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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

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 MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

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COMES NOW Defendant Amber Laura Heard, by counsel, and files this Memorandum in Support of her August 13, 2019 Motion for Entry of Protective Order, and in support thereof states as follows:

I. INTRODUCTION

This is a case between two high-profile public figures. Plaintiff John C. Depp, II has put at issue various allegations that he abused Ms. Heard during their brief, volatile, and highly publicized marriage. In light of Mr. Depp's theory of the case, civil discovery may require the exchange of personal documents and details of the utmost sensitivity and intimacy, from the parties' personal contact information and medical records to conversations with their closest confidants about incidents of violence and abuse, not to mention a number of traumatic images. Mr. Depp has already served expansive requests demanding just this information. Given the parties and subject matter, a broad universe of friends, family, and staff are implicated. This is *precisely* the type of matter for which the Supreme Court of Virginia has endowed the trial courts with "substantial latitude to fashion protective orders" to impose order and prevent abuse of pretrial materials. *See Shenandoah Pub. House, Inc. v. Fanning*, 368 S.E.2d 253, 257 (Va. 1988).

Mr. Depp initially agreed that a protective order is warranted and engaged in substantial negotiation, including the exchange of drafts and multiple conversations. Not surprisingly, Mr. Depp himself has willingly agreed to the entry of similar protective orders more than once in other previous litigation.[1] But then Mr. Depp reversed course in this matter, abandoned negotiations, and took the position that there should be no protective order. The only reason he gave is that Ms. Heard had written the op-ed at issue in this case and had also (four months earlier) submitted a declaration in support of her motion to dismiss. This baffling reversal, based entirely on facts

[1] *See, e.g., Jane Doe v. John C. Depp II*, Case No. BC482823 (Cal. Super. Ct. L.A.) (stipulated protective order entered June 6, 2012); *John C. Depp, II et al. v. Bloom Hergott Diemer Rosenthal LaViolette Feldman Schenkman & Goodman LLP*, Case No. BC680066 (Cal. Super. Ct. L.A.) (stipulated protective order entered Mar. 21, 2018).

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known to him all along, is unreasonable and reveals his commitment to gratuitously prying open (and exposing) the most intimate details of Ms. Heard's life based solely on an egregious misreading of her op-ed. For those and other reasons set forth herein it would be far "more prudent to enter a protective order to prevent a future problem than to refuse to enter a protective order and have to deal with a potentially damaging disclosure problem at a later time." *Abujaber v. Kawar*, 20 Va. Cir. 58, 1990 WL 751032, at *3 (1990).

II. FACTUAL BACKGROUND

On August 13, 2019, Defendant Ms. Heard filed a motion for a protective order governing discovery in this matter. *See* Def.'s Mot. for Protective Order. Mr. Depp initially agreed a protective order was necessary and appropriate. On August 12, 2019, Ms. Heard's counsel shared a draft and proposed a procedure to submit the motion to this Court. *See* Exhibit A, Decl. of Sean Roche, at ¶¶ 5–11.[2] The following day, Mr. Depp's counsel shared a revised draft, "want[ing] to keep the process moving." Ex. A, at ¶ 9. In negotiating the terms, counsel narrowed their disagreements to two limited issues: the scope of an Attorneys-Eyes-Only designation, and whether Mr. Depp could share confidential discovery materials with his own employees even if they were also witnesses. But then, rather than bring those issues to the Court or continue their productive negotiations, Mr. Depp suddenly abandoned the effort. "Mr. Depp has decided to oppose Defendant's motion for entry of a protective order" on the basis "that Ms. Heard chose to publish her op-ed" and "attached [a declaration] to the papers in support of her motion to dismiss" four months earlier. Ex. A, at ¶ 12.

III. LEGAL STANDARD

Virginia Supreme Court Rule 4:1(c) provides that, "for good cause shown," a court may "make any order which justice requires to protect a party or person from annoyance,

[2] All references to "Ex. A" hereinafter are to the Declaration of Sean Roche submitted herewith.

