VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

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

PLAINTIFF'S DESIGNATION/IDENTIFICATION OF OPPOSING EXPERT WITNESSES

Plaintiff John C. Depp, II, by and through his undersigned counsel, pursuant to Rule 4:1(b)(4)(A)(i) of the Rules of the Supreme Court of Virginia, and the Court's Scheduling Order dated April 22, 2021, and in response to Interrogatory No. 15 in Ms. Heard's First Set of Interrogatories dated October 7, 2019, hereby designates and identifies his opposing expert witnesses.

Given the ongoing state of discovery—in particular, the continuing document productions from the parties and non-parties and the fact that depositions of certain key parties and witnesses have yet to occur—Plaintiff reserves the right to supplement this Opposing Expert Witness Designation, to include (1) identifying additional or different areas of expected testimony for the designated witnesses, (2) identifying additional or different bases for the expected testimony of the designated witnesses, and/or (3) designating additional or different expert witnesses.

Retained Experts

1. **Richard Marks, Entertainment Industry Expert, Richard Marks & Associates, 10573 W. Pico Blvd., Suite 221, Los Angeles, California 90064.** Mr. Marks has had a long career as an executive and business lawyer in the entertainment industry. Mr. Marks has served as a business and legal affairs executive at Universal, Disney, and Paramount among other high profile entertainment companies, in addition to working as an entertainment transactional attorney in private practice with firms such as Greenberg Traurig, The Point Media, and, most recently, at Richard Marks & Associates, an entertainment law firm that Mr. Marks founded in April 2020. Mr. Marks has represented clients such as ITV, Village Roadshow, MRC, New Regency, Legendary, Electus, DirecTV, Relativity and Ovation in connection with their development and production of programming for exploitation in all media and on all platforms. Early in his career, he was responsible for business and legal affairs relating to the development, production, post-production, marketing, and advertising for feature films such as "Beverly Hills Cop II," "Aladdin," and "Beauty and the Beast," and television series such as "Cheers," "Harts of the West," and "Family Ties." Most recently, he has done similar work for streaming series such as "Bosch" and feature films including "All the Money in the World." While working on "All the Money in the World," Mr. Marks gained first-hand experience with respect to how a production company navigates and handles accusations of sexual assault and abuse alleged against an actor starring in its film. In that case, the studio removed the star of its movie even though his services had already been performed and accepted by the studio and the studio had already paid him because it felt so strongly that these sorts of claims alleged against a star in its film would irreparably damage the success of the movie.

Mr. Marks also has a reputation in the entertainment industry for his expertise in its customs and practices and has been engaged as an expert witness by companies as varied as Warner Bros., CAA, and Celador and individuals including Jillian Michaels, Frank Darabont, and Helen Bowers. He earned both his bachelor's degree and his Juris Doctor from University of California, Los Angeles ("UCLA"), graduating respectively as the Valedictory Speaker and the Chief Justice of the Moot Court, and has been a member of the California Bar since 1973.

Subject Matter of Mr. Marks' Opinion: Mr. Marks will testify concerning Ms. Arnold's opinion as rendered in Ms. Heard's Supplemental Disclosure of Expert Witness dated January 11, 2022.

Substance of Mr. Marks' Opinion: Specifically, Mr. Marks will draw on his experience and knowledge as a business and legal affairs executive with entertainment companies as well as his experience as an entertainment lawyer to testify that Ms. Arnold's opinion is deficient on several grounds.

Summary of the Grounds for Mr. Marks' Opinion: Mr. Marks will base his opinions on various grounds including the following:

a. Despite Ms. Arnold's assertion that "[t]ypically, after an actor's successful film in a franchise, an actor will renegotiate a 50% to 100% increase in her salary,"[1] that is not the case. Indeed, film studios are not likely to renegotiate multi-picture contracts. Accordingly, Ms. Arnold's assumption that Ms. Heard would have been able to successfully renegotiate her contract for Aquaman 2 to increase her salary is misplaced;

b. Ms. Arnold's methodology of "comparables" is improper and unfounded where she provides no basis for why these actors are comparable to Ms. Heard, including no

[1] Ms. Heard's Supplemental Disclosure of Expert Witness dated January 11, 2022, p. 34.

information regarding these actors' contracts, historical earnings, and future contracts and/or opportunities[2] nor about Ms. Heard's precedents. The negotiation of terms for agreements with actors for projects is customarily more closely tied to the actor's employment history, not those of other actors;

c. Despite Ms. Arnold's contention that Ms. Heard was "released" and then "re-hired" from her Aquaman 2 contract, that's not how film studios deal with the contractually controlled exercise of options for projects;

d. Despite Ms. Arnold's assertion that after an actor's participation in a successful film in a franchise, such actor will renegotiate a 50% to 100% increase in salary, that is not customary with respect to contracts in the film industry; and

e. Nothing in Ms. Arnold's Expert Designation reveals how she could testify "to a reasonable degree of certainty" that, but for the claimed defamatory statements, Ms. Heard would have earned $47 to $50 million during the past 18 months and the next 3 to 5 years especially without reference to Ms. Heard's earning history.

Mr. Marks' rebuttal opinions will be based on a review of documentary evidence and deposition and trial testimony, including Counterclaims and related exhibits filed in this action; Ms. Heard's Supplemental Disclosure of Expert Witness dated January 11, 2022; the deposition testimony taken in this action, including of Ms. Heard dated January 12-14, 2022; documents produced by Ms. Heard, specifically tax documents from 2013-2019 from Ms. Heard and Under the Black Sky, Inc. (ALH_00010429-ALH_0010449), various contracts produced by Ms. Heard (ALH_00010450-ALH_00010481, ALH_00017195 – 17215, and ALH_00017240-00017441), Ms. Heard's IMDB page (ALH_00010482); documents produced by Warner Brothers

[2] For example, Ms. Arnold states that "Jason Momoa, an actor with equivalent franchise experience, was able to renegotiate his salary and bonuses for a significant increase," without any support. Ms. Heard's Supplemental Disclosure of Expert Witness dated January 11, 2022, p. 34.

(WB_000001-16)as well as his extensive experience as an entertainment industry executive and attorney. Mr. Marks may also testify as to any fact or opinion rendered or attributed to another witness or party as identified by non-parties. Plaintiff reserves the right to designate or substitute other witnesses of the same disciplines to testify as to the facts and opinions described herein. Plaintiff further reserves the right to supplement this Designation based on additional facts Plaintiff learns during discovery and/or his ongoing investigation of this matter. In particular, as of the date of this Designation, the following depositions have yet to occur and/or be completed: Ms. Heard's agent, Ms. Heard's publicist, Disney, and Mr. Christian Carino.

Mr. Marks' CV is attached hereto as **Exhibit A.** He is being compensated for his work at the rate of $975 per hour; none of his compensation is contingent on the opinions he renders or the outcome of the litigation.

2. Michael Spindler, CPA, CFE, CFF, ABV, CAMS, Economic Damages Expert, GlassRatner Advisory & Capital Group, LLC dba B. Riley Advisory Services ("B. Riley Advisory Services"), 555 W. Fifth Street, Suite 3725, Los Angeles, California 90013. Hei so Mr. Spindler, CPA[3], Certified Fraud Examiner, Certified in Financial Forensics, Accredited in Business Valuation and Certified Anti-Money Laundering Specialist, brings over forty years of experience to complex disputes including matters related to forensic accounting and business fraud investigations across a wide range of industries, including media and entertainment. He has provided expert testimony on dozens of occasions in bench trials, jury trials, and arbitration proceedings. He has provided Foreign Corrupt Practices Act investigations and training services in various countries around the world, including China, Russia, India, and Saudi Arabia. Having conducted numerous high-profile

[3] Licenses from the States of New York, California, Nevada, Arizona, Utah, and Hawaii.

investigations of public company financial statement fraud and other matters, Mr. Spindler has presented his findings to special committees and various government agencies on behalf of clients, including the Department of Justice, Federal Bureau of Investigation, Internal Revenue Service, and the Office of Thrift Supervision. His clients include law firms, corporations, individuals, government agencies, and non-profit organizations.

Prior to joining B. Riley Advisory Services, Mr. Spindler held senior leadership positions with several forensic accounting firms and was a partner at two national public accounting firms. An experienced public speaker, Mr. Spindler has authored or co-authored a number of publications on fraud-related topics and developed and presented seminars and courses on forensic accounting and litigation support issues. He is a past President of the Los Angeles Chapter of CALCPA and of the Los Angeles Chapter of the Association of Certified Fraud Examiners. He is also a past member of the Board of Trustees of the CALCPA Education Foundation and of CALCPA Council. Mr. Spindler is a Certified Public Accountant (licensed in California, New York, Nevada, Arizona, Utah and Hawaii), is certified in Financial Forensics and accredited in Business Valuation (both issued by the AICPA), is a Certified Fraud Examiner (issued by the Association of Certified Fraud Examiners), and is a Certified Anti-Money Laundering Specialist ("CAMS"). Mr. Spindler graduated from the State University of New York at Albany with a Bachelor of Science degree in accounting and a minor degree in economics.

***Subject Matter of Mr. Spindler's Opinion*:** Mr. Spindler is expected to testify in response to Ms. Heard's claimed economic damages of between $47 million and $50 million resulting from three statements from Mr. Adam Waldman in April and June 2020 as calculated

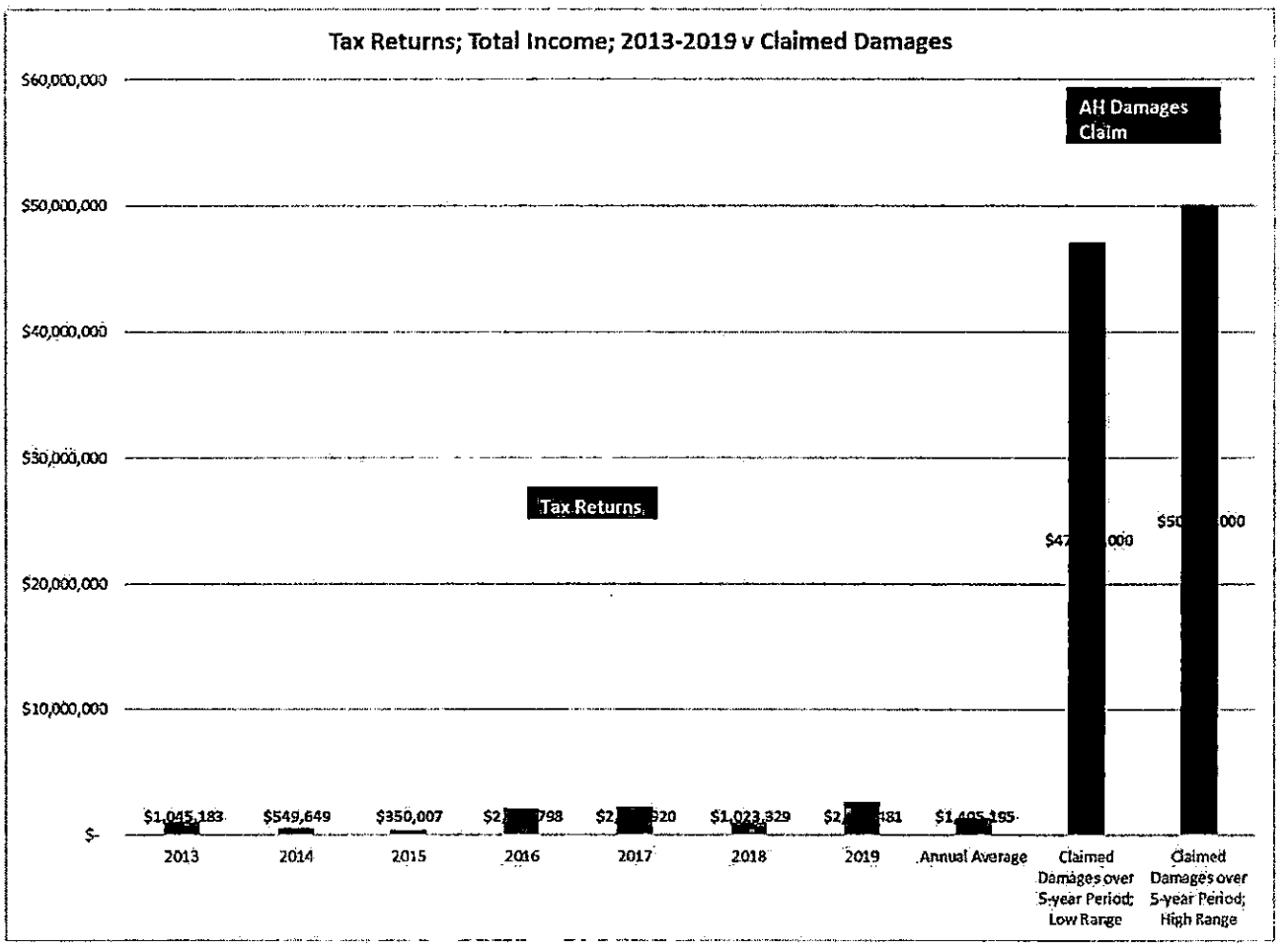
by Ms. Kathryn Arnold in Ms. Heard's Supplemental Disclosure of Expert Witnesses dated January 11, 2022.

Substance of Mr. Spindler's Opinion: Specifically, Mr. Spindler is expected to draw upon his experience and expertise as a CPA and financial forensics professional to testify that Ms. Heard's claimed economic damages of between $47 million and $50 million resulting from three statements from Mr. Adam Waldman in April and June 2020 as calculated by Ms. Kathryn Arnold are not reasonable and lack adequate support.

Summary of Grounds for Mr. Spindler's Opinion: Mr. Spindler's opinion will be based on the following grounds:

a. Ms. Heard's earnings from her film career and product endorsements were significantly lower than the claimed economic damages resulting from the three statements from Mr. Waldman. As reflected in the below chart, based on tax returns produced by Ms. Heard, during the period from 2013 through 2019, Ms. Heard earned less than $10 million in total.[4] Yet, Ms. Arnold calculates that Ms. Heard's earnings over "the past 18 months and the next three to five years" will have been depressed by between $47 million and $50 million;

[4] It should be noted that the tax returns Ms. Heard produced have been redacted. The earnings reflected in the chart are based on line 22, total income, per Ms. Heard's Form 1040s from 2013 through 2019 and line 6, total income, per the Forms 1120s for the same time period for Under The Black Sky, Inc. It is not known to what extent these amounts include other income or losses, such as dividends, capital gains, business gains or losses, etc. *See* ALH_00010429-ALH_0010449



b. In order to assess the economic damage Ms. Heard purportedly suffered as a result of the three statements by Mr. Waldman in *The Daily Mail*, "Ms. Arnold calculated the money ranges Ms. Heard's 'comparables' have been receiving over the same or similar time period."[5] Neither these calculations, nor the underlying support for these so-called comparable actors' earnings have been produced. The "time period" referenced by Ms. Arnold is not identified. It is also unclear how Ms. Arnold projected Ms. Heard's potential earnings to a future period based on unidentified and unsupported historical earnings of actors that are allegedly "comparable," especially

[5] Ms. Heard's Supplemental Disclosure of Expert Witnesses, p. 40.

when what these "comparable" actors would earn during the future damage period is unknown. Also, Ms. Arnold does not appear to consider Ms. Heard's own earnings prior to the alleged damages period.[6]

c. Since Ms. Arnold's calculations and underlying support have not been produced, these damages, as of this date, are unsupported. Ms. Arnold's damages summary is vague, indicating, for example, that Ms. Heard would have starred in "several feature films, earning at least $5 million plus residuals and back end per project," but the actual number of such films included in Ms. Arnold's damages calculation is not identified. It is also unclear if Ms. Arnold has deducted any applicable agent or business manager fees from Ms. Heard's earnings. Ms. Arnold has not produced a table of the alleged damages, reflecting the damages components that add up to her alleged total damages.

d. Based on Ms. Heard's deposition testimony, Ms. Heard was unable to identify a single project that she lost due to the allegedly defamatory statements of Mr. Waldman. Since the alleged damages period includes the past 18 months, one would expect that there would have been at least some backlog of identified projects that existed at the time of the allegedly defamatory statements, but there does not appear to be any claimed impact on any such projects;

e. The only specifically identified project in the damages calculation is for Aquaman 2, for which Ms. Heard has acknowledged that Warner Brothers honored her contract and paid her in accordance with that contract.

[6] Ms. Arnold also makes a reference under Jason Momoa for endorsement contracts for "3-5 appearance engagements at $250,000 each" without any support. Ms. Heard's Supplemental Disclosure of Expert Witnesses, p. 39.

