

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

Civil Action No.: CL-2019-0002911

FILED
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 JUDGE J. FREY
 ST. LEONARD'S COURT
 FAIRFAX COUNTY

**DEFENDANT AND COUNTERCLAIM PLAINTIFF AMBER LAURA HEARD'S
 OPPOSITION TO PLAINTIFF AND COUNTERCLAIM DEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT RE: COUNTERCLAIM OF AMBER HEARD**

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For years, Mr. Depp abused Ms. Heard in all types of ways, before and during their marriage. After Ms. Heard escaped her marriage – only after obtaining a domestic violence restraining order (“DVRO”)– Mr. Depp was not satisfied simply to allow Ms. Heard to move on with her life. Instead, he continued to victimize her by repeatedly telling friends in profanity-laced messages that he would destroy her, would never stop, and wanted her replaced on an upcoming film. Mr. Depp then filed this frivolous lawsuit, claiming he never abused Ms. Heard, and falsely characterizing her allegations as an “elaborate hoax to generate positive publicity for Ms. Heard and advance her career”; “hoax allegations”; an “attention-seeking hoax”; and “false allegations of domestic abuse against Mr. Depp to execute her hoax.” Compl. ¶¶3, 5, 23, 32.

Not content to let a jury decide this lawsuit, Mr. Depp used his attorney, Adam Waldman, to orchestrate a false and defamatory smear campaign against Ms. Heard that has included false and defamatory statements to reporters repeatedly accusing Ms. Heard of being a liar and a hoax artist and accusing Ms. Heard of the crime of perjury. This stream of false and defamatory statements against Ms. Heard is designed to ruin her life and career, simply because she was a victim of domestic abuse and violence at the hands of Mr. Depp and had the courage to finally come forward to end the abuse and violence.

Mr. Depp hoped to hide from liability for his defamation by relying on Mr. Waldman – his agent. But Virginia law does not permit a person to defame someone through his agent and escape liability. *Fuste v. Riverside Healthcare Ass’n, Inc.*, 265 Va. 127, 134 (2003) (defamation founded upon statements made by an authorized agent). Mr. Depp then imposed the attorney-client privilege for questions to Mr. Depp and Mr. Waldman respecting all aspects of the statements (other than to permit Mr. Waldman to admit he made the statements at issue), now contending that Ms. Heard cannot prove that Mr. Waldman’s work for Mr. Depp included the authorization to

make the statements at issue as Mr. Depp's agent. But he cannot impose the shield and then hide behind it. Authorization can be inferred, and here, where Mr. Waldman has been Mr. Depp's lawyer since 2016, where Mr. Waldman prepared false declarations on behalf of Mr. Depp, leaked tapes to the media on behalf of Mr. Depp, and falsely tried to initiate a perjury investigation against Ms. Heard on behalf of Mr. Depp (all of which Mr. Depp was aware of), where Mr. Waldman admitted making the statements at issue, and all three statements at issue identify Mr. Waldman as Mr. Depp's lawyer, authorization is clear. Absent denial, which Mr. Depp chose refuse to respond, authorization can clearly be inferred by the jury.

Mr. Depp is liable for Mr. Waldman's false statements against Ms. Heard, which this Court has already held are not opinions. Moreover, it is for the jury to decide whether the statements were made with actual malice – which they were, because both Mr. Depp and Mr. Waldman knew the statements are false. Finally, the statements constitute defamation *per se*, and therefore damages to Ms. Heard's personal and professional reputation, embarrassment and humiliation, are presumed. Mr. Depp's Motion for Summary Judgment should be denied.

MATERIAL FACTS

On May 27, 2016, Ms. Heard walked into California state court with bruises on her face to seek the protection of a DVRO against Mr. Depp. Compl. ¶2. Ms. Heard submitted photos and affidavits reflecting Mr. Depp's acts of domestic violence against her, and the court granted Ms. Heard a temporary restraining order on the strength of that showing.

Since that time, Mr. Depp has unlawfully targeted Ms. Heard in an ongoing harassment and online smear campaign to damage her emotionally, reputationally and financially. Mr. Depp has admitted his intention to destroy Ms. Heard's career, stating, that he [REDACTED] [REDACTED] referencing the blockbuster hit *Aquaman*. Att. 1. Also, Mr. Depp

texted his friend Christian Carino (Ms. Heard's former agent and now Mr. Depp's agent) the following about Ms. Heard: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Att. 2.

