

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 OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**

June 19, 2020

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Carla D. Brown (VSB #44803)  
Adam S. Nadelhaft (VSB #91717)  
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JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Unlike Mr. Depp, Ms. Heard has taken her discovery obligations seriously in this case, and when requested, obtained and produced responsive documents from her medical providers on the lone medical issue for her – evidence of Mr. Depp’s abuse. There is no dispute that, under Virginia Code § 8.01-399, medical treatments Ms. Heard received for this abuse are at issue and discoverable in this case. Ms. Heard has collected and produced these documents. Plaintiff is unable to articulate any basis for requiring anything beyond this.

Yet Mr. Depp now seeks to force Ms. Heard to provide him a HIPAA waiver permitting him unfettered access to all her medical records, including medical records wholly unrelated to the claims or defenses in this case. While Mr. Depp suggests that the reason Ms. Heard refuses to provide a HIPAA waiver is because doing so would undermine her defenses, this purported justification rings hollow, especially in light of Ms. Heard having actually produced the relevant medical records already. Ms. Heard submits that her irrelevant and private medical records should not fall into the hands of Mr. Depp, who has time and again leaked material about this case to the press – including material designated Confidential under the Protective Order. The Court should reject this transparent attempt to further harass Ms. Heard.

## **ARGUMENT**

### **I. Ms. Heard Has Already Produced Documents From Her Medical Providers Relating to Mr. Depp’s Abuse.**

Ms. Heard does not disagree that medical records relating to Mr. Depp’s abuse are relevant to this action. That is why, in response to Mr. Depp’s discovery requests, Ms. Heard identified medical providers who may have provided treatment related to the claims or defenses in this case. *See* Pl. Brief, Exh. A. It is also why Ms. Heard agreed to produce – and has produced, subject to the Protective Order – medical records from providers relating to treatment for injuries or conditions Ms. Heard suffered as a result of Mr. Depp’s domestic abuse. *See* Heard’s Responses

and Objections to Depp's Second RFPs at 3, 8, 10, and 11 attached hereto as Exhibit 1. In short, Ms. Heard has produced responsive, non-privileged documents relating to her medical treatment and will produce any further documents in accordance with the Rules.

Mr. Depp's motion seeks documents far beyond medical treatment relating to Mr. Depp's abuse. It is unlimited in scope and seeks a "blanket HIPAA waiver" relating to every medical treatment Ms. Heard has ever had. Depp. Br at fn 1. This request is not permitted under the Rules, and is unconscionable. Such a blanket waiver would give Mr. Depp access to all of Ms. Heard's medical records, regardless of whether they relate to this case. Virginia law does not permit such a fishing expedition, especially of such sensitive and private information of a defendant. The Rules permit information solely about physical or mental conditions that are "at issue" in a litigation. Virginia Code § 8.01-399. The only aspect of Ms. Heard's private medical records that are "at issue" in this litigation is evidence of Mr. Depp's abuse. It is telling that in Mr. Depp's motion, he omits the second half Va. Code § 8.01-399(b), which states that any order under the statute "shall be restricted to the medical records that relate to the physical or mental conditions at issue in the case" and that "[n]o disclosure" shall occur of facts the court determines "are not relevant to the subject matter involved in the pending action or do not appear to be reasonably calculated to lead to the discovery of admissible evidence." Mr. Depp has not alleged such requisite facts.

Mr. Depp's primary basis for his motion is that the Court should compel Ms. Heard to provide a blanket HIPAA waiver because he had to give one to Ms. Heard. But as the Court well knows, the parties are not similarly situated here. Mr. Depp, the Plaintiff, put his medical records at issue by alleging in his Complaint that he had been damaged, and that Ms. Heard was responsible for injuries, including a finger injury he suffered in Australia, yet he refused to produce medical records about that incident, or any other relevant records supporting his damages or specific

allegations. *See* Heard's First Mot. to Compel, Exh. B to Pl. Brief. In granting Ms. Heard's Motion to Compel a HIPAA waiver from Mr. Depp on October 18, 2019, the Court specifically noted that while it may not have granted the full request for medical records and a HIPAA waiver under Virginia Code § 8.01-399, it was granting the request in this case because "the complaint is broad enough to place these things in issue, places his mental condition in issue, even though it may or may not really be an issue in this case, nevertheless it's put in the complaint for a purpose." 10/18/19 Hrg. Tr. at 26, attached hereto as Exhibit 2. Unlike Mr. Depp, Ms. Heard has not placed treatment she received for anything other than abuse at the hands of Mr. Depp at issue in this case. Therefore, the reasoning the Court used to grant Ms. Heard's Motion to Compel does not apply here.<sup>1</sup>

**II. Mr. Depp's Expansive Request Is Not Necessary for the Proper Administration of Justice.**

Ms. Heard's approach stands in stark contrast to Mr. Depp's. As outlined in Ms. Heard's Motion to Compel filed on June 12, Mr. Depp continues to violate the Court's October 18, 2019 Order by refusing to produce complete medical records relating to a finger injury that he alleged in his complaint was caused by Ms. Heard. Many of the records Mr. Depp has produced contain inappropriate redactions that appear to relate directly to the finger injury. Ms. Heard recognizes that that Motion is not before the Court until July 10. However, Mr. Depp should not be entitled

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<sup>1</sup> As a fallback position, Mr. Depp argues that he should receive any records relating to alcohol or drug use by Ms. Heard and all of Ms. Heard's mental health records. Depp Br. at fn 1. But such records, to the extent any exist, are wholly irrelevant here, because Ms. Heard is not alleged to have any addiction or dependency or treatment in this action. Nor has Ms. Heard's mental health been placed at issue. The only aspect of Ms. Heard's medical history that is relevant to this case, or that has been put at issue, is whether Ms. Heard was abused by Mr. Depp. Under Virginia Code § 8.01-399, Mr. Depp is entitled only to those records, and Ms. Heard has already produced them and assured of supplementation as appropriate under the Rules.

to his requested relief when he has flagrantly violated an Order entered eight months ago – such an Order would run counter to the proper administration of Justice. Va. Code § 8.01-399.