Mr. Spindler's opinions will be based on a review of documentary evidence and deposition and trial testimony, including the opinions of other experts, Counterclaims and related exhibits filed in this action; Ms. Heard's Supplemental Disclosure of Expert Witness dated January 11, 2022; the deposition testimony taken in this action, including of Ms. Heard dated January 12-14, 2022; documents produced by Ms. Heard, specifically tax documents from 2013-2019 from Ms. Heard and Under the Black Sky, Inc. (ALH_00010429-ALH_0010449) and various contracts produced by Ms. Heard (ALH_00010450-ALH_00010481, ALH_00017195 – 17215, and ALH_00017240-00017441), Ms. Heard's IMDB page (ALH_00010482); documents produced by Warner Brothers (WB_000001-16); as well as his extensive experience as a CPA and financial forensics professional. Mr. Spindler may also testify as to any fact or opinion rendered or attributed to another witness or party as identified by other parties' witnesses. Plaintiff reserves the right to designate or substitute other witnesses of the same disciplines to testify as to the facts and opinions described herein. Plaintiff further reserves the right to supplement this Designation based on additional facts Plaintiff learns during discovery and/or his ongoing investigation of this matter. In particular, as of the date of this Designation, the following depositions have yet to occur and/or be completed: Ms. Heard's agent, Ms. Heard's publicist, Disney, and Mr. Christian Carino.

Mr. Spindler's CV is attached hereto as **Exhibit B**. He is being compensated for his work at the rate of $550 per hour; none of his compensation is contingent on the opinions he renders or the outcome of the litigation.

3. **Doug Bania, Analyst, Nevium Intellectual Property Consultants, 415 Laurel Street, Suite 341, San Diego, California 92101.** Mr. Bania is a Certified Licensing Professional ("CLP") and intellectual property ("IP") expert with more than fifteen years of experience in IP valuation, IP management, brand strategy, and internet and social media evaluation. As a founding principal of Nevium Intellectual Property Consultants, Mr. Bania has extensive experience analyzing the reach of website content and social media posts and providing valuation and damages calculations for intellectual property and defamation cases related to celebrities and other public figures. He has been named an expert for over ninety-five cases and has provided expert analysis, consulting, and testimony concerning social media analysis, defamation damages, internet impressions and visits, Google search results analysis, website traffic, and social media damages. Mr. Bania received his Bachelor of Arts in Cinema from San Francisco State University and a Master of Arts in Television, Film, and New Media Production from San Diego State University. Mr. Bania is a Google Analytics Certified Individual ("GAIQ") and is a current member of the International Trademark Association ("INTA") Right of Publicity Committee and the American Bar Association ("ABA") Copyright & Social Media Committee.

Subject Matter of Mr. Bania's Opinion: Mr. Bania will testify concerning the opinions and analysis provided by Kathryn Arnold and Ronald Schnell as disclosed in Ms. Heard's Supplemental Disclosure of Expert Witnesses dated January 11, 2022 (the "Supplemental Disclosures").

Substance of Mr. Bania's Opinion: Specifically, Mr. Bania will testify as to the following opinions: (1) Ms. Arnold and Mr. Schnell both base their opinions on a review and analysis of select hashtags from Twitter, but failed to conduct any analysis or evaluation to

demonstrate that the three alleged defamatory statements from Mr. Waldman caused, or are related to, use of the alleged negative hashtags related to Ms. Heard on Twitter or any other social media platforms; (2) Without establishment of a connection between the allegedly defamatory statements by Mr. Waldman and the use of alleged negative hashtags related to Ms. Heard or any harm potentially suffered by Ms. Heard, the analysis of these select hashtags from Twitter is irrelevant as a component of an economic damages analysis; and (3) Ms. Arnold's opinion is based on a contradictory and unreasonable selection of so-called "comparable" actors, which, based on various metrics including relative social media presence and Q Scores, are not comparable to Ms. Heard.

Summary of the Grounds for Mr. Bania's Opinion: Mr. Bania will base his opinions on his research-based analysis which will include a Google search and trend analysis of Mr. Depp and a review of Ms. Heard's and so-called "comparable" actors' Q Scores, which measure consumer appeal of celebrity or public figures.

a. *Relevant Key Events*: As presented at Exhibit G, Schedule 1, the first appearance of #JusticeForJohnnyDepp appeared on Twitter on September 27, 2013, years before Mr. Depp and Ms. Heard were married on February 1, 2015. On May 25, 2016, #AmberTurd was first used on Twitter. On May 27, 2016, Ms. Heard publicly accused Mr. Depp of domestic abuse and obtained a temporary restraining order against Mr. Depp. On June 7, 2016, #AmberHeardIsAnAbuser was first used on Twitter. On December 18, 2018, Ms. Heard authored an op-ed published by the *Washington Post* in which she alleges she is a victim of domestic violence at the hands of Mr. Depp. The first, second, and third "Daily Mail Articles" containing the

allegedly defamatory statements from Mr. Waldman were published on April 8, 2020, April 27, 2020, and June 24, 2020 (the "Waldman Statements").

b. *Mr. Bania's Analysis of the Hashtag Data*: For his review of Mr. Schnell's and Ms. Arnold's opinions, Mr. Bania reviewed data disclosed in the Supplemental Disclosure including Attachment 4, which summarized the use of select hashtags on Twitter (the "Hashtag Data") between January 1, 2018 and June 15, 2021.[7] On Twitter, a hashtag, written with a # symbol in front of unbroken words or phrases, is used to index keywords or topics on Twitter. This function was created to allow people to easily follow topics they are interested in.[8] In other words, a person can post or "tweet" a comment, article, picture, or video and use a relevant hashtag to group it with related posts. According to the Supplemental Disclosure, Mr. Schnell generated the Hashtag Data using the Twitter application programming interface ("API") and conducted the searches for tweets using allegedly negative hashtags related to Heard, including: #JusticeForJohnnyDepp, #AmberHeardIsAnAbuser, #AmberTurd, #WeJustDontLikeYouAmber (collectively, the "Heard Hashtags"). Mr. Schnell then performed the same API data extraction from Twitter for allegedly negative hashtags related to Mr. Depp, including: #JohnnyDeppIsALiar, #JusticeForAmberHeard, #WeAreWithYouAmberHeard, #IStandWithAmberHeard, #JohnnyDeppIsAWifeBeater, #JohnnyDeppIsAnAbuser (collectively, the "Depp Hashtags"). Dr. Bania was provided a copy of a flash drive containing the Hashtag Data. The Hashtag Data consists of an Excel spreadsheet with a daily count of uses of each of the Heard Hashtags and the Depp Hashtags from January 1, 2018, through

[7] Documents 2a and 2b, the Hashtag Data is summarized at Exhibit G, Schedules 4a and 4b.
[8] Document 12e: Twitter – How to use Hashtags

June 15, 2021.[9] An accompanying Excel worksheet provides a summary of hashtag uses by month. It appears Attachment 4 from the Supplemental Disclosure is a chart based on the monthly summary of hashtag uses ("Attachment 4"). The flash drive also contains the Tweets which use the Heard Hashtags from 2009 through 2021 (the "Schnell API Data"). Mr. Bania used the Hashtag Data and Schnell API Data to investigate if any of the Tweets are related to the Waldman Statements. The Hashtag Data and Schnell API Data appears to contain information from Twitter, but not other social media or traditional media platforms. The Supplemental Disclosures indicate Mr. Schnell will provide testimony about his review of other social media platforms. However, the Supplemental Disclosure does not appear to contain any data from platforms other than Twitter. As presented at Exhibit G, Schedules 4b and 4e, the full set of the Hashtag Data contains 2.79 million tweets related to use of the Heard Hashtags. Of the 2.79 million tweets related to use of the Heard Hashtags: (i) 984,684, or 35% of 2.79 million uses, occurred before the first publication of the Waldman Statements in April 2020; (ii) 65,590, or 2% of 2.79 million uses, occurred between April 2020 and June 2020, the period between the publications of the first and last Waldman Statements; (iii) 1.22 million, or 44% of 2.79 million uses, occurred between April 1, 2020 and January 31, 2021, a period mentioned in the Supplemental Disclosures; (iv) 1.81 million, or 65% of 2.79 million uses, occurred between April 1, 2020 and June 15, 2021, the period from the earliest Waldman Statement through the last date provided in the Hashtag Data. Uses that occurred prior to the Waldman Statements cannot be related to, or based on, the Waldman Statements. Only 2% of the uses indicated by the Hashtag Data occurred in the three

[9] Mr. Schnell does not provide an explanation indicating why June 15, 2021 is the latest available date.

months when the Waldman Statements were published. As the Supplemental Disclosure does not indicate how the Hashtag Data is related to the Waldman Statements and these observations indicate little connection based on timing, there is a lack of evidence and analysis indicating a connection between the Waldman Statements and the Hashtag Data. In the Supplemental Disclosures and Attachment 4, Mr. Schnell indicates that uses of the Heard Hashtags and Depp Hashtags were greater in some months than in other months. As presented at Exhibit G, Schedule 4b, the months with the highest volume of uses of the Heard Hashtags are: (i) February 2020: 835,208 uses, or 12.6x greater than the average monthly use for all Heard Hashtags; (ii) July 2020: 128,383 uses, or 1.9x greater than the average monthly use for all Heard Hashtags; (iii) November 2020: 678,441 uses, or 10.2x greater than the average monthly use for all Heard Hashtags; (iv) December 2020: 145,241 uses, or 2.2x greater than the average monthly use for all Heard Hashtags; (v) March 2021: 187,130 uses, or 2.8x greater than the average monthly use for all Heard Hashtags; and (vi) April 2021: 169,588 uses, or 2.6x greater than the average monthly use for all Heard Hashtags. The six highest monthly peaks comprise 77% of all uses of the Heard Hashtags in the Hashtag Data. The February 2020 peak occurs prior to publication of the Waldman Statements in April and June of 2020. Only the July 2020 peaks occur within a few months of the Waldman Statements. The February, March and April of 2021 peaks occur more than six months after the Waldman Statements. Mr. Bania's analysis does not indicate use of the Heard Hashtags increased when the Waldman Statements were published. Mr. Schnell fails to indicate or analyze how the Hashtag Data is related to the Waldman Statements and Mr. Bania's analysis does not

indicate the Waldman Statements caused an increase in use of the Heard Hashtags; accordingly, there does not appear to a connection between the Heard Hashtags and the Waldman Statements.

c. *Mr. Bania's Review of Other Publications at Time of the Waldman Statements*: To determine if other publications could have contributed to use of the Heard Hashtags, Mr. Bania utilized historical Google search results to evaluate other publications at the time of the observed spikes in use of the Heard Hashtags.[10] As presented at Exhibit G, Schedule 4b, this analysis indicates: (i) February 2020 spike: No search results related to the Waldman Statements and the top three search results all relate to Ms. Heard admitting she hit Mr. Depp; (ii) July 2020 spike: No search results related to the Waldman Statements and the top three search results relate to abuse between Ms. Heard and Mr. Depp and feces being found in Mr. Depp's bed; (iii) November 2020 spike: No search results related to the Waldman Statements and the top three search results relate to Ms. Heard's and Aquaman 2 and the UK Action; (iv) December 2020 spike: No search results related to the Waldman Statements and the top three search results relate to Mr. Depp allegedly wanting to have Ms. Heard replaced on Aquaman; (v) March 2021 spike: No search results related to the Waldman Statements and the top three search results relate to the ruling in the UK Action and allegations that Ms. Heard did not donate the $7 million settlement money; and (vi) April 2021 spike: No search results related to the Waldman Statements and the top three search results relate to the UK Action and Ms. Heard returning to Aquaman. These observations indicate none of the six visible spikes in use of Heard Hashtags relate to the Waldman Statements. The six visible spikes are

[10] See Exhibit E – Google Search Process

likely related to other publications and other news about Ms. Heard and Mr. Depp. Indeed, an article published in February 2020, during the largest visible spike, indicates the hashtag #JusticeForJohnnyDepp was trending on Twitter after Ms. Heard admitted to hitting Mr. Depp in an audio clip. Twitter users following the Heard-Depp dispute appear to be responding to publications and news other than the Daily Mail Articles and the Waldman Statements. Other than the chart provided at Attachment 4, Mr. Schnell does not explain or indicate how the Hashtag Data, or any observations from other social media platforms, are related to the Waldman Statements. Further, the Supplemental Disclosures do not indicate or describe which analytical methodologies Mr. Schnell relied upon, or will rely upon, to establish the connection and/or relation between/of use of the Heard Hashtags and the Waldman Statements. Mr. Schnell also does not address the impact of other publications on use of the Heard Hashtags.

d. *Mr. Bania's Review and Analysis of Waldman Statements*: For his review of the Waldman Statements, Mr. Bania collected data regarding dissemination of the Daily Mail Articles, reactions to the Daily Mail Articles, and internet searches related to the Waldman Statements. Mr. Bania investigated the Waldman Statements and three relevant Daily Mail Articles to determine if the Waldman Statements impacted or contributed to use of the Heard Hashtags. From review of the Daily Mail Articles,[11] the Waldman Statement are located at the end of each article. Further the Waldman Statements comprise only a fraction of the total text and topics contained in each article. From the Supplemental Disclosure, neither Mr. Schnell nor Ms. Arnold

[11] See Documents 3a, 3b and 3c - the three Daily Mail Articles containing the allegedly defamatory statements of Mr. Waldman.

provide any analysis of the Waldman Statements including any data or analysis indicating the dissemination, readership, or reaction to the Waldman Statements or any analysis indicating when and where Waldman Statements became an element of any of the Tweets using the Heard Hashtags. Data from Google Search indicates the dispute between Ms. Heard and Mr. Depp is mentioned on hundreds of thousands of websites,[12] rending, the three Daily Mail Articles containing the Waldman Statements as a small fraction of the relevant media and press coverage. Press regarding Ms. Heard's abuse allegations against Mr. Depp first began in May 2016 when Ms. Heard publicly accused Mr. Depp of domestic abuse.[13] Neither Mr. Schnell nor Ms. Arnold provide any analysis, data or measure to indicate how the Waldman Statements relate to, or caused, use of the Heard Hashtags or impacted Ms. Heard's public reputation. Data related to the Daily Mail Articles indicates how many times they were shared and how many comments each article received. Although this does not quantify how many people read the Waldman Statements, this data indicates how many readers reacted directly to the Daily Mail Articles. The data related to the Daily Mail Articles indicates: (i) 74 readers shared and 60 readers commented on the article published April 8, 2020; (ii) 385 readers shared and 148 readers commented on the article published April 27, 2020; and (iii)1,000 readers shared and 697 readers commented on the article published June 24, 2020. In total, 1,459 readers shared the Daily Mail Articles and 905 readers made comments. None of the comments mention Mr. Waldman or text related to the Waldman Statements. Mr. Bania also identified the

[12] Document 10b: Google Search of "Johnny Depp," "Amber Heard," and "Case." This search indicates the terms generated 587,000 results or webpages. Mr. Bania understands other terms such as "Abuse" could generate additional results or webpages not included in the 587,000 results reflected in this document.
[13] See Exhibit G, Schedule I

key terms or themes which were common between the three Waldman Statements. These key terms were used to investigate how many times they appeared in the Waldman Statements and in Google Trends results. Doing so provides an indication of the potential use on Tweets and readers' interest in the topics. The key terms are: "abuse hoax," "sexual violence hoax," and "fake sexual violence" (collectively, the "Key Terms"). Mr. Bania used the Key Terms to investigate if they are mentioned in Schnell API Data. If found in the Schnell API Data, it could suggest the Tweets are related to the Daily Mail Articles or the Waldman Statements. My analysis of the Key Terms in the Schnell API Data indicates: abuse hoax was used 749 times; sexual violence hoax was used 0 times; and fake sexual violence was used 434 times.[14] In total, the Key Terms were used 1,183 times on Tweets, but Ms. Arnold and Mr. Schnell do not connect these Tweets to Mr. Waldman's statements. . The 1,183 uses of the Key Terms are only 0.07% of the 1.81 million tweets related to the Heard Hashtags identified by Mr. Schnell between April 1, 2020 and June 15, 2021.[15] This low ratio implies use of the Heard Hashtags are likely a result of media coverage other than the Daily Mail Articles.[16] Mr. Bania also researched the Key Terms in Google Trends[17] to determine if Google search users searched the internet for terms from the Waldman Statements. Use of the Key Terms in Google Search could

[14] See Schedule 6

[15] Mr. Bania understands the Schnell API Data is made up of tweets between 2009 and 2021. As this data range in the Schnell API Data is larger than the Hashtag Data, the 0.07% may be inflated. The Supplemental Disclosure has not provided an indication of how many Tweets the Schnell API Data contains. Therefore, Mr. Bania has relied on the Hashtag Data for this comparison.

[16] Mr. Bania has performed this same analysis for the term "Waldman." My analysis indicates the term "Waldman" is used 217,732, or 12.05% of the 1.81 Tweets between April 1, 2020 and June 15, 2021, which needs further investigation as the data may be inflated as the term Waldman is counted multiple times per Tweet. As presented at Document 2c, one Tweet is counting Waldman 6 separate times.