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embarrassment, oppression, or undue burden or expense, including . . . that the discovery may be had only on specified terms and conditions." Because "pretrial discovery . . . has significant potential for abuse . . . implicat[ing] the privacy interests of litigants and third parties," the "prevention of [such] abuse . . . is sufficient justification for the authorization of protective orders." *Shenandoah*, 368 S.E.2d at 257.

Courts thus routinely issue orders to protect sensitive information. *See, e.g.*, *Cage v. Cage*, 2007 WL 6013150, at *5 (Va. Cir. Ct. Apr. 3, 2007) (requiring confidentiality of medical information); *Glorious Church of God in Christ v. Aetna*, 1998 WL 972132, at *3 (Va. Cir. Ct. Mar. 9, 1998) (protecting contact information from discovery to shield individuals "from any annoyance or embarrassment"); *Carr v. Brown*, 1992 WL 884821, at *1–2 (Va. Cir. Ct. July 23, 1992) ("Mrs. Carr is entitled to conduct her personal and business affairs without having to divulge the details"); *see also Pittston Co. v. U.S.*, 2002 WL 32158052, at *3 (E.D. Va. Oct. 2, 2002) ("protective order . . .[for] sensitive documents . . . is essential to the discovery process and is to be encouraged in every way"); *see also generally In re Worrell Enters., Inc.*, 14 Va. App. 671, 678 (Va. Ct. App. 1992), *abrogated on irrelevant grounds*, 259 Va. 599 (2000) ("the sole purpose of discovery is to assist trial preparation," and accordingly, "courts often order[] that discovery information will remain private.").[3]

IV. ARGUMENT

A. A Protective Order is Reasonable and Necessary Given the Sensitive Information Requested by Plaintiff.

Mr. Depp has issued discovery requests demanding production of a wide range of materials touching on the relationship and marriage between himself and Ms. Heard. Allowing open-air civil discovery in this matter will therefore publicize the most sensitive and intimate details of the lives

[3] Virginia courts may review decisions assessing Federal Rule of Civil Procedure 26 because "our Rules 4:1(b)(1) and (c) are essentially the same." *Shenandoah*, 368 S.E. at 257.

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of two film stars: security footage from their marital residences, medical records, personal notes and photographs, and many other materials illuminating a dysfunctional marriage in which Mr. Depp was repeatedly abusive and violent. Moreover, unshielded discovery may inflict significant collateral damage on family members, friends, romantic partners, guards, assistants, coaches, doctors, nurses, and many others. And all of these persons may be compelled to produce the contents of their text messages, emails, contact lists, and to recount their communications with Mr. Depp and Ms. Heard about Mr. Depp's abuse or any number of sensitive and personal matters. Dissemination of such intimate materials and memories could be more than just embarrassing or inconvenient; it could turn witnesses into cannon fodder as Mr. Depp seeks to demonize Ms. Heard in the press. This is what a protective order is designed to prevent. *See* Va. Sup. Ct. R. 4:1(c).

B. Significant Harm Would Result Absent a Protective Order.

Under Mr. Depp's proposal, almost anything that comes out in discovery could be shared with anyone without recourse. This is itself a threat to any potential witnesses: if you have discoverable information, be prepared to see your intimate life put under a public microscope and then watch as friends, family, and acquaintances are dragged across the coals with you. It takes little effort to imagine the harassment and loss of privacy that would result were many of the witnesses here to have their contact information made available to reporters and the paparazzi. As Mr. Depp knows well, that threat is especially potent given the public's interest in information about the parties, their circle of acquaintances, and the issues Mr. Depp has raised in this litigation.[4]

[4] For example, celebrity gossip website "The Blast" has posted numerous stories about this case based on documents provided by Mr. Depp. *See, e.g.*, https://theblast.com/c/johnny-depp-amber-heard-paint-can (describing a declaration reportedly obtained by Mr. Depp that has not been submitted to this court); https://theblast.com/c/johnny-depp-amber-heard-lawsuit-friend-declaration (same).

