

Plaintiff John C. Depp, II, by and through his undersigned counsel, hereby files his Opposition to Defendant Amber Laura Heard's Demurrer and Plea in Bar Seeking Dismissal of All Claims, filed September 5, 2019 ("Demurrer").¹

INTRODUCTION

As the Court is aware, this action stems from Ms. Heard's defamatory statements in an op-ed she published in the *Washington Post* on December 18, 2018 (the "Op-Ed"). Ms. Heard and her handlers artfully avoided naming Mr. Depp, but it is glaringly obvious that she was referring to him. It is too clever by half for her now to claim otherwise. The Supreme Court of Virginia rejected this same gambit – *i.e.*, a defendant attempting to evade defamation liability by leaving out the plaintiff's name while making it perfectly clear she is referring to him – in *Pendleton v. Newsome*, 290 Va. 162 (2015).

Ms. Heard authored her Op-Ed against the backdrop of her false allegations that on May 21, 2016, she was the victim of domestic abuse by Mr. Depp, which she leveraged as the centerpiece in their subsequent divorce proceeding, all of which received extensive media coverage and public attention. *See* Compl. ¶¶ 15-18, 23, 33-61. It is in this context that Ms. Heard's statements from the Op-Ed are read and imbued with their clear, defamatory meaning: Ms. Heard was again stating, very publicly, and very falsely, that Mr. Depp abused her.

None of Ms. Heard's arguments in her second demurrer and plea in bar has any merit. **First**, in her demurrer, Ms. Heard tries to evade liability for her defamatory statements by

¹ The *Memorandum of Law in Support of Defendant's Demurrer and Plea in Bar Seeking Dismissal of All Claims*, filed on September 5, 2019, shall be cited herein as "Def's Mem." Pursuant to Ms. Heard's December 4, 2019 Praecipe, we understand that Ms. Heard does not wish to proceed with any of her plea in bar arguments at the December 20, 2019 hearing other than her statute of limitations argument. Thus, this brief only addresses that particular argument. Mr. Depp reserves the right to address any of Ms. Heard's other arguments at the appropriate time in the event she raises them anew.

claiming that she did not mention Mr. Depp by name and was merely expressing opinions. But Virginia law allows “a defamation action based on a statement expressing a defamatory meaning ‘not apparent on its face’” – including where the defamed plaintiff is not mentioned by name. *Pendleton*, 290 Va. at 171-172 (2015) (affirming liability for a newspaper op-ed that did not name, but nevertheless obviously referred to, the plaintiff) (citing *Webb v. Virginian-Pilot Media Cos., LLC*, 287 Va. 84, 89 n.7 (2014)). Similarly, Virginia law long has held that “opinions may be actionable where they ‘imply an assertion’ of objective fact.” *Raytheon Tech. Servs. Co. v. Hyland*, 273 Va. 292, 303 (2007) (“*Hyland I*”) (citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21 (1990)) (internal citations omitted). Ms. Heard unmistakably defamed Mr. Depp by implication, and that defamation is actionable. Were it otherwise, it would be all too easy to engage in character assassination with impunity, and avoid liability through artful wordsmithing. Fortunately, that is *not* the law.

Second, Ms. Heard’s plea in bar is just as deficient as her demurrer. Mr. Depp timely filed his Complaint regarding Ms. Heard’s December 18, 2018 Op-Ed on March 1, 2019, well within the one-year limitations period. Without citing any authority, Ms. Heard nevertheless asserts that the suit is somehow time-barred because her Op-Ed “revived” allegations that she had made in 2016. But that argument disregards black letter Virginia law: where, as here, the defaming defendant “actually or presumptively authorized or directed [the defamatory statement’s] republication, *then this latter publication constitutes a separate cause of action, and suit was timely instituted against [the party] responsible for the new publication.*” *Weaver v. Beneficial Fin. Co.*, 199 Va. 196, 200 (1957) (emphasis added).

For these reasons, as explained more fully below, the Court should reject Ms. Heard’s demurrer and plea in bar in its entirety.

RELEVANT BACKGROUND

This action stems from Ms. Heard's publication of the defamatory Op-Ed in the *Washington Post* on December 18, 2018, in which she falsely claims to be a victim of domestic abuse. Compl. ¶ 1. The Op-Ed references the alleged backlash Ms. Heard faced after publicly accusing Mr. Depp of domestic abuse in May 2016. *Id.* As Mr. Depp alleges in the Complaint, “[a]lthough she never identified him by name, the op-ed plainly was about (and other media consistently characterized it as being about) Ms. Heard’s purported victimization after she publicly accused her former husband, Mr. Depp, of domestic abuse in 2016, when she appeared in court with an apparently battered face and obtained a temporary restraining order against Mr. Depp on May 27, 2016. The op-ed depended on the central premise that Ms. Heard was a domestic abuse victim and that Mr. Depp perpetrated domestic violence against her.” *Id.* ¶ 2. The Op-Ed was replete with statements such as how she Ms. Heard supposedly was “a public figure representing domestic abuse” and how she supposedly “spoke out against sexual violence[,]” while referring to “men accused of abuse.” *Id.* ¶ 22. Through these and other statements, “Ms. Heard makes clear, based on the foundations of the false accusations that she made against Mr. Depp in court filings and subsequently reiterated in the press for years, that she was talking about Mr. Depp and the domestic abuse allegations that she made against him in May 2016.” *Id.* “The op-ed’s clear implication that Mr. Depp is a domestic abuser is categorically and demonstrably false.” *Id.* ¶ 3.

Mr. Depp filed suit against Ms. Heard on March 1, 2019, fewer than three months after Ms. Heard published her Op-Ed. *See* Compl. Ms. Heard’s first response was a motion to dismiss for improper venue. *See* April 11, 2019 Mem. Supp. Mot. to Dismiss. After full briefing and oral argument, the Court denied Ms. Heard’s motion. *See* July 25, 2019 Op. Ltr. After the

Court's ruling, Ms. Heard hired an entirely new legal team, and the Court granted her leave to file the instant motion.