[17] See Exhibit F for explanation of Google Trends, definition of interest, and an example of the steps used to generate the Google Trends data.

indicate readers of the Daily Mail Articles are seeking additional information based on the Waldman Statements. Additionally, Mr. Bania added the terms Heard, Depp, and Waldman to the Key Terms to see if a combination of the terms generated any search traffic or interest. As presented at Documents 11a – 11l, Google Trends indicates "your search doesn't have enough data to show here" for any combination of the Key Terms individually or with the names Heard, Depp, and Waldman included. This analysis indicates very few people used the Key Terms in Google Search, implying readers of the Daily Mail Articles did not seek additional information based on the Waldman Statements. Mr. Bania performed a similar Google Trends investigation to understand if the Daily Mail received higher than normal Google search volume on the days the Waldman Statements were published. Higher than normal Google search volumes to the Daily Mail during the periods in which the Waldman Statements were published could indicate potential interest in the Daily Mail Articles compared to other news articles. For this analysis, Mr. Bania followed the same Google Trends steps outlined in Exhibit F and used the term "Daily Mail – Newspaper." As presented at Exhibit G, Schedule 5a, Daily Mail has an interest score of 82 in April 2020 and 71 in June 2020, the periods in which the Waldman Statements were published. The April 2020 score of 82 matches the average score for the Daily Mail over the period in which Mr. Bania investigated. The June 2020 score of 71 is lower than the average score for the Daily Mail over the period in which Mr. Bania investigated. This indicates Google Search use of "Daily Mail- Newspaper" did not increase when the Waldman Statements were published. Finally, Mr. Bania investigated Depp, Heard, and the Daily Mail to determine what

potentially drove interest or search traffic to Daily Mail Articles. To perform this analysis, Mr. Bania utilized Google Trends and compared Waldman to Depp, Heard, and the Daily Mail, respectively. When multiple terms or topics are selected, Google Trends can be used to understand which terms generate more search traffic or if there are correlations between the selected terms.[18] Mr. Bania first noticed Google Trends does not recognize Adam Waldman as an attorney or a public figure.[19] This means that there are very few people searching for Adam Waldman. For example, Document 9k indicates the term "Robert Shapiro" is typically affiliated with searches for a lawyer, and a businessman. By selecting a specific category rather than the generic "Search Term," Google Trends generates more specific results to the term or topic being researched.[20] As a result, Google Trends indicates the term Adam Waldman does not generate enough search traffic for Mr. Waldman to be assigned a specific category and could indicate Mr. Waldman is not a recognized public figure because very few people are searching for him. As presented at Exhibit G, Schedule 5b, a Google Trends comparison of the search term Adam Waldman to Johnny Depp, Amber Heard, and the Daily Mail generates scores of 0 or <1 for the term Adam Waldman.[21] The 0 or <1 scores for the term Adam Waldman indicates a low volume of search activity, i.e. very few people are searching for Mr. Waldman during the same period in which people search for Mr. Depp, Ms. Heard, or the Daily Mail. As a

[18] Document 9g: How to Use Google Trends to Measure Popular Search Terms and Document 9f: Google Trends – Amber Heard and Aquaman. This is an example showing when there are spikes for the term Aquaman there are also spikes for the term Amber Heard.
[19] Document 9e: Google Trends – Adam Waldman Search Topics
[20] Document 9k: Google Trends – Search For Robert Shapiro. This is another example where Robert Shapiro, an attorney, generates three different category options based on common results of the term.
[21] Document 9l: Compare Trends Search Terms – Trends Help - As the term Adam Waldman is only categorized as a Search Term, Mr. Bania selected the Search Term options for Depp, Heard, and the Daily Mail instead of the actors or newspaper categories. Google Trends indicate Search Terms and assigned category topics are measured differently.

result, a Google search for Mr. Depp, Ms. Heard, and the Daily Mail generates more interest than Mr. Waldman and could indicate interest in Depp, Heard, or the Daily Mail is more likely to drive search results to the Daily Mail Articles. As neither the Mr. Schnell nor Ms. Arnold provide any analysis of the Waldman Statements and Mr. Bania's analysis of the Waldman Statements indicates there is likely no connection to use of the Heard Hashtags, there is no evidence or analysis indicating the Waldman Statements are related to, or caused, use of the Heard Hashtags.

e. *Deficiencies in Mr. Schnell's opinion as rendered in the Supplemental Disclosure:* Although Mr. Schnell provides data from Twitter indicating use of the Heard Hashtags and Depp Hashtags, he fails to provide analysis quantifying the number of "negative" tweets or negative comments on other social media platforms, fails to provide data from other social media platforms, and fails to provide or describe any analysis or evaluation methodology to support the finding of "manipulation and a coordinated effort" to harm Ms. Heard.

    i. *Lack of Analysis or Methodology to Explain When or Why any Tweet is Negative*: The Supplemental Disclosure indicates Mr. Schnell gathered and reviewed posts on social media containing or expressing negative comments and negativity about Ms. Heard. The Supplemental Disclosure does not describe the methodology used by Mr. Schnell to determine why a tweet is "negative." Other than use of one or more of the Heard Hashtags, Mr. Schnell does not explain what terms or phrases constitute a negative tweet. Mr. Schnell's conclusion that a "vast majority" of the 2.7 million tweets are negative is not supported by analysis provided within

the Supplemental Disclosure. He does not define or describe what constitutes a vast majority. As no reference or indication that a statistical analysis of the tweets has been performed, the classification of all or a vast majority of the Heard Hashtag tweets as "negative" is unreasonable and unsupported. Without disclosure of the analyses performed, if any, one cannot determine if the opinion is supported by facts, data, or evidence. Mr. Schnell includes 8 examples of tweets using the Heard Hashtags, implying these 8 examples represent the entire population of 2.7 million uses of the Heard Hashtags. There is no explanation how these 8 examples were selected. Mr. Schnell Disclosure provides no analysis or explanation indicating the 8 examples are representative of the total population of uses of the Heard Hashtags. No statistical analysis, evaluation or measures are referenced or included. Without such an analysis, the 8 examples cannot be relied upon as an indication of any greater trends or patterns across the entire population. Additionally, the Mr. Schnell does not provide any analysis connecting or relating the Waldman Statements and uses of the Heard Hashtags. The 8 examples in the Supplemental Disclosure do not appear to incorporate any of the phrases from the Waldman Statements and none of the 8 examples reference the Daily Mail or Waldman. The Supplemental Disclosure do not indicate Mr. Schnell has analyzed the Heard Hashtag uses to investigate any connection between the Waldman Statements and uses of the Heard Hashtags on Twitter or other social media. The Supplemental Disclosure does not provide any analysis

indicating any of the other 1.8 million tweets with Heard Hashtags containing references to the Daily Mail, Waldman, or phrases from the Waldman Statements. Without such an analysis, neither the 8 examples nor the entire population of uses of the Heard Hashtags indicate any negative comments about Heard were caused by, or related to, the Waldman Statements.

ii. *Inconsistent Figures and Lack of Data to Complete Analysis of Selected Tweets:* As presented at Exhibit G, Schedule 4b, a review of Heard Hashtags indicates the totals presented in the Supplemental Disclosure do not match amounts indicated by the Hashtag Data. The Supplemental Disclosure indicates the usage of Heard Hashtags between April 2020 and January 2021 is 1,243,705 while the Hashtag Data indicates 1,218,652. This discrepancy, without explanation or support, indicates Schnell's conclusions are not supported by data provided and the calculations cannot be replicated. With respect to the "sudden increase" in use of #AmberTurd on August 16-17, 2018, the "sudden increase" is an increase from 0 to 41 uses, which is a small increase relative to the other changes seen in other months. For example, as seen at Exhibit G, Schedule 4b, between January 2020 and February 2020, or prior to the Waldman Statements, use of #JusticeForJohnnyDepp increased from 2,972 to 743,778. With respect to Mr. Schnell's reference to a Tweet that occurred on October 16, 2021 regarding Aquaman 2, the Supplemental Disclosure does not provide data for October 2021as the Hashtag Data ends on June 15, 2021. Additionally,

neither of these two tweets occurred between April and June of 2020, the time period when the Waldman Statements were published. The Supplemental Disclosure does not indicate why these two observations are relevant to claims that the Waldman Statements caused harm to Ms. Heard, or why these two observations are relevant to this case.

iii. *Data and Analyses Referenced in the Schnell Disclosure Has Not Been Provided*: The Supplemental Disclosure includes two statements that indicate Mr. Schnell may have formed his opinions without analysis or data needed to support the opinions. The Supplemental Disclosure states: "Schnell's opinions are to within a reasonable degree of scientific probability and/or certainty, and are based on his expertise, education and technical background, his work experience, ... and his examination and review of data from the three social media platforms described." However, as mentioned, Mr. Schnell only provides data from Twitter in the Supplemental Disclosure. The Supplemental Disclosure also states "Schnell will review additional materials as they become available," which indicates Mr. Schnell will review additional undisclosed and undefined data. Without data from other social media platforms and the possibility of reviewing additional data, Mr. Schnell may have formed his opinions without review of all the relevant data. Opinions without analysis of all available data, or with exclusion of relevant data, are opinions formed before the analysis was conducted. Such opinions are also likely biased as they appear to be based on incomplete analysis rather than a full

examination of the data, facts, and evidence. The Supplemental Disclosure also indicates Mr. Schnell will testify that the number of mentions of the Heard Hashtags, the number of such posts per user, the number of users creating such post, and the timing and frequency of such posts are consistent with manipulation and a coordinated effort. The Supplemental Disclosure also does not indicate or define what constitutes "a manipulated or coordinated effort" or why frequency of posts, timing of posts or number of users creating tweets are factors relevant to identifying "a manipulated and coordinated effort." The Supplemental Disclosure does not disclose the criteria or analytical methodology Mr. Schnell will rely on to measure or evaluate "a manipulated and coordinated effort." Essentially, this proposed opinion is offered without any reference or connection to data, evidence, or analysis. The Supplemental Disclosure has not provided data indicating the number of posts per user or the number of users creating posts. Without disclosure of the data and Mr. Schnell's analytical methods, one cannot determine if Mr. Schnell's opinion is the result of a reasonable and unbiased analysis of the data and evidence.

f. *Lack of Evidence or Analysis Indicating Ms. Heard Was Harmed by the Waldman Statements:* To investigate if Ms. Heard's career was harmed as a result of the Waldman Statements, Mr. Bania utilized IMDb[22] to gather data for the number of

[22] Imdb.com – is an online database of information related to films, television series, home videos, video games, and streaming content online.

acting roles Ms. Heard was credited for before and after the Waldman Statements.[23] As presented at Exhibit G, Schedule 2, Ms. Heard started her acting career around 2004 and has held roles in various movies, tv series, and short films. Ms. Heard's acting roles per year have varied and range anywhere between 0 and 5 for any given year. Ms. Arnold's analysis, as described in the Supplemental Disclosure, does not address the decline in role count experienced by Heard in years other than 2020. Ms. Heard had 1 acting role the year before the Waldman Statements and had 2 acting roles in each of 2021 and 2022, after the Waldman Statements. Based on the volatility in the number of Ms. Heard's credited roles per year, it does not appear the amount of Ms. Heard's credited roles has declined because of the Waldman Statements. The Supplemental Disclosure also indicates Ms. Arnold will testify that Jason Momoa, Gal Gadot, Zendaya, Ana De Armas, and Chris Pine are "comparable" actors to Ms. Heard. Arnold appears to claim Heard underperformed compared to these actors and these have received more projects than Ms. Heard after the Waldman Statements. According to the Supplemental Disclosure, "Actors in similar age ranges and acting styles, who broke out around the same time as Ms. Heard, have watched their careers sky-rocket, while the damage to Ms. Heard's reputation has effectively stalled her career."[24] Additionally, Arnold states: "In order to assess the economic damages the defamation caused to Ms. Heard, Ms. Arnold calculated the money ranges Ms. Heard's comparables have been receiving over the same or similar time period."[25] However, review of IMDB data indicates there is no evidence Ms. Heard's role count

[23] Document 4g: IMDb Background. IMDb is the "world's most popular and authoritative source for movie, TV and celebrity content. Our searchable database includes millions of movies, TV and entertainment programs and cast and crew members."
[24] Document 1a: Heard Supplemental Disclosure, Page 37
[25] Document 1a: Heard Supplemental Disclosure, Page 40

declined because of the Waldman Statements. Any projected decline in casting or opportunities could be the result of media and press coverage other than the Waldman Statements. Ms. Arnold fails to consider the likely impact of other media coverage and negative commentary unrelated to the Waldman Statements.

g. *Ms. Arnold's Selection of "Comparables":* According to the Supplemental Disclosure, Ms. Arnold states: "the entertainment industry relies heavily on the reputation of actors in social media and frequently will run searches on any actors being considered for any role. Likewise, entities considering actors for commercial opportunities place substantial importance on the actor's reputation in social media in determining the actor to best promote their products and services."[26] Despite this admission, Ms. Arnold selects the so-called "comparables" based on other factors (age, breakout year, etc.).[27] The Supplemental Disclosure does not provide an explanation or rationale for this contradiction. Based on Ms. Arnold's admission regarding the importance of social media and reputation in casting decisions, Mr. Bania analyzed Ms. Heard's and the "comparable" actors' Q Scores and social media following. Q Scores are "the recognized industry standard for measuring consumer appeal of performers, brand ambassadors, influencers, characters, licensed properties and brands."[28] Q Scores are ratings based on surveys which determine the strength of people's emotional connection, whether positive or negative, to a specific personality.[29] In other words, Q Scores determine how well a celebrity is known, liked, and disliked. Mr. Bania analyzed Ms. Heard's and the so-called "comparable"

[26] Document 1a: Heard Supplemental Disclosure, Page 31
[27] Document 1a: Heard Supplemental Disclosure, Page 37
[28] Document 5e: Q Score Homepage
[29] Document 5d: Performer Q Online Background & Definitions.

actors' Q Scores before the Waldman Statements.[30] As presented at Exhibit G, Schedule 3a, the Q Score analysis indicates: Ms. Heard's familiarity rating was less compared to all the "comparable" actors except for Ana De Armas;[31]Ms. Heard's positive rating was less compared to all the "comparable" actors;[32] Ms. Heard's negative rating was the highest compared to all the "comparable" actors;[33] and all of Ms. Heard's Q Score ratings were less favorable than the average of all performers.[34] Based on this analysis, Ms. Heard is less recognized than all "comparable" actors for Ana De Armas and is less liked than all "comparable" actors. As presented at Exhibit G, Schedule 3a, Mr. Bania used the Wayback Machine[35] to research Facebook, Twitter, and Instagram to better understand how many followers Ms. Heard and the "comparable" actors had before April 2020 or prior to the Waldman Statements. Although not all "comparable" actors have official social media accounts, the analysis provided sufficient information to understand the popularity of Heard compared to four of the five "comparable" actors.[36] Mr. Bania's analysis of social media followers before the Waldman Statements indicates: Gal Gadot had 11.1 million and Zendaya had 11.6 million more followers than Heard on Facebook; Gal Gadot had 2.2 million and Zendaya had 17 million more followers than Heard on Twitter; and Gal Gadot

[30] The only actor who did not have a Q Score report the Alleged Defamatory Statement is Ana De Armas. According to Q Score representatives, no Q Score reports was available prior to April 2020 and the closest report was Summer 2020. Q Score representatives indicated comparisons across Q Score report periods are done on a regular basis.
[31] Document 5d: Performer Q Online Background & Definitions. Familiarity rating indicates the percentage of people familiar with the personality.
[32] Document 5d: Performer Q Online Background & Definitions. Positive rating indicates percentage of people who rated the personality as "One of My Favorites" divided by only those who are familiar with the personality. This identifies the true fans of a personality.
[33] Document 5d: Performer Q Online Background & Definitions. Negative rating indicates percentage of people who rated the personality as "Fair" or "Poor" divided by only those who are familiar with the personality.
[34] All Performers indicates the average Q Score ratings for all personalities in the acting category.
[35] The Wayback Machine is located at archive.org and is a digital archive of the World Wide Web, which allows users to go back in time to see how websites looked in the past.
[36] Jason Momoa does not have an official Facebook or Twitter. Ana De Armas does not have an official Facebook or Twitter. Chris Pine does not have an official Facebook, Twitter, and Instagram.

had 33.2 million, Zendaya had 62.1 million, and Jason Momoa had 11 million more followers than Ms. Heard on Instagram. Ana De Armas was the only "comparable" actor with less Instagram followers than Ms. Heard. Based on this analysis, Ms. Heard has a lower social media following than all "comparable" actors except for Ana De Armas. Assuming arguendo that Ms. Arnold's assertion that casting decisions are based on reputation and social media, the selected "comparable" actors do not provide a reasonable benchmark for Ms. Heard's potential casting or compensation. Based on their larger social media following and more favorable Q-scores, the "comparable" actors are likely obtaining more acting roles and achieving greater compensation than Ms. Heard because they are more well-known, have larger followings, are more liked, and less disliked.