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In these circumstances, the "potential for abuse" of materials produced in the discovery process is at its apex. *Shenandoah*, 368 S.E.2d at 257. Good cause therefore exists to enter a protective order shielding these materials from very wide, very public disclosure at this stage.

Even were Mr. Depp to revert to his previous position and ask the Court to enter the draft protective order he previously proposed, that draft still proposes sharing these intimate, most sensitive details and documents with any individual he designates as an employee or representative without limitation. This too would improperly eviscerate any semblance of privacy for both Ms. Heard and any number of witnesses. Moreover, many of Mr. Depp's employees and representatives are likely to be fact witnesses and sources of discovery, and permitting them to view any and all sensitive documents Mr. Depp may wish to share, at whatever time Mr. Depp would like to share them, could well taint both discovery and any future testimony. The Protective Order Ms. Heard has proposed, by contrast, permits disclosure of confidential materials to fact witnesses in appropriate circumstances and with appropriate protections.[5]

V. CONCLUSION

For the foregoing reasons, Defendant Amber Laura Heard respectfully requests this Court enter the attached Exhibit B as the Protective Order governing discovery in this matter and allow twenty-one (21) days for Ms. Heard to classify documents consistent with any Protective Order and produce such documents to Plaintiff, and such other relief as this Court deems appropriate.

[5] Aside from access by Mr. Depp's employees, the other primary difference between the two parties' respective drafts related to the use of an "Attorneys' Eyes Only" designation. Courts routinely balance the right of privacy against litigation needs by instituting two-tiered protective orders that allow any party to designate certain information—such as medical records—as "Attorneys' Eyes Only." *See, e.g., Aviles v. BAE Sys. Norfolk Ship Repair, Inc.*, 2017 WL 10187460, at *2 (E.D. Va. Aug. 28, 2017). Indeed, attorneys'-eyes-only designations are commonly used as a pragmatic and efficient method to allow discovery to proceed while protecting highly sensitive information. *See, e.g., McAirlaids, Inc. v. Kimberly-Clark Corp.*, 299 F.R.D. 498, 499, 501 (W.D. Va. 2014); *Cappetta v. GC Servs. Ltd. P'ship*, 266 F.R.D. 121, 127 (E.D. Va. 2009). Ms. Heard's proposed order filed herewith accepts most of Mr. Depp's other proposed changes to Ms. Heard's draft.

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Dated this 30th day of August 2019.

Respectfully submitted,

[redacted]

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of August 2019, I served the foregoing via electronic mail (per Order of this Court) upon the following:

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

DECLARATION OF SEAN PATRICK ROCHE, ESQ.

COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX, to wit:

Pursuant to Virginia Code § 8.01-4.3, I, Sean Patrick Roche, Esq., declare:

1. I am an attorney-at-law in good standing and licensed to practice in this Court and the state and federal courts in Virginia, Maryland, and the District of Columbia.

2. I am a partner (technically member) with the Virginia law firm of Cameron/McEvoy, PLLC.

3. I am local counsel, along with Timothy J. McEvoy, Esq., in the above-referenced matter for Defendant Amber Laura Heard.

4. As such, I have personal knowledge of the facts and circumstances relevant to the details included herein.

5. In the days leading up to August 8, 2019, counsel for Mr. Depp and I discussed the need for a protective order to govern discovery in this matter.

6. On August 8, 2019, I contacted Benjamin Chew, Esq. (counsel for Mr. Depp) via e-mail and asked if he would prefer to "take the first crack at a draft [protective order] or should we do it on our end?"

7. On August 12, 2019, at approximately 3:00pm, I spoke with Mr. Chew by telephone and we agreed a protective order would be necessary and we agreed I would draft and circulate the first version of a proposed protective order.

8. I circulated a draft protective order to Mr. Chew at approximately 7:49pm ET by e-mail later that same evening of August 12, 2019.

