VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO DENY THE REMAINDER OF DEFENDANT'S PLEA IN BAR, AND SCHEDULE AN EVIDENTIARY HEARING BEFORE A JURY ON THE REMAINING ISSUES

January 22, 2021

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Mr. Depp has brought a defamation claim based on Ms. Heard's Op-Ed article she drafted, at the request of and with the assistance of the ACLU, on topics addressing the ability to speak out, be heard, receive proper investigation, and not be retaliated against, respecting domestic abuse and violence, sexual harassment and assault, the #MeToo movement, Violence Against Women Act, and Title IX rules. Mr. Depp was not named in the article. The Op Ed article was published in *The Washington Post,* a highly regarded publication that reserves its Op Eds for significant and pressing issues of public concern, and not private disputes. In response to the Complaint alleging defamation because of the Op Ed article, Ms. Heard filed a Plea in Bar based on Virginia's Anti-SLAPP statute, requesting an evidentiary hearing before a jury. Ms. Heard, like all Virginia litigants, has a right to demand a jury on such an issue. Yet Mr. Depp seeks to shortcut this right by refusing Ms. Heard's request to first contact the Court through Calendar Control for scheduling long briefing and setting an evidentiary hearing, before a jury. Mr. Depp instead noticed Ms. Heard's Plea in Bar for a hearing based solely on the pleadings, as a 30-minute matter, with only five pages of briefing.[1] Ms. Heard does not agree to waive her rights to a jury trial or evidentiary hearing on her assertion of Anti-SLAPP immunity.

Mr. Depp's justification for simply ignoring an evidentiary hearing and jury demand is, since he chose to submit his Plea in Bar to the Court on the pleadings, and the Court dismissed his Anti-SLAAP defense, Ms. Heard should follow suit. First, the statements at issue are nothing alike. Mr. Depp's statements were personal attacks on Ms. Heard, nothing more. In contrast, Ms.

[1] While the Court requested that all of these issues, including that this matter should not be heard on January 29, in briefing and a hearing on January 29, the Court permitted Ms. Heard 10 pages to address these issues, and 5 additional pages to Mr. Depp, and indicated the parties could have up to one hour to argue.

Heard's statements[2] were in the context of an Op-Ed, in conjunction with the ACLU and in her role as an ambassador of for the ACLU, calling for "Congress [to] reauthorize and strengthen the Violence Against Women Act," and called for "changes to laws and rules and social norms" so that "women who come forward to talk about violence receive more support." **Ex. 7 (Declaration of ACLU) ¶¶4-6.** These topics are clearly matters of public concern. *Id.* ¶ 5. If the Court finds that the Op-Ed contains matters of public concern, Ms. Heard possesses immunity under the Anti-SLAAP act, unless Mr. Depp can prove by clear and convincing evidence that Ms. Heard knew the statements were false or made them with reckless disregard. This is clearly a jury question, and Ms. Heard appropriately requested a jury trial. Because this same issue (whether the statements were false or made with reckless disregard) will be considered by the jury on Mr. Depp's defamation claim, Ms. Heard requests this issue be heard by the jury at trial, rather than scheduling a separate evidentiary hearing, which would be largely redundant and inefficient for the parties and this Court. To the extent the Court believes it can determine whether the statements satisfied the first prong, "statements....regarding matters of public concern that would be protected under the First Amendment to the United States Constitution made by that person that are communicated to a third party," without further evidence, then Ms. Heard requests the Court so rule. If the Court believes it requires an evidentiary hearing (as Ms. Heard earlier requested), then Ms. Heard requests that either the Court defer the ruling until trial or set an evidentiary hearing on this issue.

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[2] Oddly, Mr. Depp argues that only "opinions" are protected under the Anti-SLAPP statute, Depp Memo at 3-4. Yet the Anti-SLAPP statute explicitly protects "**statements**...regarding matters of public concern that would be protected under the First Amendment to the United States Constitution made by that person that are communicated to a third party." Va. Code §8.01-223.2 (emphasis added).

BACKGROUND

In late 2017, the nation witnessed a series of accusations of famous, powerful men abusing women. This triggered an intense, ongoing debate about the prevalence of abuse and the nature of the societal forces that have long caused victims – mainly women – to remain silent.[3]

On December 18, 2018, Ms. Heard joined that conversation by publishing an Op-Ed online in *The Washington Post. See* **Att. 1**. Ms. Heard is described in the Op-Ed as "an actress and ambassador on women's rights at the American Civil Liberties Union." *Id.* The ACLU suggested Ms. Heard write, and assisted Ms. Heard in submitting, an Op-Ed piece to the Washington Post addressing how victims are often intimidated by institutions and social dynamics that protect abusers, and that these dynamics cause people to question victims. **Att. 7 ¶ 5.**

The editors at *The Post* (not Ms. Heard) created the title, "Amber Heard: I spoke up against sexual violence – and faced our culture's wrath. That has to change." When the same Op-Ed appeared in *The Post's* print edition one day later, the editors changed the title to "A Transformative Moment for Women." **Att. 2.**

The dominant message of the Op-Ed is that "[w]e are in a transformative political moment" and "have an opening now to bolster and build institutions protective of\women." Ms. Heard described the lessons of the #MeToo movement, surveyed the dramatic rise of women in electoral politics, and declared that "[w]omen's rage and determination to end

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[3] *See, e.g.,* Jeannie Suk Gersen, *Bill Cosby's Crimes and the Impact of #MeToo on the American Legal System,* NEW YORKER (Apr. 27, 2018); Amy Kaufman & Daniel Miller, *Six Women Accuse Filmmaker Brett Ratner of Sexual Harassment or Misconduct,* L.A. TIMES (Nov. 1, 2017); Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades,* N.Y. TIMES (Oct. 5, 2017).

sexual violence are turning into a political force." She therefore called on Congress to "reauthorize and strengthen the Violence Against Women Act," and criticized "proposed changes to Title IX rules governing the treatment of sexual harassment and assault in schools." More broadly, she advocated the election of "representatives who know how deeply we care about these issues," as well as the adoption of cultural and political reforms to "right the imbalances that have shaped our lives."

On March 1, 2019, Mr. Depp filed a Complaint alleging defamation against Ms. Heard based on the Op-Ed. In response, on April 11, 2019, Ms. Heard filed a Motion to Dismiss and Plea in Bar, in which she stated "Mr. Depp's claims are also subject to dismissal under the Virginia Anti-SLAPP statute," and "demands that any Plea in Bar in Virginia be tried as an evidentiary hearing before a jury." **Att. 3 at 2 and n.3.** On March 27, 2020, this Court ruled on the Demurrer, but recognized that "Ms. Heard reserved her arguments that ... she is entitled to immunity under Virginia's Anti-SLAPP statute ... for a later evidentiary hearing." **Att. 4 at n.1**

Despite demanding an evidentiary hearing in front of a jury on her Plea in Bar, Mr. Depp insisted on setting the Plea in Bar based solely on the pleadings, on the Friday Motions docket. The parties met and conferred, Ms. Heard reasserted her jury demand, Mr. Depp indicated he would look further into the issue and respond to Ms. Heard. **Att. 5.** Instead of responding, Mr. Depp filed this Motion to deny Ms. Heard's Plea in Bar on the papers and set it for January 29, 2021. Granting Mr. Depp's Motion would deny Ms. Heard her Constitutional rights as recognized under Va. Code §8.01-336 and Rule 3:21 of the Rules of the Virginia Supreme Court.

ARGUMENT

I. Ms. Heard has a Right to an Evidentiary Hearing by Jury on Her Plea in Bar

"[A] plea in bar is a defensive pleading that reduces the litigation to a single issue." *Kroger Co. v. Appalachian Power Co.*, 244 Va. 560, 562 (1992). "Its very purpose is to decide factual issues whose determination, when applied to certain legal principles, may end or limit pending litigation." *Painter v. Singh*, 73 Va. Cir. 77, 78 (Fairfax Cir. Ct. 2007) (Wooldridge, Jr., J.) (citing *Nelms v. Nelms*, 236 Va. 281 (1988).)

In *Painter*, the Court explained that Defendant "was free to demand a jury trial on the plea in bar. Va. Code § 8.01-336(B) holds that in any action at law, 'unless one of the parties demands that the case **or any issue** thereof be tried by a jury...the whole matter of law and fact may be heard and judgment given by the court.'" 73 Va. Cir. at 78. (emphasis in original). In fact, "[j]ury trials on pleas in bar are not a rarity in this court." *Id.* In *Painter*, a jury did not hear the Plea in Bar because "Plaintiff did not request a jury when the plea in bar was set for a hearing at calendar control. Plaintiff did not request a jury on the morning of the hearing, or ask why one was not present. Plaintiff did not even request a jury in her responses to the court's questions during closing argument." *Id.* The Court held "[h]aving not requested a jury, either in writing or orally at the hearing itself, ***Plaintiff waived her right to have a jury decide the factual issues raised at the plea in bar.***" *Id.* at 79. (emphasis added).

In contrast, Ms. Heard requested an evidentiary hearing by jury on her Plea in Bar as to her Anti-SLAPP immunity defense. She has never waived that request. The only way a Plea in Bar can be heard on the papers is "[u]pon agreement of the parties." *Kroger Co.*, 244 Va. at 562. Mr. Depp cannot request, on his own, that Ms. Heard's Plea in Bar be heard on the papers. The "right of trial by jury as declared in Article I, Section 11 of the Constitution of Virginia and by

statutes thereof shall be preserved inviolate to the parties." Va. Code §8.01-336; *see also* Rule 3:21. Thus, Mr. Depp's Motion should be denied. In the event the Court may be able to determine whether the statements made by Ms. Heard in the Op-Ed were matters of public concern based on the submissions and argument, Ms. Heard asks that this Court issue that finding, and then Ms. Heard should be granted an evidentiary hearing in front of a jury on the remaining portion of the Anti-SLAPP statute. Given that a jury will be empaneled for this case already in May, and much of the same evidence will be presented at that trial as would be presented on the remaining issues, Ms. Heard suggests this issue be determined by the same jury for judicial economy and efficiency.

II. Mr. Depp's Motion to Seek to Dismiss Ms. Heard's Plea in Bar is Without Merit.

Virginia's anti-SLAPP statute, Va. Code § 8.01-223.2, enacted in 2017, grants immunity to persons alleged to have made certain defamatory statements regarding matters of public concern:

> A person shall be immune from civil liability for... a claim of defamation based solely on statements (i) regarding matters of public concern that would be protected under the First Amendment to the United States Constitution made by that person that are communicated to a third party.... The immunity provided by this section shall not apply to any statements made with actual or constructive knowledge that they are false or with reckless disregard for whether they are false.

Va. Code § 8.01-223.2(A). Thus, there are two issues that must be determined. First, whether the statements at issue regard a matter of public concern, which if they do, would attach the immunity. While there is scarce Virginia caselaw on the anti-SLAPP statute, the Eastern District of Virginia recently held that the first issue is a question of law. *Alexis v. Kamras*, 2020 U.S. Dist. LEXIS 227962, at *55 (E.D. Va. Dec. 3, 2020) (Payne, J). The Court held the statements at issue were matters of public concern because of the "nature of the topic discussed (i.e., the reliability of the city's educational system) and by the intense local media interest in the Carver

scandal and the persons responsible for it." *Id.* at *56. The Court further held that, "[a]lthough the termination of a private employee by a private employer may not be a matter of public concern, allegations that public school teachers coached public school students to cheat on state examinations are a matter of public concern." *Id.* at *56-*57 (citations omitted).

Second, if the immunity applies, it can only be lost if the statements were made with actual or constructive knowledge that they are false or with reckless disregard for whether they are false. "[T]he question of whether the statements were made with reckless disregard for their truth or constructive knowledge of their falsity will go to a jury." *Id.* at *57. Mr. Depp has the burden, "by clear and convincing evidence" to prove Ms. Heard acted with an improper mental state. *Id.* at *56.[4]

A. Ms. Heard's Statements Concern Public Issues and are Protected

Based on this Court's ruling on Mr. Depp's Demurrer, the following statements from Ms. Heard's Op-Ed are at issue:

- Amber Heard: I spoke up against sexual violence—and faced our culture's wrath. That has to change.
- 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.
- I had the rare vantage point of seeing, in real time, how institutions, protect men accused of abuse.