In a meet and confer to discuss this issue, Mr. Depp's counsel named only two medical providers they believed did not provide a full set of responsive information, and even then, were unable to articulate any basis for such belief (and have not in Plaintiff's Brief). In response, Ms. Heard proposed a sensible resolution. Her counsel noted:

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

(5/29/20 Email, attached hereto as Exhibit 3). Mr. Depp's counsel never responded to this offer to send a joint communication to ensure full production or provide an alternative solution.

Mr. Depp also argues that he needs a broad HIPAA waiver because the absence of medical records relating to abuse is evidence that the abuse did not occur. Setting aside the logical fallacy in that statement – which also bespeaks total ignorance of the many reasons victims of domestic violence keep their abuse hidden for long periods of time – this argument is not a reason to grant the motion. Mr. Depp can presumably make this argument without any records. Virginia Code §8.01-399(b) is designed to prevent precisely this type of frolic.

### **III. Mr. Depp Seeks All of Ms. Heard's Medical Records for Improper Reasons.**

Finally, Mr. Depp argues that time is of the essence because he needs “complete medical records” in connection with the litigation in England in which Mr. Depp has sued a British publication for defamation stemming from his relationship with Ms. Heard. Depp Br. at 5. It is wholly inappropriate for Mr. Depp to use litigation in this Court as a discovery vehicle for his UK

litigation in which Ms. Heard is not even a party. The Rules do not permit discovery in one case to further a separate legal action, regardless of where it may be. Moreover, although Ms. Heard's medical records are covered under the Protective Order in this case, the Court has no way of knowing whether the records will be afforded similar protection if they are used in the UK proceeding. Mr. Depp lays bare his motivation for seeking documents from this Court at this time: he wants them not for this case, but for the UK case, and hopefully to be able to publish this sensitive and private information without protection, to embarrass and humiliate Ms. Heard. The Court should not grant a motion based so transparently on this improper motivation.

There is yet another reason to protect Ms. Heard from Mr. Depp's harassment. Mr. Depp's out of state, *pro hac vice* counsel has continually engaged in improper leaking to the press items relevant to this case without disclosing them to Ms. Heard. This conduct is also detailed in Ms. Heard's June 12 Motion to Compel, scheduled to be heard on July 10, 2020. It is no defense for Mr. Depp to argue that while his counsel might leak non-confidential material, he knows where to draw the line. Just last week, counsel for Ms. Heard was contacted by a media member who described deposition testimony of a third party that had been clearly designated confidential under the Protective Order in this case. In fact, the term "Confidential" appeared on the face of the transcript. The only way the person could have learned of the deposition testimony was by a leak, presumably by Mr. Depp's counsel. This demonstrates precisely why Ms. Heard should not be forced to turn over a blanket, broad HIPAA waiver that entitles Mr. Depp to unbounded access to all her medical records. Mr. Depp simply cannot be trusted to keep them confidential.

### CONCLUSION

For all the above reasons, the Court should deny Mr. Depp's motion to compel.

Dated this 19th day of June 2020

Respectfully submitted,

Amber L. Heard



By Counsel: \_\_\_\_\_

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*Counsel to Defendant Amber Laura Heard*

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2020 JUN 19 PH 3:10

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**DEFENDANT AMBER LAURA HEARD'S RESPONSES AND OBJECTIONS TO  
PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION**

Pursuant to Rule 4:9 of the Rules of the Supreme Court of Virginia ("Rules"), Defendant Amber Laura Heard, by and through her attorneys, submits these responses and objections (the "Responses") to Plaintiff John C. Depp's Second Set of Requests for Production dated November 4, 2019 (the "Requests").

**GENERAL OBJECTIONS**

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

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



3. Defendant objects to the Requests to the extent they impose any obligations or requirements beyond the scope of the Rules or any case law interpreting them.

4. Defendant's Responses are not intended to be and shall not be construed as an agreement or concurrence that all information provided is admissible with respect to Plaintiff's claims.

5. Defendant objects to each Request to the extent that it calls for information that: (a) may be derived or ascertained from documents that have been or will be produced in this action; (b) is already in Plaintiff's possession, custody, or control; (c) is publicly available; or (d) is otherwise independently available to Plaintiff or his counsel.

6. Defendant objects to the Requests to the extent they purport to call for documents or information that: (a) are subject to the attorney-client privilege; (b) constitute attorney work product; (c) are protected from disclosure based on common interest or a similar privilege; or (d) are otherwise protected from disclosure under applicable privilege, law, or rule. Defendant will not produce such information in response to the Requests, and any inadvertent production thereof shall not be deemed a waiver of any privilege with respect to such information.

7. Defendant objects to the Requests to the extent they require unreasonable measures to locate and produce responsive information or documents. Defendant will construe the requests to require a reasonable and diligent search of its reasonably-accessible files where it would reasonably expect to find information, documents, or things related to the requests, and specifically states that it will limit its search for ESI by use of the agreed and identified search terms and ESI protocol proposed by Defendant.