9. At approximately 12:05pm ET on August 13, 2019, Mr. Chew responded by e-mail with the "proposed edits" to the protective order for Mr. Depp with a stated desire that he "wanted to keep the process moving."

10. By August 20, 2019, the issues in the protective order had been narrowed to Mr. Depp's request to exclude an "attorney's eyes only" designation and an ability to circulate confidential documents to "employees."

11. At approximately 1:00pm ET on August 21, 2019, I spoke with Robert Gilmore, Esq. and Camille Vasquez, Esq. (both co-counsel for Mr. Depp) by telephone and it was agreed again that a protective order was necessary for all parties to protect confidential information, and the parties would continue to discuss.

12. Roughly two hours later, at approximately 2:58pm ET on August 21, 2019, Mr. Depp's counsel indicated by e-mail that: "Mr. Depp has decided to oppose Defendant's motion for entry of a protective order. The rationale, which I would be happy to discuss with you in more detail, is that Ms. Heard chose to publish her op-ed in the *Washington Post* last December, defaming Mr. Depp, and then attached to the papers in support of her motion to dismiss (transfer venue) a declaration attaching materials unrelated to the merits of her motion[.]"

CERTIFICATION

I hereby certify under penalty of perjury that the contents of this Declaration are true and accurate to the best of my knowledge, information and belief.

Dated: August 30, 2019
Location: Fairfax, Virginia

Sean Patrick Roche

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

PROTECTIVE ORDER

To expedite the flow of discovery materials, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the Parties (as defined below as to both "Parties" and "Party") are entitled to keep confidential which should not be generally available to the public, to ensure that only materials the Parties are entitled to keep confidential are subject to such treatment, and to ensure that the Parties are permitted reasonably necessary uses of such materials in preparation for and in the conduct of these proceedings, it is HEREBY ORDERED THAT:

I. INFORMATION SUBJECT TO THIS ORDER

This Protective Order governs all "Protected Information" produced in this litigation, including all copies, excerpts or notes thereof whether produced by the Parties or by non-Parties. Discovery materials produced in this case may be designated and labeled according to the following categories: CONFIDENTIAL and HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY, as set forth in Sections A and B below. Both of the identified categories of information shall be identified collectively in this Order by the title "Protected Information." Any documents derived from or containing "Protected Information" must also be designated with the appropriate category of confidentiality in accordance with the terms of this Order. All

EXHIBIT B

"Protected Information" shall be used only for purposes of this litigation and not for any other purpose and shall be disclosed only in accordance with the terms of this Protective Order.

A. Information Designated as Confidential

1. For purposes of this Order, "CONFIDENTIAL" information shall mean all documents, materials, items, deposition testimony or information produced for or disclosed to a receiving Party that a producing Party, including any Party to this action and any non-Party which contains confidential or sensitive personal information of the Designating Party which is not publicly available. Any "CONFIDENTIAL" information obtained by any Party from any person pursuant to discovery in this litigation may be used only for purposes of this litigation.

A designating Party shall take reasonable care to designate for protection only those parts of documents, materials, items, deposition testimony or information that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. The Parties acknowledge, that the celebrity status of the Parties involved broadens the scope of what would normally be "CONFIDENTIAL."

2. Any document or tangible thing containing or including any "CONFIDENTIAL" information may be designated as such by the producing Party by marking it "CONFIDENTIAL" prior to or at the time copies are furnished to the receiving Party. All "CONFIDENTIAL" information not reduced to documentary, tangible, or physical form, or which cannot be conveniently designated by marking it shall be designated by the producing Party informing the receiving Party of the designation in writing.