Att. at 4 at 4-5. The Court, in ruling on the Demurrer, has already held that "Defendant's op-ed concerns the matter of what happened after Defendant attained the status of a public figure

[4] Mr. Depp cites *Pendleton v. Newsome*, 290 Va. 162, 174 (2015) to claim Virginia's Anti-SLAPP statute does not apply in defamation claims. In fact, the opposite is true: the Anti-SLAPP statute is explicitly designed to provide immunity for defamation claims under certain circumstances. Not surprisingly, *Pendleton* did not involve the Anti-SLAPP statute. It merely held that at the demurrer stage, innuendo can potentially be defamatory. *Pendleton* is, thus, inapposite to the issue at hand.

representing domestic abuse." ***Id.* at 6.** Therefore, this Court has already found that Ms. Heard's statements are of public concern. This holding tracks with courts throughout the country, which have held that statements regarding domestic violence and sexual harassment are issues of public concern.[5] In fact, a California federal case, *Guzman v. Finch*, 2019 WL 1877184, at *5–6 (S.D. Cal. Apr. 26, 2019), with facts similar to circumstances here, recently found that a Facebook post discussing the author's experience with rape and domestic violence to empower other survivors qualified as an issue of public interest because "the focus of Defendant's conduct appear[ed] to be the public interest in domestic violence and/or abusive relationships rather than an effort to gather ammunition for another round of [private] controversy." *Id.* (internal citations omitted). Importantly, "[i]t need not be proved that a particular adult is in actuality a sexual predator in order for the matter to be a legitimate subject of discussion." *Terry v. Davis Cmty. Church*, 131 Cal. App. 4th 1534, 1548 (2005).

[5] *See e.g.*, *Sipple v. Found. for Nat'l Progress*, 71 Cal. App. 4th 226, 239 (1999) (holding held that a complaint arising from a magazine article that accused a nationally known political consultant of domestic violence fell within the scope of the anti-SLAPP statute because "domestic violence is an extremely important public issue in our society") *M.G. v. Time Warner, Inc.*, 89 Cal.App.4th 623 (2001) (applying anti-SLAPP statute where "[t]he broad topic of the article and the program was not whether a particular child was molested but rather the general topic of child molestation in youth sports, an issue which, like domestic violence, is significant and of public interest."); *Campone v. Kline*, 2018 WL 3652231, at *7 (Tex. App. Aug. 2, 2018) (holding that allegations that a religious leader had made multiple women feel uncomfortable were protected under Texas's anti-SLAPP statute because "[t]hose allegations can be viewed as touching on issues of . . . public safety (whether he made women feel unsafe) . . ." *Cavin v. Abbott*, 545 S.W.3d 47, 60-65 (Tex. Ct. App. 2017) (establishing that subjects of mental illness or domestic abuse plainly fall within the ordinary meaning of "health" or "safety" and it is clear that such "health" and "safety" under the TCPA includes that of private parties embroiled in an otherwise private dispute, including domestic violence); *Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146 (2004) (charges of domestic abuse by one partner in a lesbian relationship that had achieved national prominence due to adoption litigation were an issue of public interest because claims "potentially affected a large number of children and adoptive parents beyond the direct participants.")

Mr. Depp, citing no Anti-SLAPP cases, advances two arguments. First, he asserts the Court has already held that the statements could be defamatory, and therefore capable of being proven false. But that has no relevancy at this stage: "[T]he inquiry at this stage of the anti-SLAPP analysis is not whether the statements are true, but whether the allegations in the complaint are a matter of public interest." *Briganti v. Chow*, 42 Cal.App.5th 504, 509 (2019). The Anti-SLAPP statute is designed to provide immunity to potentially defamatory statements. Therefore, the fact this Court held that Ms. Heard's statements from the Op-Ed are potentially defamatory is of no consequence as to whether Anti-SLAPP immunity applies.

Second, Mr. Depp argues that because the Court found his statements about Ms. Heard were not of the public concern, then neither could Ms. Heard's statements be of public concern. Unlike Ms. Heard's Op-Ed, published in a highly recognized and respected publication, which focused on the "transformative political [#MeToo] movement," called for "Congress [to] reauthorize and strengthen the Violence Against Women Act," and called for "changes to laws and rules and social norms" so that "women who come forward to talk about violence receive more support," Mr. Depp's defamatory statements were not directed to matters of public concern that would be protected by the First Amendment and subject to immunity under Virginia's Anti-SLAPP statute. Rather, they are directed primarily at Ms. Heard in whether she was committing perjury and created a "hoax" against Mr. Depp. These are highly personal matters, and the statements were made by Mr. Depp solely for his own personal benefit. *See Padilla v. S. Harrison R-II Sch. Dist.*, 181 F.3d 992, 997 (8th Cir. 1999) ("The question before us is whether the compelled expression of a teacher's opinion on the propriety of a sexual relationship between a teacher and a nonstudent minor is entitled to First Amendment protection. We conclude that it is not[.]"); *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 492 F.3d 1192, 1205 (10th Cir. 2007)

("In determining whether speech pertains to a matter of public concern, the court may consider the motive of the speaker and whether the speech is calculated to disclose misconduct or merely deals with personal disputes and grievances unrelated to the public's interest.") (quotations omitted). Moreover, Mr. Depp failed to respond to Ms. Heard's arguments that his statements were not of public concern: "Mr. Depp's counsel neither argued nor addressed this point during oral argument on in their reply brief." **Att. 6 at 10.** There is no comparison between the statements at issue.

B. The Truth of the Statements are a Question of Fact for the Jury

It is quite obvious there is a dispute between the parties as to whether Ms. Heard's statements are true. But Mr. Depp argues that because he has alleged the statements are false, Anti-SLAPP immunity cannot apply. This argument makes no sense, because it would mean that Anti-SLAPP immunity would never apply if a Plaintiff merely alleges falsity. In fact, the case Mr. Depp cites, *Steele v. Goodman*, 382 F. Supp. 3d 403, 427 (E.D. Va. 2019) (Lauck, J.) was not a Plea in Bar or a Summary Judgment decision. Rather, it was a decision on a Motion to Dismiss. *Id.* at 428. This case is inapplicable to the issue. This question, instead, must "go to a jury." *Alexis*, 2020 U.S. Dist. LEXIS 227962, at *57.

CONCLUSION

For these reasons, Ms. Heard respectfully requests this Court to deny Mr. Depp's Motion, issue a determination that the statements satisfied the first prong of the Anti-SLAPP statute "of public concern," and if not able, grant an evidentiary hearing on this issue, and permit Ms. Heard to present the remaining issues on the Anti-SLAPP defense to a jury at the May 17, 2021 trial.

Dated this 22nd day of January 2021.

Respectfully submitted,

Amber L. Heard

[redacted]

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CERTIFICATE OF SERVICE

I certify that on this 22nd day of January, 2021, a copy of the foregoing shall be served by via email, pursuant to the Agreed Order dated August 16, 2019, as follows:

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Opinions

Amber Heard: I spoke up against sexual violence — and faced our culture's wrath. That has to change.

Amber Heard arrives at the premiere of "Aquaman" on Dec. 12 in Los Angeles. (Jordan Strauss/Jordan Strauss/Invision/AP)

By Amber Heard
December 18, 2018

Amber Heard is an actress and ambassador on women's rights at the American Civil Liberties Union.

I was exposed to abuse at a very young age. I knew certain things early on, without ever having to be told. I knew that men have the power — physically, socially and financially — and that a lot of institutions support that arrangement. I knew this long before I had the words to articulate it, and I bet you learned it young, too.

Like many women, I had been harassed and sexually assaulted by the time I was of college age. But I kept quiet — I did not expect filing complaints to bring justice. And I didn't see myself as a victim.

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.

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.

Listen to broadcast journalist Connie Chung read a letter to Christine Blasey Ford, acknowledging publicly for the first time that she was sexually abused. (Kate Woodsome, Danielle Kunitz/The Washington Post)

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.

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5 Opinion
The Republican Senate majority is imperiled

In recent years, the #MeToo movement has taught us about how power like this works, not just in Hollywood but in all kinds of institutions — workplaces, places of worship or simply in particular communities. In every walk of life, women are confronting these men who are buoyed by social, economic and cultural power. And these institutions are beginning to change.

We are in a transformative political moment. 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. #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 are turning into a political force.

We have an opening now to bolster and build institutions protective of women. For starters, Congress can reauthorize and strengthen the Violence Against Women Act. First passed in 1994, the act is one of the most effective pieces of legislation enacted to fight domestic violence and sexual assault. It creates support systems for people who report abuse, and provides funding for rape crisis centers, legal assistance programs and other critical services. It improves responses by law enforcement, and it prohibits discrimination against LGBTQ survivors. Funding for the act expired in September and has only been temporarily extended.

We should continue to fight sexual assault on college campuses, while simultaneously insisting on fair processes for adjudicating complaints. Last month, Education Secretary Betsy DeVos proposed changes to Title IX rules governing the treatment of sexual harassment and assault in schools. While some changes would make the process for handling complaints more fair, others would weaken protections for sexual assault survivors. For example, the new rules would require schools to investigate only the most extreme complaints, and then only when they are made to designated officials. Women on campuses already have trouble coming forward about sexual violence — why would we allow institutions to scale back supports?

I write this as a woman who had to change my phone number weekly because I 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. 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 — and my life and livelihood depended on myriad judgments far beyond my control.

I want to ensure that women who come forward to talk about violence receive more support. We are electing representatives who know how deeply we 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.

Read more:

The Post's View: What Betsy DeVos's new Title IX changes get right — and wrong

Betsy DeVos: It's time we balance the scales of justice in our schools

Janet Napolitano: Don't let the Trump administration undermine Title IX

Mili Mitra: The most horrifying part of the Dartmouth sexual harassment case

710 Comments

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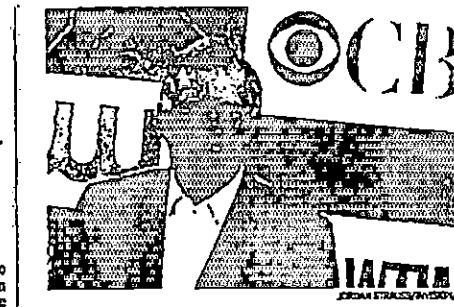

JESSICA STRAUSS/INVISION/ASSOCIATED PRESS

Leslie Moonves in July 2013. The CBS chief executive resigned in September after multiple allegations of sexual misconduct surfaced.

A transformative moment for women

BY AMBER HEARD

I was exposed to abuse at a very young age. I knew certain things early on, without ever having to be told. I knew that men have the power — physically, socially and financially — and that a lot of institutions support that arrangement. I knew this long before I had the words to articulate it, and I bet you learned it young, too.

Like many women, I had been harassed and sexually assaulted by the time I was of college age. But I kept quiet — I did not expect filing complaints to bring justice. And I didn't see myself as a victim.

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.

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.

In recent years, the #MeToo movement has taught us about how power like this works, not just in Hollywood but in all kinds of institutions — workplaces, places of worship or simply in particular communities. In every walk of life, women are confronting these men who are buoyed by social, economic and cultural power. And these institutions are beginning to change.

We are in a transformative political moment. 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. #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 are turning into a political force.

We have an opening now to bolster and build institutions protective of women. For starters, Congress can reauthorize and strengthen the Violence Against Women Act. First passed in 1994, the act is one of the most effective pieces of legislation enacted to fight domestic violence and sexual assault. It creates support systems for people who report abuse, and provides funding for rape crisis centers, legal assistance programs and other critical services. It improves responses by law enforcement, and it prohibits discrimination against LGBTQ survivors. Funding for the act expired in September and has only been temporarily extended.