8. Defendant objects to the Requests to the extent they seek information that is not within Defendant's possession, custody, or control. Subject to this General Objection, in

responding to the Requests, Defendant will provide only responsive information within Defendant's possession, custody, or control.

9. Defendant objects to the Definitions and Instructions to the extent they seek to impose obligations greater than those imposed by the Rules or any other applicable law, rule, or agreement of the parties.

10. Defendant objects to the Requests to the extent they are based on a false premise and contain express or implied assumptions of fact or law with respect to matters at issue in this case. Defendant's Responses to the Requests are not intended to be and shall not be construed as an agreement or concurrence with Plaintiff's characterization of any facts, circumstances, or legal obligations. Defendant reserves the right to contest any such characterization as inaccurate.

11. Defendant expressly reserves all rights and privileges under the Rules and any other applicable law or rule. The failure to assert such rights and privileges or the inadvertent disclosure by Defendant of information or documents protected by such rights or privileges shall not constitute a waiver thereof, either with respect to these Responses or with respect to any future discovery objections or responses.

12. Defendant's Responses to the Requests are made to the best of her present knowledge, information, and belief. These Responses are at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of Defendant's knowledge and investigation, are subject to such additional knowledge of facts as may result from Defendant's further discovery or investigation.

disproportionate to the needs of this case because it is not reasonably limited to medications for injuries or conditions Defendant suffered as a result of Mr. Depp's abuse. Subject to and without waiving the foregoing objections, Defendant will conduct a reasonable search for documents responsive to this Request, including by applying the search terms agreed to in Defendant's October 29, 2019 Letter. Defendant will thereafter produce any non-privileged documents that are responsive to this Request and that refer or relate to the claims and defenses in this case.

**REQUEST NO. 3**

**All Documents and Communications pertaining to any treatment for alcohol or drug use or abuse by You or Mr. Depp from 2013 to present.**

**RESPONSE TO REQUEST NO. 3**

Defendant objects to Request No. 3 to the extent that it seeks information that is not relevant to any party's claims or defenses. Defendant is not alleged to have any alcohol, drug, addiction or dependency issue that are in dispute in this action. Defendant objects to this request to the extent it relates to the use of drugs or alcohol by Defendant on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant to either party's claims or defenses and is disproportionate to the needs of this case because it is not reasonably limited to treatment for alcohol or drug use or abuse by Plaintiff or treatment for injuries or conditions Defendant suffered as a result of Mr. Depp's domestic abuse. Subject to and without waiving the foregoing objections, Defendant will conduct a reasonable search for documents responsive to this Request, including by applying the search terms agreed to in Defendant's October 29, 2019 Letter. Defendant will thereafter produce any non-privileged documents that are responsive to this Request and that refer or relate to the claims and defenses in this case.

whether there is an implication therein that Defendant was subject to domestic abuse *by Plaintiff*.

Defendant's arrests are not relevant to Plaintiff's domestic abuse of Defendant.

#### **REQUEST NO. 8**

**A complete copy of all medical records, charts and files from any mental and/or physical health care providers who have seen, consulted, examined or provided treatment or services to You from 2010 to the present, including but not limited to Dr. David Kipper.**

#### **RESPONSE TO REQUEST NO. 8**

Defendant objects to Request No. 8 on the grounds that it is overly broad, unduly burdensome, and seeking information that is not relevant to either party's claims or defenses and disproportionate to the needs of this case because it is not reasonably limited to treatment for physical and/or mental injuries or conditions Defendant suffered as a result of Mr. Depp's abuse. Subject to and without waiving the foregoing objections, Defendant will produce medical records, if any, related to relevant services and treatment she received from the medical providers identified in Defendant's Response to Interrogatory 5 of Plaintiff's Second Set of Interrogatories.

#### **REQUEST NO. 9**

**Copies of all of Your personal journals and/or diaries from 2010 to the present.**

#### **RESPONSE TO REQUEST NO. 9**

Defendant objects to Request No. 9 on the grounds that it is overly broad and unduly burdensome because it is not reasonably limited to information relating to Plaintiff's domestic abuse of Defendant and therefore seeks information that is not relevant to any party's claims or defenses. Subject to and without waiving the foregoing objections, Defendant will conduct a reasonable search for responsive documents in her custody and will non-privileged materials that refer or relate to the claims and defenses in this case, should any exist.

**REQUEST NO. 10**

**Copies of any and all correspondence or other records that You or anyone acting on Your behalf received from or sent to: (1) any mental and/or physical health care providers from 2010 to the present; and (2) any health insurer providing you coverage for any medical, psychiatric, counseling, rehabilitation or other care from 2010 to the present.**

**RESPONSE TO REQUEST NO. 10**

Defendant objects to Request No. 10 on the grounds that it is overly broad, unduly burdensome, and seeks information not relevant to the claims or defenses of any party because it is not reasonably limited to treatment for physical and/or mental injuries or conditions Defendant suffered as a result of Mr. Depp's abuse. Subject to and without waiving the foregoing objections, Defendant will produce medical records, if any, related to relevant services and treatment she received from the medical providers identified in Defendant's Response to Interrogatory 5 of Plaintiff's Second Set of Interrogatories.

**REQUEST NO. 11**

**Documents sufficient to show any prescription drugs You have obtained from January 2010 to the present, including any prescription drugs that You currently take.**

**RESPONSE TO REQUEST NO. 11**

Defendant objects to Request No. 11 on the grounds that it is overly broad, unduly burdensome, and seeks information not relevant to the claims or defenses of any party because it is not reasonably limited to treatment for physical and/or mental injuries or conditions Defendant suffered as a result of Mr. Depp's abuse. Subject to and without waiving the foregoing objections, Defendant will produce medical records, if any, related to services and treatment she received from the medical providers identified in Defendant's Response to Interrogatory 5 of Plaintiff's Second Set of Interrogatories.