3. Information designated "CONFIDENTIAL" and information contained therein shall be available only to:

a. The Plaintiff and Defendant (collectively "Parties" and at times referred to individually as a "Party");

b. Counsel and supporting personnel employed in or by the law firm(s) of counsel of record, such as attorneys, paralegals, legal translators, legal secretaries, legal clerks, paralegals, litigation support personnel, and third-party vendors retained by the Parties or law firm(s) to assist in connection with this litigation;

c. experts and/or consultants retained to furnish expert and/or professional services specifically for this litigation or to give testimony in connection with this litigation, including independent experts hired specifically for this litigation, and employees of such experts and consultants hired specifically for this litigation and performing work in connection with this litigation;

d. judges and court personnel; the jury and alternates for any trial of this cause; certified court reporters acting as such; and to the extent necessary to prosecute any appeals of this action, the judges and court personnel of appellate courts (under seal or with other suitable precautions determined by the Court);

e. court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary in this action, including independent legal translators retained to translate in connection with this action and independent stenographic reporters and videographers retained to record and transcribe testimony in connection with this action;

f. graphics, translation, or design services retained by counsel for purposes of preparing demonstrative or other exhibits for deposition, hearing, trial, or other court proceedings in this action;

g. non-technical jury or trial consulting services;

h. mock jurors retained to prepare for trial or other court proceedings in this action;

i. external vendors retained by counsel for purposes of this action;

j. trial and deposition witnesses (including their attorneys) during the course of or in preparation for depositions or testimony in this lawsuit, to the extent reasonably necessary;

k. representatives of any insurer providing a defense to any of the Parties;

l. any person who is (i) identified on the face of the document as an author or recipient, or (ii) has been identified or designated to testify regarding a topic of the document; and

m. any other person with the prior written consent of the producing Party or by agreement of the Parties.

4. Before disclosing documents pursuant to this Section (I)(A), and/or any information contained or reflected in the documents, designated as "CONFIDENTIAL" information to any persons specified in subparagraph I(A)(3)(c), (f)-(i), (k)-(l) above, Counsel must first inform each such person that the "CONFIDENTIAL" information to be disclosed is confidential, to be held in confidence, to be used solely for the purpose of this litigation, and further, that these restrictions are imposed by a court order and obtain the person's signature on Attachment A hereto.

B. Information Designated Highly Confidential – Attorneys' Eyes Only

1. For purposes of this Order, "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY " information shall mean extremely sensitive "CONFIDENTIAL" information or tangible things the designating Party believes in good faith is: (a) not generally known to others and

would not normally be revealed to third-parties except in confidence; (b) is sensitive and protected by a right of privacy under federal or state law or any other applicable right related to confidentiality or privacy; or (c) for which disclosure to another would create a substantial risk of serious injury that could not be avoided by less restrictive means. Because of the more limited nature of this designation, the producing Party shall notify the receiving Party upon production of those documents or categories of documents that have been designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Any "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information obtained by any Party from any person pursuant to discovery in this litigation may be used only for purposes of this litigation.

A designating Party shall take reasonable care to designate for protection only those parts of documents, materials, items, deposition testimony or information that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

2. Any document or tangible thing containing or including any "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be designated as such by the producing Party by marking it "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" prior to or at the time copies are furnished to the receiving Party. All "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information not reduced to documentary, tangible, or physical form, or which cannot be conveniently designated by marking shall be designated by the producing Party informing the receiving Party of the designation in writing.

3. Documents designated CONFIDENTIAL ATTORNEYS' EYES ONLY and information contained therein shall be available only to individuals specified in sub-paragraphs I(A)(3)(b)-(e), (i), (j), (l), and (m) above. Absent agreement among the Parties as to how the

"HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" document may be used in examining a third-party called to testify at trial, the Court will determine the extent to which such persons called to testify may be shown during their testimony documents designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," and, if so, whether the person called should be required to demonstrate their agreement or understanding of the terms of this Order either by acknowledging the same during the course of testifying under oath or by executing a Confidentiality Agreement in the form attached hereto as Attachment A.

4. Any personal information such as addresses, telephone numbers, email addresses, passwords, contact information or other personal identifiable information shall be redacted if contained on any documents and materials that contain such information as such information may be exchanged by counsel outside of any filing and such information should be redacted from any document/filings to avoid public disclosure. To the extent any Party deems it necessary to remove any redaction, the moving Party will file the appropriate motion under seal with the Court.