Mr. Bania's opinions will be based on the documents listed in Exhibit D and the schedules presented at Exhibit G. Mr. Bania may also testify as to any fact or opinion rendered or attributed to another witness or party as identified by other parties' witnesses. Plaintiff reserves the right to designate or substitute other witnesses of the same disciplines to testify as to the facts and opinions described herein. Plaintiff further reserves the right to supplement this Expert Witness Designation based on additional facts Plaintiff learns during discovery and/or his ongoing investigation of this matter.

Should Schnell provide additional data, analysis or evidence of his investigations, I reserve the right to review such additional disclosures when and if they are provided.

Mr. Bania's CV is attached hereto as **Exhibit C**. He is being compensated for his work at the rate of $660 per hour for consultation and deposition/trial preparation time and $760 per

hour for deposition and trial testimony time; none of his compensation is contingent on the opinions he renders or the outcome of the litigation.

4. **Shannon J. Curry, PsyD, Clinical Psychologist, Curry Psychology Group, 200 Newport Center Drive, Suite 204, Newport Beach, California 92660.** Dr. Curry is a clinical and forensic psychologist with extensive clinical and research experience and expertise in individual and community trauma, forensic psychology, and relationships/the Gottman method of couples' therapy. Currently, Dr. Curry is the owner and director of the Curry Psychology Group, a multispecialty mental health center in Newport Beach, California. Dr. Curry has nine years of experience as a licensed clinical psychologist, providing direct therapy and assessment services and supervising masters- and doctoral-level clinicians. Prior to becoming a clinical psychologist, Dr. Curry worked for seven years as a therapist. She is experienced in treating adults, couples, adolescents, children, and families across a diverse range of settings including community counseling centers, forensic psychiatric hospitals, correctional programs, military facilities, and rural clinics both in the U.S. and abroad (Ayacucho, Peru and La Paz, Mexico). In addition to her clinical work, Dr. Curry is on the board for the University of California Irvine Center for Unconventional Security Affairs ("CUSA") and is involved in continued research on issues of poverty, warfare, violence, environmental sustainability, and complex disaster.

Dr. Curry received her Bachelor of Arts in Psychology and Social Behavior with high honors from the University of California, Irvine; a Master of Arts in Psychology from Pepperdine University; a Post-Doctoral Master of Science in Clinical Psychopharmacology from Alliant University (for psychologist prescriptive authority in certain states and federal jurisdictions); and a doctorate in Clinical Psychology from Pepperdine University with research honors. Dr. Curry completed a year-long doctoral internship at Tripler Army Medical Hospital in

Honolulu, Hawaii, an American Psychological Association ("APA")-Accredited training site, where she obtained intensive experience in psychological assessment and the treatment of post-traumatic stress disorder ("PTSD"). She then completed a two-year post-doctoral residency at Hawaii State Hospital, a forensic psychiatric hospital where she specialized in trauma and forensic psychology and obtained Certification as a Forensic Evaluator for the Hawaii State Department of Courts and Corrections.

This Designation reflects Dr. Curry's finding and opinions as more fully set out in her rebuttal report, incorporated herein by this reference as though set forth in full, and attached as **Exhibit H.**

Subject Matter of Dr. Curry's Opinion: Dr. Curry will testify regarding Dr. Dawn Hughes' forensic psychological evaluation of Ms. Heard and opinions as rendered in Ms. Heard's Supplemental Disclosure of Expert Witnesses dated January 11, 2022.

Substance of Dr. Curry's Opinion: Specifically, Dr. Curry is expected to draw upon her experience and expertise as a clinical and forensic psychologist, the results of her comprehensive, multi-method evaluation of Ms. Heard, and her review of current and relevant peer-reviewed scientific literature to testify that Dr. Hughes' evaluation of Ms. Heard and expert opinions rendered are deficient and in contradiction of professional standards.

Summary of Grounds of Dr. Curry's Opinion: Specifically, Dr. Curry is expected to testify that Dr. Hughes' evaluation of Ms. Heard and expert opinions rendered are deficient and in contradiction of professional standard for, among other reasons: (i) the extended duration between the dates in which Dr. Hughes evaluated Ms. Heard and lack of explanation concerning the potential impact of duration on the evaluation; (ii) Dr. Hughes' inappropriate referral question; (iii) Dr. Hughes' reliance on data and subsequent conclusions that are irrelevant to the

psycholegal purpose of her opinions; (iv) Dr. Hughes' deficient and inappropriate psychometric testing employed during her evaluation of Ms. Heard; (v) Dr. Hughes' misrepresentation of psychometric test validity; (vi) Dr. Hughes' misrepresentation of Ms. Heard's test results; and (vii) Dr. Hughes' inappropriate statements of opinion.

Dr. Curry's opinions will be based on a multi-method evaluation including (1) a semi-structured interview of the defendant, Ms. Heard; (2) administration of psychological testing; (3) review of prior psychological testing by Dr. Dawn Hughes; (4) review of Ms. Heard's available legal, medical, and psychiatric records; (5) review of relevant scientific literature, which are listed in Appendix I of Dr. Curry's Rebuttal Report, attached as **Exhibit H**; and (6) review of documentary evidence as reflected in Appendix II of Dr. Curry's IME Report of Ms. Heard and including the deposition testimony of Ms. Heard, Ms. Pennington, Ms. Henriquez, Dr. Blaustein, and Dr. Amy Banks taken in this action.

Dr. Curry may also testify as to any fact or opinion rendered or attributed to another witness or party as identified by other parties' witnesses. Plaintiff reserves the right to designate or substitute other witnesses of the same disciplines to testify as to the facts and opinions described herein. Plaintiff further reserves the right to supplement this Designation based on additional facts Plaintiff learns during discovery and/or his ongoing investigation of this matter. In particular, as of the date of this Designation, the follow depositions have yet to occur: Ms. Debbie Lloyd and Ms. Tasya van Ree.

Dr. Curry's CV is attached hereto as **Exhibit I**. She is being compensated for her work at the rate of $400 per hour for time spent preparing and $450 per hour for time spent attending and providing testimony in court proceedings; none of her compensation is contingent on the opinions she renders or the outcome of the litigation.

5. **Richard J. Shaw, MD, Forensic Psychiatrist, Stanford University School of Medicine, 401 Quarry Road, Suite 1122, Palo Alto, California 94305.** Dr. Shaw is a Professor of Psychiatry who has been practicing psychiatry for over 35 years. Dr. Shaw currently works at the Department of Psychiatry and Behavioral Sciences at Stanford University School of Medicine where he has worked since 1996. Dr. Shaw serves as the Medical Director for Consultation-Liaison Services at the Lucile Packard Children's Hospital at Stanford University and as a Psychiatric Consultant for the Pediatric Emergency Room at Standard University Medical Center. Dr. Shaw is board certified in psychiatry and child and adolescent psychiatry. Dr. Shaw currently serves on various professional organizations including as a member of the Committee on the Physically Ill Child for the American Academy of Child and Adolescent Psychiatry. Dr. Shaw has authored 70 peer revied manuscripts and almost 30 book chapters. Dr. Shaw serves on the editorial board for *Academic Psychiatry.* Dr. Shaw is a seasoned expert who has been performing forensic psychiatric work for the past 18 years, has been retained as an expert in almost 200 cases, and has provided trial or deposition testimony in nearly 50 cases. Dr. Shaw received his Pre-clinical Training in Basic Medical Sciences from the University of London and his Medical Degree at the Middlesex Hospital Medical School from the University of London.

Subject Matter of Dr. Shaw's Opinion: Dr. Shaw will testify concerning Dr. Spiegel's opinions as rendered in Ms. Heard's Supplemental Disclosure of Expert Witness dated January 11, 2022.

Substance of Dr. Shaw's Opinion: Specifically, Dr. Shaw will draw upon his experience and expertise as a forensic psychiatrist to testify that (i) based on the Goldwater Rule, psychiatrists should not render professional opinions about the mental state of individuals they

have not personally and thoroughly evaluated; (ii) the Goldwater Rule remains best practices as it has been widely accepted by the professional organizations that dictate standards of care with regard to forensic practice; (iii) in rendering an opinion about cognitive deficits and psychiatric diagnoses in Mr. Depp without conducting a personal evaluation, Dr. Spiegel has failed to abide by the Goldwater Rule; and (iv) Dr. Spiegel misrepresents the literature on risk factors for IPV as Dr. Spiegel frames these risk factors as evidence that Mr. Depp is an IPV perpetrator.

Summary of the Grounds for Dr. Shaw's Opinion: Dr. Shaw will base his opinions on the following grounds:

f. The Goldwater Rule:

a. *American Psychiatric Association*:

i. In 1973, the American Psychiatric Association (APA) developed a policy commonly known as the Goldwater Rule following a controversy that emerged during the 1964 presidential election when Fact magazine published the results of a large survey of psychiatrists who were asked whether Senator Barry Goldwater was psychologically fit to run for the presidency. Many respondents described the senator as "paranoid," "grossly psychotic" and a "megalomaniac" while others provided diagnoses that included schizophrenia and narcissistic personality disorder.[37] After Senator Goldwater successfully sued the magazine for defamation of character, the APA asserted that psychiatrists should not give professional

[37] Fact Magazine. 1,189 Psychiatrists Say Goldwater Is Psychologically Unfit to be President! Vol 1, No. 5. New York, NY: Fact Publishing; September-October 1964.

opinions about the mental state of individuals they have not personally and thoroughly evaluated.[38]

ii. The Goldwater Rule has subsequently been published as an annotation in Section 7.3 of the Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry: "On occasion psychiatrists are asked for an opinion about an individual who is in the light of public attention or who has disclosed information about himself/herself through public media. In such circumstances, a psychiatrist may share with the public his or her expertise about psychiatric issues in general. However, it is unethical for a psychiatrist to offer a professional opinion unless he or she has conducted an examination and has been granted proper authorization for such a statement."[39]

iii. The APA Ethical Guidelines further caution that "a psychiatrist should avoid cloaking their public statements with the authority of the profession."[40]

iv. In 2008, Richard Friedman, MD, a Professor of Psychiatry at Weill Cornell Medical College, similarly opined that "for a mental health professional – or any physician – to publicly offer a diagnosis at a distance of a non-patient not only invites public distrust of these professionals but also is intellectually dishonest and is damaging to the

[38] American Psychiatric Association. The Principles of Medical Ethics: Principles With Annotations Especially Applicable to Psychiatry. Arlington, VA: American Psychiatric Press Inc; 2008.
[39] Ibid.
[40] Ibid.

profession."[41] He also wrote that "a professional opinion should reflect a thorough and rigorous examination of a patient, the clinical history, and all relevant clinical data and protection of strict confidentiality, none of which is possible by casual observation of a public figure. To do so otherwise is unethical because it violates this fundamental principle and thereby misleads the public about what constitutes accepted medical and nonmedical professional practice."[42]

v. In 2016, Ronald Pies, MD, a Professor of Psychiatry, also at Weill Cornell Medical College, writing in the Psychiatric Times, supported the premise of the Goldwater Rule, including that it is unethical to offer publicly the putative clinical diagnosis of any living person unless the psychiatrist has conducted a thorough clinical examination of the person, evaluated appropriate ancillary data such as the person's family history or psychometric testing, and has been granted proper authorization for stating the person's diagnosis publicly.[43] However, he argued for greater clarity and specificity in interpreting the Goldwater Rule. While Dr. Pies asserted that comments made by a psychiatrist that amount to a clinical diagnosis of a living person in the absence of a clinical evaluation was a breach of the Goldwater Rule, he wrote that there were circumstances in which a psychiatrist might give a professional opinion. These included: (1) historical inferences

[41] Friedman RA. "Is It Time to Call Trump Mentally Ill?" The New York Times, February 17, 2017.
[42] Ibid.
[43] Pies RW: Deconstructing and Reconstructing the "Goldwater Rule," Psychiatric Times, Vol 33 No 10, October 7, 2016

as to a likely diagnosis applied to a person who was no longer living, often a historical figure of interest; (2) non-diagnostic professional opinions regarding living persons when a psychiatrist might comment broadly about the clinical significance of a pattern of behavior without offering a specific clinical diagnosis; and (3) professional comments that offer a differential diagnosis of a symptomatic or behavioral pattern in a living person, without providing a clinical diagnosis of that person. Dr. Pies also clarified that a clinical diagnosis can only be made on the basis of a direct personal examination of a patient.

vi. In 2017, the APA Ethics Committee reasserted its support for the Goldwater Rule in an opinion in which it was asserted that while it was reasonable for psychiatrists to share their expertise about psychiatric issues in general, it was unethical to offer a professional opinion about an individual without conducting a psychiatric evaluation.[44] The Ethics Committee clarified that the rule applied to all professional opinions offered by a psychiatrist, not merely those limited to affirming the presence or absence of a psychiatric diagnosis. In explaining this position, the Ethics Committee gave three justifications in support of their opinion:

    1. When a psychiatrist renders an opinion about the behavior, symptoms, or diagnosis of a public person without consent, the psychiatrist is violating the principle that all psychiatric

[44] Oquendo M (2017). "APA Remains Committed to Supporting Goldwater Rule." www.psychiatry.org Accessed February 6, 2022.

evaluations should be conducted with both consent and authorization of the individual.

2. When a psychiatrist offers a professional opinion about an individual who has not been examined, the psychiatrist is departing from the established and accepted community standard of care which requires a careful review of the individual's medical history and first-hand examination. Practicing in this manner compromises the integrity of the psychiatrist and the psychiatric profession.
3. When psychiatrists offer medical opinions about an individual whom they have not examined, there is the potential to stigmatize those with mental illness.

vii. In a 2017 commentary on the APA Ethics Committee opinion, Maria Oquendo, MD, PhD, the President of the APA, came out strongly in support of this position, including that adherence to the Goldwater Rule should supersede concerns commonly expressed against the Rule, including those related to freedom of speech, civic duty, and "professional opinions or psychological profiles solicited by courts or law officials for forensic cases."[45] Dr. Oquendo concluded her commentary by speaking to the damage to the professional integrity and trust of psychiatry by the community and wrote that breaking the

[45] Ibid.

Goldwater Rule was "irresponsible, potentially stigmatizing, and definitely unethical."[46]

viii. The presidency of Donald Trump has brought fresh attention to the premise of the Goldwater Rule. In December 2016, a Huffington Post article featured a letter written by three professors of psychiatry citing President Trump's "grandiosity, impulsivity, hypersensitivity to dislikes or criticism, and an apparent inability to distinguish between fantasy and reality" as evidence of his mental instability.[47] John D. Gartner, a practicing psychotherapist and author who teaches at Johns Hopkins University Medical School, and quoted in the U.S. News & World Report, described President Trump as having "malignant narcissism, which is characterized by grandiosity, sadism, and antisocial behavior."[48] It has been argued that while the validity of *psychiatric profiling* is not established, it might reasonably be defended if it was deemed vital to public safety or national security.[49] However, this argument has little bearing with respect to private citizens involved in civil litigation.

b. American Psychological Association

i. In 2016, Susan H McDaniel, PhD, President of the American Psychological Association, in response to press coverage regarding

[46] Ibid.
[47] Greene R (2016). Is Donald Trump Mentally Ill? 3 Professors Of Psychiatry Ask President Obama To Conduct 'A Full Medical And Neuropsychiatric Evaluation' The Huffington Post. https://www.huffpost.com/entry/is-donald-trump-mentally_b_13693174. Accessed February 6, 2022.
[48] Milligan S (2017). Temper Tantrum, US News & World Report. http://www.usnews.com/news/the-report/articles/2017-01-27/does-donald-trumps-personality-make-him-dangerous. Accessed February 6, 2022
[49] Kroll J, Pouncey C (2016). The ethics of APA's Goldwater Rule. Journal of the American Academy of Psychiatry and the Law, 44, 226-235.

whether or not therapists should analyze presidential candidates, came out strongly with the opinion that neither psychiatrists nor psychologists should offer diagnoses of candidates or any other living public figure they have never examined.[50] Dr. McDaniel wrote that the code of ethics of the American Psychological Association promotes the view that psychologists should "'take precautions' that any statements they make to the media 'are based on their professional knowledge, training, or experience in accord with appropriate psychological literature and practice' and 'do not indicate that a professional relationship has been established' with people in the public eye, including political candidates."[51]

ii. When providing opinions of psychological characteristics, psychologists must conduct an examination adequate to support their statements or conclusions and should not offer psychiatric diagnoses of a living public figure they have not examined.

c. *American Medical Association*:

i. In 2017, the American Medical Association wrote new guidelines into the AMA Code of Medical Ethics stating that physicians should "refrain from making clinical diagnoses about individuals (*e.g.*, public officials, celebrities, persons in the news) they have not had the

[50] McDaniel, SH. "Response to Article on Whether Therapists Should Analyze Presidential Candidates." American Psychological Association, March 14, 2016.
[51] Ibid.