## CERTIFICATE OF SERVICE


I certify that on this 19th day of June 2020, a copy of the foregoing shall be served by first class mail, postage prepaid, and by email, upon:

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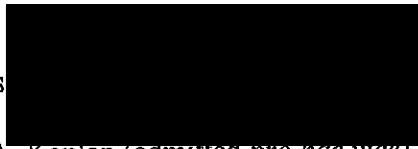
copy

Dated this 25th day of November, 2019

Respectfully submitted,

Amber L. Heard

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## CERTIFICATE OF SERVICE

I certify that on this 25<sup>th</sup> day of November 2019, a copy of the foregoing was served by

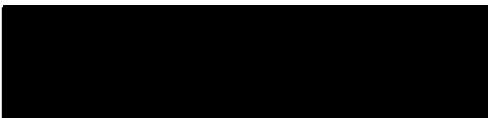
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# Transcript of Hearing

**Date:** October 18, 2019  
**Case:** Depp, II -v- Heard

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Transcript of Hearing  
Conducted on October 18, 2019

<p>1 VIRGINIA: 2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY 3 -----X 4 JOHN C. DEPP, II, ) 5 Plaintiff, ) 6 -vs- ) NO. CL-2019-0002911 7 AMBER LAURA HEARD, ) 8 Defendant. ) 9 -----X 10 Hearing 11 BEFORE THE HONORABLE BRUCE D. WHITE 12 Fairfax, Virginia 13 Friday, October 18, 2019 14 10:49 a.m. 15 16 17 18 19 20 Job No.: 268360 21 Pages: 1 - 28 22 Reported by: Theresa R. Hollister, CCR</p>	<p>1 APPEARANCES 2 3 ON BEHALF OF PLAINTIFF: 4 ROBERT B. GILMORE, ESQUIRE 5 STEIN MITCHELL BEATO &amp; MISSNER, LLP 6 901 Fifteenth Street, Northwest 7 Suite 700 8 Washington, D.C. 20005 9 (202) 737-7777 10 11 BENJAMIN G. CHEW, ESQUIRE 12 BROWN RUDNICK, LLP 13 601 Thirteenth Street, Northwest 14 Suite 600 15 Washington, D.C. 20005 16 (202) 536-1700 17 18 19 20 21 22</p>
<p>1 Hearing held at: 2 3 4 Fairfax County Circuit Court 5 4110 Chain Bridge Road 6 Courtroom 5H 7 Fairfax, Virginia 22030 8 (703) 691-7320 9 10 Pursuant to notice, before Theresa R. 11 Hollister, Certified Court Reporter and Notary 12 Public for the Commonwealth of Virginia. 13 14 15 16 17 18 19 20 21 22</p>	<p>1 APPEARANCES (cont.) 2 3 ON BEHALF OF DEFENDANT: 4 J. BENJAMIN ROTTENBORN, ESQUIRE 5 WOODS ROGERS, PLC 6 10 South Jefferson Street 7 Suite 1400 8 Roanoke, Virginia 24011-1319 9 (540) 983-7600 10 11 JOHN C. QUINN, ESQUIRE 12 KAPLAN HECKER &amp; FINK, LLP 13 350 Fifth Avenue 14 Suite 7110 15 New York, New York 10118 16 (212) 763-0884 17 18 19 20 21 22</p>

Transcript of Hearing  
Conducted on October 18, 2019

2 (5 to 8)