This is only the tip of the iceberg reflecting Mr. Depp's misogyny, deep inner anger and hatred of Ms. Heard, and his attendant "justification" in his mind, of his violence and abuse towards Ms. Heard. In other texts over the years, Mr. Depp repeated threats to harm Ms. Heard. He told his nurse in 2019 that Ms. Heard was "[REDACTED]" and threatened "[REDACTED]" [REDACTED] Att. 3. He called Ms. Heard the most horrendous of names, including "[REDACTED]," an "[REDACTED]," a "[REDACTED]," and "[REDACTED]." Atts 4-6. Mr. Depp also threatened in early 2019 that "[REDACTED]"

[REDACTED]

[REDACTED] Att. 4.

To help accomplish this task of destroying Ms. Heard, Mr. Depp hired Adam Waldman as his attorney. Mr. Waldman has been Mr. Depp's attorney since October 2016, having been referred to Mr. Depp by representatives of Saudi Prince Abdulaziz bin Salman to discuss a financial problem Mr. Depp was having. Att. 7, 11:9-13:15, 15:1-16:2, Att. 8, 601:5-605:7. Mr. Waldman has

represented Mr. Depp in many litigations, including the UK Action, and in this matter. **Att. 7**, 28:2-32:21. Mr. Depp considers Mr. Waldman “a trusted advisor.” **Att. 8**, 605:13-14.

Mr. Waldman, on behalf of Mr. Depp, attempted to intimidate and threaten witnesses to influence their testimony in a manner adverse to Ms. Heard. For example, on June 22, 2019, Mr. Waldman wrote to Laura Divenere

I assume you are fearful of something and you needn't be. I wanted to talk to you specifically because *I heard from Johnny* and others that you are a nice person and more importantly, I have you all over the surveillance video immediately after the May 21 *faked abuse claims*,... You were with her immediately prior to and immediately after *she created this hoax*.... So the question for you to consider is: do you want to speak with me off the record and we can consider together if and how to use any eyewitness account you provide, regarding which I would be very respectful of your wishes and sensitivities, *or do you want to remain on the side of the hoax*... *If it's the latter we will send you a subpoena to compel your appearance in sworn testimony.*

Att. 9 (emphasis added). Less than a year later, on May 17, 2020, Mr. Waldman, on behalf of Mr. Depp, wrote Ms. Divenere's counsel and threatened legal action when she claimed that she was pressured into agreeing to submit a declaration:

My name is Adam Waldman, and I represent Johnny Depp.... I read with some surprise the story in today's Hollywood Reporter the assertion that *your client claimed I improperly pressured her to participate in her sworn declaration*.... I do not let false statements like these, ascribed to your client, about me or any client sit more than one business day without responding with supporting evidence....*I intend to take action tonight regarding news reports that I have behaved inappropriately.*

Att. 10. Ms. Divenere testified that Mr. Waldman threatened her with negative consequences if she did not cooperate with him, including perjury if she did not sign the declaration he wanted her to sign. **Att. 11**, 15:16-18:6; 30:3-36:15. Ms. Divenere also testified that Mr. Depp represented to the world that her declaration was proof of Ms. Heard lying, when in fact, Ms. Divenere does not believe Ms. Heard lied. *Id.* 41:19-48:7. Ms. Divenere testified that she felt coerced by Mr. Waldman to sign the declaration. *Id.* 31:9-13.

Mr. Waldman was clear that he was performing this work on behalf of Mr. Depp, and that it was Mr. Depp who told Mr. Waldman Amber's abuse allegations were a hoax. For example, Mr. Waldman wrote to one witness, "*Johnny depp's lawyer Adam waldman here.... I know from Johnny, as with other hoax claims* where we have multiple eyewitnesses, that it was amber who assaulted Johnny." **Att. 12**; *See also Att. 13* (Mr. Waldman writes to another witness, "As discussed with Debbie, and then with Johnny, we can send you a friendly subpoena if it helps alleviate any concerns about being legally compelled.")