opportunity to personally examine."[52] In a 2017 commentary on these guidelines, Mark Moran wrote that physicians should understand that they will be taken as authorities when they engage with the media and therefore should ensure that the medical information they provide is "accurate, inclusive of known risks and benefits, commensurate with their medical expertise, and based on valid scientific evidence and insight gained from professional experience."[53]

g. Professional Standards of Forensic Practice Abide By The Goldwater Rule: Standards of care with regard to forensic practice have been addressed by the two principal professional organizations, the American Academy of Psychiatry and the Law and the American Board of Forensic Psychology. Both these organizations have published practice guidelines that are consistent with the principles outlined in the Goldwater Rule.

   a. *American Academy of Psychiatry and the Law*

      i. In 2015, the American Academy of Psychiatry and the Law (AAPL) published a Practice Guideline for the Forensic Assessment based on the work of an AAPL Task Force that consisted of many of the acknowledged experts in the field of forensic psychiatry.[54] The Practice Guideline was the product of a consensus based on the available literature and knowledge in a broad range of forensic

[52] American Medical Association (2017). "Reference Committee on Amendments to Constitution and Bylaws." Accessed Fairbury 6, 2022.
[53] Moran M (2017). AMA Goes Beyond 'Goldwater Rule' In Ethics Guidelines on Media Interaction. Psychiatric News. 52 (24): 1. doi:10.1176/appi.pn.2017.12b6. Accessed February 6, 2022
[54] American Academy of Psychiatry and the Law. AAPL Practice Guideline for the Forensic Assessment, J Am Acad Psychiatry Law, 43, 2, 2015.

assessments. The Practice Guidelines were intended to address the variable standards and inconsistencies in forensic practice, to ensure integrity in the course of a forensic evaluation, and to ensure adherence to the American Medical Association's Code of Ethics. These ethical guidelines call for adherence to honesty, objectivity, and respect for persons.

ii. The Practice Guideline specifically addresses the importance of informed consent in the course of a forensic assessment. The guidelines state that the evaluee should be given an opportunity to ask questions regarding the process, contact counsel regarding questions about the assessment process, and give proper informed consent. With respect to collateral information, the Practice Guideline addresses the importance of a thorough review of collateral information including past psychiatric and mental health treatment records. With respect to the topic of conducting an assessment without an interview, the AAPL ethics guidelines state: "For certain assessments (such as record reviews for malpractice cases), a personal examination is not required. In all other forensic evaluations, if, after appropriate effort, it is not feasible to conduct a personal examination, an opinion may nonetheless be rendered on the basis of other information. Under these circumstances, it is the responsibility of psychiatrists to make earnest efforts to ensure that their statements, opinions, and reports or testimony based on these opinions, clearly state that there was no

personal examination and note any resulting limitations to their opinions."[55]

iii. The Practice Guideline specifically comments on the need for a thorough mental status examination to elicit information about the frequency and severity of psychiatric symptoms including mood, anxiety, trauma-related symptoms, thought content, thought form, delusional beliefs, perceptual disturbances, cognition, and concentration and relevant comments, insights, and judgment. With respect to rendering opinions, the Practice Guideline notes that the scientific foundation for the opinion may have to withstand a *Daubert* challenge in court and that the evaluator should ensure that the scientific technique used is reliable and generally accepted among other factors.[56] When an opinion cannot be rendered to a reasonable degree of medical certainty, the referral source should be notified before the evaluator writes a report. In cases in which further information or testing is required to render a final opinion, the Practice Guideline states that "these opinions can be problematic and are not generally recommended" and that if a preliminary opinion is given, "its limitation should be explained and the need for further information described."[57]

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[55] Ibid.
[56] Daubert v. Merrell Dow Pharmaceuticals, 509 US 579. 1993.
[57] American Academy of Psychiatry and the Law. AAPL Practice Guideline for the Forensic Assessment, J Am Acad Psychiatry Law, 43, 2, 2015.

b. American Board of Forensic Psychology

i. The American Psychological Association has also published practice guidelines for the specialty of Forensic Psychology.[58] These guidelines contain specific text regarding the rendering of professional forensic opinions about persons who have not been examined: "Forensic practitioners recognize their obligations to only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for those opinions or to substantiate their findings (EPPCC Standard 9.01). Forensic practitioners seek to make reasonable efforts to obtain such information or data, and they document their efforts to obtain it. When it is not possible or feasible to examine individuals about whom they are offering an opinion, forensic practitioners strive to make clear the impact of such limitations on the reliability and validity of their professional products, opinions, or testimony."[59]

h. Dr. Spiegel Failed to Abide by the Goldwater Rule: In rendering an opinion about cognitive deficits and psychiatric diagnoses in Mr. Depp without conducting a personal evaluation, Dr. Spiegel's practice is not consistent with the Goldwater Rule. He is proposing to offer damaging testimony about the character of Mr. Depp without conducting a thorough evaluation based on principles that have been endorsed by the American Psychiatric Association, American Psychological Association, American

[58] American Psychological Association. Specialty Guidelines For Forensic Psychology (2013). American Psychologist 68, 1, 7-19 https://www.apa.org/practice/guidelines/forensic-psychology. Accessed February 6, 2022
[59] Ibid.

Medical Association, American Academy of Psychiatry and the Law, and the American Board of Forensic Psychology. The opinions that Dr. Spiegel intends to offer are based on an incomplete data set, lacking a mental status examination and lacking a review of relevant prior psychiatric history. Moreover, Dr. Spiegel is proposing to offer his opinions without having obtained informed consent from Mr. Depp. The Goldwater Rule was established specifically to discourage testimony of this nature recognizing that when a psychiatrist provides opinions about mental status and psychiatric diagnoses, he/she carries an authority that bears significant weight in both legal proceedings and with the general public. The Ethics Committee of the American Psychiatric Association has consistently ruled that psychiatric profiling and diagnoses made without a personal examination of the individual are a violation of its principles. In addition, Dr. Spiegel does not indicate whether he believes his opinions can be rendered to a reasonable degree of medical certainty or specify that further information would be needed to confirm these opinions. As noted above, the Practice Guideline of the American Academy of Psychiatry and the Law and of the American Board of Forensic Psychology states that reference should be made to these limitations in cases where conclusions are drawn without a full data set.

a. *Dr. Spiegel Improperly Speculates about the Cognitive Abilities of Mr. Depp without Evidence from Neuropsychological Testing:* Dr. Spiegel opines that Mr. Depp has demonstrated impaired attention, difficulty with word-finding retrieval, and impairments in cognitive memory and processing speed which he believes are a direct result of his sustained use and abuse of drugs and alcohol. However, Dr. Spiegel cites no neuropsychological testing data to

support these opinions. In addition, such opinions would generally be provided by a trained neuropsychologist who is credentialed to conduct such testing, rather than a psychiatrist. The manner in which these opinions have been developed is in violation of the Goldwater Rule.

b. *Dr. Spiegel Improperly Attributes Undocumented Deficits in Brain Function, Cognition and Memory to Medications Prescribed to Mr. Depp:* Dr. Spiegel is expected to testify that medications prescribed to Mr. Depp, including Seroquel, Neurontin, and Adderall, are highly abusable and that prolonged abuse can have damaging effects on brain function, cognition, and memory. Dr. Spiegel believes that, while taking these prescribed medications, Mr. Depp was not "sober" by any medical definition. It is not clear whether Dr. Spiegel has records to document the rationale for the prescription of these medications, the doses, the time of administration, or his clinical response. However, all three of these medications have established psychiatric indications and can be safely prescribed for many years without harmful effects on brain function, cognition, or memory. In fact, Adderall, a medication prescribed to improve focus and concentration and decrease impulsivity, has been shown in multiple studies to improve brain functioning and academic achievement.

    i. *Dr. Spiegel Improperly Speculates About the Presence of Narcissistic Personality Disorder and Deficits in Temperament in Mr. Depp without a Proper Clinical Evaluation:* Dr. Spiegel intends to opine that Mr. Depp has characteristics of Narcissistic Personality Disorder,

which include lack of empathy, controlling behavior, self-absorption, displays of physical violence when told "no," and displays of anger when they perceive rejection from their partner. However, to make a diagnosis of Narcissistic Personality Disorder, the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) specifies that the individual needs to manifest a pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts. The DSM-5 criteria do not include controlling behavior, displays of physical violence when told "no," or displays of anger when they perceive rejection from their partner. In Ms. Heard's Supplemental Disclosure of Expert Witnesses, Dr. Spiegel does not provide details of the data on which he bases his opinion. In addition, Dr. Spiegel intends to opine that Mr. Depp has a "frail temperament" that results in a lack of behavioral control and impulsivity. While there are established and evidence-based measures to assess temperament, there is no evidence that Dr. Spiegel has relied upon such data. The rendering of such opinions without a personal evaluation and supplementary evidence is another violation of the Goldwater Rule. Richard Friedman, MD, in a commentary on the practice of making clinical diagnoses in individuals without doing an in-person evaluation has also noted that characteristics of a diagnosis such as Narcissistic Personality Disorder may also be explained on the basis of other mental health issues.[60]

[60] Friedman RA, (2008). Role of physicians and mental health professions in discussions of public figures. Journal

i. Dr. Spiegel Misrepresents the Literature on Risk Factors for IPV as Evidence that Mr. Depp is an IPV Perpetrator: Much of the research conducted on topics of medical and psychiatric interest, including IPV, involves the identification of risk factors that are more commonly associated with specific behaviors or psychiatric conditions. This research can be useful in helping screen for specific diagnoses and developing interventions to help prevent these conditions. However, the presence even of multiple risk factors in any one individual is not evidence that that individual has this condition. With regard to Mr. Depp, his alleged past trauma history, alleged prior history of substance abuse, and alleged history of impulsive or erratic behaviors is not evidence that he is a perpetrator of IPV. The presence of IPV needs to be verified with objective data and cannot be established solely based on a profile of risk factors.

Dr. Shaw's rebuttal opinions will be based on a review of Ms. Heard's Supplemental Disclosure of Expert Witnesses dated January 11, 2022, as well as the evidence that Dr. Spiegel has relied on to form his opinion as identified as Attachment 7 to Ms. Heard's Supplemental Disclosure. Dr. Shaw's opinion will also be based on current and relevant peer-reviewed scientific literature. A full list of references that Dr. Shaw has relied on thus far to form his opinion is attached hereto as **Exhibit J.** Dr. Shaw may also testify as to any fact or opinion rendered or attributed to another witness or party as identified by non-parties. Plaintiff reserves the right to designate or substitute other witnesses of the same disciplines to testify as to the facts and opinions described herein. Plaintiff further reserves the right to supplement this Designation based on additional facts Plaintiff learns during discovery and/or his ongoing investigation of this matter.

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of the American Medical Association 300, 11, 1348-1350.

Dr. Shaw's CV is attached hereto as **Exhibit K.** He is being compensated for his work at the rate of $800 per hour; none of his compensation is contingent on the opinions he renders or the outcome of the litigation.

Respectfully submitted,

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Dated: February 10, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February 2022, I caused copies of the foregoing to be served by email (per written agreement between Parties) on the following:

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EXHIBIT D

Exhibit D – Document Relied Upon

DOC #	Document Title
1a	Heard Supplemental Expert Witness Disclosure
1b	2020-08-10 Heards Couterclaims with Exhibits
1c	2019-03-01 Depp v. Heard Complaint with Exhibits
2a	Schnell Tweet Summary Information - ALH_00017239
2b	Key Term Search for Schnell API Data
2c	Example of Tweet Using Waldman Multiple Times
3a	Daily Mail Article - April 8, 2020 - Amber Heard's 'sexual violence' evidence against Johnny Depp. . .
3b	Daily Mail Article - April 27, 2020 - Listen to 911 call made night Johnny Depp and Amber Heard . . .
3c	Daily Mail Article - June 24, 2020 - Prominent MeToo activist Amanda de Cadenet drops her support of. . .
3d	8 April 2020 Article - Comments Section
3e	27 April 2020 Article - Comments Section
3f	24 June 2020 Article - Comments Section
4a	Amber Heard - IMDb
4b	IMDb Background
5a	Comparable Performer Q Profile
5b	Heard Q Profile
5c	Qscore Results
5d	Performer Q Online Background & Definitions
5e	Q Score Homepage
6a	Amber Heard - Google Search - November 2020
6b	Amber Heard Says She'll Return for Aquaman 2
6c	How Amber Heard Stood Alone Against Hollywood
6d	Inside the Johnny Depp Court Case
6e	Amber Heard - Google Search - November 2020
6f	Johnny Depp Tried to Have Amber Heard Replaced on Aquaman
6g	Aquaman Johnny Depp Reportedly Tried to Have Amber Heard Removed
6h	Johnny Depp Tried to Have Amber Heard Removed from Aquaman
6i	Amber Heard - Google Search - November 2020
6j	Johnny Depp vs. Amber Heard - Depp loses bid to appeal UK court ruling
6k	Johnny Depp's Lawyers accuse Amber Heard of a calculated and manipulative Lie in new appeal
6l	Amber Heard shares poignant photo after ex-husband Johnny Depp loses his wife-beater appeal
6m	Amber Heard - Google Search - November 2020
6n	Johnny Depp's $50M lawsuit dismissal sought after UK wife Beater ruling

DOC #	Document Title
6o	Johnny Depp's US defamation lawsuit should be thrown out after wife-beater ruling in the UK
6p	Amber Heard teases return to Aquaman franchise with throwback snap from set of original film
6q	Amber Heard - Google Search - November 2020
6r	Amber Heard admits to hitting Johnny Depp in recording
6s	Amber Heard mocks Johnny Depp in Second audio tape
6t	Actress Amber Heard admits she hit former husband Johnny Depp and threw pots and pans
6u	Amber Heard - Google Search - November 2020
6v	Amber Hear - Johnny Depp threated to kill me many times
6w	Johnny Depp says feces in bed was last straw in Amber Heard marriage
6x	Johnny Depp wanted Amber Heard barefoot, pregnant - and at home, court told
7a	Amber Heard - Facebook - 1Feb22
7b	Amber Heard - Twitter - 1Feb22
7c	Amber Heard - Instagram - 1Feb22
7d	Jason Momoa - Instagram - 1Feb22
7e	Gal Gadot - Facebook - 1Feb22
7f	Gal Gadot - Twitter - 1Feb22
7g	Gal Gadot - Instagram - 1Feb22
7h	Zendaya - Facebook - 1Feb22
7i	Zendaya - Twitter - 1Feb22
7j	Zendaya - Instagram - 1Feb22
7k	Ana De Armas - Instagram - 1Feb22
8a	Amber Heard - Facebook - 25Jan20
8b	Amber Heard - Twitter - 4Feb20
8c	Amber Heard - Instagram - 2Feb20
8d	Gal Gadot - Facebook - 19Feb20
8e	Gal Gadot - Twitter - 23Mar20
8f	Gal Gadot - Instagram - 23Mar20
8g	Zendaya - Facebook - 4Mar20
8h	Zendaya - Twitter - 22Mar20
8i	Zendaya - Instagram - 29Feb20
8j	Jason Momoa - Instagram - 8Mar20
8k	Ana De Armas - Instagram - 9Oct19
9a	Google Trends - Heard v Waldman
9b	Google Trends - Depp v Waldman
9c	Google Trends - Daily Mail v Waldman
9d	Google Trends - Daily Mail
9e	Google Trends - Adam Waldman Search Topics
9f	Google Trends - Amber Heard and Aquaman
9g	How to Use Google Trends to Measure Popular Search Terms

DOC #	Document Title
9h	FAQ About Google Trends Data - Trends Help
9i	Google Trends Terms Example
9j	Google Trends - Interest Over Time
9k	Google Trends - Search for Robert Schapiro
9l	Compare Trends Search Terms - Trends Help
10a	#JusticeForJohnnyDepp Trends After Amber Heard Admits to Hitting Actor in Audio Clip
10b	Google Search of "Johnny Depp" "Amber Heard" "Case"
11a	Google Trends - Amber Heard Abuse Hoax
11b	Google Trends - Amber Heard Sexual Violence Hoax
11c	Google Trends - Amber Heard Fake Sexual Violence
11d	Google Trends - Johnny Depp Abuse Hoax
11e	Google Trends - Johnny Depp Sexual Violence Hoax
11f	Google Trends - Johnny Depp Fake Sexual Violence
11g	Google Trends - Adam Waldman Abuse Hoax
11h	Google Trends - Adam Waldman Sexual Violence Hoax
11i	Google Trends - Adam Waldman Fake Sexual Violence
11j	Google Trends - Abuse Hoax
11k	Google Trends - Sexual Violence Hoax
11l	Google Trends - Fake Sexual Violence
12a	AmberTurd First Use
12b	WeJustDontLikeYouAmber First Use
12c	JusticeForJohnnyDepp First Use
12d	AmberHeardIsAnAbuser Fist Use
12e	Twitter - How to use hashtags