5	7
1 PROCEEDINGS	1 MR. ROTTENBORN: Thank you, Your Honor.
2 (Court reporter duly sworn by the Court.)	2 One thing I would ask, permission to hand up to the
3 MR. ROTTENBORN: Good morning, Your	3 court is Ms. Depp's -- or Ms. Heard's 2016
4 Honor. Ben Rottenborn from Woods Rogers here on	4 declaration that she filed in California because
5 behalf of Amber Heard.	5 that's what this case is really about.
6 THE COURT: Good morning.	6 Now, we have a motion for leave to file a
7 MR. QUINN: Good morning, Your Honor.	7 demurrer on the 2018 op-ed. And I know that's not
8 John Quinn from Kaplan Hecker, also for Ms. Heard.	8 an issue in front of the court today, but we believe
9 THE COURT: Good morning.	9 that the 2018 op-ed standing alone, there's no way
10 MR. GILMORE: Good morning, Your Honor.	10 it's defamatory.
11 Robert Gilmore from Stein Mitchell on behalf of	11 So when what plaintiff has done is try to
12 plaintiff, Johnny Depp.	12 bootstrap these comments that Ms. Heard made in a
13 THE COURT: Good morning.	13 sworn statement in 2016 and say all of those are
14 MR. CHEW: Good morning, Your Honor. Ben	14 false. And with Your Honor's leave, I would just
15 Chew for Johnny Depp.	15 like to just go through a few of those, because I
16 THE COURT: Good morning. I'm ready when	16 think that they frame all of the discussion about
17 you all are.	17 the requests that are in dispute.
18 MR. ROTTENBORN: We're here today on	18 THE COURT: You all gave me a 20-minute
19 Ms. Heard's motion to compel discovery responses	19 time limit. You've got 10 minutes to do it. Use
20 from plaintiff Johnny Depp. I'd like to start very	20 your 10 minutes how you'd like.
21 briefly, Your Honor, with the discussion of what	21 MR. ROTTENBORN: Thank you.
22 this case is about. So this case is a \$50 million	22 THE COURT: I'm sure you'll use it the
6	8
1 defamation case that stems from a 2018 op-ed that	1 way you think is most efficient.
2 Ms. Heard wrote in the Washington Post.	2 MR. ROTTENBORN: So, as Your Honor can see
3 THE COURT: I've read your complaint.	3 in that declaration, and I'll just hit a few
4 MR. ROTTENBORN: And Your Honor saw in	4 highlights. In paragraph 4, Ms. Heard says, "During
5 the complaint that op-ed doesn't contain a word	5 the entirety year of our relationship, Johnny has
6 about Mr. Depp. It talks about Ms. Heard being a	6 been verbally and physically abusive to me."
7 public figure and facing backlash so -- from	7 Paragraph 5, she ties that abuse, that
8 speaking out against domestic abuse. So what the	8 physical abuse, that verbal abuse to Mr. Depp's
9 plaintiff does and the theory of plaintiff's case is	9 long-held and widely acknowledged public and private
10 that they try to revive -- and they admit, they use	10 history of drug and alcohol abuse. She says that
11 the word revive -- these 2016 allegations of	11 when he is high on drugs or drunk on alcohol or
12 domestic abuse that Ms. Heard made about Johnny Depp	12 both, as is often the case, according to Ms. Heard,
13 in obtaining a protective order in California state	13 that that is when he is abusive. And not only is he
14 court, a temporary restraining order against	14 abusive, but he's destructive to property. So the
15 Mr. Depp. 2016 allegations as cited in paragraph 2,	15 context of the statements that Ms. Heard made in
16 paragraph 3, paragraph 5, and paragraph 6 of the	16 2016, that Mr. Depp is now suing her for \$50 million
17 complaint. I'd be happy to hand that up to, Your	17 on, are that -- is that when Mr. Depp was abusive to
18 Honor.	18 Ms. Heard when he was on alcohol and drugs.
19 THE COURT: You don't need to hand me the	19 So as part of our discovery requests in
20 complaint. You can assume that I've read the	20 this case, we have asked for evidence of Mr. Depp's
21 complaint. I may not have memorized it, but I've	21 alcohol and drug use. Mr. Depp brought this
22 done my best to familiarize myself with this case.	22 lawsuit. Mr. Depp is suing Ms. Heard for \$50

<p>9</p> <p>1 million. Virginia law and this court's practices 2 grant defendants broad discovery into anything that 3 is relevant or might be relevant in the context of 4 the case. And as the Roanoke Memorial Hospital case 5 has said and held for 30 years, and many other 6 courts have said, the question of whether something 7 is relevant can't be determined in darkness. The 8 question of whether something is relevant must be 9 determined in the context of the case. And when 10 this case is about the truth or the falsity of these 11 statements that Ms. Heard made in 2016, alleging 12 that Mr. Depp was destructive to property, was 13 abusive to her when he was using drugs and alcohol, 14 that opens the door to discovery of his destruction 15 of property, of his abuse of drugs and alcohol. He 16 put that at issue. He opened the door to it. And 17 now Mr. Depp is trying to deny Ms. Heard the 18 evidence that she needs, in part, to prove that 19 those statements that she made in 2016 were true. 20 Now, all of defendant's -- plaintiff's 21 defenses to what we're seeking here go toward 22 admissibility. And that's another point, Your</p>	<p>11</p> <p>1 plaintiff cannot put its head in the sand and deny 2 us discovery to that, to those pieces of 3 information. 4 Moving on, Your Honor, to the request 43 5 and 44 about this finger injury. Mr. Depp put this 6 finger injury, this graphic allegation regarding his 7 finger being severed, into his complaint. He says 8 in his declaration he filed in this case what his 9 doctor told him about it. And now he's refusing to 10 sign a HIPAA release to grant us access to the 11 records of what his doctor told him about it, or the 12 treatment of that, or other statements that he may 13 have made about Ms. Heard to his doctor. 14 He claims in his opposition that what the 15 doctor said isn't the most relevant evidence. Well, 16 as Your Honor well knows, that's not the standard 17 for discovery in Virginia. We're just at the 18 beginning of discovery. The standard is not let the 19 plaintiff decide which evidence is the most relevant 20 and allow them to give that. Virginia Code 21 8.1-399(B) says the physical or mental condition of 22 someone is at issue, it must be disclosed.</p>
<p>10</p> <p>1 Honor. Right now the standard is relevant or might 2 be relevant. The standard is not a motion in 3 limine. We believe that all the evidence that we're 4 seeking will ultimately be admissible, but that's 5 not the standard here. 6 What they're asking the court to do is to 7 hold, as a matter of law, essentially, that in a 8 case in which a defendant has accused a plaintiff of 9 being abusive when he was drunk or when he was high, 10 that she can't take evidence or discovery on his 11 drug or alcohol abuse. And that, that position is 12 just preposterous, Your Honor. 13 In addition, evidence of drug and alcohol 14 abuse, the State v. Woodson [sic] case we cite in 15 our brief talks about drug use was so intertwined 16 with the facts of the case, that it became part and 17 parcel of the entire case. 18 That's the same thing here. Drug use and 19 the destruction of property are so intertwined with 20 the allegations that Mr. Depp is claiming are false 21 and that Ms. Heard will prove are true, that they 22 are part and parcel of the entire case. And</p>	<p>12</p> <p>1 Now, what the plaintiff will say is, 2 well, it's not at issue, Your Honor. But it very 3 much is at issue and it very much was put at issue 4 by Mr. Depp. He could have written a short and 5 plain statement as is permitted in Virginia, 6 alleging defamation. And instead he larded up his 7 complaint with lots of allegations about both him 8 and about Ms. Heard and the relationship. Ms. Heard 9 deserves the right to test those allegations through 10 discovery and try to disprove those allegations. 11 Another category, Your Honor, that he put 12 at issue in the complaint, is he says he is not a 13 perpetrator of domestic violence. He says, I've 14 never abused Ms. Heard or any other woman. He said 15 that on page 2 of his declaration and in paragraph 16 23 of his complaint, he says he is not a perpetrator 17 of domestic violence. So we have requested 18 documents relating to Mr. Depp's commission of 19 domestic violence against other romantic partners. 20 They've have said, no, that's not relevant. Again, 21 it very much is relevant and it very much was put in 22 issue by Mr. Depp.</p>