We should continue to fight sexual assault on college campuses, while simultaneously insisting on fair processes for adjudicating complaints. Last month, Education Secretary Betsy DeVos proposed changes to Title IX rules governing the treatment of sexual harassment and assault in schools. While some changes would make the process for handling complaints more fair, others would weaken protections for sexual assault survivors. For example, the new rules would require schools to investigate only the most extreme complaints, and then only when they are made to designated officials. Women on campuses already have trouble coming forward about sexual violence — why would we allow institutions to scale back supports?

I write this as a woman who had to change my phone number weekly because I 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. 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 — and my life and livelihood depended on myriad judgments far beyond my control.

I want to ensure that women who come forward to talk about violence receive more support. We are electing representatives who know how deeply we 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.

The writer is an actress and ambassador on women's rights at the American Civil Liberties Union.

MELISSA ROSENBERG

Excerpted from washingtonpost.com/people/alyssa-rosenberg

Pay the women instead

If there is one tiny kernel of relief in the infuriating news cyclone that has been 2018, it is the report that CBS doesn't intend to pay disgraced and disgraceful former chairman and chief executive Leslie Moonves $120 million in severance. Of course, that relief is mitigated incurring costs upfront in the form of lawyers' fees. It's a perverse incentive structure that gives companies millions of reasons not to deal aggressively with male stars who harass their co-workers.

Some companies have begun to write employment contracts specifying that employees who are axed because of sexual misconduct can't demand that

Racism is a national security issue

BY SHERRILYN IFILL

Two newly released reports from the Senate Intelligence Committee about Russian interference in the 2016 election have been nothing short of revelatory. Both studies — one produced by researchers at Oxford University, the other by the cybersecurity firm New Knowledge — describe in granular detail how the Russian government tried to sow discord and confusion among American voters. And both conclude that Russia's campaign included a massive effort to deceive and co-opt African Americans. We now have unassailable confirmation that a foreign power sought to exploit racial tensions in the United States for its own gain.

Ever since U.S. intelligence agencies reported that the Russian government worked to sway the 2016 election, foreign election meddling has been one of our nation's top national security concerns. But our discussions about Russian interference rarely touch on the other major threat to our elections: the resurgence of state-sponsored voter suppression in the United States. In light of these disturbing new reports, it is clear we can no longer think of foreign election meddling as a phenomenon separate from attempts to disenfranchise Americans of color. Racial injustice remains a real vulnerability in our democracy, one that foreign powers are only too willing to attack.

How should we respond? First, we have to make it easier, not harder, for Americans to vote. In the wake of the Supreme Court's 2013 *Shelby County* decision, which severely weakened the Voting Rights Act, we've seen a resurgence of voter-suppression efforts across the nation. Congress has the power to fix the Voting Rights Act, but so far it has declined to do so. The revelations of Russia's racial targeting should serve as a wake-up call that domestic voter suppression, in addition to being unconstitutional, effectively aids foreign attacks on our democracy. Indeed, we should take seriously the danger that domestic and foreign groups may coordinate to suppress turnout in future elections, a possibility we can begin to forestall, first and foremost, by protecting the franchise here at home. Rep. Terri A. Sewell (D-Ala.) has already introduced a comprehensive new voting rights bill, and Congress should swiftly act upon it in the new year.

Second, these revelations only deepen the urgency of demanding more accountability from technology companies. The New Knowledge report criticizes social media companies such as Facebook for misleading Congress about the nature of Russian interference, noting that one even denied that specific groups were targeted. This is just more evidence that Silicon Valley has yet to come to grips with the enormous influence it wields in our democracy, and the ways that foreign powers can use that influence to manipulate Americans. Congress should require greater transparency and responsibility from these corporations before the 2020 elections.

Finally, we have to accept that foreign powers seize upon these divisions because they are real — because racism remains the United States' Achilles' heel. Indeed, it is, and always has been, a national security vulnerability — a fundamental and easily exploitable reality of American life that belies the image and narrative of equality and justice we project and export around the world. It may be especially difficult in our era of "fake news" and "alternative facts," but we must recognize that our failure to acknowledge hard truths, especially when it comes to race, makes it easier for foreign powers to turn us against one another. Russia did not conjure out of thin air the black community's legitimate grievances about racist policing. Nor did it invent racist and hateful conspiracy theories. Rather, Russian trolls seized upon these real problems as ready-made sources of discord. Moving forward, we need to recognize that our failure to honestly address issues of civil rights and racial justice makes all of us more susceptible to foreign interference.

This is hardly the first time our adversaries have identified race and racism as America's great vulnerability. During the Cold War, the Soviet Union frequently pointed to segregation and civil unrest as proof of American hypocrisy. This propaganda was sufficiently widespread, and contained enough truth, that leaders of both parties began arguing that segregation undermined the United States' position in the Cold War, helping to ease the passage of civil rights legislation in the 1950s and 1960s.

Today, we need a similar understanding that our failure to ensure equal justice for all has grave implications for U.S. national security. The upcoming House oversight committee hearings on Russian interference and voter suppression will be critical opportunities to educate the public on the threats to our democracy, and they deserve our close attention.

But we must be careful not to reduce the struggle for racial equality into a bloodless question of national interest. Civil rights are essential to our national security, but national security cannot be the chief rationale for pursuing civil rights. After all, racial injustice is not just another chink in our armor. It is the great flaw in our character. Our adversaries know that race makes us our own worst enemy. It is past time we learn this hard truth ourselves.

The writer is president and director-counsel of the NAACP Legal Defense and Educational Fund.

DAVID IGNATIUS

A Russian spy's dream

Imagine American politics for a moment as a laboratory experiment. A foreign adversary (let's call it "Russia") begins to play with the subjects, using carrots and sticks to condition their behavior. The adversary develops tools to dial up anger and resentment inside the lab bubble, and even recruits unwitting accomplices to perform specific tasks.

This 21st-century political dystopia isn't drawn from a "spec script" that just landed in Hollywood. It's a summary of two reports on the Kremlin-linked Internet Research Agency published this week by the Senate Intelligence Committee. The studies describe a sophisticated, multilevel Russian effort to use every available tool of our open society to create resentment, mistrust and social disorder.

For a century, Russian intelligence agents have been brilliant at creating false fronts and manipulating opposition groups. Now, thanks to the Internet, they seem to be perfecting these dark arts.

Even as it meddles abroad, the Kremlin has just introduced new legislation to block its own information space from foreign penetration. Under the new law, reported this week, Russia could control all Internet and message traffic into the country, block any anonymous websites and, during a crisis, manage the Russian Web from a central command point.

Put the two halves of Russian behavior

"Russia's IRA activities were designed to polarize the U.S. public and interfere in elections," the study says, by encouraging African American voters to boycott elections, pushing right-wing voters toward extremism, and "spreading sensationalist, conspiratorial and other forms of junk political news and misinformation."

The Russians pushed every button. They sought to tap African American anger with "Blacktivist" and "Black Matters" Facebook pages. They reached conservatives through pages called "Army of Jesus," "Heart of Texas" and "Secured Borders." The list of the IRA's top-20 Facebook pages is a catalogue of American rage.

The New Knowledge report blows the cover off these Internet operations. It shows how Hillary Clinton and vice-presidential nominee Tim Kaine were depicted as the "Satan Team," with Clinton wearing devil's horns and Kaine bearing a red mark on his forehead. The researchers found an image of Jesus wearing a red "Make America Great Again" hat.

Instagram provided a useful platform for manipulating younger Americans. The IRA's "Blackstagram" account had 303,668 followers; "American Veterans" had 215,680; "Sincerely Black" had 196,754; and "Rainbow Nation" had 156,465, to name the top four Instagram pages cited in the New Knowledge study.

Russia's Internet activity wasn't just

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

COMBINED MOTION TO DISMISS PURSUANT TO VA. CODE § 8.01-265(i) AND PLEA IN BAR[1]

COMES NOW, by special appearance, Defendant Amber Laura Heard ("Ms. Heard"), by her undersigned counsel, and, pursuant to Virginia Code section 8.01-265(i) and the Rules of the Supreme Court of Virginia, hereby files this Combined Motion to Dismiss and Plea in Bar. In support of this Combined Motion and Plea in Bar, Ms. Heard states as follows:

Plaintiff John C. Depp, II ("Mr. Depp") has filed a Complaint alleging defamation against Ms. Heard. For the reasons stated below, and in the accompanying Memorandum in Support of Motion to Dismiss, filed contemporaneously with this filing as an attachment to the Motion for Leave for Briefing Schedule, the Complaint should be dismissed.

I. Motion to Dismiss Pursuant to Va. Code § 8.01-265(i).

The reasoning behind the Motion to Dismiss Pursuant to Va. Code § 8.01-265(i) is explained in detail within the Memorandum in Support filed contemporaneously with this Motion. The Memorandum in Support is incorporated herein by reference.

[1] The undersigned counsel will confer with counsel for Plaintiff to appear at calendar control for scheduling a briefing schedule and an evidentiary hearing for the Motion to Dismiss portion of this Combined Motion to Dismiss and Plea in Bar. To the extent necessary, the undersigned counsel will confer with counsel for Plaintiff and schedule a separate briefing schedule and, if necessary, an evidentiary hearing for the Plea in Bar.

II. Plea in Bar.

The appropriate venue for this matter is Los Angeles, California. Nevertheless, if this matter is transferred without dismissal, or if this matter remains in Virginia by court order or otherwise, Ms. Heard hereby preserves her argument that Mr. Depp's claims should be dismissed in their entirety with prejudice under the California Anti-SLAPP statute. *See* Cal. Civ. Proc. Code § 425.16.[2] Moreover, to the extent Virginia law is deemed to apply for any reason, and out of an abundance of caution, Mr. Depp's claims are also subject to dismissal under the Virginia Anti-SLAPP statute. *See* Va. Code § 8.01-223.2.[3]

WHEREFORE, in consideration of the foregoing, Defendant Amber Laura Heard respectfully moves this Court to (i) grant the Motion to Dismiss and dismiss this matter to proceed in the appropriate venue of Los Angeles, California, (ii) alternatively, to sustain the Plea in Bar and dismiss the Complaint with prejudice, and (iii) grant such other and further relief as deemed appropriate.

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[2] This Plea in Bar would be titled a "Motion to Strike" under California law and should be viewed as such to the extent necessary.

[3] Ms. Heard demands that any Plea in Bar in Virginia be tried as an evidentiary hearing before a jury in accordance with Va. Code § 8.01-336 and Rule 3:21 of the Rules of the Supreme Court of Virginia.

Dated this 11th day of April 2019.

Respectfully submitted,

By: [redacted]

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of April 2019, I served the foregoing via First Class Mail (postage prepaid) and electronic mail upon the following:

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Re: *John C. Depp, II v. Amber Laura Heard*, Case No. CL-2019-2911

Dear Counsel:

This matter came before the Court on December 20, 2019, for argument on Defendant's Demurrer and non-evidentiary Plea in Bar. At the conclusion of the hearing, the Court took the matter under advisement. The questions presented are (1) whether Plaintiff has pleaded an actionable claim for defamation by implication, and (2) whether Plaintiff is barred from recovering on his defamation claim under the applicable statute of limitations.

OPINION LETTER

BACKGROUND

Plaintiff's claim for defamation stems from four statements made in Defendant's op-ed, which was published in the *Washington Post* online and in print on December 18, 2018, and December 19, 2018, respectively. The article, entitled "Amber Heard: I spoke up against sexual violence—and faced our culture's wrath. That has to change" (online) and "A transformative moment for women" (print), does not name Plaintiff explicitly. It discusses how—two years before the op-ed was published—Defendant became a public figure "representing domestic abuse," what Defendant experienced in the aftermath of attaining this status, and what Defendant believed could be done to "build institutions protective of women." *See* Compl. Ex. A, at 1-4. Plaintiff brought this action on March 1, 2019, alleging that the op-ed was really about "Ms. Heard's purported victimization after she publicly accused her former husband, Johnny Depp ("Mr. Depp") of domestic abuse in 2016 . . . ." Compl. at ¶ 2. Plaintiff asserts that "the op-ed's clear implication that Mr. Depp is a domestic abuser is categorically and demonstrably false," Compl. at ¶ 3, and he specifically takes issue with the following four statements from the op-ed:

1. Amber Heard: I spoke up against sexual violence—and faced our culture's wrath. That has to change.

2. 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.