ARGUMENT

I. Ms. Heard's Demurrer Argument Fails, Because the Op-Ed Statements Imply Assertions of Fact That Defame Mr. Depp

A. Legal Standard

In deciding whether to sustain a demurrer, the sole question before the trial court is whether the facts pleaded, implied, and fairly and justly inferred are legally sufficient to state a cause of action against the defendant. *Pendleton*, 290 Va. at 171; *see also, e.g., Lewis v. Kei*, 281 Va. 715, 719 (2011). On demurrer in a defamation suit, the trial court determines, as a matter of law, whether the defamatory statements alleged by the plaintiff are actionable. *Lewis*, 281 Va. at 725.

Virginia law is clear that a defamatory charge may be made by inference, implication, or insinuation, making "room for a defamation action based on a statement expressing a defamatory meaning 'not apparent on its face.'" *Pendleton*, 290 Va. at 172 (citing *Webb v. Virginian-Pilot Media Cos., LLC*, 287 Va. 84, 89 n.7 (2014)); *Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 7 (1954). Accordingly, "[i]n order to render words defamatory and actionable, it is not necessary that the defamatory charge be in direct terms but it may be made indirectly, and it matters not how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory." *Carwile*, 196 Va. at 7.

In determining whether allegedly defamatory statements are reasonably capable of the meaning ascribed to them by innuendo, every fair inference that may be drawn from the pleadings must be resolved in the plaintiff's favor. *Id.* at 8. Although the allegedly defamatory words should be ascribed their plain and natural meaning, a court must also consider the

publication as a whole, the context in which a statement was made, and whether the circumstances surrounding the making and publication of the statement would convey a defamatory meaning to its recipients. *Pendleton*, 290 Va. at 172; *Carwile*, 196 Va. at 7; *see also Afro-American Pub. Co. v. Jaffe*, 366 F.2d 649, 655 (D.D.C. 1966) (“Appellant’s publication must be taken as a whole, and in the sense in which it would be understood by the readers to whom it was addressed.”). Thus, allegations that circumstances attended the making of a statement which conveyed a defamatory meaning to the recipients of such statement, along with an explanatory of the circumstance and defamatory meaning conveyed, is sufficient to survive demurrer. *Pendleton*, 290 Va. at 172.

B. Ms. Heard’s Statements in the Op-Ed Defame Mr. Depp by Implication

The crux of Ms. Heard’s argument in her second demurrer appears to be that the statements in her Op-Ed are not actionable because they are opinions which do not explicitly refer to Mr. Depp. To obfuscate the true target and defamatory nature of her statements, Ms. Heard segregates the defamatory statements from one another, addressing each defamatory statement, and even individual clauses within each defamatory statement, separate from the rest and devoid of any context. *See* Def’s Mem. at 7-14. This tortured approach, however, is *not* how Virginia courts evaluate whether statements are defamatory. *See* Section I.A, *supra*; *see also Morris v. Massingill*, 61 Va. Cir. 532 (2003) (finding it inappropriate to consider each statement singly, rather than as a whole, to assess defamatory meaning). As Ms. Heard herself acknowledges, “context is key.” *See* Def’s Mem. at 6. Here, Ms. Heard’s statements in the Op-Ed were made in the context of her prior, very public, and false allegations that she had suffered domestic abuse at the hands of Mr. Depp. *See* Compl. ¶¶ 15-18, 23, 33-61. When Ms. Heard’s statements in the Op-Ed are read together, in the context of pervasive media coverage regarding

Ms. Heard's prior allegations and divorce from Mr. Depp, the defamatory meaning of her statements is unmistakable: Ms. Heard is, once again, falsely telling the world that Mr. Depp abused her.

The Supreme Court of Virginia's decision in *Pendleton v. Newsome* is particularly instructive for this case. In *Pendleton*, an elementary school student tragically died after having an allergic reaction to a peanut provided to her by a fellow student. *Pendleton*, 290 Va. 165-66. The child's tragic death prompted widespread publicity by local, national, and international media, which identified the plaintiff, the child's mother, by name. *Id.* at 166, 172. Included in these media reports were statements and comments by the defendants, the school's administrators, insinuating that the mother bore responsibility for the death of her child. *Id.* at 167. The statements of the school administrators did not explicitly refer to the plaintiff by name or her conduct, but referred generally to "a parent's responsibility to provide the school with accurate, timely information; and health emergency plan . . . and the medicine necessary to execute the plan" and how this "does not always occur." *Id.* at 168-70. Nevertheless, the Supreme Court of Virginia found, in the context of the wide-spread news coverage identifying the plaintiff, by name, as the mother of the deceased child, the defendant's statements were capable of defamatory meaning "aimed directly at [the plaintiff] and at no other person." *Id.* at 172-173. Indeed, the Court found that, even though defendants' statements "may be true if taken out of context, . . . in the context of the alleged publicity attending the case when the statements were published, it cannot be said at the demurrer stage that they were not capable of conveying the defamatory innuendo that the plaintiff bore responsibility for her child's death." *Id.* at 173.

Here, as in *Pendleton*, the context of the publicity and media frenzy surrounding Ms. Heard's false accusations against Mr. Depp brings the defamatory nature of Ms. Heard's

statements in the Op-Ed and the target of those defamatory statements into focus. Even though Ms. Heard, like the defendants in *Pendleton*, artfully avoided using Mr. Depp's name or describing his alleged conduct in the Op-Ed, her statements indisputably convey defamatory meaning. *See id.* at 172-73 (finding that statements that did not refer to the plaintiff or her conduct were capable of conveying defamatory innuendo because the identity of the plaintiff and circumstances of her child's death were publicly known); *Carwile*, 196 Va. at 7 ("it matters not how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory"). With the backdrop of Ms. Heard's public allegations against Mr. Depp in 2016, Ms. Heard's statement in the Op-Ed, "Then, two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out," clearly refers to Mr. Depp and implies that he was the perpetrator of her abuse: "two years ago" is the precise time frame when Ms. Heard publicly (and falsely) accused Mr. Depp of domestic violence; and "domestic abuse" plainly refers to abuse allegedly perpetrated by her spouse at the time, publicly known to be Mr. Depp.² Moreover, this statement colors and contextualizes Ms. Heard's following statements in the Op-Ed: that she "had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse" and suffered "death threats," negative press coverage, and a "myriad of judgments far beyond [her] control."