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<p style="text-align: right;">13</p> <p>1 Same thing for his medical records, that 2 he -- communications with one of his doctors, this 3 guy, Dr. Kipper, who treated him, I believe he was 4 involved with the finger incident, but also treated 5 him for substance abuse. Mr. Depp says that those 6 are privileged. Well, the Hall versus Lashbrook 7 case that we cited talks about how evidence of abuse 8 of other romantic partners, Your Honor, is very 9 relevant to, to cases involving abuse. 10 Evidence of Mr. Depp's medication that he 11 may have been prescribed by this doctor that may 12 have interacted with drugs and alcohol in a way that 13 made him even more violent or that may have affected 14 his memory -- and that gets to another point, Your 15 Honor, the Via versus Commonwealth case. The 16 Virginia Supreme Court talks about evidence that 17 bears on a witness's memory is highly relevant. And 18 medical evidence that Mr. Depp may have from his 19 doctors is relevant to that question as well. 20 So not only the finger injury, but 21 communications with Dr. Kipper that mention 22 Ms. Heard or mention his other romantic partners is,</p>	<p style="text-align: right;">15</p> <p>1 his complaint that he has surveillance footage that 2 exonerates him. And now he's refusing to produce or 3 at least refusing to give us details about 4 surveillance footage at other properties that he and 5 Ms. Heard shared. 6 And so, for all of those reasons, all of 7 the things that we're seeking, Your Honor, are 8 issues that Mr. Depp put at issue in his complaint. 9 He's suing Ms. Heard for \$50 million and it is 10 improper -- 11 THE COURT: You have mentioned that three 12 times. Is there a different standard I should apply 13 if someone sues for \$50 million instead of for 14 \$100,000? 15 MR. ROTTENBORN: Not at all, Your Honor, 16 but whether -- 17 THE COURT: Then we probably shouldn't 18 dwell on that. 19 MR. ROTTENBORN: What I'm asking the 20 court to apply is Virginia's broad standard of 21 discovery related to relevance, especially on issues 22 that Mr. Depp put at issue. Thank you.</p>
<p style="text-align: right;">14</p> <p>1 again, highly relevant, not because Ms. Heard put it 2 at issue, but because Mr. Depp put it at issue, by 3 saying that everything that she said in 2016 is 4 false and is a lie. 5 THE COURT: I've got you with about 2 6 minutes left. 7 MR. ROTTENBORN: Thank you, Your Honor. 8 I'll wrap up briefly. 9 THE COURT: I was willing to give you all 10 30 minutes and put you at the end of the docket, but 11 you all are the ones that wanted to do it, so. 12 MR. ROTTENBORN: Well, we think we can 13 cover it in this short amount of time. 14 Your Honor, just very quickly, payments 15 to other witnesses, that's highly relevant to their 16 credibility. Mr. Depp is refusing to say -- he said 17 in his complaint all these allegations about 18 witnesses being neutral and supporting his side of 19 the story. And now he's refusing to disclose 20 evidence about whether or not he paid them. Again, 21 that goes straight to his credibility. 22 Surveillance footage, again, he put in</p>	<p style="text-align: right;">16</p> <p>1 THE COURT: Okay. Thank you. 2 MR. GILMORE: Good morning, Your Honor 3 Robert Gilmore for Plaintiff Johnny Depp. 4 THE COURT: Good morning. 5 MR. GILMORE: Defendant's motion to 6 compel is a fishing expedition, plain and simple, 7 Your Honor. It's intended to harass Mr. Depp and 8 it's intended to distract the court, the parties, 9 the jury from what's the sole issue in this case. 10 THE COURT: It isn't distracting the jury 11 because this is discovery. It doesn't mean it's 12 admissible just because it is discovery. 13 MR. GILMORE: Well, discovery has to be 14 reasonably calculated to lead to the discovery of -- 15 THE COURT: No, I've said that because 16 you said it's going to mislead the jury. 17 MR. GILMORE: I think -- 18 THE COURT: Hold on. I think you are 19 telling me something that's not really an issue for 20 me today. 21 MR. GILMORE: Well, whether it's 22 admissible is, to some extent, an issue today,</p>