5. Before disclosing documents pursuant to this Section I(B), and/or any information contained or reflected in the documents, designated as HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY to any persons enumerated in sub-paragraph I(A)(3)(c), (i), and (l) above, Counsel must first inform each such person that the information to be disclosed is highly confidential, to be held in confidence, to be used solely for the purpose of this litigation, and further, that these restrictions are imposed by a court order and obtain the person's signature on Attachment A hereto.

II. CHALLENGES TO CONFIDENTIALITY DESIGNATIONS

1. Nothing in this Order shall prevent a receiving Party from contending that any documents or information designated as Protected Information have been improperly designated. A receiving Party may at any time request that the producing Party cancel or modify the Protected Information designation with respect to any document or information contained therein.

2. A Party shall not be obligated to challenge the propriety of a designation of any category of Protected Information at the time of production, and a failure to do so shall not preclude a subsequent challenge thereto. Any challenge to the propriety of a designation of any category of Protected Information shall be written, shall be served on counsel for the producing Party, and shall particularly identify the documents or information that the receiving Party contends should be differently designated. The Parties shall use their best efforts to confer to resolve promptly and informally such disputes. If an agreement cannot be reached, the receiving Party may request that the Court cancel or modify a designation. The burden of demonstrating the confidential nature of any information shall at all times be and remain on the designating Party.

3. Until a determination is made by the Court, the information in issue shall be treated as having been properly designated and subject to the terms of this Order.

III. NONPARTY USE OF THIS PROTECTIVE ORDER

1. A non-Party producing information or material voluntarily or pursuant to a subpoena or a court order may designate such material or information as Protected Information pursuant to the terms of this Protective Order.

2. A non-Party's use of this Protective Order to protect its Protected Information does not entitle that non-Party access to the Protected Information produced by any Party in this case.

IV. NO WAIVER OF PRIVILEGE

1. Nothing in this Protective Order shall require production of information that a Party contends is protected from disclosure by the attorney-client privilege, the work-product immunity, or other privilege, doctrine, right, or immunity. Moreover, if information subject to a claim of attorney-client privilege, work-product immunity, or other privilege, doctrine, right, or immunity is nevertheless inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver or estoppel as to any such privilege, doctrine, right, or immunity.

2. If any Party inadvertently or unintentionally produces materials protected under the attorney-client privilege, work-product immunity, or other privilege, doctrine, right, or immunity, any holder of that privilege, right, or immunity may obtain the return of those materials by notifying the recipient(s) promptly after the discovery of the inadvertent or unintentional production and providing a privilege log for the inadvertently or unintentionally produced materials. The recipient(s) shall (i) refrain from any further examination or disclosure of the claimed inadvertent or unintentional production material; (ii) if requested, promptly make a good-faith effort to return the claimed inadvertent or unintentional production material and all copies thereof (including summaries and excerpts) to counsel for the producing Party, or destroy all such claimed inadvertent or unintentional production material (including summaries and excerpts) and all copies thereof, and certify in writing to that fact; and (iii) not use the inadvertent or unintentional production material for any purpose absent further order of the

Court. Notwithstanding this provision, no person is required to delete information that may reside on the respective person's electronic back-up systems that are over-written in the normal course of business, provided such back-ups are not used to access or copy the inadvertently or unintentionally produced materials. Nothing herein shall preclude a party from moving for an order compelling production of the claimed inadvertent or unintentional production material, or requesting that the court review such inadvertent or unintentional production material in an in camera hearing to determine whether such material is subject to a claim of attorney-client privilege, attorney work product, or any other applicable privilege, or immunity.

V. PROVISIONS APPLICABLE TO ALL PROTECTED INFORMATION

1. No document or materials containing the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" stamp shall be copied in whole or in part without the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" designation and the identifying bates number appearing on the copy.