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

4. I write this as a woman who had to change my phone number weekly because I 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. 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—and my life and livelihood depended on myriad judgments far beyond my control.

Compl. at ¶ 22. Plaintiff details a number of facts and circumstances to contextualize the 2018 op-ed, including certain events surrounding the couple's highly publicized divorce in 2016, to support his allegation that Defendant falsely implied that she was a victim of domestic abuse at his hands. *See* Compl. at ¶¶ 13-19, 24-30.

Presently before the Court is Defendant's Demurrer, wherein Defendant asserts that the four statements are not actionable under a theory of defamation, and one of Defendant's Plea in Bar arguments as to the statute of limitations.[1] This Letter Opinion addresses these issues in turn.

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[1] At the plea in bar portion of the hearing, Ms. Heard reserved her arguments that (1) she is entitled to immunity under Virginia's Anti-SLAPP statute and (2) that she cannot be liable for the online article's title for a later evidentiary hearing.

ANALYSIS

I. Defendant's Demurrer

On demurrer, the trial court must determine whether the complaint states a cause of action upon which the relief requested may be granted. *Welding, Inc. v. Bland County Service Auth.*, 261 Va. 218, 226 (2001). "A demurrer admits the truth of all properly pleaded material facts and all facts which are impliedly alleged, as well as facts that may be fairly and justly inferred." *Pendleton v. Newsome*, 290 Va. 162, 171 (2015) (citing *Cox Cable Hampton Roads, Inc. v. City of Norfolk*, 242 Va. 394, 397 (1991). "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 a defendant." *Id.*

The elements of a defamation claim include: (1) publication of (2) an actionable statement with (3) the requisite intent. *Schaecher v. Bouffault*, 290 Va. 83, 91 (2015). On demurrer, "the trial judge is responsible for determining whether, as a matter of law, the allegedly defamatory statements are actionable." *Taylor v. Southside Voice, Inc.*, 83 Va. Cir. 190 (2011). To be "actionable," a statement must be both "false and defamatory." *Schaecher*, 290 Va. at 91. Because statements of opinion cannot be "false," they are never actionable. *See Fuste v. Riverside Healthcare Ass'n*, 265 Va. 127, 132 (2003). A statement qualifies as "defamatory" only if it "tends to injure one's reputation in the common estimation of mankind . . . ." *Schaecher*, 290 Va. at 92 (noting the speech complained of must have "the requisite defamatory 'sting' to one's reputation.").

Typically, "an editorial or op-ed column" is "ordinarily not actionable" because it appears "in a place usually devoted to, or in a manner usually thought of as representing, personal viewpoints." *Id.* However, Virginia recognizes that "a defamatory charge may be made by inference, implication, or insinuation." *Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 8 (1954), and that a statement expressing a defamatory meaning may not be "apparent on its face." *Pendleton*, 290 Va. at 172 (citing *Webb v. Virginian-Pilot Media Cos., LLC*, 287 Va. 84, 89 n.7 (2014)). 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.

Under this theory of implied defamation, "in determining whether the words and statements complained of 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." *Carwile*, 196 Va. at 8. "However, the meaning of the alleged defamatory language cannot, by innuendo, be extended beyond its ordinary and common acceptation." *Id.* The innuendo functions to show "how the words used are defamatory, and how they relate to the plaintiff, but it cannot introduce new matter, nor extend the meaning of the words used, or make that certain which is in fact uncertain." *Id.*

The Supreme Court of Virginia has summarized the role of a trial court on demurrer where the plaintiff has proceeded on a theory of defamation by implication as follows:

> Because Virginia law makes room for a defamation action based on a statement expressing a defamatory meaning "not apparent on its face," **evidence is admissible to show the circumstances** surrounding the making and publication of the statement **which would reasonably cause the statement to convey a defamatory meaning** to its recipients. **Allegations that *such circumstances* attended the making of the statement, with an explanation of the circumstances and the defamatory meaning allegedly conveyed, will suffice to survive demurrer if the court, in the exercise of its gatekeeping function, deems the *alleged meaning* to be defamatory.** Whether the circumstances were reasonably sufficient to convey the alleged defamatory meaning, and whether the plaintiff was actually defamed thereby, remain issues to be resolved by the fact-finder at trial.

Pendleton, 290 Va. at 172 (bold emphasis added).

In the present case, Plaintiff pleaded (1) that Defendant published the statements at issue. Compl. at ¶ 75, and (2) that Defendant had the requisite intent when making the statements that allegedly imply that Plaintiff abused Defendant. Compl. at ¶ 81 ("At the time of publication, Ms. Heard knew these statements were false."). Accordingly, the Court must determine whether the statements complained of are actionable. *See Schaecher*, 290 Va. at 91. Because a statement must be both false and defamatory to be actionable, *Fuste*, 265 Va. at 132, and because the statements at issue were made in an op-ed that does not name Plaintiff, the Court must determine whether Plaintiff has adequately pleaded that the statements otherwise possess a prohibited defamatory implication. *See Carwile*, 196 Va. at 8. To make this determination, the Supreme Court of Virginia has articulated that when "[a]llegations that . . . circumstances [that would reasonably cause the statement to convey a defamatory meaning to its recipients] attended the making of the statement, with an explanation of the circumstances and the defamatory meaning allegedly conveyed," they will "suffice to survive demurrer if the court, in the exercise of its gatekeeping function, deems the *alleged meaning* to be defamatory." *Pendleton*, 290 Va. at 172 (emphasis added).[2] Here, Plaintiff has pleaded circumstances that would reasonably cause three of the four statements at issue to convey the alleged defamatory meaning that Mr. Depp abused Ms. Heard, and this alleged meaning is in fact defamatory.

A. Three Statements Are Actionable Under a Theory of Defamation by Implication

The Court finds that the following three statements are actionable:

i. Amber Heard: I spoke up against sexual violence—and faced our culture's wrath. That has to change.

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[2] "Whether the circumstances were reasonably sufficient to convey the alleged defamatory meaning, and whether the plaintiff was actually defamed thereby, remain issues to be resolved by the fact-finder at trial." *Id.*

ii. 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.

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

First, Plaintiff has alleged a number of circumstances that would reasonably cause the three statements above to convey the alleged defamatory meaning—that Mr. Depp abused Ms. Heard—to its recipients. Specifically, the Complaint alleges that the events surrounding the parties' divorce—including Ms. Heard's repeated allegations of domestic violence—attended the making of her statements in the *Washington Post* op-ed. *See* Compl. at ¶ 16 (alleging that, in May 2016, Ms. Heard falsely yelled "stop hitting me Johnny," in addition to stating that Mr. Depp struck her with a cell phone, hit her, and destroyed the house, before she "presented herself to the world with a battered face as she publicly accused Mr. Depp of domestic violence and obtained a restraining order against him."); ¶ 19 ("Despite dismissing the restraining order and withdrawing the domestic abuse allegations, Ms. Heard (and her surrogates) have continuously and repeatedly referred to her in publications, public service announcements, social media postings, speeches, and interviews as a victim of domestic violence, and a "survivor," always with the clear implication that Mr. Depp was her supposed abuser."); ¶ 20 ("Most recently, in December 2018, Ms. Heard published an op-ed in the Washington Post that falsely implied Ms. Heard was a victim of domestic violence at the hands of Mr. Depp."); ¶ 21 ("The "Sexual Violence" op-ed's central thesis was that Ms. Heard was a victim of domestic violence and faced personal and professional repercussions because she "spoke up" against "sexual violence" by "a powerful man."); ¶ 22 ("Although Mr. Depp was never identified by name in the "Sexual Violence" op-ed, 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 the she made against him in 2016."). Drawing every fair inference in Plaintiff's favor, the Court finds that these circumstances, as pleaded, would reasonably cause the three statements above to convey the alleged defamatory meaning that Mr. Depp abused Ms. Heard.

Second, Plaintiff has alleged an implied meaning that is clearly defamatory. Compl. at ¶ 78 (noting that these statements imply "Ms. Heard was the victim of domestic violence at the hands of Mr. Depp."). The implication that Mr. Depp abused Ms. Heard is defamatory *per se* because it imputes to Plaintiff "the commission of some criminal offense involving moral turpitude, for which the party, if the charge is true, may be indicted and punished." *See Tronfeld v. Nationwide Mut. Ins. Co.*, 272 Va. 709, 713 (2006) (citing *Fleming v. Moore*, 221 Va. 884, 889 (1981); *see also* VA. CODE § 18.2-57.2 (2020); CAL. PENAL CODE § 243(e)(1) (2016).

Because the Complaint contains allegations of circumstances that would reasonably cause the three statements above to convey an alleged defamatory meaning, and this alleged meaning—that Mr. Depp abused Ms. Heard—is defamatory *per se*, the Court is instructed under *Pendleton* to allow these statements to proceed beyond demurrer. 290 Va. at 172-73.

Additionally, the Court finds that allowing these three statements to proceed beyond demurrer under the standard articulated in *Pendleton* is consistent with the doctrine set forth in *Carwile*, which states that "[t]he province of the innuendo is to show how the words used are defamatory, and how they relate to the plaintiff, but it [cannot] introduce new matter, nor extend the meaning of the words used [beyond their ordinary and common acceptation], or make that certain which is in fact uncertain." *Carwile*, 196 Va. at 8.

By holding that Plaintiff has met the pleading standard set forth in *Pendleton*, 290 Va. at 172, the Court is not allowing Plaintiff to proceed on an allegation of an implicit defamatory meaning that introduces new matter. The implied defamatory meaning alleged was that Mr. Depp abused Ms. Heard, and Defendant's op-ed concerns the matter of what happened after Defendant attained the status of a public figure representing domestic abuse. Drawing every fair inference in Plaintiff's favor, the Court can conclude—as Plaintiff alleges—that an aspect of the article relied on the factual underpinning that Ms. Heard was abused by Mr. Depp.

This finding also does not extend the meaning of the words in each of the three actionable statements beyond their ordinary meanings.

Amber Heard: I spoke up against sexual violence—and faced our culture's wrath. That has to change.

The first statement could reasonably convey the alleged defamatory meaning—that Mr. Depp abused Ms. Heard—to its readers without extending the words beyond their ordinary and common acceptation. *See Pendleton*, 290 Va. at 172; *Carwile*, 196 Va. at 8. Resolving every fair inference in Plaintiff's favor, this statement could reasonably imply that the "sexual violence" Ms. Heard "spoke up against" was in fact perpetrated by Mr. Depp, as he alleges. While the Court recognizes that this factual implication derives only from a part of the statement, and that the remaining portion is couched in Defendant's subjective opinion and perception, the Supreme Court of Virginia has held that "[f]actual statements made in support of an opinion . . . can form the basis for a defamation action." *See Lewis v. Kei*, 281 Va. 715, 725 (2011) (citing *Hyland v. Raytheon Tech. Servs. Co.*, 277 Va. 40, 46 (2009)).

Although the Court in *Lewis* noted that, "in determining whether a statement is one of fact or opinion, a court may not isolate one portion of the statement at issue from another portion of the statement" it made clear that this meant, "in considering whether a plaintiff has adequately pled a cause of action for defamation, *the court must evaluate all of the statements attributed to the defendant and determine whether, taken as a whole, a jury could find that defendant knew or should have known that the factual elements of the statements were false and defamatory.*" *Id.* (emphasis added). This Court holds that a jury in this case could find that Defendant knew or should have known that the implied factual elements of this statement (and the other two allowed to proceed) were false and defamatory based on the pleadings.

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.