As part the campaign to smear Ms. Heard, Mr. Waldman and Mr. Depp also contacted the media to falsely call Ms. Heard a liar and a hoax artist. This not only included the main stream media, but also social media accounts, including "That Umbrella Guy," "ThatBrianFella," and "TheRealLauraB," which regularly attacked Ms. Heard. **Att. 7**, 216:15-219:10. Mr. Waldman also regularly Tweeted about the facts of this case, the Counterclaim and Ms. Heard, **Att. 14**, until his Twitter account was revoked for life for his conduct. **Att. 7**, 55:15-56:13.

In November 2018, Mr. Depp invited a *GQ* journalist to interview him to provide "the truth Johnny Depp wants you to hear" because, according to Mr. Heath, Depp was "angry – angry about a lot of things – and he's vengeful." **Att. 15**. Mr. Depp falsely alleged that there was "no truth to [Ms. Heard's judicial statements of abuse] whatsoever" and alleged that Ms. Heard fabricated the bruising on her face and perjured herself in connection with the 2016 DVRO. *Id.*

Mr. Depp then used Mr. Waldman to further the perjury lie. Mr. Waldman informed a German outlet that the "LAPD and Australia are actively pursuing a criminal investigation against Amber Heard." **Att. 16** But the LAPD was not investigating Ms. Heard for perjury or any other criminal activity, which Mr. Waldman now admits. In fact, the only "evidence" of this supposed

“investigation” was that Mr. Waldman brought a binder of information to the LAPD and asked them to investigate Ms. Heard. **Att. 7**, 220:19-231:6.

On April 12, 2019, Mr. Waldman accused Ms. Heard of committing a “hoax” as well as committing “defamation, perjury and filing and receiving a fraudulent temporary restraining order demand with the court,” by accusing Ms. Heard of not being attacked by Depp. **Att. 17**. The article attributed these quotes to “Depp’s lawyer, Adam Waldman.” *Id.*

The defamation by Mr. Depp, through Mr. Waldman continued, when in June 2019, he stated that “Ms. Heard continues to defraud her abused hoax victim Mr. Depp, the #metoo movement she masquerades as the leader of, and other real abuse victims worldwide.” **Att. 18**. Like the previous article, the quote was attributed to “Depp’s attorney, Adam Waldman.” *Id.*

On July 2, 2019, Mr. Depp, through Mr. Waldman, told Blast that Ms. Heard, “went to court with painted on ‘bruises’ to obtain a Temporary Restraining Order on May 27.” **Att. 19**. The next day, Mr. Waldman continued Mr. Depp’s defamation of Ms. Heard when he stated to People magazine that “Ms. Heard’s ‘battered face’ was a hoax.” **Att. 20**. Both articles described Mr. Waldman as Mr. Depp’s attorney.¹

Mr. Depp, through Mr. Waldman, continued to claim that Ms. Heard was committing perjury, when he stated to the Daily Mail on April 8, 2020 that “Amber Heard and her friends in the media use fake sexual violence allegations as both a sword and shield, depending on their needs. They

¹ The Court held that all of these statements were defamatory, but dismissed Statements A-E of the Counterclaims as being time-barred. 1/4/21 Op. at 4-10.

have selected some of her sexual violence hoax ‘facts’ as the sword, inflicting them on the public and Mr. Depp.” **Att. 21.** The article attributed the quote to “Adam Waldman, Depp’s lawyer.” *Id.*

Previously, Mr. Waldman and Mr. Depp met with the Daily Mail to leak partial audio recordings of Mr. Depp and Ms. Heard. **Att. 7,** 102:11-122:14. Mr. Waldman testified specifically that “Mr. Depp was with me when we had this meeting.” *Id.* 104:17-20. Mr. Waldman’s *pro hac vice* admission in this case was revoked for leaking confidential information. **Att. 22.**

Then on April 27, 2020, Mr. Depp, again using Mr. Waldman as his conduit, told the Daily Mail that “Quite simply this was an ambush, a hoax. They set Mr. Depp up by calling the cops but the first attempt didn’t do the trick. The officers came to the penthouses, thoroughly searched and interviewed, and left after seeing no damage to face or property. So Amber and her friends spilled a little wine and roughed the place up, got their stories straight under the direction of a lawyer and publicist, and then placed a second call to 911.” **Att. 23.** Like all of the other articles, the quote was attributed to “Depp’s lawyer Adam Waldman.” *Id.*