2. All Protected Information shall be held in confidence by each person to whom it is disclosed, shall be used only for purposes of this litigation, and shall not be disclosed to any person who is not entitled to receive such information as herein provided. All produced Protected Information shall be carefully maintained so as to preclude access by persons who are not entitled to receive such information.

3. Except as may be otherwise ordered by the Court, any person may be examined as a witness at deposition, hearing, and trial and may testify concerning all Protected Information of which such person is reasonably believed to have prior knowledge.

4. Any Party may designate as Protected Information all or portions of transcripts of depositions, or exhibits thereto, containing Protected Information, by making such designation

either by statement of Counsel on the record at the deposition itself or by written notice, sent by Counsel to all Parties within twenty (20) days after receipt of the deposition transcript or other pretrial testimony and, in no event later than thirty (30) days after the date on which the deposition or other pretrial testimony is given, provided that only those portions of the transcripts designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" shall be deemed Protected Information. The transcripts of any such deposition or exhibit shall be marked by the court reporter as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

5. Any documents or materials that reveal Protected Information that are to be filed with the Court shall initially be filed under seal. The Court hereby finds that, under the specific facts of this case, the categories of documents and information encompassed by this Order cannot be protected reasonably by some measure other than a protective order, and, thus restricting public access thereto is warranted. *See, e.g., Perreault v. The Free Lance-Star*, 276 Va. 375, 389–390 (2008).

6. Nothing in this Protective Order shall prevent any Party from seeking further protection with respect to the use of any such Protected Information in connection with the trial, a hearing, or other proceeding in this litigation.

7. The provision of this Protective Order may be modified as to specified documents or other information by written agreement between counsel for the Parties. If counsel cannot agree as to the disposition of such a request, any of them may apply to the Court for a ruling thereon after using their best efforts to confer to resolve promptly and informally such disputes.

8. Nothing in this Order shall restrict any Party or its counsel from disclosing or using, in any manner and for any purpose, its own Protected Information.

9. Any of the notice requirements herein may be waived, in whole or in part in writing signed by counsel of record for the Party against whom such waiver will be effective.

10. Inadvertent or unintentional production of documents or things containing Protected Information that are not designated as one or more of the two categories of Protected Information at the time of production shall not be deemed a waiver in whole or in part of a claim for confidential treatment. The producing Party shall notify the receiving Party promptly after the discovery of the error in writing and, with respect to documents, provide replacement pages bearing the appropriate confidentiality legend. In the event of any unintentional or inadvertent disclosure of Protected Information other than in a manner authorized by this Protective Order, counsel for the Party responsible for the disclosure shall immediately notify opposing counsel of all of the pertinent facts, and make every effort to further prevent unauthorized disclosure, including retrieving all copies of the Protected Information from the recipient(s) thereof and securing the agreement of the recipients not to further disseminate the Protected Information in any form. Compliance with the foregoing shall not prevent the producing Party from seeking further relief from the Court.

11. Within sixty (60) days after the entry of a final non-appealable judgment or order, or the complete settlement of all claims asserted against all Parties in this action, each Party shall, at the option of the receiving Party, either return or destroy all physical objects and documents that embody Protected Information it has received, and shall destroy, in whatever form stored or reproduced, all physical objects and documents, including but not limited to correspondence, memoranda, notes, and other work product materials that contain or refer to any category of Protected Information. All Protected Information not embodied in physical objects and documents shall remain subject to this Order. Notwithstanding this provision, no person is

required to delete information that may reside on the respective person's electronic back-up systems that are over-written in the normal course of business, provided the files containing such Protected Information are not accessed or copied from such back-ups. If a Party destroys Protected Information, the destruction must be by means satisfactory to the producing Party, and the Party must provide to the producing Party a Certificate of Destruction swearing to compliance with this provision. Notwithstanding anything to the contrary, counsel of record for the Parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts, and deposition and trial exhibits.