As for the second statement, Defendant called herself "a public figure representing domestic abuse," which can be read to imply that she became a representative of domestic abuse *because* she was abused by Mr. Depp, not just because she spoke out against the alleged abuse. This inference can be drawn without extending the language beyond its "ordinary and common acceptation." *Carwile*, 196 Va. at 8. The word "represent" has over ten meanings in Merriam Webster's dictionary, including: "to serve as a specimen, example, or instance of," and "to serve as a counterpart or image of." *See Represent*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/representing (last visited Mar. 25, 2020). Notwithstanding the other meanings of the word "represent," the Court must resolve every fair inference in Mr. Depp's favor, including that Ms. Heard meant she was an "example of" a public figure who was domestically abused. This conclusion is further supported by Defendant saying she attained this status "two years ago," which would have been the same time the parties' divorce was unfolding. Again, in light of the law set forth in *Lewis*, 281 Va. at 725, this Court holds that a jury in this case could find that Defendant knew or should have known that the implied factual elements of this statement were false and defamatory based on the pleadings.

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

Drawing every fair inference in Plaintiff's favor, the Court can fairly conclude that Defendant's statement that she saw "how institutions protect men accused of abuse," could reasonably convey to its recipients that she saw how Mr. Depp was protected by institutions after he abused her and she spoke up against it. The Court finds that to reference one who was accused of abuse and protected by an institution can reasonably imply—at the demurrer stage—that the person in fact committed the abuse of which he was accused without extending the words beyond their ordinary meaning. Further, Defendant said she saw this happen to "men," "in real time," which—when read in context of the entire article, where Defendant previously stated that she became a public figure representing domestic abuse "two years ago," and in light of the circumstances pleaded about the parties' divorce—would reasonably cause readers to conclude she was referring to her experience with Mr. Depp despite her efforts to globalize the statement. *See Lewis*, 281 Va. at 725 (holding that the court must evaluate the statements taken as a whole to determine whether a jury could find that defendant knew or should have known that the factual elements of the statements were false and defamatory); *see also Carwile*, 196 Va. at 8 (noting that it does not matter "how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory.").

To summarize, all *Pendleton* requires is that the plaintiff plead allegations of an implied defamatory meaning, that is in fact defamatory, as well as circumstances that would reasonably cause the statements at issue to convey an alleged defamatory meaning. *Pendleton*, 290 Va. at 172-73. Because Plaintiff alleged that all three of these statements carry the same defamatory meaning based on the same attenuating circumstances, the Court must overrule Defendant's

Demurer because it finds that these statements could reasonably convey the alleged defamatory meaning that Mr. Depp abused Ms. Heard when drawing every fair inference in Plaintiff's favor.

B. The Fourth Statement Is Not Actionable

Even in light of the somewhat relaxed defamation by implication pleading standard set forth by the Supreme Court of Virginia in *Pendleton*, the Court must still determine that the alleged circumstances are ones that "**would reasonably cause the statement to convey a defamatory meaning.**" *Id.* (bold emphasis added). The Court finds that the circumstances alleged regarding the statements Ms. Heard made during and after the parties' divorce would not reasonably cause the fourth statement to convey a defamatory meaning. Therefore, the Court cannot proceed to the other steps of the analysis outlined in *Pendleton*. *See id.* Plaintiff argues that the following statement implies that Mr. Depp abused Ms. Heard:

> I write this as a woman who had to change my phone number weekly because I 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. 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—and my life and livelihood depended on myriad judgments far beyond my control.

This statement lacks any factual underpinning that Mr. Depp abused Ms. Heard even when considering the circumstances alleged and resolving all fair inferences in Plaintiff's favor. The statement is too opinion-laden and representative of Defendant's own perspective for it to be actionable, and it notably lacks any implicit reference to the alleged meaning that Mr. Depp abused Ms. Heard. The Court simply cannot find that this statement has a defamatory charge without extending the meaning of the words far beyond their ordinary and common acceptation. *Carwile*, 196 Va. at 8. Accordingly, Defendant's Demurrer is sustained with prejudice as to the fourth statement discussed above.

Drawing the line at this statement is consistent with this Court's ruling regarding the other three statements, as those were held to be statements that were "artfully disguised," as articulated in *Carwile*, 196 Va. at 8, but nonetheless reasonably capable of conveying the alleged defamatory meaning in light of the circumstances pleaded, such that a jury could find that Defendant knew or should have known that the implied factual elements of the statements were false and defamatory. *See Pendleton*, 290 Va. at 172-73; *Lewis*, 281 Va. at 725. As for the first three statements, it is still the province of the fact-finder in this case to determine whether the circumstances were sufficient to convey the alleged defamatory meaning, and whether the plaintiff was actually defamed thereby. *Pendleton*, 290 Va. at 172-73.

II. Defendant's Plea in Bar as to the Statute of Limitations

A plea in bar condenses the litigation by narrowing it to a discrete issue of fact that bars a plaintiff's right of recovery when proven. *Tomlin v. McKenzie*, 251 Va. 478, 480 (1996). The

burden of proof on the dispositive fact rests on the moving party. *Id.* When considering the pleadings, "the facts stated in the plaintiffs' motion for judgment [are] deemed true." *Tomlin*, 245 Va. at 480 (quoting *Glascock v. Laserna*, 247 Va. 108, 109 (1994)). "Familiar illustrations of the use of a plea would be: the statute of limitations, absence of proper parties (where this does not appear from the bill itself), *res judicata*, usury, a release, an award, infancy, bankruptcy, denial of partnership, *bona fide purchaser*, denial of an essential jurisdictional fact alleged in the bill, etc." *Nelms v. Nelms*, 236 Va. 281 (1988).

Defamation claims are governed by VA. CODE § 8.01-247.1, which provides that "[e]very action for injury resulting from libel, slander, insulting words, or defamation shall be brought within one year after the cause of action accrues." Defendant argues that the gravamen of Plaintiff's case is that Defendant should be held liable for reviving statements she made in 2016, which is an attempt to end-run the statute of limitations. Def.'s Mem. Supp. Dem. & Plea in Bar 14-15. Plaintiff argues that the op-ed was published less than three months before Plaintiff filed suit, and—even if this were a case regarding revived statements—that Virginia law considers a new action to accrue each time the defamatory statement is published. Pl.'s Opp'n 10-11.

Assuming *arguendo* that Plaintiff proceeds on a theory of republication, Plaintiff is correct in asserting that the date of republication is the date on which the clock begins running for the statute of limitations in a defamation action. *See Blue Ridge Bank v. Veribanc, Inc.*, 866 F.2d 681, 689 (4th Cir. 1989) ("It is well settled that the author or originator of a defamation is liable for republication or repetition thereof by third persons, provided it is the natural and probable consequence of his act, or he has presumptively or actually authorized or directed its republication") (quoting *Weaver v. Beneficial Finance Co.*, 199 Va. 196, 199 (1957)); *Weaver*, 199 Va. at 200 (holding the one-year statute of limitations does not bar a defamation claim involving a letter when the letter's contents were revealed before a promotion board (i.e., republished) within one year of the present action). Consequently, the original publication date of these statements does not prohibit Plaintiff from bringing this action because the statements—if republished—were reiterated within one year of Plaintiff bringing this action. The Court must therefore deny Defendant's Plea in Bar as to the statute of limitations.

CONCLUSION

For the foregoing reasons, Defendant's Demurrer is sustained as to the fourth statement listed above, but it is overruled as to the other three statements. Further, Defendant's Plea in Bar regarding the statute of limitations is denied. Counsel shall prepare an Order reflecting the Court's ruling and forward that Order to the Court for entry.

Sincerely,

[redacted]

Bruce D. White

Elaine Bredehoft

From: Elaine Bredehoft
Sent: Thursday, January 14, 2021 2:11 PM
To: Chew, Benjamin G.
Cc: Ben Rottenborn; Adam Nadelhaft; Vasquez, Camille M.
Subject: RE: Follow up from our call yesterday - Anti-SLAPP, Conciliator Request, Attorneys' fees Procedure, Discovery Supp

Ben: How are you doing on Items 1 and 2? I am free to talk this afternoon if that would be helpful.

Camille: I did not see a response to No. 4, but if you sent, please forward again.

Thanks.

Elaine

Elaine Charlson Bredehoft
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From: Chew, Benjamin G. <BChew@brownrudnick.com>
Sent: Wednesday, January 13, 2021 8:31 AM
To: Elaine Bredehoft <ebredehoft@charlsonbredehoft.com>
Cc: Ben Rottenborn <brottenborn@woodsrogers.com>; Adam Nadelhaft <anadelhaft@cbcblaw.com>; Vasquez, Camille M. <CVasquez@brownrudnick.com>
Subject: Re: Follow up from our call yesterday - Anti-SLAPP, Conciliator Request, Attorneys' fees Procedure, Discovery Supp

Good morning, Elaine,

Thanks for your message yesterday.

As to your recommendation to engage a conciliator, your item 2, we respectfully decline and prefer to stay with the status quo, and Chief Judge White.

We are still working through items 1, 2, and I believe Camille already responded as to 4. Concerning Ms. Howell, I will consult with Camille and get back to you.

Best regards,

Ben

From: Elaine Bredehoft <ebredehoft@charlsonbredehoft.com>
Sent: Tuesday, January 12, 2021 2:15 PM
To: Chew, Benjamin G. <BChew@brownrudnick.com>; Vasquez, Camille M. <CVasquez@brownrudnick.com>
Cc: brottenborn@woodsrogers.com; Adam Nadelhaft <anadelhaft@cbcblaw.com>
Subject: Follow up from our call yesterday - Anti-SLAPP, Conciliator Request, Attorneys' fees Procedure, Discovery Supp

CAUTION: External E-mail. Use caution accessing links or attachments.

Ben and Camille: I am writing to follow up on our call yesterday. We still have the following issues outstanding and I am awaiting your responses:

1. Anti-SLAPP. You indicated you would like to place our Plea in Bar on Anti-SLAPP on the docket for January 29. After reviewing the pleadings, briefs and researching, I indicated that we have asked for a Jury trial on the Plea in Bar, and are not in agreement with setting this down on the pleadings with 5 page briefs and 30 minutes. We believe this should be reserved for trial in light of the jury request, and at a minimum, if there were any issues to be decided by the Court, we would want an evidentiary hearing and longer briefing. You were going to take a look at this and let me know your thoughts. If you still believe you can place this on the docket on the pleadings, you were going to let me know so that we can appear at Calendar Control before Chief Judge White to address this issue. You indicated you are available tomorrow morning, as am I, but if we are going to appear, we should get the Calendar Control notice filed asap to give Chief Judge White a head's up.
2. Conciliator. I suggested that we request a Conciliator for this case to try to resolve or at least narrow more of the discovery disputes before appearing before Chief Judge White. We have had a number of occasions where we disagree about whether a meet and confer has taken place, and then agreement later about what will be produced – after the briefs are filed, and it seems to me that these types of issues can be more efficiently resolved with a Conciliator than taking up Chief Judge White's time. We have several avenues for requesting appointment of a Conciliator, but this is one of the things we can address with Chief Judge White through Calendar Control. You were going to think about it and let me know.
3. Attorneys' fees Procedure under Rule 3:25(D). You said you were confident we could work this out before next Friday's hearing, and you owed us a response. I am happy to jump on a call to talk through any issues you may have.
4. Other discovery supplementation. I indicated that there were a number of individuals you have identified as having knowledge and no contact information. I would appreciate your updating this asap. Also, there are two categories of documents you had agreed to provide based on a hearing in September relating to Ed White, namely Nos. 3 and 5 of the 7th RFPs – All documents supporting or otherwise relating to the allegations contained in Paragraph 7 of the Second Witness Statement of Edward White (attached to the RFPs), and All documents supporting or otherwise relating to the allegations contained in paragraph 9 (including 9(a)-(e) of the Second Witness Statement of Edward White. These last two were promised by October 30. If you believe you have provided, please let me know when and by what means (and if able, the bates numbers). If not, please let me know when we can expect these.
5. Separately, Jennifer Howell's counsel has represented that you (not sure which attorney, but Mr. Depp's counsel) have represented to Ms. Howell's counsel that you do not plan to call her as a witness at trial. Can you please confirm this?