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<p style="text-align: right;">17</p> <p>1 because if there's no hope of the discovery that the 2 parties --</p> <p>3 THE COURT: You and I are fencing over 4 words now that have no real impact on this, other 5 than when somebody makes a representation in court 6 that I don't think is right, I like to correct them 7 on it. When you say this ruling today is affecting 8 what happens to the jury, that really isn't correct 9 because we aren't at that stage yet. So you can 10 move on to your argument and I'll quit my diatribe.</p> <p>11 MR. GILMORE: I understand. I'll move 12 on, Your Honor.</p> <p>13 The sole issue in this case is whether 14 Amber Heard was lying when she claimed to be the 15 victim of domestic abuse by Mr. Depp. So the 16 categories of discovery are not -- that Ms. Heard 17 seeks -- are not relevant for that sole issue.</p> <p>18 Let's start with the medical records 19 first. Virginia Code 8.01-399 says treatment 20 records and testimony from a treating physician are 21 not discoverable unless the treatment has been put 22 at issue. Mr. Depp, Mr. Depp's medical condition</p>	<p style="text-align: right;">19</p> <p>1 malpractice case brought by the plaintiff. So, of 2 course, the plaintiff was putting his medical 3 condition at issue there.</p> <p>4 It makes sense that an opposing party 5 isn't able to say, oh, I think that my opponent is 6 crazy, that allows me to investigate and get all of 7 his mental health records. If that were allowed, 8 litigants always would assert that there was some 9 physical or psychological condition of the opponent 10 that's at issue and then try and use that to open up 11 potentially sensitive or embarrassing discovery to 12 harass the opponent or even to deter them from 13 continuing with the case.</p> <p>14 Let me address the documents about drug 15 or substance abuse. As my colleague, Mr. Chew, said 16 at our last hearing in front of Your Honor, 17 Mr. Depp, he's owned his past struggles in this 18 area. He has nothing to hide. But that's not the 19 issue in this case. The issue in this case is not 20 whether Mr. Depp was a drug or alcohol abuser. It's 21 about whether he abused Ms. Heard physically, as she 22 has falsely alleged. He did not.</p>
<p style="text-align: right;">18</p> <p>1 has not been put at issue by him. This isn't a 2 personal injury case. Ms. Heard is trying to put at 3 issue his medical condition. She is the defendant. 4 A defendant can't put a plaintiff's medical 5 condition at issue as some sort of cause to then pry 6 open discovery into medical conditions and 7 treatment.</p> <p>8 That's the holding of multiple cases that 9 we cite in our briefs. For instance, the Second 10 Circuit in the In Re Simms case, dealing with the 11 therapist/patient privilege that federal courts 12 recognize, cites the privilege is not overcome when 13 the plaintiff's mental state is put in issue only by 14 the defendant. And the D.C. circuit reached that 15 same conclusion in the Coke [sic] case that we also 16 cite.</p> <p>17 But that's what Ms. Heard is trying to do 18 here. Ms. Heard points to no cases where a court 19 said an opposing party is allowed to put at issue 20 the medical condition of the opponent as the basis 21 for discovery. The only case that they cite, the 22 Pettis versus Godfrey [sic] case, that was a medical</p>	<p style="text-align: right;">20</p> <p>1 The extent that any documents about 2 substance abuse involve medical treatment for 3 substance abuse, they are not subject to discovery 4 under Virginia Code 8.01-399. And even documents 5 that don't involve medical treatment still are not 6 subject to discovery, because they cannot yield 7 admissible evidence. Essentially, what Ms. Heard 8 wants to argue is that because Mr. Depp supposedly 9 did one bad thing, take drugs or abuse alcohol, he 10 is more likely to have hit her. But that is classic 11 propensity evidence that Rule 404 prohibits. And 12 that's the only kind of evidence, inadmissible 13 evidence, that this discovery could possibly yield. 14 That's why it is not discoverable because it is not 15 relevant, it's not reasonably calculated to lead to 16 discoverable evidence.</p> <p>17 When you also consider that what would 18 this evidence be used for, it is not admissible. It 19 would be prejudicial, this kind of information would 20 only lead to prejudicial evidence that would not be 21 admitted.</p> <p>22 We saw what happened at the last hearing.</p>

21  
1 Ms. Heard's lawyers tried to wave around what they  
2 thought were embarrassing and salacious documents to  
3 pressure us to accede to their position on the  
4 motion for the protective order. We're worried that  
5 they're going to try to do those tactics throughout  
6 this case. And that's why we think that allowing  
7 this kind of discovery is just going to feed into  
8 that. They want to taint the jury, harass my  
9 client, and distract from what's at in their case,  
10 whether their client is lying. That's not a proper  
11 purpose for discovery.  
12 Finally, with respect to Mr. Depp's past  
13 alleged acts, those are not discoverable, because it  
14 is, again, the kind of classic propensity evidence  
15 that Rule 404 does not allow.  
16 The prior allegation, we're not aware of  
17 any document, Mr. Depp having any document  
18 reflecting an allegation by any of Mr. Depp's other  
19 romantic partners.  
20 THE COURT: Let me ask you a question.  
21 Does your complaint say that your client avers that  
22 he's not a domestic abuser and has never abused

22  
1 anyone? If that is in the complaint, why aren't  
2 they entitled to do discovery to find out whether  
3 that's a truthful statement that your client has put  
4 in the complaint?  
5 MR. GILMORE: That is a truthful  
6 statement. That is his claim.  
7 THE COURT: Then why aren't they allowed  
8 to do discovery to see whether it is truthful or  
9 not? They don't just need to take his word for it,  
10 do they?  
11 MR. GILMORE: That statement is not  
12 relevant to what is at issue in this case.  
13 THE COURT: Well, somebody thought it was  
14 relevant enough to put it in the complaint.  
15 MR. GILMORE: Understood. There are many  
16 reasons why things are said in complaints. Truthful  
17 statements are made. But whether that is a relevant  
18 issue for the case to allow open-ended discovery on,  
19 is a wholly different matter, Your Honor. Mr. Depp  
20 understood that this case, since the public op-ed,  
21 is going to be in the public press. And so it's  
22 important for him to say that. But what's at issue

