of Virginia's decision in *Selected Risks* is, thus, precisely the type of clear, controlling authority that demonstrates there are *no* substantial grounds for differing opinions on the issue Ms. Heard seeks to certify for interlocutory appeal.

Justices Poff's and Thomas' dissents in *Selected Risks* do not constitute "substantial grounds for differing opinions" on whether nonmutual defensive collateral estoppel, or Ms. Heard's so-called "*Bates* exception," is recognized by Virginia law. As Ms. Heard points out, *Selected Risks* involved offensive collateral estoppel, as opposed to defensive collateral estoppel. *See* Mot. at 6-8. Moreover, Justices Poff's and Thomas' dissents relied upon exceptional circumstances warranting the departure from the mutuality requirement that are not present here – specifically, the prior adjudication of *criminal intent in a criminal proceeding*. *See Selected Risks*, 233 Va. at 267 (Poff, J. dissenting) (finding *Heller*, which found a criminal adjudication of intent conclusive upon the plaintiff, to be indistinguishable and controlling), 268 (Thomas, J. dissenting) (identifying the "correct issue" to be decided as "[w]hether a person who is convicted of a crime for which intent was an essential element can prevent proof of that conviction in a subsequent civil suit against the same individual, based on the same facts, where intent is an essential element of the civil dispute"). This arguable "exception" to the mutuality requirement for collateral estoppel, previously recognized by the Virginia Supreme Court in *Eagle, Star & British Dominions Ins. Co. v. Heller*, 149 Va. 82 (1927), was addressed by the Court in its Letter

Opinion and found to be inapplicable here. *See* Letter Opinion at 5. The dissenting opinions in *Selected Risk* recognized this "criminal" exception to the mutuality requirement, not the so-called "*Bates* exception" Ms. Heard advocates for here. These dissenting opinions, accordingly, do not evidence any substantial grounds for disagreement on how Ms. Heard's Supplemental Plea for nonmutual defensive collateral estoppel fares under Virginia law.

Even if, *arguendo*, Virginia law were unclear on the mutuality requirement for collateral estoppel, the UK Judgment is a *foreign* judgment, so the operative doctrine to determine its preclusive effect is *comity*, which is a discretionary doctrine under Virginia law. *See Am. Online, Inc. v. Anonymous Publicly Traded Co.*, 261 Va. 350, 360 (2001). As the Court held in its Letter Opinion, "[c]omity is not a matter of obligation. It is a matter of favor or courtesy." Letter Opinion at 8 (quoting *Am. Online*, 261 Va. at 360). Thus, even if the mutuality requirement for collateral estoppel was a fading vestige of Virginia law (which it is not), this Court would still be following clear Virginia precedent by nonetheless declining to afford the UK Judgment preclusive effect here.

Ignoring the discretionary nature of the comity doctrine, Ms. Heard argues there are substantial grounds for difference of opinion on whether the Court should recognize the UK Judgment under principles of comity. *See* Mot. at 10-14. To support this argument, Ms. Heard contends that the Court only addressed one of the four factors Virginia courts consider in evaluating whether comity is appropriate – namely, whether the procedural and substantive law of the foreign court is reasonably comparable to that of Virginia. *See id.* at 10 (citing *Clark v. Clark*, 11 Va. Ct. App. 286, 296-97 (1990)). The Court, however, primarily addressed this single factor in the Letter Opinion because it is the *only factor Ms. Heard argued in support of her Supplemental Plea* – she did not even cite any of the other factors in support of her Supplemental

Plea. Unlike Ms. Heard, the Court identified all four comity factors in the Letter Opinion and appears to have based its ruling, at least in part, on one of the other factors, finding that enforcing of the UK Judgment would be contrary to the public policy of Virginia. *See* Opinion Letter at 7-9 (citing *Clark*, 11 Va. Ct. App. at 296-97).

In any event, Ms. Heard can still only cite one Virginia case which recognized a UK judgment under principles of comity, *see* Mot. at 10-12 (citing *Oehl v. Oehl*, 221 Va. 618 (1980)); and, as the Court found in the Letter Opinion, this case is distinguishable from the present circumstances because it was a "domestic law case[]," *see* Opinion Letter at 9. This case is also distinguishable because comity was applied where there was mutuality of parties. *See Oehl*, 221 Va. 618. One highly distinguishable case does not create a substantial ground for differing opinions on whether the UK Judgment should have been afforded preclusive effect in this action, where the parties to this action and the UK Action were not the same or in privity with one another. *See* Opinion Letter at 9 ("[T]he Court is hesitant to apply preclusive effect to the UK finding, especially considering Defendant was not a party in the UK suit and was not subject to the same discovery requirements in that suit.").

II. The Court Should Order Ms. Heard to Reimburse Mr. Depp His Reasonable Costs and Attorneys Fees for Responding to Her Motion

Mr. Depp spent in excess of $100,000 successfully opposing Ms. Heard's Supplemental Plea. Although the Court denied Mr. Depp's related request for sanctions, it made clear that Ms. Heard's Supplemental Plea bordered on frivolous, finding it "misguided and only thinly supported by preexisting law." Letter Opinion at 10. With Ms. Heard's Motion, the case is now in a different procedural posture. The Supplemental Plea may not have been sanctionable, but seeking an interlocutory appeal of the Order denying the "misguided" and "thinly supported" Supplemental Plea should be. *See, e.g.*, *Wrenn v. McFadden*, 905 F.2d 1533 (4th Cir. 1990)

("Because this appeal is interlocutory and frivolous, we grant the motion for sanctions in the form of single costs and attorney's fees in favor of the appellees.").

Virginia law does not countenance a party submitting a pleading or motion that is unfounded in fact or law and interposed to "harass or to cause unnecessary delay or needless increase in the cost of litigation." *See* Va. Code § 8.01-271.1. Yet, this is precisely what Ms. Heard has done with her Motion. Ms. Heard's Supplemental Plea was "misguided" and "thinly supported" in the first place and the Court's Letter Opinion clearly and thoroughly set out the controlling Virginia precedent demonstrating why this was the case. *See generally* Letter Opinion ("This is not a matter of first impression; it is a matter of stare decisis."). In the face of the Court's Letter Opinion, Ms. Heard cannot in good faith contend, as she does in her Motion, that there is no controlling Virginia precedent, or substantial grounds for differing opinions, that precluded the relief she sought in her Supplemental Plea. Thus, Ms. Heard's sole purpose in bringing this Motion to appeal the Court's Order denying her Supplemental Plea must be solely to unnecessarily delay and needlessly increase the costs of this litigation for Mr. Depp, as she has done time and time again throughout this case. Ms. Heard can and should be sanctioned for this conduct.

CONCLUSION

For the foregoing reasons, Mr. Depp respectfully requests that the Court deny Ms. Heard's Motion and impose sanctions on her for filing this frivolous Motion in the first place.

Respectfully submitted,

[redacted]

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Dated: September 29, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September 2021, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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