Thanks very much for your cooperation. As I indicated, please let me know if another call would be helpful to resolve any of these issues. Also, if you want to schedule Calendar Control, please let me know asap, or if you need more time and you are available other days for the Calendar Control, let me know what days and let's see if we can lock one in.

Elaine

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Elaine Bredehoft

From:	Elaine Bredehoft
Sent:	Friday, January 15, 2021 9:05 AM
To:	Chew, Benjamin G.
Cc:	Adam Nadelhaft; Ben Rottenborn; Joshua Treece; Crawford, Andrew C.; Vasquez, Camille M.
Subject:	RE: Depp v. Heard

Ben: I agree we met and conferred twice. During the first of those meet and confers, you told me that you wanted to set this down for a hearing. I told you I would take a deep dive on this issue, which I did, and then we scheduled the second meet and confer so I could discuss with you my findings. During that second meet and confer, I told you and Camille that I had researched the subject, that the Plea in Bar clearly requested "an evidentiary hearing before a jury in accordance with Va. Code Section 8.01-336 and Rule 3:21 of the Rules of the Supreme Court of Virginia" and we also requested a jury trial under the Answer & Grounds of Defense, so this cannot be disposed of in a 30 minute motion before the Court and should not be set down for a Friday hearing. I asked you to take a further look at this, and if you disagreed, we should discuss it further, and if we still did not agree, I suggested we go to Calendar Control. I told you I would not schedule anything for January 29, so that you did not feel rushed to file something quickly, and instead would have time to review this carefully, to avoid having to file a brief that would not be appropriate in light of the evidentiary and jury trial requests.

Instead of coming back to me to discuss further, including why you still believe you can force us to waive an evidentiary and jury trial that have been properly and rightfully requested, you filed the motion.

I ask you to reconsider, and withdraw the motion. If you need to talk with me further, I am available to talk today. I will set this down for next Wednesday for Calendar Control since that is your availability, but I am hopeful that will not be necessary and that you will remove the motion.

Let me know if you want to talk this through with me today. Elaine

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From: Chew, Benjamin G. <BChew@brownrudnick.com>
Sent: Friday, January 15, 2021 8:50 AM
To: Elaine Bredehoft <ebredehoft@charlsonbredehoft.com>
Cc: Adam Nadelhaft <anadelhaft@cbcblaw.com>; Ben Rottenborn <brottenborn@woodsrogers.com>; Joshua Treece <jtreece@woodsrogers.com>; Crawford, Andrew C. <ACrawford@brownrudnick.com>; Vasquez, Camille M. <CVasquez@brownrudnick.com>
Subject: Re: Depp v. Heard

Good morning, Elaine,

As you know, we met and conferred on this issue twice, and you advised us that you aee available for argument on this January 29.

This is clearly an issue the Court can response in the papers, as it did Mr. Depp's Anti-SLAPP defense and the parties' respective pleas in bars on the statute of limitations. Accordingly, I ask that you reconsider and that Ms Heard simply file her responsive brief on or before next Friday.

To the extent you still insist on going to Calendar Control, I am available Wednesday morning.

Best regards,

Ben

Sent from my iPhone

On Jan 14, 2021, at 6:04 PM, Elaine Bredehoft <ebredehoft@charlsonbredehoft.com> wrote:

CAUTION: External E-mail. Use caution accessing links or attachments.

Ben: I am so disappointed that you filed this without further consulting me after I indicated that we asked for a Jury Trial on these issues and in any event, this could not be decided on the papers, and required an evidentiary hearing and longer briefing.

Are you available for calendar control on Tuesday? I think that is the best way to deal with this. Elaine

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From: Chew, Benjamin G. <BChew@brownrudnick.com>
Sent: Thursday, January 14, 2021 4:38 PM
To: Elaine Bredehoft <ebredehoft@charlsonbredehoft.com>
Cc: Adam Nadelhaft <anadelhaft@cbcblaw.com>; Ben Rottenborn <brottenborn@woodsrogers.com>; Joshua Treece <jtreece@woodsrogers.com>; Crawford, Andrew C. <ACrawford@brownrudnick.com>; Vasquez, Camille M. <CVasquez@brownrudnick.com>
Subject: Depp v. Heard

Good afternoon, Elaine,

Please see attached motion filed today. Thanks again for agreeing to reserve January 29 for this hearing. Think you will agree upon reading that five pages is more than sufficient.

Also, as to your motion to establish a protocol, we will be filing an opposition tomorrow. You will see that we agree to certain aspects of your proposal, but believe Ms. Heard's schedule is too expedited.

Best regards,

Ben

****

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NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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January 4, 2021

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Re: *John C. Depp, II v. Amber Laura Heard*, CL-2019-2911

Dear Counsel:

This matter is before the Court on Plaintiff John C. Depp II's Demurrer and Plea in Bar to All Counterclaims. At the conclusion of the hearing, the Court took the matter under advisement to consider the following five issues:

1) Whether the Court should exercise jurisdiction over Defendant's Counterclaim for declaratory judgment when Defendant has asserted the same argument in her Answer and Grounds for Defense?

2) Whether Plaintiff's statements are actionable under Virginia defamation law?

3) Whether Defendant has alleged sufficient facts to state a claim for a violation of the Virginia Computer Crimes Act?

4) Whether Defendant's Counterclaims arise out of the same transaction or occurrence as Plaintiff's Complaint such that Plaintiff's filing of the Complaint tolled the statute of limitations for Defendant's defamation counterclaims?

5) Whether Plaintiff is entitled to anti-SLAPP immunity for his statements?

The Court has considered the briefs in support of and in opposition to the present motion, as well as the arguments made by counsel at the hearing on October 16, 2020. For the reasons discussed below, the Court sustains the Demurrer as to Count I and Count III, and grants the Plea in Bar as to Statements A-E.

BACKGROUND

In the underlying action for defamation, Plaintiff John C. Depp II ("Mr. Depp") is suing Defendant Amber Laura Heard ("Ms. Heard") for statements that she made in an op-ed published by *The Washington Post* in 2018. Mr. Depp, believing that Ms. Heard's statements falsely characterize him as a domestic abuser, filed his defamation claim on March 1, 2019. On August 10, 2020, Ms. Heard filed her Counterclaims as well as her Answer and Grounds for Defense.

In her Counterclaims, Ms. Heard alleges that Mr. Depp and his agents have engaged in an ongoing online smear campaign to damage her reputation and cause her financial harm. Countercl. ¶ 6. Ms. Heard alleges that Mr. Depp has defamed her on multiple occasions, beginning during an interview with *GQ* in November 2018. *Id.* at ¶ 33. The alleged harm includes attempting to remove her from her role as an actress in *Aquaman* and as spokeswoman for L'Oréal. *Id.* at ¶ 6. Ms. Heard seeks declaratory relief granting immunity from civil liability for her statements; compensatory damages of $100,000,000; punitive damages of not less than $350,000; attorney's fees and costs; and an injunction to prevent Mr. Depp from continuing the alleged harms. *Id.* at 19.

ANALYSIS

I. COUNT I: DECLARATORY JUDGMENT IS DISMISSED.

Where an actual controversy exists, circuit courts "shall have power to make binding adjudications of right" in the form of declaratory judgments. Va. Code § 8.01-184. However, "the power to make a declaratory judgment is a discretionary one and must be exercised with care and caution. It will not as a rule be exercised where some other mode of proceeding is provided." *Liberty Mut. Ins. Co. v. Bishop*, 211 Va. 414, 421 (1970). Because the driving

purpose behind declaratory judgments is to resolve disputes before a right is violated, "where claims and rights asserted have fully matured, and the alleged wrongs have already been suffered, a declaratory judgment proceeding . . . is not an available remedy." *Charlottesville Area Fitness Club Operators Ass'n v. Albemarle Cty. Bd. of Supervisors*, 285 Va. 87, 99 (2013) (quoting *Bd. of Supervisors v. Hylton Enters.*, 216 Va. 582, 585 (1976)).

Where granting declaratory judgment is duplicative of the relief already available, circuit courts may decline to exercise jurisdiction. *See Godwin v. Bd. of Dirs. of Bay Point Ass'n*, No. CL10-5422, 2011 WL 7478302, at *3 (Va. Cir. Ct. Feb. 8, 2011) (Norfolk). In *Godwin*, the circuit court declined to issue a declaratory judgment that a document was void when there also existed a breach of contract claim that asserted the same document was void. *Id.* at *1-3. Where it "appear[ed] to be a duplicative remedy that does not add anything to the relief that may be available under [the other count]," the court would not issue a declaratory judgment. *Id.* at *3. Similarly, federal courts have recognized that declaratory judgment is unnecessary where there exists some other claim resolving the same issue. *See Jackson v. Ocwen Loan Servicing LLC*, Civil Action No. 3:15cv238, 2016 WL 1337263, at *12-13 (E.D. Va. Mar. 31, 2016) (granting a Motion to Dismiss after finding that a claim for declaratory relief was "duplicative and permitting it to proceed [would] not serve a useful purpose."). For instance, in *Tyler v. Cashflow Technologies, Inc.*, a federal court dismissed a declaratory judgment counterclaim because the defendant's request that the court declare that his statements were not defamatory was merely the inverse of the plaintiff's defamation claim. Case No. 6:16-CV-00038, 2016 WL 6538006, at *1 (W.D. Va. Nov. 3, 2016). Importantly, in *Tyler*, the court stated that "[t]o consider both claims would be duplicative and force 'the court to handle the same issues twice.'" *Id.* at *6.

Ms. Heard's Answer and Grounds for Defense states: "The statements in the op-ed are expressions of opinion that are protected by the First Amendment to the United States Constitution and Article I, Section 12 of the Constitution of Virginia. Defendant requests an award of her reasonable attorneys' fees and costs pursuant to Virginia's Anti-SLAPP Statute, including § 8.01-223.2, and/or any amendments thereto." Answer at 29, ¶ 5. Her defense is therefore "some other mode of proceeding" to afford her the same relief that is requested in her Counterclaim. *See Liberty Mut. Ins. Co.*, 211 Va. at 421. To hear both Ms. Heard's anti-SLAPP defense and her declaratory judgment counterclaim would equate to adjudicating the same issue twice. *See Tyler*, 2016 WL 6538006, at * 6. Additionally, since this Court would not rule on Ms. Heard's declaratory judgment counterclaim until after all matters have been tried, the purpose of declaratory judgment – to resolve disputes before the right has been violated – is defeated. *See Charlottesville Area Fitness Club Operators Ass'n*, 285 Va. at 99. Accordingly, this Court dismisses Count I of Ms. Heard's Counterclaim.

In her brief and at oral argument, Ms. Heard argued that declaratory judgment is an appropriate vehicle for anti-SLAPP immunity. Specifically, she pointed this Court to the case *Reisen v. Aetna Life and Cas. Co.*, where the Virginia Supreme Court held that the circuit court did not abuse its discretion by exercising jurisdiction over an action for declaratory judgment even though the same issue (regarding insurance coverage) was scheduled for adjudication in an upcoming tort action. 225 Va. 327, 334-35 (1983). In *Reisen*, the insurance company had an immediate need to determine its liability because, if coverage existed, then the company owed a duty to the defendant to negotiate a settlement. *Id.* at 335. Thus, the issue was ripe for adjudication. *Id.* Here, Ms. Heard has asserted no immediate need for declaratory relief. In fact,

by asserting anti-SLAPP immunity as a counterclaim, even if the Court held in her favor that her statements are protected, she would receive this relief at the same time as receiving the same relief under her anti-SLAPP defense. Importantly, this Court is not holding that declaratory relief could never be an appropriate vehicle for asserting anti-SLAPP immunity, but merely that, in this instance, it would be duplicative of the relief already requested.