12. If at any time documents containing Protected Information are subpoenaed by any court, arbitration tribunal, or administrative/legislative body, the person to whom the subpoena or other request is directed shall (a) give written notice thereof to every Party who has produced such documents and to its counsel by overnight mail and either email or facsimile within five business days of receipt of such subpoena, and (b) shall make a reasonable effort to provide each Party with five business days to object to the production of such documents. If a producing Party does not take steps to prevent disclosure of such documents within five business days of the date written notice is given, the Party to whom the referenced subpoena is directed may produce such documents in response thereto. For the avoidance of doubt, nothing in this paragraph shall be construed as requiring any Party to subject itself to any penalties for noncompliance with any court order, subpoena, or other direction by a court, arbitration tribunal, or administrative/legislative body.

13. The Circuit Court of Fairfax County in Fairfax, Virginia is responsible for the interpretation and enforcement of this Protective Order. After termination of this litigation, the provisions of this Protective Order shall continue to be binding except with respect to those

documents and information that become a matter of public record. This Court retains and shall have continuing jurisdiction over the Parties and recipients of the Protected Information for enforcement of the provision of this Protective Order following termination of this litigation. All disputes concerning Protected Information produced under the protection of this Protective Order shall be resolved by the Circuit Court of Fairfax County.

14. Execution of this Protective Order shall not constitute a waiver of the right of any Party to claim in this action or otherwise that any Protected Information, or any portion thereof, is privileged or otherwise non-discoverable, or is not admissible in evidence in this action or any other proceeding.

15. This Protective Order shall not apply to any document or information that is publicly available, or was, or is, independently acquired from a source other than the Parties or a non-party providing materials under this Protective Order.

16. This Protective Order shall become effective as between the Parties immediately upon submission to the Court for approval, notwithstanding the pendency of approval by the Court. If approval by the Court is ultimately denied, withheld, or made conditional, no Party shall treat any designated Protected Information produced prior to that time in a manner inconsistent with this Protective Order without giving the producing Party sufficient advance notice to allow for application to the Court for additional relief.

17. This Protective Order shall be binding upon the Parties hereto, their attorneys, and their successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

ENTERED this ____ day of _____, 2019.

_____
The Honorable Bruce D. White
Chief Judge – Circuit Court for Fairfax County

[END OF PROTECTIVE ORDER – SIGNATURES OF COUNSEL TO FOLLOW]:

WE ASK FOR THIS:

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SEEN AND _____:

_____

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Counsel for Plaintiff John C. Depp, II

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

ATTACHMENT A
TO THE PROTECTIVE ORDER

CONFIDENTIALITY AGREEMENT

I reside at _____.

My present employer is _____.

My present occupation or job description is _____.

1. I hereby acknowledge receipt of a copy of the Protective Order in the above-referenced matter dated _____, 20_____, and have been engaged as _____ on behalf of _____ in connection with the litigation styled, *John C. Depp, II v. Amber Laura Heard,* Civil Action No. CL-2019-0002911.

2. I hereby acknowledge that I have read the Protective Order in the above captioned proceeding, and that I am fully familiar with and agree to comply with, and be bound by, the provisions of said Order. I understand that I am to retain all copies of any documents designated as CONFIDENTIAL and/or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY in a secure manner, and that all copies are to remain in my personal custody/control until I have completed my assigned duties, whereupon the copies and any writings prepared by me containing

any CONFIDENTIAL and/or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY information are to be returned to counsel who provided me with such material or destroyed as directed by such counsel.

3. I agree not to copy or use any Protected Information for any purpose other than in connection with this proceeding and agree not to reveal any Protected Information to anyone not authorized by the Protective Order. I will not divulge Protected Information to persons other than those specifically authorized by said Order and I will not copy or use, except solely for the purpose of this action, any information obtained pursuant to said Order, except as provided in said Order. I also agree to notify any stenographic or clerical personnel who are required to assist me of the obligations of said Order.

4. I solemnly affirm under the penalty of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

Executed on _____, 20____.

_____

Printed Name: _____