Finally, on June, 24, 2020, Mr. Depp, again through Mr. Waldman, falsely accused Ms. Heard in the Daily Mail of committing an “abuse hoax” against Depp. **Att. 24.** The article stated that the quote was from “Depp’s attorney Adam Waldman.” *Id.* Mr. Waldman’s statements came from him directly, and through Mr. Depp’s longtime publicist, Robin Baum, who forwarded Mr. Waldman’s statements on behalf of Mr. Depp to media outlets. **Att. 25.**

For each of the defamatory statements at issue, Mr. Waldman refused to answer any questions based on privilege: “Did you make that statement on behalf of Mr. Depp?”; “Why did you make the statement?”; “Were you representing Mr. Depp at the time you made this statement?”; “Did you discuss the statement with Mr. Depp before making the statement?”; “Did you discuss the statement with Mr. Depp after making the statement?”; “Was Mr. Depp aware, either before or

after, that you were making this statement?"; "Did you make this statement with Mr. Depp's authorization or agreement?"; "Was Mr. Depp aware that you were speaking with the press?"; "Did Mr. Depp ever ask you to retract or correct this statement?"; and "Did you rely upon any statements or evidence from Mr. Depp in making this statement?" **Att. 7** Waldman Tr. 64:4-68:4, 69:12-73:21, 77:4-80:2. Mr. Depp also refused to answer the same questions. **Att. 8.**

But the evidence is clear that Mr. Depp was well aware of Mr. Waldman's activities on Mr. Depp's behalf. When Mr. Depp's manager told Mr. Depp, "[REDACTED]" Mr. Depp responded:

[REDACTED]

Att. 26 (emphasis added). Mr. Depp is responsible for these actions.

LEGAL STANDARD

As the Virginia Supreme Court has long held, "the decision to grant a motion for summary judgment is a drastic remedy which is available only where there are no material facts genuinely in dispute." *Smith by Rosen v. Smith*, 254 Va. 99, 103 (1997) (affirming the trial court's decision denying summary judgment because "there were genuine issues of fact in dispute and that summary judgment was premature at that stage of the proceedings."). This includes cases where a plaintiff files a claim for defamation. *Parson v. Carroll*, 272 Va. 560, 564 (2006) (reversing Circuit Court grant of summary judgment on defamation claim based on alleged physical and sexual abuse and holding that "a circuit court's decision granting a summary judgment motion is an extreme remedy."). Additionally, "in our discovery rules, we have cautioned that discovery ordinarily

should not supplant the taking of evidence at a trial.” *Smith by Rosen*, 254 Va. at 103-04. As the Supreme Court has held, in tort actions, a plaintiff who alleges that she was injured due to the negligence of another has no duty, to defeat a motion for summary judgment, to fully develop her allegations of negligence during discovery. *Owens v. Redd*, 215 Va. 13, 14 (1974) (“The record shows that plaintiff’s allegations of negligence of Coca-Cola and Allegheny were not fully developed in the discovery depositions. She was under no duty to fully develop her allegations of negligence of the defendants at that time); *O’Brien v. Snow*, 215 Va. 403, 405 (1974) (no duty to fully develop claim of willful and malicious conduct in depositions or answers to interrogatories).

In this context, the Supreme Court has repeatedly held that summary judgment is available only when there are no material facts genuinely in dispute. *Fultz v. Delhaize Am., Inc.*, 278 Va. 84, 88 (2009) (citing *Stockbridge v. Gemini Air Cargo, Inc.*, 269 Va. 609, 618 (2005); *Smith*, 254 Va. 99, 103 (1997); *Slone v. General Motors Corp.*, 249 Va. 520, 522 (1995)). Thus, “a trial court considering a motion for summary judgment must ‘accept as true ‘those inferences from the facts that are most favorable to the nonmoving party, unless the inferences are forced, strained, or contrary to reason.’” *Acres v. Serco, Inc.*, 102 Va. Cir. 66, 67 (Fairfax Cir. 2019) (Koontz, Jr., J.) (denying motion for summary judgment) (quoting *Klaiber v. Freemason Assocs.*, 266 Va. 478 (2003)). “[I]f the evidence is conflicting on a material point or if reasonable persons may draw different conclusions from the evidence, summary judgment is not appropriate.” *Fultz*, 278 Va. at 88. As the Supreme Court cautioned “we are increasingly confronted with appeals of cases in which a trial court incorrectly has short-circuited litigation pretrial and has decided the dispute without permitting the parties to reach a trial on the merits.” *Id.* (holding circuit court erred in granting the defendants’ motion for summary judgment.)