EXHIBIT E

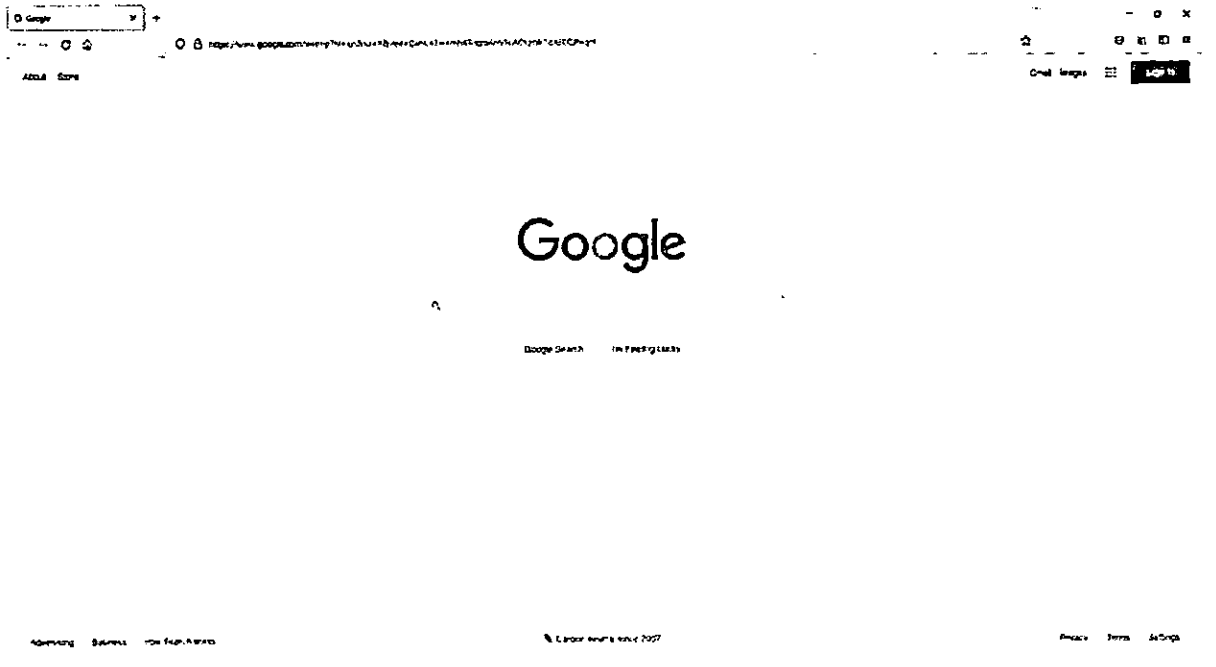
Exhibit E – Google Search Process

To perform this historical Google search investigation, I followed search techniques which generate the most unbiased results within the search engine results page ("SERP"), or the page seen after entering a query into Google. The search techniques include clearing all web browser history and using the Google custom date tool to generate the best representation of historic search results based on key dates in this Case.[1] By utilizing Google's "Custom date range" tool, I was able to generate SERPs which included webpages related to "Amber Heard," or any other relevant term used in my analysis, that were published and most likely to have appeared in the SERP over the top six periods in which the Heard Hashtags were used.

I then analyzed the top three organic webpages in each SERP for the top six time periods where the Heard Hashtags were used to better understand if the webpages were related to the Waldman Statements. I only analyzed the top three organic webpages as research shows the top three results of the first-page search results receive a 56% to 75% click through rate (meaning the ratio of users who click on a specific link to the number of total users who view the page).[2] In other words, the top three webpages listed in the SERP receive the majority of the clicks for a specific Google search.

An example of this process is provided below.

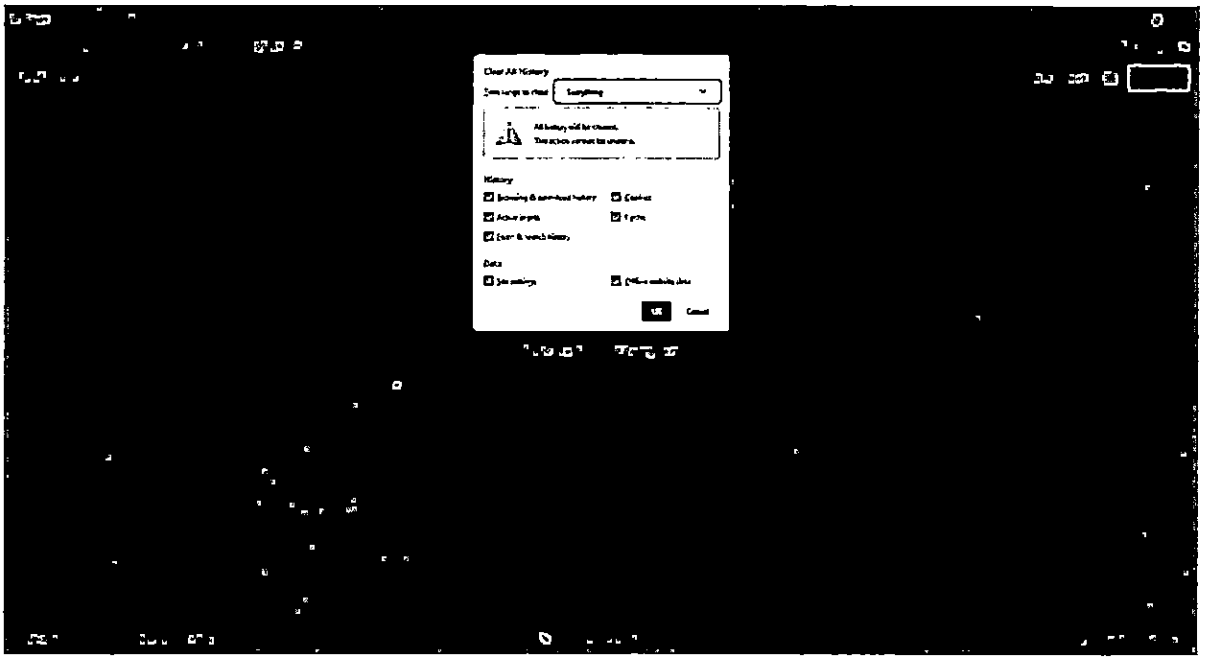
1. Launch Firefox or another browser.



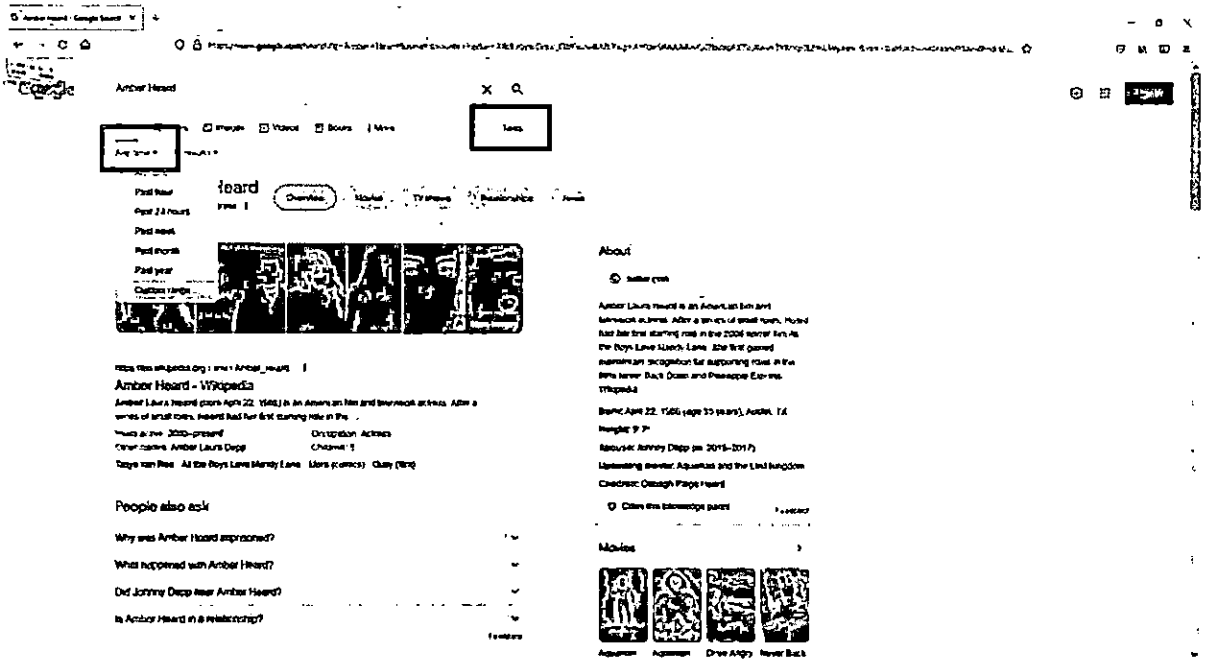
[1] Search techniques are based on Chapter 33, Page 628 "Using Internet Analytic Tools for Valuation and Damages Calculations" of the Comprehensive Guide to Economic Damages, Volume One, 6th Edition, Business Valuation Resources, contributed by Brian Buss and Doug Bania, 2021.
[2] https://backlinko.com/google-ctr-stats

2. In Firefox, click the options menu, click on "History" then "Clear recent history"

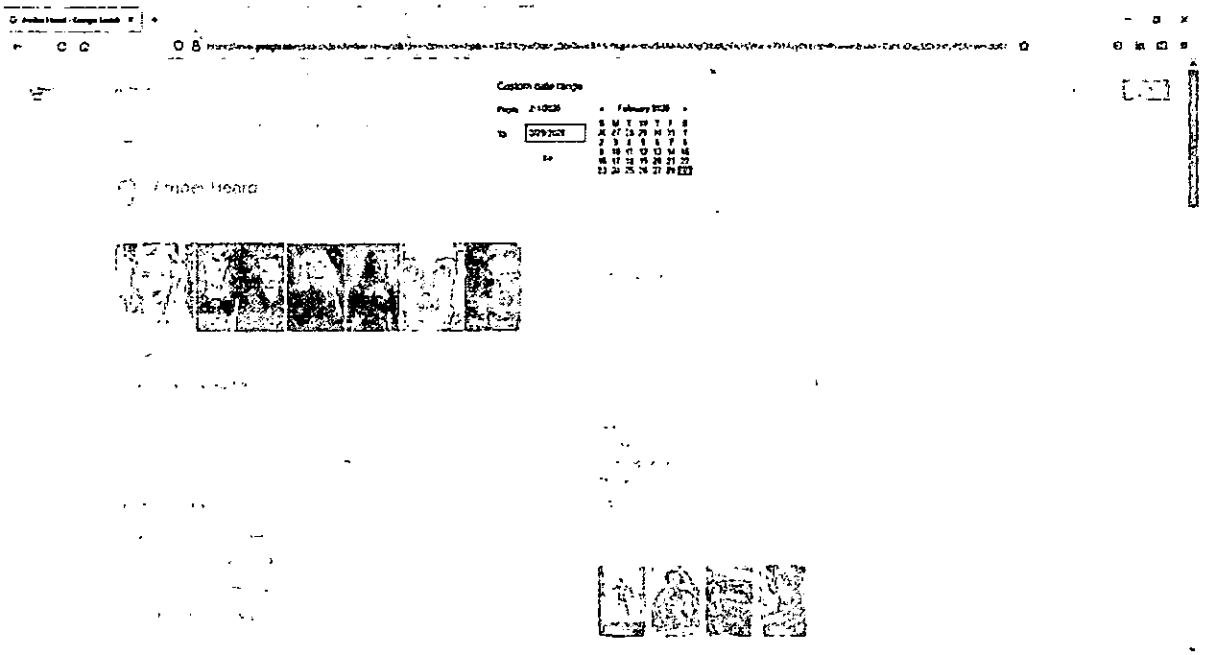
3. Under the "Clear All History" popup box, make sure "Everything" is selected in the "Time range to clear" field. Make sure all "History" and "Data" checkboxes are selected. Click "OK."



4. Search for the term "Amber Heard" then select "Tools" then "Custom Range" under the "Any Time" dropdown



5. Select the relevant date range in the "Custom date range" popup box.



6. Relevant search results for the date range selected are shown.

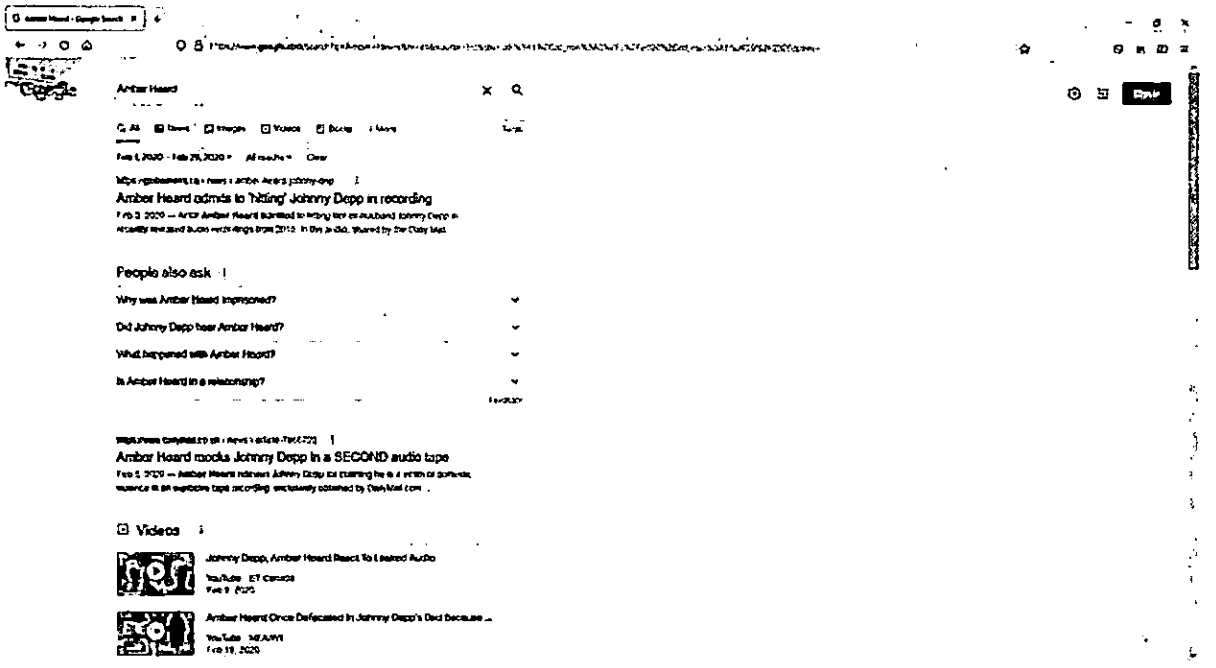


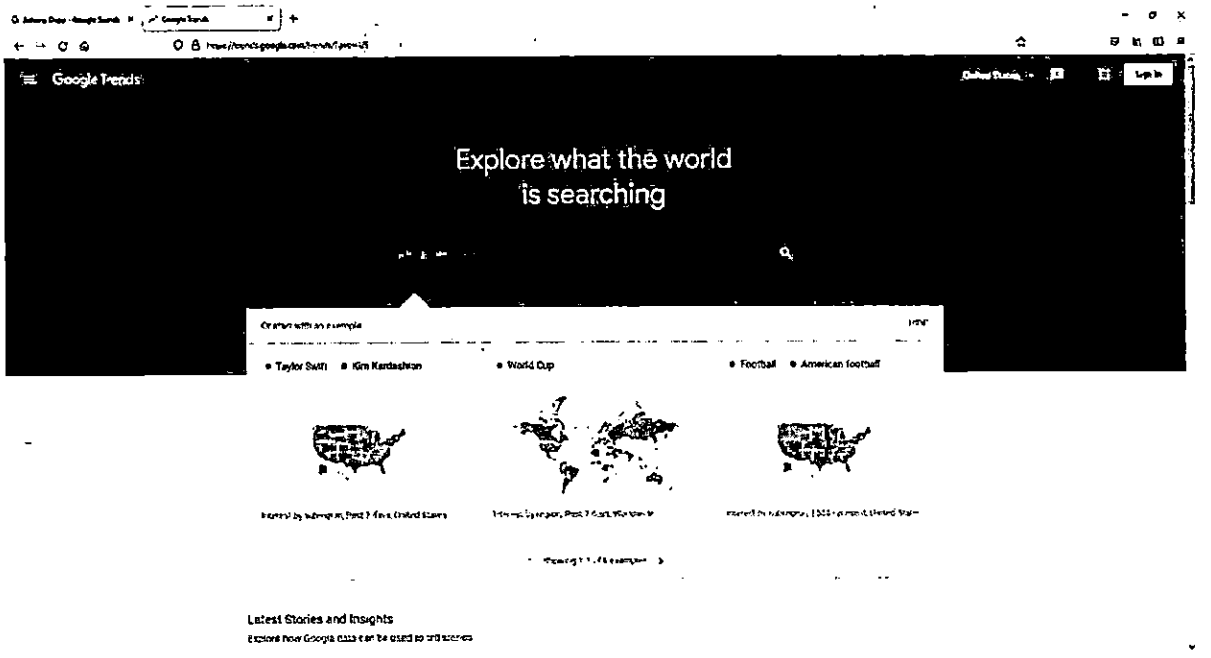
EXHIBIT F

Exhibit F – Google Trends Search

Google Trends is a website owned and operated by Google which shows how frequently a search term is entered into Google's search engine relative to a sample of Google's total search volume over a defined period of time. Google states: "Google Trends data reflects searches people make on Google every day."[3]