Taken together, along with the publicity of Ms. Heard's prior allegations (which the Complaint sets forth in detail and which Ms. Heard cannot credibly dispute), these statements

² Notably, a media outlet called out this precise language as alluding to Mr. Depp shortly after Ms. Heard published the Op-Ed. Ella Cerón, *What Happened After Amber Heard Spoke Out About Johnny Depp*, THE CUT, Dec. 18, 2018, available at <https://www.thecut.com/2018/12/amber-heard-op-ed-violence-against-women.html> ("While the actor did not mention Depp by name in the Washington Post article, she does allude to the time period when, 'two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out.'"). *See Exhibit 1.*

have an actionable defamatory meaning. “[I]n the context of the alleged publicity attending the case when the statements were published, it cannot be said at the demurrer stage that they were not capable of conveying the defamatory innuendo.” See *Pendleton*, 290 Va. at 173; see also *Carwile*, 196 Va. at 8-9 (“While the defamatory language does not in express terms charge the plaintiff with a breach of his professional honor, yet, when aided by the innuendo, operating within the scope of its legitimate functions, it does impute conduct tending to injure him in his profession.”);³ *Horne v. WTVR, LLC*, No. 3:16-cv-000092-JAG, 2017 WL 1330200, at *3 (E.D. Va. Apr. 6, 2017) (finding that a news segment about a school system hiring and then firing a convicted felon, which ended with a statement “that it is a crime to make false representations about criminal convictions when filling out an application” was capable of the defamatory insinuation that the felon hired by the school system had lied about her convictions when filing out her application).

Moreover, Ms. Heard admitted in her first motion to dismiss that the supposed “dozens of violent episodes throughout” Ms. Heard’s and Mr. Depp’s relationship were “the basis for Ms. Heard’s perspective as a domestic abuse victim” in the Op-Ed. Apr. 11, 2019 Mem. i/s/o Mot. to Dismiss at 2. And, as Mr. Depp has alleged, see Compl. ¶ 2, many media outlets have

³ In *Carwile*, the defendant published a newspaper article in which it was reported that “two city officials evaded a direct answer as to an inquiry as to whether they were considering a recommendation to the District Committee of the Virginia State Bar to take action against [the plaintiff] for his conduct the charges which cast a shadow across the entire Police Department;” and, when the reporter failed to get a reply to his suggestive question, reported that under the State Code an administrative agency could request a court to disbar an attorney for violation of the attorney ethical code. *Id.* The Court found that the language used, “read in connection with the whole article,” implied that the plaintiff was guilty of unethical and unprofessional conduct. *Id.* at 9.

interpreted, and reported on, Ms. Heard's Op-Ed as referring to Mr. Depp and his alleged domestic abuse of Ms. Heard.⁴

Ironically, the *Washington Post*, which published the Op-Ed, said it best:

“Though Heard did not name Depp or any specific allegations, *her piece was widely interpreted as being in reference to him* because of the media coverage of their tense split (emphasis added).”⁵

Ms. Heard's words must be “taken in their plain and natural meaning and to be understood . . . as other people would understand them . . . according to the sense in which they appear to have been used.” See *Carwile*, 196 Va. at 7. Here, “other people” have clearly “understood” Ms. Heard's words in the Op-Ed to state, again, that she was abused by Mr. Depp.

⁴ Ella Cerón, *What Happened After Amber Heard Spoke Out About Johnny Depp*, THE CUT, Dec. 18, 2018, available at <https://www.thecut.com/2018/12/amber-heard-op-ed-violence-against-women.html> (“While the actor did not mention Depp by name in the Washington Post article, she does allude to the time period when, ‘two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture’s wrath for women who speak out.’”), see **Exhibit 1**; Maria Puente, *Amber Heard speaks out about domestic abuse despite consequences she says she paid*, USA TODAY, Dec. 18, 2018, available at <https://www.usatoday.com/story/life/2018/12/18/amber-heard-speaks-out-again-domestic-abuse/2357283002/> (“Amber Heard, the ex-wife of Johnny Depp who accused him of beating her up, posted a column in the Washington Post late Tuesday lamenting the consequences she paid for speaking out . . .”), see **Exhibit 2**; Mike Redmond, *Johnny Depp Allegedly Tried to Get Amber Heard Fired from ‘Aquaman’ like the Vindictive D*ck He Is*, PAJIBA, April 19, 2019, available at https://www.pajiba.com/celebrities_are_better_than_you/johnny-depp-tried-to-get-amber-heard-fired-from-aquaman.php (“Granted, Heard never mentions Depp by name in the column, but it’s pretty obvious who she’s talking about . . .”), see **Exhibit 3**.

⁵ Sonia Rao, *A timeline of Johnny Depp and Amber Heard's ongoing legal battle*, WASHINGTON POST, May 22, 2019, available at <https://www.washingtonpost.com/arts-entertainment/2019/05/22/timeline-johnny-depp-amber-heards-ongoing-legal-battle/> (emphasis added). See **Exhibit 4**.

In a separate article, the *Washington Post* also indirectly exposed the falsehood of Ms. Heard's sworn representation that she had never traveled to Virginia. Declaration of Amber Laura Heard (April 10, 2019), ¶ 56. See “Cause Celeb: Amber Heard backs ‘revenge porn’ bill on Capitol Hill” by Emily Heil, *Washington Post*, May 22, 2019 at 4:20 p.m. EDT. See **Exhibit 5**.

Finally, in the unlikely event that someone somehow missed the point that Ms. Heard was referring to Mr. Depp in her Op-Ed – she removed any conceivable doubt by attaching to her original motion to dismiss (transfer venue) a gratuitous 14-page declaration chock full of false allegations of abuse by Mr. Depp that had nothing whatsoever to do with the narrow legal dispute at issue in that motion.

C. The Op-Ed Was a Republication of, Not a Mere Reference to, Ms. Heard’s 2016 Allegations

Ms. Heard would have the Court make a distinction between referring to the existence of an earlier statement and affirmatively making the statement again (a “republication”), averring that her statements in the Op-Ed constitute the former and are, thus, not actionable. Def’s Mem. at 8-9. However, the republication cases that Ms. Heard cites hold just *the opposite*. *See id.* (citing *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 175 (3d Cir. 2012); *Sayler v. Southern Poverty Law Center, Inc.*, 701 F. Supp. 2d 912, 916 (W.D. Ky. 2009)).