ARGUMENT

I. MR. DEPP IS LIABLE FOR THE ACTIONS OF HIS AGENT, MR. WALDMAN

The Supreme Court recognizes that if a principal instructs his agent to make a public statement defaming the reputation of another person, the principal can be sued for defamation. *Fuste v. Riverside Healthcare Ass'n, Inc.*, 265 Va. 127, 134 (2003) (recognizing that defamation liability may be founded upon statements made by an authorized agent). "Agency is defined as a fiduciary relationship arising from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and the agreement by the other so to act." *Tingler v. Greystone Homes, Inc.*, 298 Va. 63, 101 (2019). "While the power of control is an important factor to consider in determining whether an agency relationship exists, agency may be inferred from the conduct of the parties and from the surrounding facts and circumstances." *Transparent GMU v. George Mason Univ.*, 298 Va. 222, 246 (2019). Moreover, "[t]he potential power of control, not the actual exercise of control, is the important element." *Virginia Employment Comm'n v. A.I.M. Corp.*, 225 Va. 338, 347 (1983). The "apparent authority, so far as third persons are concerned, is the real authority." *J. C. Lysle Milling Co. v. S. W. Holt & Co.*, 122 Va. 565, 572 (1918).

Nor do labels matter. As the only case cited by Mr. Depp on this issue holds, in finding an agency relationship existed for an independent contractor, "[a]lthough the Agreement specifically stated that Metrix was an independent contractor, and not the 'legal representative' of Hartzell, the use of these terms does not end our inquiry. The relationship of parties to a contract does not depend on what the parties themselves call the relationship, but rather on what the relationship actually is in law." *Hartzell Fan, Inc. v. Waco, Inc.*, 256 Va. 294, 300-01 (1998).

"Agency may be proven in many ways....Frequently it is established and has, of necessity, to be established by circumstantial evidence." *Royal Indemnity Co. v. Hook*, 155 Va. 956, 970 (1931);

see also Magallon v. Wireless Unlimited Inc., 85 Va. Cir. 460, 464 (Fairfax Cir. 2012) (Thacher, J.) (“an agency relationship may be inferred from the conduct of the parties and surrounding facts”). The Supreme Court has been clear that “direct evidence is not indispensable - indeed frequently is not available - but instead circumstances may be relied on, such as the relation of the parties to each other and their conduct with reference to the subject matter.” *Acordia of Virginia Ins. Agency, Inc. v. Genito Glenn, L.P.*, 263 Va. 377, 385-86 (2002). “Unless the existence of an agency relationship depends on unambiguous documents, or undisputed facts, the question of agency *vel non* is one of fact for the jury.” *Drake v. Livesay*, 231 Va. 117, 121 (1986).

The facts in this case more than establish that Mr. Waldman was Mr. Depp’s agent and was authorized to make the defamatory statements at issue on behalf of Mr. Depp. Both Mr. Waldman and Mr. Depp concede that Mr. Waldman has been Mr. Depp’s attorney since October 2016, and that Mr. Waldman has represented Mr. Depp in all of his matters, including this action and the UK action. **Att. 7**, 11:9-16:2, 28:2-32:21; **Att. 8**, 601:5-605:14. The only representations that Mr. Waldman refused to answer based on supposed privilege grounds is whether Mr. Waldman represented Mr. Depp when he made the statements at issue. **Att. 7**, 65:9-66:7. The refusal to answer those questions is improper, because “[t]he fact of representation is not within the privilege. Indeed, it is a necessary preliminary fact, to be established before any privilege can be asserted.” *Gretsky v. Miller*, 160 F. Supp. 914, 915 (D. Mass. 1958). Nevertheless, despite the improper refusal to answer these questions, the evidence shows that each article quoted Mr. Waldman as representing Mr. Depp, as each stated the quotes came from “Depp’s attorney, Adam Waldman.” **Att. 21** at 9, **Att. 23** at 11, **Att. 24** at 12. Furthermore, the evidence demonstrates that Mr. Waldman gathered false declarations on Mr. Depp’s behalf, claimed that there was a perjury investigation against Ms. Heard on Mr. Depp’s behalf, and leaked partial audio recordings on behalf of Mr.