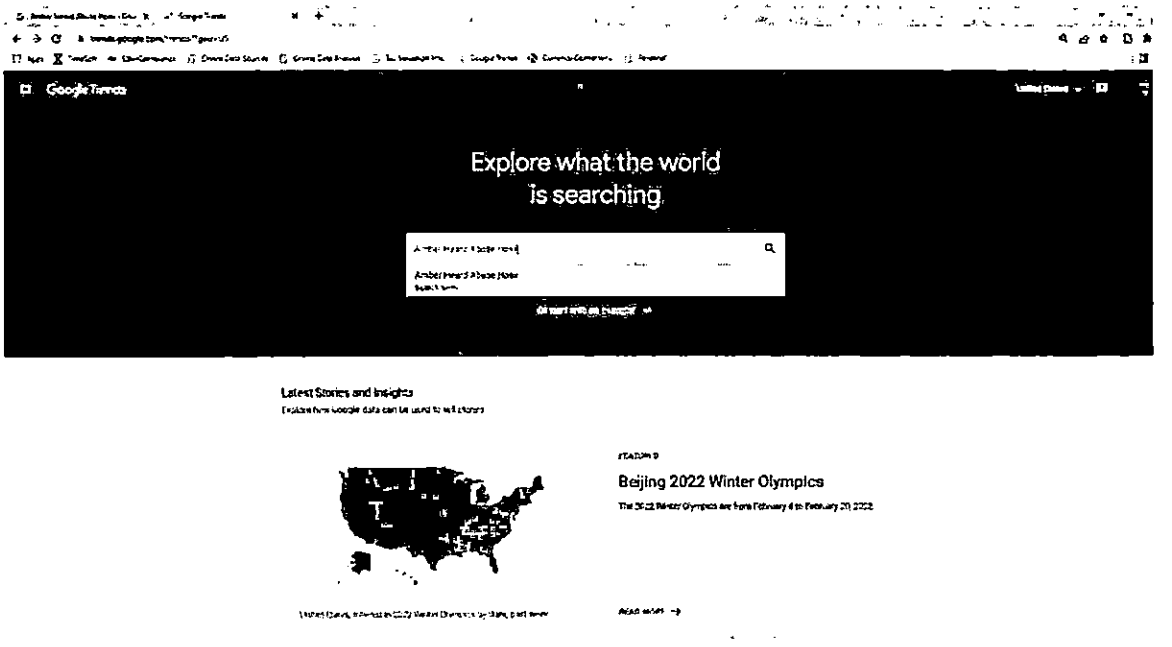
The higher the datapoint or "spikes" on the scale, the higher number of searches for the term relative to a sample of all searches for all topics.[1] Google Trends displays historical online interest for a given subject and users can adjust the dates to fit their specific analysis. A data point of 100 represents the month with the highest interest and all other months are compared as a percentage. Google explains this as follows: "Numbers represent search interest relative to the highest point on the chart for the given region and time. A value of 100 is the peak popularity for the term. A value of 50 means that the term is half as popular. A score of 0 means there was not enough data for this term."[4]

1. Go to trends.google.com

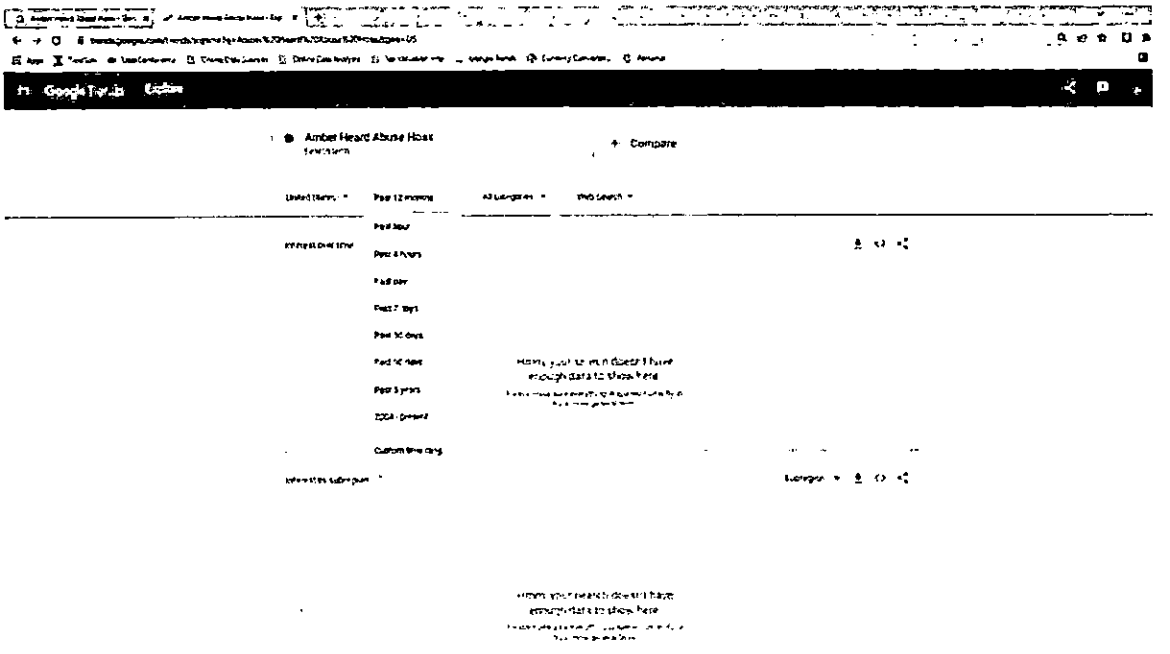


[3] Document 9h: FAQ About Google Trends Data
[4] Document 9j: Google Trends – Interest Over Time

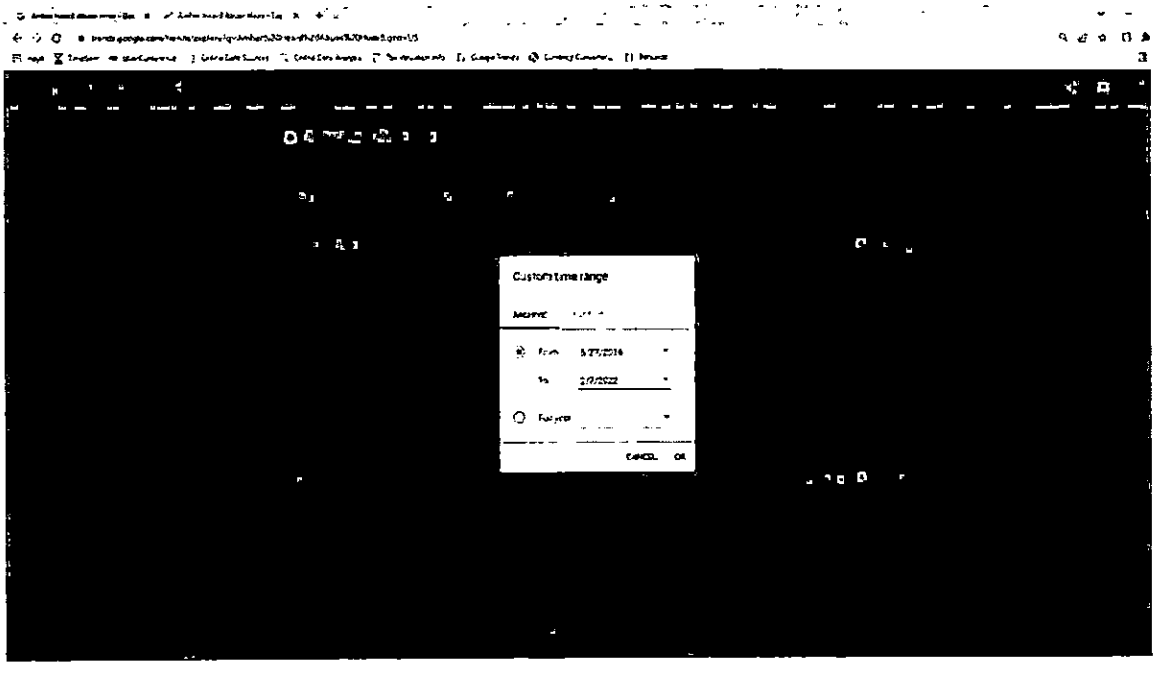
2. At Google Trends, search "Amber Heard Abuse Hoax."



3. To adjust the data to reflect a different time period, select the default period labeled "Past 12 months" then select "Custom time rang...".



4. In the "Custom time range" pop-up box, select 5/27/2016 as the "From" date and 2/7/2022 as the "To" date then select "OK". I selected 5/27/2016 as the "To" date because this is the data heard first claimed domestic abuse by Depp.



5. To export the Google Trends data into excel, select the arrow button at the top right-hand corner of the chart.

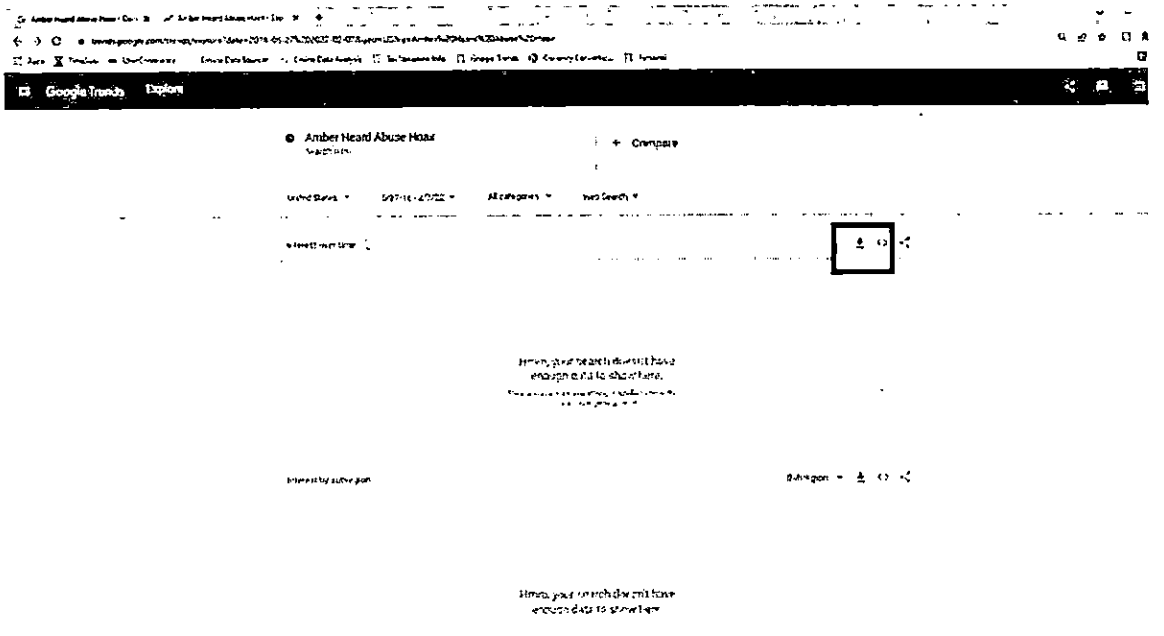


EXHIBIT G

Nevium Intellectual Property Consultants

Timeline of Relevant Key Events

Exhibit G, Schedule 1

Relevant Key Events		
Date	Event	Source
14-Sep-09	Police officers at the Seattle-Tacoma International Airport witnessed Amber Heard ("Heard") physically assault her then domestic partner, Tasya Van Ree	Doc 1c, Paragraph 25
27-Sep-13	First use of #JusticeForJohnnyDepp	Doc 12c
1-Feb-15	Johnny Depp ("Depp") and Heard got married	Doc 1c, Paragraph 13
Dec 2015	Heard allegedly physically attacked Depp	Doc 1c, Paragraph 30
21-Apr-16	Depp claims Heard allegedly physically attacked Depp. Heard claims Depp allegedly physically attacked Heard.	Doc 1c, Paragraph 30
21-May-16	Depp allegedly physically attacked Heard	Doc 1c, Paragraph 33
23-May-16	Depp and Heard no longer married.	Doc 1c, Paragraph 8
25-May-16	First use of #AmberTurd	Doc 12a
27-May-16	Heard publicly accuses Depp of domestic abuse and obtains a temporary restraining order against Depp	Doc 1c, Paragraph 2
7-Jun-16	First use of #AmberHeardIsAnAbuser	Doc 12d
Jan 2017	Depp and Heard finalized their divorce	Doc 1c, Paragraph 18
18-Dec-18	Heard published an op-ed on the Washington Post's website that implied Heard was allegedly a victim of domestic violence at the hands of Depp	Doc 1c, Paragraph 20
19-Dec-18	Heard published an op-ed on the Washington Post's hard copy paper that implied Heard was allegedly a victim of domestic violence at the hands of Depp	Doc 1c, Paragraph 20
8-Apr-20	Heard claims Depp, through Adam Waldman ("Waldman"), claim Heard was committing perjury to the Daily Mail and 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."	Doc 1b, Paragraph 45
27-Apr-20	Heard claims Depp, through Waldman, telling the Daily Mail that "Quite simply this was an ambush, a hoax. They set Mr. Depp up by calling the cops buy 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."	Doc 1b, Paragraph 46
24-Jun-20	Heard claims Depp, through Waldman, telling the Daily Mail that Heard committed an "abuse hoax" against Depp.	Doc 1b, Paragraph 47
16-Aug-20	First use of #WeJustDontLikeYouAmber	Doc 12b

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Amber Heard IMDB Analysis

Exhibit G, Schedule 2

Source: Document 4a (Amber Heard - IMDb)

Amber Heard Acting Roles Per IMDB

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
Movie	2	2	3	2	3	4	3	2	0	3	1	4	0	2	3	1	0	1	2	**38**
TV	2	1	1	2	0	0	1	1	0	0	0	1	0	0	0	0	1	1	0	**11**
Short	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**2**
Total	4	4	4	5	3	4	4	3	0	3	1	5	0	2	3	1	1	2	2	**51**

Note: TV Series which expand over multiple years are counted in each period Heard appears.
Heard has held 50 roles but one tv series aired from 2020 to 2021. Therefore, the count above reflects 51 rather than 50.

April/June 2020
Alleged Defamatory Statements

Observations

There are 2 periods in which Heard had 0 acting roles - 2012 and 2016
The number of acting roles Heard had since 2004 varies between 0 and 5
Heard had 1 acting role in 2019 and 1 acting role in 2020
Heard has had 2 acting roles in 2021 and 2 acting roles in 2022

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Overview of the Alleged "Comparable" Actors

Exhibit G, Schedule 3a

Overview of the Alleged Comparable Actors						
Analysis	Facebook Followers	Twitter Followers	Instagram Followers	Q Score Familiarity	Q Score Positive	Q Score Negative
Timeline	Before April 2020 (2)				Before April 2020 (1)	
Source	Schedule 3b	Schedule 3b	Schedule 3b	Schedule 3c	Schedule 3c	Schedule 3c
Amber Heard	339,368	142,500	3,800,000	25	9	28
Gal Gadot	11,431,275	2,380,000	37,000,000	33	28	10
Zendaya	11,998,042	17,200,000	65,900,000	44	21	13
Jason Momoa	NA	NA	14,800,000	41	27	8
Ana De Armas	NA	NA	1,500,000	9	15	17
Chris Pine	NA	NA	NA	41	19	12

Ratio of Alleged Comparable Actors' Followers to Heard Followers			
Gal Gadot	11,091,907	2,237,500	33,200,000
Zendaya	11,658,674	17,057,500	62,100,000
Jason Momoa	NA	NA	11,000,000
Ana De Armas	NA	NA	(2,300,000)
Chris Pine	NA	NA	NA

Ratio of Alleged Comparable Actors' Followers to Heard Followers			
Gal Gadot	33.7x	16.7x	9.7x
Zendaya	35.4x	120.7x	17.3x
Jason Momoa	NA	NA	3.9x
Ana De Armas	NA	NA	0.4x
Chris Pine	NA	NA	NA

Notes

1) Only Q Score report provided after April 2020 was for Ana De Armas as the first Q score report for her was reported in Summer 2020.

2) NA Indicates no official social media page is available for the Actor.