Additionally, Ms. Heard also asserted that declaratory judgment is necessary for anti-SLAPP immunity because Mr. Depp could nonsuit at any moment and, thereby, deprive her of the opportunity to recover attorney's fees. Under Virginia's anti-SLAPP statute, however, this Court may only award reasonable attorney's fees to "[a]ny person who has a suit against him dismissed or a witness subpoena or subpoena duces tecum quashed pursuant to the immunity provided by this section . . .." Va. Code § 8.01-223.2(B). Here, even if Ms. Heard's counterclaims were to move forward, and Mr. Depp were to nonsuit, Ms. Heard still would not be able to recover reasonable attorney's fees under this statute because she would not have had Mr. Depp's suit dismissed, rather she would be proceeding under her own claim.

Overall, this Court does not find any persuasive reason to hear Ms. Heard's anti-SLAPP immunity argument twice, nor does it appear to be necessary to permit Ms. Heard's claim to move forward in case Mr. Depp should choose to nonsuit. As such, this Court declines to exercise jurisdiction over Ms. Heard's counterclaim for declaratory judgment. It is therefore dismissed.

II. PLAINTIFF'S DEMURRER

In Virginia, a court may sustain a demurrer upon a finding that "a pleading does not state a cause of action or that such pleading fails to state facts upon which the relief demanded can be granted . . .." Va. Code § 8.01-273(A). A demurrer tests only the legal sufficiency of the factual allegations; it does not permit a court to evaluate the merits of the claim. *Fun v. Va. Military Inst.*, 245 Va. 249, 252 (1993). Accordingly, the Court must "accept as true all properly pled facts and all inferences fairly drawn from those facts." *Dunn, McCormack & MacPherson v. Connolly*, 281 Va. 553, 557 (2011) (quoting *Abi-Najm v. Concord Condo., LLC*, 280 Va. 350, 357 (2010)). Nonetheless, "a court considering a demurrer may ignore a party's factual allegations contradicted by the terms of authentic, unambiguous documents that properly are a part of the pleadings." *Ward's Equip., Inc. v. New Holland N. Am., Inc.*, 254 Va. 379, 382-83 (1997) (citing *Fun*, 245 Va. at 253).

A. The Demurrer to Count II for Defamation and Defamation *Per Se* is Overruled.

The elements of a defamation claim include: "(1) publication of (2) an actionable statement with (3) the requisite intent." *Schaecher v. Bouffault*, 290 Va. 83, 91 (2015). On demurrer, "the trial judge is responsible for determining whether, as a matter of law, the allegedly defamatory statements are actionable." *Taylor v. Southside Voice, Inc.*, 83 Va. Cir. 190, 192 (2011). To be "actionable," a statement must be both "false and defamatory." *Schaecher*, 290 Va. at 91. Because statements of opinion cannot be "false," they are never actionable. *See Fuste v. Riverside Healthcare Ass'n*, 265 Va. 127, 132 (2003). For the reasons explained below, the Court finds that Ms. Heard has pled actionable statements for a defamation claim.

The Requisite 'Sting'

To qualify as defamatory, a statement must possess the requisite 'sting' to one's reputation. *Schaecher*, 290 Va. at 92. The Supreme Court of Virginia has previously stated that defamatory language is that which "'tends to injure one's reputation in the common estimation of mankind, to throw contumely, shame, or disgrace upon him, or which tends to hold him up to scorn, ridicule, or contempt, or which is calculated to render him infamous, odious, or ridiculous.'" *Id.* (quoting *Moss v. Harwood*, 102 Va. 386, 392 (1904)). If language is merely "insulting, offensive, or otherwise inappropriate, but constitutes no more than 'rhetorical hyperbole,'" then it does not possess the requisite 'sting' to be considered defamatory. *Id.* Importantly, in deciding whether a statement is defamatory, a court must evaluate it in the context of the publication. *Id.* at 93.

Here, Ms. Heard has alleged defamation with respect to the following eight statements:

A. In a November 2018 interview with *GQ*, Mr. Depp stated that there was "no truth to [Ms. Heard's judicial statements of abuse] whatsoever" and said "[t]o harm someone you love? As some kind of bully? No, it didn't, it couldn't even sound like me." Further, the article quoted Mr. Depp as stating "[Ms. Heard] was at a party the next day. Her eye wasn't closed. She had her hair over her eye, but you could see the eye wasn't shut. Twenty-five feet away from her, how the fuck am I going to hit her? Which, by the way, is the last thing I would've done.'" Countercl. ¶ 63.

B. On April 12, 2019, Mr. Depp, through his attorney, is quoted in *Page Six*, accusing Ms. Heard of committing "defamation, perjury and filing and receiving a fraudulent temporary restraining order demand with the court . . .." *Id.* ¶ 66.

C. In June 2019, Mr. Depp, through his attorney, told *The Blast* that "Ms. Heard continues to defraud her abused hoax victim Mr. Depp, the #metoo movement she masquerades as the leader of, and other real abuse victims worldwide." *Id.*

D. On July 2, 2019, Mr. Depp, through his attorney, told *The Blast* that Ms. Heard, "went to court with painted on 'bruises' to obtain a Temporary Restraining Order on May 27." *Id.*

E. On July 3, 2019, Mr. Depp, through his attorney, stated to *People* magazine that "Ms. Heard's 'battered face' was a hoax." *Id.*

F. On April 8, 2020, Mr. Depp, through his attorney, told *The Daily Mail* that "Amber Heard and her friends in the media use fake sexual violence allegations as both a sword and shield, depending on their needs. They have selected some of her sexual violence hoax 'facts' as the sword, inflicting them on the public and Mr. Depp." *Id.*

G. On April 27, 2020, Mr. Depp, through his attorney, again told *The Daily Mail* that "[q]uite simply this was an ambush, a hoax. They set Mr. Depp up by calling

the cops but the first attempt didn't do the trick. The officers came to the penthouses, thoroughly searched and interviewed, and left after seeing no damage to face or property. So Amber and her friends spilled a little wine and roughed the place up, got their stories straight under the direction of a lawyer and publicist, and then placed a second call to 911." *Id.*

H. On June 24, 2020, Mr. Depp, through his attorney, accused Ms. Heard in *The Daily Mail* of committing an "abuse hoax" against Mr. Depp. *Id.*

Each of the above statements imply that Ms. Heard lied and perjured herself when she appeared before a court in 2016 to obtain a temporary restraining order against Mr. Depp. Moreover, they imply that she has lied about being a victim of domestic violence. In light of the #MeToo Movement and today's social climate, falsely claiming abuse would surely "injure [Ms. Heard's] reputation in the common estimation of mankind." *See Schaecher*, 290 Va. at 92. Therefore, this Court finds that the statements contain the requisite 'sting' for an actionable defamation claim.

Protected Opinion Statements

A statement is generally not defamatory when it is "dependent on the speaker's viewpoint . . .." *See Fuste*, 265 Va. at 133. Where the context of the statements and the positions of the people reading the statements "would allow them to reasonably conclude that [the] statement was purely her own subjective analysis," the statement is not actionable. *Schaecher*, 290 Va. at 106. However, even opinion statements are actionable if they "'imply an assertion' of objective fact." *Id.* at 103.

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

Mr. Depp's Statements are Not 'Fair and Accurate Accounts'

Mr. Depp argues that his statements are protected as "fair and accurate accounts" of his lawsuit. Tr. 8:9-14. Because a party "has a right to institute and prosecute an action without fear of being mulched in damages for reflections cast upon the defendants," no action for defamation can lie from a publication that constitutes a "fair and accurate account of the issues in suit . . .." *Bull v. Logetronics, Inc.*, 323 F. Supp. 115, 135 (E.D. Va. 1971). In *Bull*, the court considered a press release that stated (1) the plaintiff sued defendants for "conspiracy to defraud," (2) plaintiff sued for "royalty payments and damages in an amount over $1,000,000.00," and (3) plaintiff was "seeking punitive damages, alleging a conspiracy to circumvent the provisions of a contract relating to manufacture and sale of film processors under U.S. patents . . .." *Id.* at 134. The court held that those statements were a fair and accurate summary of the allegations. *Id.*

Here, Mr. Depp's statements are notably different than those in *Bull*. *See id.* Although much of what Mr. Depp states is also contained in his Complaint, the statements do not appear to have been made in the context of attempting to recount litigation. Instead, Mr. Depp makes

factual assertions that do not fairly and accurately summarize the litigation that has taken place. Accordingly, his statements are not protected.

Although Mr. Depp's statements may have been made in self-defense, Ms. Heard has alleged sufficient malice for her defamation allegations to survive demurrer.

Under *Haycox v. Dunn*, so long as Mr. Depp's statements were "repelling the charge and not with malice," his statements would have been made in self-defense and therefore would be privileged. 200 Va. 212, 231 (1958) (internal citations omitted). There, the court recognized that, generally, the rule is "that it is the court's duty to determine as a matter of law whether the occasion is privileged, while the question of whether or not the defendant was actuated by malice, and has abused the occasion and exceeded his privilege are questions of fact for the jury." *Id.* at 229 (quoting *Bragg v. Elmore*, 152 Va. 312, 325 (1929)).

Because Ms. Heard has alleged facts in support of a showing of malice, the Court cannot properly decide this claim on demurrer. In support of her accusation of malice, Ms. Heard alleged that the *GQ* journalist, Mr. Heath, stated that Mr. Depp invited him to interview the actor because he was "angry – angry about a lot of things – and he's vengeful." Countercl. ¶ 33. Moreover, Ms. Heard has alleged that Mr. Depp has the intention of ruining her career; citing statements that he made to friends demonstrating a malicious intent. *See* Countercl. ¶¶ 17-19. Further, Mr. Depp has admitted his intent to destroy Ms. Heard's career by stating that he wanted her replaced on *Aquaman*. *See* Countercl. ¶ 7. Accordingly, Ms. Heard has sufficiently pled a malicious intent, which prevents a ruling on the self-defense privilege at this stage in the litigation.

Since Mr. Depp's statements contain the requisite 'sting', are not merely statements of opinion, and do not fairly and accurately describe litigation, the Court must overrule the Demurrer with respect to Count II. Additionally, although Mr. Depp may have made his statements in self-defense, Ms. Heard has pled malice to the extent that this Court cannot determine whether Mr. Depp's statements are privileged at the Demurrer stage.

B. The Demurrer to Count III: VCCA is Sustained.

Under the Virginia Computer Crimes Act ("VCCA"), a claimant must prove that (1) the person used a computer or computer network; (2) to "communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make a suggestion or proposal of an obscene nature, or threaten any illegal or immoral act"; (3) with the intent to "coerce, intimidate, or harass" another person. Va. Code § 18.2-152.7:1; *Barson v. Commonwealth*, 284 Va. 67, 71 (2012).

None of Ms. Heard's allegations satisfy all three prongs of the VCCA. First, Ms. Heard has alleged that Mr. Depp used a computer or computer network in four instances: when he "initiated, coordinated, overs[aw] and/or supported and amplified two change.org petitions"; when he "created, controlled, and/or manipulated social media accounts"; when he texted Mr. Bettany in 2013; and when he texted Mr. Carino in 2016. Countercl. ¶¶ 6, 8, 17, 19. This Court now examines each of these instances to determine whether they meet the other two VCCA prongs.

The allegation that "Mr. Depp has initiated, coordinated, overseen and/or supported and amplified two change.org petitions: one to remove Ms. Heard as an actress in the *Aquaman* movie franchise, and one to remove her as a spokeswoman for L'Oréal" fails under the second prong of the VCCA. *See* Countercl. ¶ 6. Nothing in that allegation implies facts showing that the change.org petitions included obscene language, threatened illegal or immoral acts, or suggest or propose obscene acts. *See* Va. Code § 18.2-152.7:1. Likewise, the allegation that Mr. Depp "created, coordinated, controlled, and/or manipulated social media accounts created specifically for the purpose of targeting Ms. Heard," also fails under the second prong of the VCCA. *See* Va. Code § 18.2-152.7:1. The pleading fails to demonstrate that the social media accounts communicated obscene language, suggested obscene acts, or threatened illegal or immoral acts. Because neither of those allegations meets the second element of the VCCA, they cannot move forward in this litigation.