Depp while in Mr. Depp's presence. Att. 7, 102:11-122:14, 220:19-231:6; Att. 11, 15:16-18:6; 30:3-36:15; Att. 16. As Mr. Depp stated, [REDACTED]

[REDACTED] Att. 26. Mr. Depp is asking this Court to believe he gave Mr. Waldman the authority to do everything on his behalf except make the defamatory statements at issue. Such argument defies logic, and given that the agency relationship has been established, "[w]hether Mr. [Waldman] was permitted such authority is a matter that should be resolved by the finder of fact." *Magallon*, 85 Va. Cir. at 464.

II. ACTUAL MALICE IS A QUESTION FOR THE JURY

Mr. Depp claims that there is no evidence of actual malice -- knowledge that the statements about Ms. Heard were false or reckless disregard that the statements were false. But the jury could -- and Ms. Heard believes will -- conclude that the facts surrounding Mr. Waldman's statements as summarized above constitute actual malice. The Court has already found that Ms. Heard has shown actual malice on behalf of Mr. Depp. *See* 1/4/21 Op. at 10 ("Ms. Heard has alleged sufficient facts in her Counterclaim to demonstrate that Mr. Depp may have made these statements with actual or constructive knowledge or with reckless disregard for whether they are false."). Discovery has confirmed those allegations. Indeed, if Mr. Depp abused Ms. Heard, as Ms. Heard alleges, then Mr. Depp's statements, through Mr. Waldman, that Ms. Heard's allegations are a "sexual violence hoax" and "hoax" have to be false, and Mr. Depp knows those statements are false. There is no reason for the Court to have to rule again on the same issue.²

² The Court previously ruled on 3/24/21 as to Ms. Heard's immunity for her Op-Ed statements based on Virginia's Anti-SLAPP statute that, "whether Ms. Heard made the statements 'with actual or constructive knowledge that they were false or with reckless disregard for whether they were false' will be determined by a jury as part of the trial scheduled to commence on April 11, 2022."

Furthermore, “[b]ecause actual malice is a subjective inquiry, a plaintiff ‘is entitled to prove the defendant’s state of mind through circumstantial evidence.’” *Spirito v. Peninsula Airport Comm’n*, 2019 U.S. Dist. LEXIS 83880, at *14 (E.D. Va. Apr. 3, 2019) (citing *Harte-Hanks Commc’ns, Inv. v. Connaughton*, 491 U.S. 657, 668 (1989).) Where “possibly subjective evaluations are at issue, as here where a determination of whether Defendants acted with actual malice. . . the Fourth Circuit has cautioned against a Court taking those determinations away from a jury.” *Id.* at *16 (citations omitted). Here, Mr. Waldman admitted that he had no personal knowledge of what went on during Mr. Depp’s and Ms. Heard’s marriage, and never witnessed any interaction between Mr. Depp and Ms. Heard during their marriage. **Att. 7**, Waldman Tr. 25:1-26:6. Yet, with no personal knowledge, Mr. Waldman told the world on behalf of Mr. Depp that Ms. Heard was engaged in a “sexual violence hoax” and “hoax” against Mr. Depp, falsifying her abuse. When asked anything about these statements, including why Mr. Waldman made these statements, Mr. Depp asserted the attorney-client privilege and Mr. Waldman refused to answer. **Att. 7**, 64:4-68:4, 69:12-73:21, 77:4-80:2. Mr. Depp refused to answer the same questions. **Att. 8**. Given Mr. Waldman’s and Mr. Depp’s refusal to answer these questions based on the attorney-client privilege, it must be inferred that Mr. Depp was involved in the statements; otherwise there would be no privilege attached. That is the fairest and most logical inference, since Mr. Waldman admitted making the statements, he was Mr. Depp’s lawyer, and all three statements identify Mr. Waldman as Mr. Depp’s lawyer at the time of the statements. **Att. 7**, 11:9-13:15, 64:4-68:4, 69:12-73:21, 77:4-80:2, **Atts. 21, 23, 24**. Given that Mr. Depp knows these statements are false, actual malice has been shown.