In both *Philadelphia Newspapers* and *Sayler*, the courts recognized that republication, at its core, is the editing and republishing of defamatory material, or the redistribution of defamatory material in a new forum, directed to a new audience. *Philadelphia Newspapers*, 690 F.3d at 174 (“Republishing material (for example, the second edition of a book), editing, and reissuing material, or placing it in a new form that includes the allegedly defamatory material resets the statute of limitations.”); *Sayler*, 701 F. Supp. 2d at 916 (“The republication ‘exception provides the plaintiff with a remedy where the defendant edits and retransmits the defamatory material, or distributes the defamatory material for a second time with the goal of reaching a new audience.’”). In both cases, the courts found that merely adding a new link on a website to a previously published article, without any modification of or supplement to the allegedly

defamatory material, did not constitute republication. *Philadelphia Newspapers*, 690 F.3d at 175; *Saylor*, 701 F. Supp. 2d at 917-18.

Ms. Heard's statements in her Op-Ed, however, go far beyond merely referencing or providing a new "link" to her prior allegations. Rather, she repackaged her prior allegations in an article that she wrote and published in the *Washington Post*. Indeed, Ms. Heard admitted that:

"I wrote the Op-Ed in Los Angeles, California, and submitted it to the *Washington Post* through my contact at the ACLU, who as based in New York. The Op-Ed was published on December 18, 2018."

Declaration of Amber Heard (April 10, 2019), ¶ 54 (emphasis added).

All the hallmarks of republication are present: she "edited," indeed, wrote anew, her prior defamatory statements; and she "redistributed" her newly-packaged defamatory statements in a new forum, a national newspaper, to a new audience. See *Philadelphia Newspapers*, 690 F.3d at 174; *Saylor*, 701 F. Supp. 2d at 916; see also *Davis v. Mitan (In re Davis)*, 347 B.R. 607, 611-12 (W.D. Ky. 2006) (holding that the updating of a defamatory website with new, substantive material constituted a republication); *Larue v. Brown*, 235 Ariz. 440, 445-46 (Ct. App. 2014) (finding that, in replying to comments made in response to the original defamatory articles, and referring to the substance of the original articles therein, defendants republished the original defamatory statements).

It is well settled under Virginia law that the author of defamatory statements is liable for their republication, as a new cause of action, where, as here, the author authorized or directed the republication. *Weaver*, 199 Va. at 199; see also *Adams v. Children's Hospital of the King's Daughters*, 100 Va. Cir. 68, *5 (2018) (finding plaintiff adequately alleged that defendant presumptively authorized republication of defamatory statements). Here, Ms. Heard did not merely authorize or direct publication of the Op-Ed: she wrote the Op-Ed and the defamatory

statements republished therein. Accordingly, applying *Weaver* and the above-cited authorities, Ms. Heard can, and should, be held liable for republishing her prior defamatory allegations against Mr. Depp in the Op-Ed. *See Weaver*, 199 Va. at 200.

D. Ms. Heard's Statements Are Actionable Because They Contain a False Factual Predicate

Finally, Ms. Heard's attempt to chop up her statements in the Op-Ed to defend them as opinions also is unavailing. Particularly where, as here, defamatory statements are made by implication, the allegedly defamatory statements must be considered as whole, "in view of any accompanying opinion and other stated facts." *See Hyland v. Raytheon Tech. Servs. Co.*, 277 Va. 40, 47 (2009) ("*Hyland I*"). The U.S. Supreme Court has recognized that "expressions of 'opinion' may often imply an assertion of objective fact" with defamatory implication and "[s]imply couching such statements in term of opinion does not dispel these implications." *Milkovich*, 497 U.S. at 18-19 (holding that article implying the plaintiff had committed perjury was not a protected opinion, because it was sufficiently factual be susceptible of being proved true or false"). Indeed, the Restatement makes clear that a statement dressed up as an opinion may nevertheless be actionable as defamatory "if it implies the allegation of undisclosed defamatory facts as the basis for that opinion." Restatement (Second) of Torts § 566 cmt. a.

The Supreme Court of Virginia has endorsed the U.S. Supreme Court's holding that "expressions of opinion may be actionable where they 'imply an assertion' of objective fact." *Hyland I*, 273 Va. at 303 (citing *Milkovich*, 497 U.S. at 21). Accordingly, the Supreme Court of Virginia has held that opinions "laden with factual content" are properly put before a jury for a determination as to whether the opinions were defamatory. *Richmond Newspapers, Inc. v. Lipscomb*, 234 Va. 277, 298 n. 8 (1987). Indeed, even Ms. Heard acknowledges that a statement is couched as an opinion can be defamatory if it contains a "factual kernel . . . which can be

objectively proven to be true or false.” Def’s Mem. at 10 (citing *Lamb v. Weiss*, 62 Va. Cir. 259 (2003)).

That is *precisely* what we have here, a supposedly “factual kernel” at the core of all Ms. Heard’s statements in the Op-Ed: that Ms. Heard was the victim of domestic abuse at the hands of Mr. Depp. Take, for example, Ms. Heard’s statement, “[t]hen two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture’s wrath for women who speak out.” Regardless of whether it is subjective if someone is a “public figure representing domestic abuse” or “felt the full force of our culture’s wrath,” whether “two years ago” Ms. Heard experienced “domestic abuse” is indisputably a factual underpinning of her statement that “can be objectively proven to be true or false.” *See Lamb*, 62 Va. Cir. at *6 (declining to sustain demurrer with respect to statement that plaintiff “misspent” advertising funds because the statement could be proven true or false); *see also Milkovich*, 497 U.S. at 21 (“We also think the connotation that the petitioner committed perjury is sufficiently factual to be susceptible of being proved to be true or false.”); *Hyland II*, 277 Va. at 49 (holding that a jury should decide the truth or falsity of “factual components” of statements couched as opinions).