The remaining two allegations of computer usage fail under the third prong of the VCCA because Ms. Heard has not alleged that they were made with the intent to "coerce, intimidate, or harass." *See* Va. Code § 18.2-152.7:1. Rather, it appears that Mr. Depp texted those statements, privately, to two of his friends, and Ms. Heard has not alleged that Mr. Depp intended for her to see them. Accordingly, this Court sustains the Demurrer to Count III since none of Ms. Heard's allegations satisfy the prongs of the VCCA.

III. PLAINTIFF'S PLEA IN BAR IS GRANTED IN PART AND DENIED IN PART.

A plea in bar condenses "litigation by reducing it 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 burden of proof rests with the moving party. *Id.* When considering the pleadings, "the facts stated in the plaintiffs' motion for judgment [are] deemed true." *Id.* (quoting *Glascock v. Laserna*, 247 Va. 108, 109 (1994)). Moreover, "[f]amiliar illustrations of the use of a plea would be: The statute of limitations; absence of proper parties (where this does not appear from the bill itself); *res judicata*; usury; a release; an award; infancy; bankruptcy; denial of partnership; *bona fide* purchaser; denial of an essential jurisdictional fact alleged in the bill, etc." *Nelms v. Nelms*, 236 Va. 281, 289 (1988).

A. Statements A through E Are Barred by the Statute of Limitations.

Under Va. Code § 8.01-247.1, Virginia's statute of limitations for a defamation action is one year. However, "if the subject matter of the counterclaim . . . arises out of the same transaction or occurrence upon which the plaintiff's claim is based, the statute of limitations with respect to such pleading shall be tolled by the commencement of the plaintiff's action." Va. Code § 8.01-233(B). To determine whether an issue arises out of the same transaction or occurrence, the "proper approach asks 'whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.'" *Funny Guy, LLC v. Lecego, LLC*, 293 Va. 135, 154 (2017).

In *Funny Guy*, the court found that the facts were related in origin and motivation because they both stemmed from the plaintiff's desire to be paid for the work he had done. 293 Va. at 155. Plaintiff's claims also satisfied the time and space factors because both claims

involved a single payment dispute. *Id.* Since all of the theories of recovery "fit within a single factual narrative," the court held that they formed a "convenient trial unit." *Id.* The court also held that it was unlikely that the parties would anticipate a single payment dispute developing into multiple lawsuits and, therefore, the final factor was met. *Id.* Similarly, the Fourth Circuit held that a counterclaim was compulsory when a plaintiff filed a § 1983 action against a police officer and the police officer counterclaimed for defamation because it arose out of the same transaction or occurrence. *Painter v. Harvey*, 863 F.2d 329, 331 (4th Cir. 1988). The court deemed the counterclaim compulsory because both the claim and counterclaim stemmed from what transpired during the plaintiff's arrest, the resolution of one claim might bar the other claim via *res judicata* later, the evidence presented for both claims was virtually the same, and because there was a logical relationship between the two claims. *Id.* at 331-32; *see also Nammari v. Gryphus Enters. LLC*, 1:08cv134 (JCC/TCB), 2008 WL 11512205, at *1-3 (E.D. Va. May 12, 2008) (holding that Defendant's counterclaim for defamation was compulsory because both it and Plaintiff's wrongful termination claim arose from Plaintiff's termination).

Conversely, in *Powers v. Cherin*, the Court held that the plaintiff's claims did not "arise out of the same transaction or occurrence" because the first count for negligence stemmed from a car accident while the second count for medical malpractice stemmed from the doctor's subsequent medical treatment of the plaintiff. 249 Va. 33, 37 (1995). Likewise, the Fourth Circuit held that a defamation allegation in an amended complaint did not arise out of the same transaction or occurrence as the allegations in the original complaint and was therefore barred by the one-year statute of limitations. *English Boiler & Tube, Inc. v. W.C. Rouse & Son, Inc.*, No. 97-2397, 1999 WL 89125, at *2 (4th Cir. Feb. 23, 1999). There, Plaintiff attempted to amend its complaint to include reference to an allegedly defamatory letter written by a different author, directed to a different recipient, and published on a different date than the other letters alleged in the complaint. *Id.* Thus, they were separate instances of defamation and the second, un-related allegation was barred by the statute of limitations. *Id*; *see also Cojocaru v. City Univ. of N.Y.*, 19 Civ. 5428 (AKH), 2020 WL 5768723, at *3-4 (S.D.N.Y. Sept. 28, 2020) (holding that Plaintiff's allegations in an Amended Answer do not relate back because "[w]hile the alleged text messages concerned the same general subject matter as the *New York Post* interviews, they were a separate publication, directed toward a different recipient, and included some distinct accusations."). In both of the aforementioned cases, a party attempted to amend their own pleading. *See English Boiler & Tube, Inc.*, 172 F.3d 862, 1999 WL 89125, at *2 (describing how plaintiff attempted to amend his own complaint) and *Cojocaru*, 2020 WL 5768723, at *3-4 (describing how defendant attempted to amend his Answer). In those instances, the parties were not time-barred when they filed their initial pleadings.

Here, both Ms. Heard's allegations and Mr. Depp's allegations stem from the same set of facts: the Domestic Violence Restraining Order ("DVRO") proceeding in May 2016 and the events leading up to it. As previously stated, to succeed on his defamation claim, Mr. Depp is going to need to show (1) publication of (2) an actionable statement with (3) the requisite intent. *See Schaecher*, 290 Va. at 91. Ms. Heard would need to meet the same standard if her Counterclaims are permitted to proceed. In presenting evidence of publication, the statements that Ms. Heard alleges in her Counterclaims were not made in the same publication as the one referenced in Mr. Depp's Complaint. Whereas Mr. Depp's Complaint focuses on an op-ed published in *The Washington Post*, Ms. Heard's Counterclaim focuses on statements in *GQ*,

People Magazine, *The Daily Mail*, and other publications. To demonstrate actionable claims, both parties will likely need to present similar evidence regarding whether Mr. Depp actually abused Ms. Heard in May 2016. However, while Mr. Depp's Complaint focuses on Ms. Heard's intent in making the statements, Ms. Heard would instead need to present evidence on Mr. Depp's intent. Therefore, the only connection between the claims is in origin – they both stem from the 2016 incident. *See Funny Guy, LLC*, 293 Va. at 154. Because these claims arise from statements made in separate publications, on separate dates, and by different people, the Court is not persuaded that Mr. Depp could have anticipated, at the time of filing his Complaint, a need to defend against statements made to other publications. The lack of relatedness and failure to reasonably put Mr. Depp on notice of a potential counterclaim compels this Court to grant the Plea in Bar to Statements A through E.

B. Mr. Depp is Not Entitled to Anti-SLAPP Immunity.

Mr. Depp asserted in his Plea in Bar that he is entitled to anti-SLAPP immunity for the statements that are the subject of Ms. Heard's Counterclaim.[1] As addressed earlier, Virginia's anti-SLAPP law provides immunity for statements "regarding matters of public concern that would be protected by the First Amendment." Va. Code § 8.01-223.2(A). Here, the Court finds no support for the notion that Mr. Depp's statements are on matters on public concern. Moreover, Mr. Depp's counsel neither argued nor addressed this point during oral argument or in their reply brief. Lastly, Ms. Heard has alleged sufficient facts in her Counterclaim to demonstrate that Mr. Depp may have made these statements with actual or constructive knowledge or with reckless disregard for whether they are false. *See supra* p. 8 (citing instances in the Counterclaim alleging that Mr. Depp made his statements with actual malice). Accordingly, the Court denies the Plea in Bar for anti-SLAPP immunity.

IV. CONCLUSION

For the foregoing reasons, Count I is dismissed, the Demurrer to Count II is overruled, the Demurrer to Count III is sustained, and the Plea in Bar is granted for Statements A through E due to the lapsed statute of limitations. Count II with respect to Statements F, G, and H survive. Counsel shall prepare an appropriate order reflecting the Court's ruling and submit it to the Court for entry.

Sincerely,

[redacted]

Bruce D. White

[1] Mr. Depp's counsel did not address this point in his oral argument or in his Reply Memorandum. Ms. Heard's counsel stated that she believes this point was "conceded by [Mr. Depp's counsel] because it was not addressed in their reply." Oct. 16, 2020 Tr. 33:3-6.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

DECLARATION OF BEN WIZNER

1. My name is Ben Wizner. I am employed by the American Civil Liberties Union Foundation ("ACLU") in the position of Director of the Speech, Privacy, and Technology Project. I am familiar with the facts set forth in this Declaration based on my position with the ACLU.

2. The ACLU Women's Rights Project, a project within the Ruth Bader Ginsburg Liberty Center of the ACLU Legal Department, engages in systemic legal reform to ensure that everyone has the freedom to live, work, and learn regardless of gender. One of its priorities is holding institutions accountable for gender-based violence and requiring them to adopt systems to prevent such violence before it happens

3. Domestic violence, sexual assault, and other forms of gender-based violence deprive women and girls of their fundamental ability to live with dignity. Women and girls experience domestic violence and sexual assault at alarming rates. Governments, institutions, laws, and policies contribute to the systematic devaluation of the lives and safety of women and girls by failing to respond to gender-based violence and by discriminating against those

subjected to such violence. Domestic violence and sexual assault can affect women in all walks of life, including celebrities.

4. Amber Heard is, and was in November 2018, an "ambassador" for the ACLU on Women's Rights. Part of Ms. Heard's role as an ambassador for the ACLU is to speak and write on areas the ACLU believes are of public importance, to encourage change and reform.

5. In November 2018, the ACLU suggested Ms. Heard write and assisted her in submitting an Op-Ed piece to *The Washington Post* addressing the reluctance of survivors of domestic violence and sexual assault to report their experiences, and the institutional intimidation and social dynamics that discourage such reporting and protect abusers. Her piece further addressed how these dynamics can cause people to question survivors who report violence. The ACLU regards all of these matters as subjects of public concern and has repeatedly addressed them through litigation, advocacy, and public education. This Op-Ed piece also included discussion of the #MeToo movement, an increase in women in Congress, the Violence Against Women Act, and reduction in schools' obligations to respond to sexual harassment and assault under Title IX.

6. The ACLU assisted Ms. Heard in placing her Op-Ed piece with *The Washington Post*. In my view, *The Washington Post* is a highly regarded institution and its acceptance of the piece for publication is a further indication of the importance of the issues that it addresses. In the ACLU's experience, national news outlets like *The Washington Post* do not look to publish Op-Eds on private matters, but rather seek out timely pieces on newsworthy issues that will be of interest to their readers. The fact that *The Washington Post* selected and published Ms. Heard's Op-Ed is a testament to the importance to its readership of the topics she covered.

I declare under penalty of perjury that the foregoing is true and correct.

January 22, 2021
Date

[redacted]
Ben Wizner
American Civil Liberties Union

CHARLSON BREDEHOFT COHEN & BROWN, P.C.

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•ONLY ADMITTED IN MARYLAND

January 22, 2021

BY MESSENGER
John T. Frey, Clerk
Fairfax County Circuit Court
4110 Chain Bridge Road, 3rd Floor
Fairfax, VA 22030

Re: ***Case No. CL-2019-0002911 – John C. Depp, II v. Amber Laura Heard***

Dear Mr. Frey:

Enclosed for filing in the above referenced matter, please find Defendant's Opposition to Plaintiff's Motion to Deny the Remainder of Defendant's Plea in Bar, and Schedule an Evidentiary Hearing Before a Jury on the Remaining Issues.

Also enclosed is an extra copy of the filing, which we would appreciate being date-stamped and returned to us via the awaiting messenger.

Thank you very much for your assistance.

Very truly yours,

[redacted]

Elaine Charlson Bredehoft

Enclosures