23  
1 is whether he abused Ms. Heard as she falsely  
2 claims.  
3 THE COURT: Say that again. That  
4 Mr. Depp put that in his complaint because he knew  
5 that this would be in the press and it was important  
6 for him to put it in the press?  
7 MR. GILMORE: Mr. Depp --  
8 THE COURT: That's the motivation for  
9 that being in the complaint? That's what you're  
10 saying on the record?  
11 MR. GILMORE: Much of this is to, as to  
12 his character and his conduct, absolutely, Your  
13 Honor. But it is important for him to have stated  
14 that. He is facing a public op-ed that was leveled  
15 at him by Ms. Heard. But the issue in terms of what  
16 is defamatory is whether she had abused -- whether  
17 he had abused Ms. Heard.  
18 And so the kind of discovery Ms. Heard  
19 tries to shoehorn her argument into some sort of  
20 modus operandi argument. But that's a bogus  
21 argument.  
22 The Western Alliance Bank case that we



24  
1 cite --  
2 THE COURT: You have about 2 minutes left  
3 as well. Thank you.  
4 MR. GILMORE: Thank you, Your Honor.  
5 Modus operandi refers to evidence so nearly  
6 identical in method as to earmark them as the  
7 handwork of the accused. Ms. Heard cannot seriously  
8 argue that Mr. Depp engaged in some sort of  
9 distinctive method of domestic abuse towards her  
10 that would be proven by showing he engaged in a  
11 similarly distinctive method of abuse. That would  
12 be a non-sensible argument.  
13 And the arguments that they make for  
14 discovery into arrests that don't even involve  
15 domestic abuse allegations, and that are decades  
16 old, are similarly irrelevant and meritless, a  
17 fishing expedition.  
18 For all these reasons, Your Honor, we  
19 respectfully ask that the court deny Ms. Heard's  
20 motion in its entirety.  
21 THE COURT: Thank you.  
22 You can have a minute to reply.

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25  
1 MR. ROTTENBORN: Thank you, Your Honor.  
2 Your Honor, I think you grasp the issue  
3 fully, which is that Mr. Depp has put these claims  
4 at issue in his complaint. His motivation for doing  
5 that, whether it's to rehabilitate his image  
6 publicly or because it's relevant to the lawsuit in  
7 his mind, is irrelevant. He has made allegations in  
8 the complaint that he is not a perpetrator of  
9 domestic violence against Ms. Heard or any other  
10 woman. He has made other allegations that go  
11 straight to these discovery requests. And Ms. Heard  
12 deserves the right to test those allegations,  
13 particularly when the core of this case, plaintiff's  
14 theory of this case is that statements that  
15 Ms. Heard made in 2016 were, were false. And in  
16 those statements she said that when he abused her he  
17 was on drugs and alcohol and was destroying property  
18 often as well.  
19 Now, as for the medical records, this is  
20 the last thing I will touch on, he put these at  
21 issue. He references his finger, his medical  
22 treatment of his finger in his complaint. He put it

26  
1 at issue by saying that statements that she made  
2 about his medical condition, his substance abuse,  
3 were false.  
4 And so, for all those reasons, as I think  
5 Your Honor recognized in this case about domestic  
6 abuse, which it's a matter of common sense, domestic  
7 abuse and abuse of drugs and alcohol are often  
8 intertwined, as numerous case law and cases have  
9 side, Ms. Heard is entitled to the full discovery  
10 that she seeks. Thank you.  
11 THE COURT: Thank you.  
12 The motion to compel is granted. I will  
13 say that I probably would not grant it as to some of  
14 the matters, such as the medical records that might  
15 be protected under 8.01-399 of the code, but I think  
16 that the complaint is broad enough to place these  
17 things in issue, places his mental condition in,  
18 issue, even though it may or may not really be an  
19 issue in this case, nevertheless it's put in the  
20 complaint for a purpose. I'm told by counsel that  
21 now, perhaps, that purpose is merely so that the  
22 press will get it and not really so much related to

27  
1 the lawsuit. And that's a little troubling.  
2 But nonetheless, the motion to compel is  
3 granted as to all matters at this point.  
4 Would you all do an order. Of course,  
5 note your exceptions.  
6 MR. ROTTENBORN: Yes, Your Honor. Thank  
7 you very much.  
8 THE COURT: And the time for production,  
9 you all are able to come up with an agreement on  
10 that?  
11 MR. CHEW: We actually planned to discuss  
12 that right after this hearing.  
13 THE COURT: Okay. Thank you. Hope  
14 everybody has a good weekend.  
15 (The hearing was concluded at 11:11 a.m.)  
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1 CERTIFICATE OF SHORTHAND REPORTER  
2 I, Theresa R. Hollister, the court  
3 reporter before whom the foregoing hearing was  
4 taken, do hereby certify that the foregoing  
5 transcript is a true and correct record of the  
6 testimony given; that said testimony was taken by me  
7 stenographically and thereafter reduced to  
8 typewriting under my supervision; and that I am  
9 neither counsel for, related to, nor employed by any  
10 of the parties to this case and have no interest,  
11 financial or otherwise, in its outcome.  
12  
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14  
15    
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17 Theresa R. Hollister  
18 Court Reporter  
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21  
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## Rottenborn, Ben

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**From:** Rottenborn, Ben  
**Sent:** Friday, May 29, 2020 4:47 PM  
**To:** 'Chew, Benjamin G.'; Vasquez, Camille M.  
**Subject:** HIPAA Issue

Ben and Camille,

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

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

Thanks,  
Ben