Similarly, Ms. Heard’s statements that she had a “rare vantage point of seeing in real time, how institutions protect men accused of abuse” and received threats and negative press coverage for speaking out, considered with Ms. Heard’s other statements in the Op-Ed and the publicity surrounding her allegations against Mr. Depp, contain the factual predicate that she had, in fact, experienced domestic abuse during her marriage to Mr. Depp. *See Hyland II*, 277 Va. at 47 (holding that, in determining whether a statement is one or fact or opinion, a court should evaluate the statement in the context of other accompanying opinions and facts). Ms. Heard tries to argued that whether a vantage point is “rare” to events taking place “in real time”

can be a subjective assessment in certain circumstances. *See* Def’s Mem. at 12. But, here, in the context of the Op-Ed as a whole and Ms. Heard’s public allegations against Mr. Depp, the only fair implication is that her “rare vantage point” on “how institutions protect men accused of abuse” is a result of Ms. Heard’s (false) claim to have experienced abuse by Mr. Depp. *See id.*

Ms. Heard’s allegations of domestic abuse by Mr. Depp may have been repackaged into an “opinion” piece and buried within subjective statements of what she claims to have experienced, but purposefully artful drafting does not dispel the defamatory implication underpinning her statements. *See Milkovich*, 497 U.S. at 18-19. Indeed, Ms. Heard’s gratuitous – and false – declaration submitted with her first pleading for dismissal, embraces this defamatory implication in no uncertain terms. Ms. Heard cannot have it both ways: she cannot attempt to evade liability for her defamatory statements by claiming they are only her opinion, while simultaneously sensationalizing the defamatory statements that inform her “opinions” before this Court and the public.

II. Ms. Heard’s Plea In Bar Is Legally Defective And, at Most, Would Raise Questions of Fact for a Jury

A. Legal Standard

As the Court is well aware, a plea in bar is a mechanism to reduce litigation to a distinct issue of fact which, if proven, creates a bar to the plaintiff’s right of recovery. *Tomlin v. McKenzie*, 251 Va. 478, 480 (1996). The moving party carries the burden of proof on the issue of fact raised. *Id.* Where no evidence is taken in support of the plea, the trial court must rely solely upon the pleadings in resolving the issue presented. *Weichert Co. of Va., Inc. v. First Commercial Bank*, 246 Va. 108, 108 (1993).

B. Mr. Depp's Claims Are Not Barred by the Statute of Limitations

Ms. Heard's argument that Mr. Depp's claims are barred by the statute of limitations fails. Mr. Depp's claims all concern the publication of Ms. Heard's Op-Ed, which occurred on December 18, 2018, and Mr. Depp filed suit on March 1, 2019, well within Virginia's one-year statute of limitations for defamation claims. *See* Virginia Code § 8.01-247.1.

To avoid this self-evident conclusion, Ms. Heard contends that she cannot be held liable for "reviv[ing]" statements she made in 2016 by imputing those statements to the 2018 Op-Ed. Def's Mem. at 14-15. Tellingly, Ms. Heard does not cite *any* authority to support her conclusory assertion that the statute of limitations for Mr. Depp's defamation claims accrued two years before she published the Op-Ed which is the subject of Mr. Depp's lawsuit. *Id.* Nor could she: Virginia law is clear that, where, as here, there has been a separate republication of a prior defamatory statement, a new cause of action and, thus, a new statute of limitations accrues. *Weaver*, 199 Va. at 200 ("If it be determined by the jury that the republication [of a libelous letter] was the natural and probable consequence of the original publication, or that appellees actually or presumptively authorized or directed its republication, then this latter publication constitutes a separate cause of action, and suit was timely instituted against appellees who were responsible for the new publication."); *Sponaule v. Rutledge*, 58 Va. Cir. 3, *2 (2001) (finding that the republication of defamatory statements constituted a separate cause of action for which defendant could be liable); *see also Doe v. Roe*, 295 F. Supp. 3d 664, 671 (E.D. Va. 2018) ("[W]here there are separate publications of the same defamatory statement, a new cause of action, and thus a new statute of limitations, accrues with each republication.").

In any event, whether the Op-Ed is a republication of Ms. Heard's defamatory statements in 2016 is a factual issue for resolution by a jury, not on a plea in bar. *See Eramo v. Rolling Stone, LLC*, 209 F. Supp. 3d 862, 879-80 (W.D. Va. 2016) (concluding that whether a reprinting

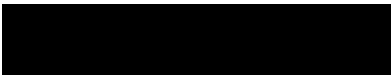
of an article with an editor's note constituted a substantive alteration and, thus, republication, was a factual issue for the jury); *Weaver*, 199 Va. at 202 (holding that whether a republication of defamatory content was the natural and probable consequence of the original publication is an issue to be resolved by a jury). Accordingly, the Court should deny Ms. Heard's plea in bar.⁶

CONCLUSION

For the foregoing reasons, Mr. Depp respectfully requests that the Court overrule Ms. Heard's Demurrer and deny her Plea in Bar.

Dated: December 6, 2019

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⁶ As stated, *supra*, at p. 1, fn. 1, based on Ms. Heard's Praecipe dated December 4, 2019, limiting the scope of her plea in bar, Mr. Depp omits arguments his counsel had prepared explaining why Ms. Heard is not entitled to anti-SLAPP immunity and why whether she or someone else selected the title of her Op-Ed would be a factual questions for a jury to decide.

Exhibit 1

STYLE SELF CULTURE POWER 

AMBER HEARD | DEC. 19, 2018

What Happened After Amber Heard Spoke Out About Johnny Depp

By Ella Cerón



Amber Heard. Photo: Getty Images

In the wake of the allegations made against Harvey Weinstein and other people who have abused their power in a variety of industries, and thanks to Tarana Burke's #MeToo movement, more people than ever are opening up about sexual harassment, and the culture that has turned a blind eye to abusers. But as Amber Heard writes for the *Washington Post*, there are still ramifications against survivors who do choose to speak out.

In an op-ed for the *Post*, the *Aquaman* star recalled her own experience, saying that she had to change her phone number weekly because she was getting death threats. "For months, I rarely left my apartment, and when I did, I was pursued by camera drones and photographers on foot, on motorcycles and in cars," she wrote.

“Tabloid outlets that posted pictures of me spun them in a negative light. I felt as though I was on trial in the court of public opinion.”