III. THE DEFAMATORY STATEMENTS ARE NOT OPINIONS

This is the second time Mr. Depp has contended to this Court that the statements at issue are

opinions. Mr. Depp's argument was previously rejected by this Court:

Although Mr. Depp's statements (*and those of his attorney*) can be understood as their opinion of what occurred, these statements nevertheless imply that Mr. Depp did not abuse Ms. Heard. *These statements must survive demurrer because whether Mr. Depp abused Ms. Heard is a fact that is capable of being proven true or false.*

1/4/21 Op. at 6. (Emphasis added). "Whether an alleged defamatory statement is one of fact or opinion is a question of law," *Fuste v. Riverside Healthcare Ass'n, Inc.*, 265 Va. 127, 132 (2003). Thus, the fact that the statements at issue have already been determined to be factual and capable of being proven true or false is the law of case. Mr. Depp is simply improperly seeking reconsideration of that Order. *See Harvey Constr. Co. v. Fairfax County Bd. of Supervisors*, 31 Va. Cir. 177, 178 (Fairfax Cir. 1993) (Stevens, J.) (denying summary judgment because "failure to file a claim with the Board of Supervisors, pursuant to the Procurement Act, was raised on demurrer. Since the demurrer was overruled, the sufficiency of the Motion for Judgment in terms of compliance with the Procurement Act is now the law of the case.")

Mr. Depp claims that the statements at issue are merely Mr. Waldman's opinion or advocacy as to what happened. Again, the Court already heard this argument, and held that while the statements "can be understood as their opinion of what occurred, these statements nevertheless imply that Mr. Depp did not abuse Ms. Heard." 1/4/21 Op. at 6. Indeed, the statements went far beyond opinion and accused Ms. Heard of committing the crime of perjury and fabricating evidence of domestic violence, claiming that before calling 911, "Amber and her friends spilled a little wine and roughed the place up" and that Ms. Heard was carrying out an "abuse hoax." **Atts. 21, 23, 24.** All of these allegations can be proven false, and therefore cannot be opinion. *See e.g., Tronfeld v. Nationwide Mut. Ins. Co.*, 272 Va. 709, 715 (2006) ("The statement "[t]hat [plaintiff] just takes people's money" is capable of disproof by evidence, if adduced, that [plaintiff's] clients received monetary or other relief as a result of his legal services.")

IV. MS. HEARD WAS DAMAGED BY THE DEFAMATORY STATEMENTS

Mr. Depp also appears to argue Ms. Heard was not damaged by the defamatory statements. Not true. Since publication of the defamatory statements in April 2020, Ms. Heard has been the subject of over one million negative tweets, and has caused reputational damages and economic losses that over a 5-year period range from \$ [REDACTED]. Att. 27; Att. 28 at 71-73. In addition, the defamation has resulted in numerous losses, such as emotional distress, the loss of time and energy; loss of friendships; loss of jobs; and financial loss, all of which greatly impacted Ms. Heard's daily functioning and her capacity to cope. Att. 28 at 71-73. Ms. Heard has also suffered (and continues to suffer) from stress, anxiety, nightmares, crying, flashbacks, feeling afraid, emotional numbing, dissociation, struggles with trusting others, significant sleep disruption, relationship and intimacy problems, interpersonal disconnection, hypervigilance, and intense psychological pain, and the defamation activated long held feelings of shame and humiliation about the abuse. *Id.* Experts will also opine as to the financial and emotional damages the defamatory statements caused. 27.

Furthermore, Ms. Heard is alleging that statements are Defamation *Per Se*. Under Defamation *Per Se*, damages are presumed. *Fleming v. Moore*, 221 Va. 884, 888 n.3 (1981). "Unlike general defamation, defamation *per se* presumes damage to reputation, humiliation, or embarrassment; and such damage need not be proven." *Thomas v. Psimas*, 101 Va. Cir. 455, 456 (Norfolk Cty. Cir. 2018) (citing *Poulston v. Rock*, 251 Va. 254, 260-61(1996)). Therefore, there is no basis to grant summary judgment based on Ms. Heard's damages.

CONCLUSION

For the foregoing reasons, Ms. Heard requests that Mr. Depp's Motion for Summary Judgment be denied.

March 11, 2022



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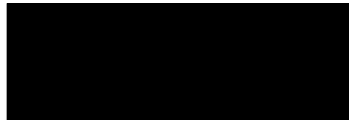
CERTIFICATE OF SERVICE

I certify that on this 11th day March 2022, a copy of the foregoing was served by email, by agreement of the parties, addressed as follows:

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