Heard came forward in 2016 with allegations that then-husband Johnny Depp had been physically and emotionally abusive to her; she was granted a restraining order and their divorce was finalized in 2017. Heard donated her settlement to the ACLU and the Children’s Hospital of Los Angeles.

While the actor did not mention Depp by name in the *Washington Post* article, she does allude to the time period when, “two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture’s wrath for women who speak out.”

“Friends and advisers told me I would never again work as an actress — that I would be blacklisted. A movie I was attached to recast my role. I had just shot a two-year campaign as the face of a global fashion brand, and the company dropped me. Questions arose as to whether I would be able to keep my role of Mera in the movies ‘Justice League’ and ‘Aquaman.’”

Heard also addressed the power structures in place to defend powerful men in particular, not for the sake of any one man’s reputation, but in an effort to save the livelihoods of the people attached to him. She compared the situation to the Titanic, noting that when the ship “strikes an iceberg, there are a lot of people on board desperate to patch up holes — not because they believe in or even care about the ship, but because their own fates depend on the enterprise.”

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In the essay, she urged Congress to “reauthorize and strengthen” the Violence Against Women Act, the funding for which lapsed earlier this year and has only been granted a temporary extension. Heard also spoke out against the changes to Title IX proposed by Education Secretary Betsy DeVos, which would limit the definitions of sexual assault in ways that favor the alleged abuser more than the victim.

“I want to ensure that women who come forward to talk about violence receive more support,” Heard wrote. “We can work together to demand changes to laws and rules and social norms — and to right the imbalances that have shaped our lives.”

Sources: [WASHINGTON POST](#) &

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■ 3 COMMENTS

Exhibit 2

Amber Heard speaks out again about domestic abuse, despite consequences she says she paid

Maria Puente, USA TODAY Published 8:29 p.m. ET Dec. 18, 2018



(Photo: Kevin Winter/ Getty Images)

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Amber Heard, the ex-wife of Johnny Depp who accused him of beating her up, posted a column in the Washington Post late Tuesday lamenting the consequences she paid for speaking out and urging Congress to reauthorize the Violence Against Women Act.

Two years ago, she wrote, she "became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out."

Heard, 32, was told she'd never work in Hollywood again. Her role in a movie was recast. The company that hired her for a two-year gig as the face of a global fashion brand dropped her. There were doubts about whether she would keep her role of Mera in "Justice League" and just-released "Aquaman," although she subsequently did.

She had to change her phone number weekly because of death threats. For months, she rarely left her home and when she did she was pursued by camera drones and photographers on foot, motorcycles and in cars. Tabloids posted mean pictures of her, she recounted. She was on trial in the court of public opinion, with little control over

how people were judging her, she said.

"I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse," she wrote.



Amber Heard in a scene from "Aquaman." (Photo: Jasin Boland/Warner Bros./via AP)

She said she wants to ensure that women who come forward to talk about domestic violence receive more support, and now is the "transformative political moment" to do it.

She said the first thing to do is reauthorize the Violence Against Women Act, the 1994 law she described as "one of the most effective pieces of legislation enacted to fight domestic violence and sexual assault."

She suggested that recent changes proposed by Education Secretary Betsy DeVos to rules governing the treatment of sexual harassment and assault in schools and colleges might weaken protections for sexual assault survivors.

And she said President Donald Trump, whom she attacked for his statements and behavior regarding sexual misconduct, has provoked women around the country to organize to oppose him and fight sexual violence.

"The president of our country has been accused by more than a dozen women of sexual misconduct, including assault and harassment. Outrage over his statements and behavior has energized a female-led opposition," she wrote.

"#MeToo started a conversation about just how profoundly sexual violence affects women in every area of our lives. And last month, more women were elected to Congress than ever in our history, with a mandate to take women's issues seriously. Women's rage and determination to end sexual violence is turning into a political force."



Johnny Depp and his wife Amber Heard arriving at a court in Australia in April 2016. (Photo: PATRICK HAMILTON/AFP/Getty Images)

She said more representatives in Congress know how deeply women care about these issues. "We can work together to demand changes to laws and rules and social norms – and to right the imbalances that have shaped our lives," she said.

The Depp-Heard divorce, after less than two years of marriage, was one of Hollywood's most toxic in 2016, an ugly affair featuring allegations of physical abuse, restraining orders, media-mobbed court hearings, leaked texts and cellphone pictures of facial bruises, plus dueling lawyers and publicists.

Heard claimed the Los Angeles police went to their downtown loft the night of the alleged altercation and documented the abuse. But the cops instead told reporters they found no evidence of a crime when they arrived.

Depp denied beating her then and denies it to this day.



Amber Heard in May 2016 leaving Los Angeles Superior Court court after giving a sworn declaration that husband Johnny Depp threw her cellphone at her during a fight, striking her cheek and eye. (Photo: Richard Vogel/AP)

After a summer of sniping, Heard withdrew her allegations that Depp, 55, abused her and her request for a permanent restraining order against him, and the two settled their divorce out of court in August 2016. They issued a joint statement to the media.

"Our relationship was intensely passionate and at times volatile, but always bound by love," the statement said. "Neither party has made false accusations for financial gain. There was never any intent of physical or emotional harm. Amber wishes the best for Johnny in the future."

Heard eventually donated her share of the divorce settlement, about \$7 million, to a charity focused on fighting domestic abuse of women. In addition to her thriving acting career, she is now an ambassador on women's rights for the American Civil Liberties Union.

Heard did not name Depp in her column but there was one passage that might have referred to him.

"Imagine a powerful man as a ship, like the Titanic. That ship is a huge enterprise. When it strikes an iceberg, there are a lot of people on board desperate to patch up holes – not because they believe in or even care about the ship, but because their own fates depend on the enterprise," she wrote.

Now the #MeToo movement is making a difference, she said.

"In every walk of life, women are confronting these men that are buoyed by social, economic and cultural power. And these institutions are beginning to change."

Exhibit 3



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Johnny Depp Allegedly Tried to Get Amber Heard Fired from 'Aquaman' like the Vindictive D*ck He Is

By [Mike Redmond](#) | [Celebrity](#) | April 19, 2019 | [139 Comments](#)

By [Mike Redmond](#) | [Celebrity](#) | April 19, 2019 |



In a December 2018 op-ed for *The Washington Post*, Amber Heard wrote about her life as an actress after she publicly [accused Johnny Depp of domestic abuse](#), and you'll probably be surprised to learn, it's not been great. Granted, Heard never mentions Depp by name in the column, but it's pretty obvious who she's talking about, and the following passage just became all kinds of relevant. (Emphasis mine.)

Friends and advisers told me I would never again work as an actress — that I would be blacklisted. A movie I was attached to recast my role. I had just shot a two-year campaign as the face of a global fashion brand, and the company dropped me. **Questions arose as to whether I would be able to keep my role of Mera in the movies “Justice League” and “Aquaman.”**

I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse.

Imagine a powerful man as a ship, like the Titanic. That ship is a huge enterprise. When it strikes an iceberg, there are a lot of people on board desperate to patch up holes — not because they believe in or even care about the ship, but because their own fates depend on the enterprise.

You see, not only is Depp suing Heard for \$50 million over her *WaPo* column — which spectacularly blew up in his face by dragging [even more abuse allegations](#) into the light — he's also suing his former lawyer Jake Bloom for advising Depp to settle his divorce with Heard instead of fighting a messy battle in court. I know jacksh*t about lawyering, but that seems like pretty good advice!

But just like his vindictive suit against Heard, Depp's attack on Bloom has already backfired by resurfacing the actor's alleged attempts to get Heard blacklisted and fired from *Aquaman*, a film she was already cast in.

THR reports:

Sources familiar with the deposition requests say [Warner Bros. chairman Kevin] Tsujihara will be asked to testify under oath about whether or not he played a role in “blacklisting” Heard at Warner Bros. Depp, a star in the studio’s *Fantastic Beasts* franchise (he plays Grindelwald), is alleged to have personally lobbied Tsujihara to remove the actress from *Aquaman* and block her from getting other projects. (Heard ultimately did co-star in *Aquaman*, which was released in December.)

Ironically, *Aquaman* ended up being a billion-dollar success for Warner Bros. while the *Fantastic Beasts* franchise is definitely not doing Harry Potter numbers, so if there’s one person who’s potentially on the outs with the studio, it’s Depp. There’s already been whispers of firing him as Grindelwald, and I’m sure Warner Bros. is just thrilled to see its name continue to show up next to Depp’s (and its former chairman who resigned following accusations of sexual harassment).

Legal observers question why Waldman has advised Depp to bring suits against both Heard and Bloom, both of which only threaten to reignite Heard’s domestic violence claims. The suits also put Warner Bros. in the awkward position of having to answer renewed questions about Depp’s involvement in upcoming *Fantastic Beasts* films (three more films in the J.K. Rowling-created franchise are planned). Rowling, who was known to have a close relationship with Tsujihara, publicly backed Depp in the wake of backlash over the Heard domestic abuse claims, writing in a statement, “The filmmakers and I are not only comfortable sticking with our original casting, but genuinely happy to have Johnny playing a major character in the movies.”

To be clear, the box-office success and/or subjective quality of *Aquaman* is irrelevant in the context of Depp’s alleged attempts at blacklisting Heard. Nothing justifies that level of abusive control. *Nothing*.

That said, Heard’s Mera is one of the best parts of *Aquaman*. Yes, the movie is yet another male-focused superhero film in a “sea” of many — I’m a horrible person — but its portrayal of Mera along with its bright, stupid-fun, balls-out tone is delightful. Mera is easily an equal to Jason Momoa’s Aquaman, and not once is she the damsel-in-distress. She’s just a straight-up dope female character that’s still seen way too rarely these days.

And yet Johnny Depp was going to deprive Amber Heard of that role because she didn’t want to get smacked around every time he was loaded? (Allegedly.) F*ck that, you creepy turd in a bolo-tie.

Header Image Source: Warner Bros.

Exhibit 4

A timeline of Johnny Depp and Amber Heard's ongoing legal battle

By Sonia Rao
May 22

Former spouses Johnny Depp and Amber Heard are entrenched in another heated legal battle, stemming from an op-ed Heard wrote for The Washington Post last year about being a public survivor of abuse.

Though she didn't mention anyone by name, Heard wrote about feeling "the full force of our culture's wrath" after going public with physical abuse allegations a couple of years prior — a thinly veiled reference to those she had brought forward against her estranged husband during their very public divorce. On Monday, Depp reiterated his denial of the allegations in a court document stemming from a \$50 million defamation lawsuit he filed in March over the op-ed, arguing that the piece had negatively affected his career.

The ensuing back-and-forth, during which each party has accused the other of perpetrating abuse, has been contentious, to say the least. Below is a timeline of the legal happenings.

May 23, 2016: Heard files for divorce after 15 months of marriage, citing irreconcilable differences

Four days later, a judge issued the actress a temporary restraining order against Depp.

The proceedings played out publicly over the next few months, with tabloids publishing several videos and photographs related to Heard's allegations. Court documents detailed, among others, an instance of domestic violence that Heard said took place two days before she filed for divorce. (The Los Angeles Police Department responded to a 911 call at the actors' penthouse but told media that there had been no evidence of a crime.)

"During the entirety of our relationship, Johnny has been verbally and physically abusive to me," Heard said in the documents, per the Associated Press. "I endured excessive emotional, verbal and physical abuse from Johnny, which has included angry, hostile, humiliating and threatening assaults to me whenever I questioned his authority or disagreed with him."

In June, People magazine published a widely circulated photo of Heard with bruises on her eye and lip. Depp's team vehemently denied all allegations of abuse against him.

Aug. 16, 2016: Heard and Depp reach a \$7 million divorce settlement

Heard also retracted her allegations against Depp a day before a restraining order hearing was set to begin. In a joint statement, the actors described their relationship as "intensely passionate and at times volatile, but always bound by love."

"Neither party has made false accusations for financial gain," they continued. "There was never any intent of physical or emotional harm. Amber wishes the best for Johnny in the future."

The Hollywood Reporter stated that the actors negotiated a nondisparagement agreement as a part of the divorce. Heard reportedly donated the money she received from the settlement to the American Civil Liberties Union and the Children's Hospital Los Angeles.

Dec. 18, 2018: The Post publishes Heard's op-ed

The op-ed, which identified Heard as an actress and ambassador on women's rights at the ACLU, urged readers to support women who come forward with allegations of abuse by taking them seriously and electing politicians who will fight for "changes to laws and rules and social norms."

Though Heard didn't name Depp or any specific allegations, her piece was widely interpreted as being in reference to him because of the media coverage of their tense split. She touched upon the death threats, overwhelming paparazzi attention and career hits that followed her coming forward.

"Two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out," Heard wrote. "Friends and advisers told me I would never again work as an actress — that I would be blacklisted. A movie I was attached to recast my role. I had just shot a two-year campaign as the face of a global fashion brand, and the company dropped me. . . . I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse."

March 1, 2019: Depp files the defamation lawsuit in Fairfax Circuit Court in Virginia

Depp's lawyers stated in the complaint that the op-ed "depended on the central premise that Ms. Heard was a domestic abuse victim and that Mr. Depp perpetrated domestic violence against her," a premise they described as "categorically false." They argued that Heard was the one who had actually abused Depp, referring to an incident she previously referred to as self-defense.

The complaint also blamed Heard for Disney announcing that it had dropped Depp from the Pirates of the Caribbean franchise four days after the op-ed was published.

Depp's attorney, Adam Waldman, told The Post on Tuesday that Depp brought the defamation lawsuit because of "newly available evidence" — witness testimonies and more than 80 surveillance videos that Waldman said show Heard without injuries in the days after she said she had been hurt.

Waldman also clarified that the lawsuit was filed in Fairfax County instead of Los Angeles County, where both Depp and Heard reside, because the op-ed was printed at The Post's plant in Springfield, Va. Heard's attorney, Eric George, has criticized this decision and argued for the litigation to take place in California, where much of the alleged abuse took place.

April 10, 2019: Heard files a motion to dismiss the complaint, detailing alleged abuse

Heard stated in her declaration that Depp began to hit her about a year into their relationship, when she began to witness him "abusing drugs and alcohol or would notice that he was drunk or high." She detailed more than a dozen instances of alleged abuse, ranging from late 2012 to the May 2016 incident that directly preceded the divorce filing. She sometimes referred to Depp as "the Monster."

One of the alleged incidents took place in March 2015, when Depp was in Australia shooting "Pirates of the Caribbean: Dead Men Tell No Tales." Heard said that Depp's attack left her "naked and barefoot, covered in alcohol and glass." He severed the tip of his finger during this visit, temporarily shutting down production. Heard said he wrote her messages around the house by mixing oil paint with his blood.

Heard recalled fearing for her life the following December when she said she was going to leave Depp, after which he allegedly hit her and pushed her face into a mattress: "For a while, I could not scream or breathe," she wrote. "I worried that Johnny was in a blacked-out state and unaware of the damage he was doing, and that he could actually kill me."

Regarding the heavily publicized 911 call from May 2016, Heard wrote that she was "afraid to give the police a statement that would create an international media incident."

May 20, 2019: Depp accuses Heard of faking her injuries

On Monday, Depp filed an opposition to Heard's motion to dismiss the defamation lawsuit. His team argued that the litigation would have to take place in Virginia because of a law there that requires libel claims to be sorted out in the "place of publication" (Virginia) rather than the "place of harm" (California).

Depp filed his own declaration alongside the opposition, stating that Heard fabricated domestic violence allegations against him and that she arrived to court in May 2016 with "painted-on bruises that witnesses and surveillance footage show she did not possess each day of the preceding week." He also accused Heard of abusing him throughout their relationship, often while under the influence.

"I will continue to deny them for the rest of my life," Depp said of Heard's claims against him. "I never abused Ms. Heard or any other woman."

George, Heard's attorney, denied Depp's allegations in a statement to The Post: "The evidence in this case is clear: Johnny Depp repeatedly beat Amber Heard. The increasingly desperate attempts by Mr. Depp and his enablers to revive his career by initiating baseless litigation against so many people once close to him — his former lawyers, former managers, and his former spouse — are not fooling anyone."

Sonia Rao

Sonia Rao is a pop culture reporter. She attended Boston University and wrote for the Boston Globe before coming to The Post as a Style intern in 2017. She officially joined the features department in 201

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Exhibit 5

Reliable Source

Cause Celeb: Amber Heard backs ‘revenge porn’ bill on Capitol Hill

By Emily Heil

May 22

Cause: Passage of the SHIELD Act — one of those cleverly acronym-ed pieces of legislation that stands for “Stopping Harmful Image Exploitation and Limiting Distribution.” Basically, it targets people who share explicit images of someone without their consent, a.k.a. “nonconsensual pornography” or “revenge porn.”


Celeb: Model-actress-activist Amber Heard (firmly putting aside those tabloid headlines currently swirling about her former marriage to actor Johnny Depp), sharing her own story of having been hacked in 2014 — along with a handful of other Hollywood actresses — and having her nude photos distributed around the Internet.

Scene: A Wednesday news conference with Reps. Jackie Speier (D-Calif.) and John Katko (R-N.Y.) in the Capitol Visitor Center to reintroduce the bill. Heard, wearing a sleek black dress with black and white loafers that looked ready to pound the marble halls of Congress, stood next to (and high-fived) lawmakers talking up the legislation before making her own case.

Sound bite: Heard’s tone was passionate as she described the fallout, even years later, from her hacking. “My stolen and manipulated photos are still online to this day, posted again and again with sexually explicit and humiliating and degrading headlines about my body, about myself,” she said. “I continue to be harassed, stalked and humiliated by the theft of those images.”

“The consequences to my personal safety, dignity and livelihood are severe,” she continued. “My relationships, my family, my profession, my opportunities, and moreover, my expectations for bodily autonomy and liberty are forever compromised.”

Emily Heil

Emily Heil is a reporter covering national food news and trends. Previously, she co-authored the Reliable Source column for The Post. Follow 

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I hereby certify that on this 6th day of December 2019, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

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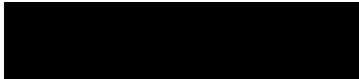
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