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Analysis of the Alleged "Comparable" Actors - Social Media

Exhibit G, Schedule 3b

Social Media Analysis								
Social Media Platform:	Facebook		Twitter			Instagram		
Page Details	Followers	Source	Tweets	Followers	Source	Posts	Followers	Source
As of Investigation (1Feb22)								
Amber Heard	927,000	7a	1,137	188,000	7b	1,136	4,100,000	7c
Gal Gadot	19,000,000	7e	1,925	3,000,000	7f	1,618	73,000,000	7g
Zendaya	19,000,000	7h	58,500	19,900,000	7i	3,520	127,000,000	7j
Jason Momoa	No official Facebook page		No official Twitter page			2,836	16,700,000	7d
Ana De Armas	No official Facebook page		No official Twitter page			1,762	5,500,000	7k
Chris Pine	No official Facebook page		No official Twitter page			No official Instagram page		
Before April 2020								
Amber Heard	339,368	8a	NA	142,500	8b	902	3,800,000	8c
Gal Gadot	11,431,275	8d	1,549	2,380,000	8e	1,301	37,000,000	8f
Zendaya	11,998,042	8g	58,700	17,200,000	8h	3,426	65,900,000	8i
Jason Momoa	No official Facebook page		No official Twitter page			2,451	14,800,000	8j
Ana De Armas	No official Facebook page		No official Twitter page			1,744	1,500,000	8k
Chris Pine	No official Facebook page		No official Twitter page			No official Instagram page		

Before April 2020 Archive.Org Dates			
Amber Heard	**Archived Date**	**Zendaya**	**Archived Date**
Facebook	25-Jan-20	Facebook	4-Mar-20
Twitter	4-Feb-20	Twitter	22-Mar-20
Instagram	2-Feb-20	Instagram	29-Feb-20
Gal Gadot	**Archived Date**	**Jason Momoa**	**Archived Date**
Facebook	19-Feb-20	Instagram	8-Mar-20
Twitter	23-Mar-20		
Instagram	23-Mar-20	**Ana De Armas**	**Archived Date**
		Instagram	9-Oct-19

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Analysis of the Alleged "Comparable" Actors - Q Scores

Exhibit G, Schedule 3c

Q Score Overview							
Source Document	5b	5a	5a	5a	5a	5a	5a and 5b
Actor	Amber Heard	Jason Momoa	Gal Gadot	Zendaya	Chris Pine	Ana De Armas	All Performers
Q Score Period.	Winter '19	Winter '20	Winter '20	Winter '20	Winter '20	Summer '20	
Familiarity	25	41	33	44	41	9	30
Positive Q Score	9	27	28	21	19	15	17
Negative Q Score	28	8	10	13	12	17	18

Notes

Q Score Period

Winter 2019	Fieldwork dates: January 22, 2019 – February 7, 2019
Winter 2020	Fieldwork dates: January 24, 2020 - February 12, 2020
Summer 2020	Fieldwork dates: June 29, 2020 - July 13, 2020

Reasoning Behind Different Q Score Periods

Nevium asked for most recent reports prior to April 2020.

No Q Score report was available prior to April 2020 for Ana de Armas and closest to the April 2020 date was the Summer 2020 report.

No Winter 2020 Q Score report was available for Amber Heard so Winter 2019 was the closest to the April 2020 date.

Q Score representatives mentioned comparisons across Q Score report periods are done on a regular basis with their clients.

Q Score Definitions (see Doc 5d for details)

Familiarity	The higher the score the more well known
Positive Q Score	The higher the score the more liked
Negative Q Score	The higher the score the more disliked

"All Performers" include the alleged comparable actors and other actors

The Q Scores metrics are calculated exactly the same way each measurement period.

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Reproduction of Schnell Hashtag Data - Depp Hashtag Usage Analysis

Exhibit G, Schedule 4a

Source: Document 2a (ALH_00017239.xls) - Data from the Schnell Opinions

Monthly Tweet Count - Depp Hashtags

Hashtag:	JohnnyDeppIsALiar	Justiceforamberheard	wearewithyouamberheard	IStandWithAmberHeard	JohnnyDeppisawifebeater	JohnnyDeppIsAnAbuser	Total: All Depp Hashtags
January 2018	-	-	27	3	-	-	30
February 2018	-	-	-	-	-	-	-
March 2018	-	-	-	-	-	-	-
April 2018	-	-	-	-	-	-	-
May 2018	-	-	1	-	-	-	1
June 2018	-	-	-	-	-	-	-
July 2018	-	-	17	1	-	-	18
August 2018	1	2	1,137	5	-	-	1,145
September 2018	-	-	18	1	-	-	19
October 2018	-	-	50	-	-	-	50
November 2018	7	-	47,098	368	-	-	47,473
December 2018	-	1	36	2	-	-	39
January 2019	-	-	34	-	-	-	34
February 2019	-	-	5	-	-	-	5
March 2019	-	-	326	20	1	-	347
April 2019	35	6,834	1,470	-	1	56	8,396
May 2019	47	571	49	-	-	4	671
June 2019	36	125	34	2	-	37	234
July 2019	84	297	67	-	7	97	552
August 2019	6	12	9	-	-	28	55
September 2019	18	195	166	-	1	13	393
October 2019	-	131	64	3	-	-	198
November 2019	7	419	2,098	11	-	6	2,541
December 2019	-	135	24	-	-	-	159
January 2020	-	14	2	-	-	-	16
February 2020	16	8,806	310	1	-	229	9,362
March 2020	14	4,221	2,774	1	-	446	7,456
April 2020	20	1,443	993	13	-	25	2,494
May 2020	6	560	310	20	-	5	901
June 2020	1	344	110	6	-	15	476
July 2020	18	3,522	7,375	60	-	298	11,273
August 2020	1	1,087	812	18	1	332	2,251
September 2020	2	263	212	6	-	10	493
October 2020	11	944	306	350	-	21	1,632
November 2020	32	4,864	1,231	305	2,420	1,061	9,913
December 2020	4	958	457	38	841	567	2,865
January 2021	3	560	195	70	337	457	1,622
February 2021	3	543	387	169	480	431	2,013
March 2021	3	2,288	1,256	957	1,229	956	6,689
April 2021	4	1,934	1,192	514	1,094	756	5,494
May 2021	17	1,952	553	556	1,269	318	4,665
June 2021	11	406	199	130	7,373	194	8,313
Total	407	43,431	71,404	3,630	15,054	6,362	140,288

Analysis of Heard Hashtags Based on Key Dates

Key Dates	Month Analyzed	Monthly Hashtags	Total Hashtags	Mo Hashtags / Total	Notes
April 8 - 1st WS	April 2020	2,494	140,288	2%	Reactions during month when 1st and 2nd WS was published
April 27 - 2nd WS	May 2020	901	140,288	1%	Reactions the month after 1st and 2nd WS were published
June 24 - 3rd WS	June 2020	476	140,288	0%	Reactions during month when 3rd WS was published
June 24 - 3rd WS	July 2020	11,273	140,288	8%	Reactions the month after 3rd WS was published
Before April 2020		79,194	140,288	56%	Indicates 56% of tweets cannot be related to the WS
After October 2020		41,574	140,288	30%	Indicates 30% of tweets occurred more than 4 months after the last WS

* WS = Waldman Statements

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Reproduction of Schnell Hashtag Data - Heard Hashtag Usage Analysis

Exhibit G, Schedule 4b

Source: Document 2a (ALH_00017239.xls) - Data from the Schnell Opinions

Monthly Tweet Count - Heard Hashtags					
Hashtag:	JusticeForJohnnyDepp	AmberHeardIsAnAbuser	AmberTurd	WeJustDontLikeYouAmber	Total: All Heard Hashtags
January 2018	23	-	-	-	23
February 2018	24	-	-	-	24
March 2018	52	-	-	-	52
April 2018	16	-	1	-	17
May 2018	68	-	1	-	69
June 2018	60	-	-	-	60
July 2018	34	-	-	-	34
August 2018	2,937	24	41	-	3,002
September 2018	451	23	-	-	474
October 2018	432	48	4	-	484
November 2018	291	86	-	-	377
December 2018	299	83	-	-	382
January 2019	1,003	63	-	-	1,066
February 2019	743	9	1	-	753
March 2019	1,252	14,408	2	-	15,662
April 2019	4,774	5,375	6	-	10,155
May 2019	17,290	3,878	-	-	21,168
June 2019	8,418	2,493	-	-	10,911
July 2019	8,364	3,842	-	-	12,206
August 2019	4,531	1,476	2	-	6,009
September 2019	5,124	1,903	-	-	7,027
October 2019	3,679	958	-	-	4,637
November 2019	4,319	1,593	1	-	5,913
December 2019	3,511	1,528	-	-	5,039
January 2020	2,972	1,654	-	-	4,626
February 2020	743,778	91,388	42	-	835,208
March 2020	30,516	8,770	20	-	39,306
April 2020	22,436	6,183	39	-	28,658
May 2020	17,342	5,634	14	-	22,990
June 2020	11,469	2,468	5	-	13,942
July 2020	87,991	28,398	11,994	-	128,383
August 2020	18,703	5,868	1,568	13,878	40,017
September 2020	11,491	3,512	784	299	16,086
October 2020	22,194	5,038	460	191	27,883
November 2020	550,737	123,652	3,142	910	678,441
December 2020	120,750	22,717	1,678	96	145,241
January 2021	97,492	17,870	1,423	226	117,011
February 2021	71,171	12,333	635	73	84,212
March 2021	169,617	16,568	725	220	187,130
April 2021	152,388	15,328	1,237	635	169,588
May 2021	97,329	10,251	1,110	69	108,759
June 2021	33,337	4,031	457	26	37,851
Total	2,329,408	419,453	25,392	16,623	2,790,876
Total Average	55,462	9,987	605	396	66,449
Average After WS	98,963	18,657	1,685	1,108	120,413

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Reproduction of Schnell Hashtag Data - Heard Hashtag Usage Analysis

Exhibit G, Schedule 4b

Source: Document 2a (ALH_00017239.xls) - Data from the Schnell Opinions

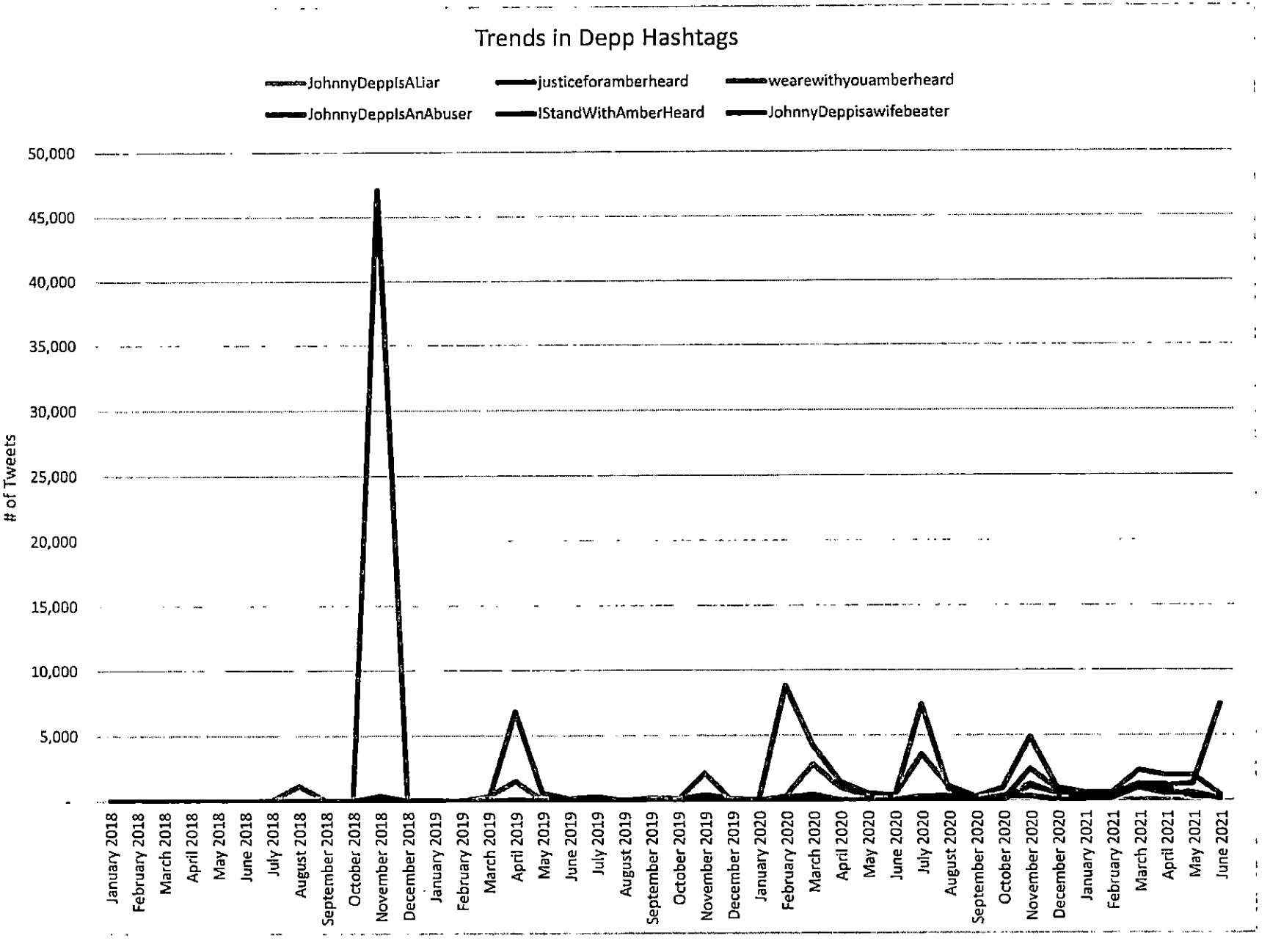
Analysis of Heard Hashtags Based on Key Dates

Key Dates	Month Analyzed	Monthly Hashtags	Total Hashtags	Mo Hashtags / Total	Notes
Comparison to Total Hashtags After the Waldman Statements					
April 8 - 1st WS	April 2020	28,658	1,806,192	2%	Reactions during month when 1st and 2nd WS was published
April 27 - 2nd WS	May 2020	22,990	1,806,192	1%	Reactions the month after 1st and 2nd WS were published
June 24 - 3rd WS	June 2020	13,942	1,806,192	1%	Reactions during month when 3rd WS was published
June 24 - 3rd WS	July 2020	128,383	1,806,192	7%	Reactions the month after 3rd WS was published
After March 2020	Apr 2020 - Jun 2021	1,806,192	1,806,192	100%	Indicates 65% of the tweets came after the first WS was published
After October 2020	Nov 2020 - Jun 2021	1,528,233	1,806,192	85%	Indicates 55% of tweets occurred more than 4 months after the last WS
During WS	Apr 2020 - Jun 2020	65,590	1,806,192	4%	Indicates minimal hashtags were used when the WS were published
Schnell Indication	Apr 2020 - Jan 2021	1,218,652	1,806,192	67%	No indicates by Schnell why this date is relevant
Comparison to Total Hashtags Data From January 2018 and June 2021					
After March 2020	Apr 2020 - Jun 2021	1,806,192	2,790,876	65%	Indicates 65% of the tweets came after the first WS was published
During WS	Apr 2020 - Jun 2020	65,590	2,790,876	2%	Indicates minimal hashtags were used when the WS were published
Schnell Indication	Apr 2020 - Jan 2021	1,218,652	2,790,876	44%	No indicates by Schnell why this date is relevant
Before April 2020	Jan 2018 - Mar 2020	984,684	2,790,876	35%	Indicates 35% of tweets cannot be related to the WS
Peaks	Feb 2020, Jul 2020, Nov 2020, Dec 2020, Mar 2021, Apr 2021	2,143,991	2,790,876	77%	6 peaks, or highest months of Heard Hashtags, makes up 77% of tweets
Comparison to Peak Hashtags Data Compared to Total Monthly Average Hashtag Use					
Peak 1	Feb 2020	835,208	66,449	12.6x	
Peak 2	Jul 2020	128,383	66,449	1.9x	
Peak 3	Nov 2020	678,441	66,449	10.2x	
Peak 4	Dec 2020	145,241	66,449	2.2x	
Peak 5	Mar 2021	187,130	66,449	2.8x	
Peak 6	Apr 2021	169,588	66,449	2.6x	

Discrepancy Analysis based on Schnell Analysis

Key Dates	Months Analyzed	Schnell Report	Schnell Hashtag Data Above	Difference	
Schnell Indication	Apr 2020 - Jan 2021	1,243,705	1,218,652	25,053	Data provided by Schnell does not match his comments at Doc 1a, Page 23

* WS = Waldman Statements


Trends in Depp Hashtags
JohnnyDeppIsALiar
justiceforamberheard
wearewithyouamberheard
JohnnyDeppIsAnAbuser
IStandWithAmberHeard
JohnnyDeppisawifebeater
# of Tweets
50,000
45,000
40,000
35,000
30,000
25,000
20,000
15,000
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5,000
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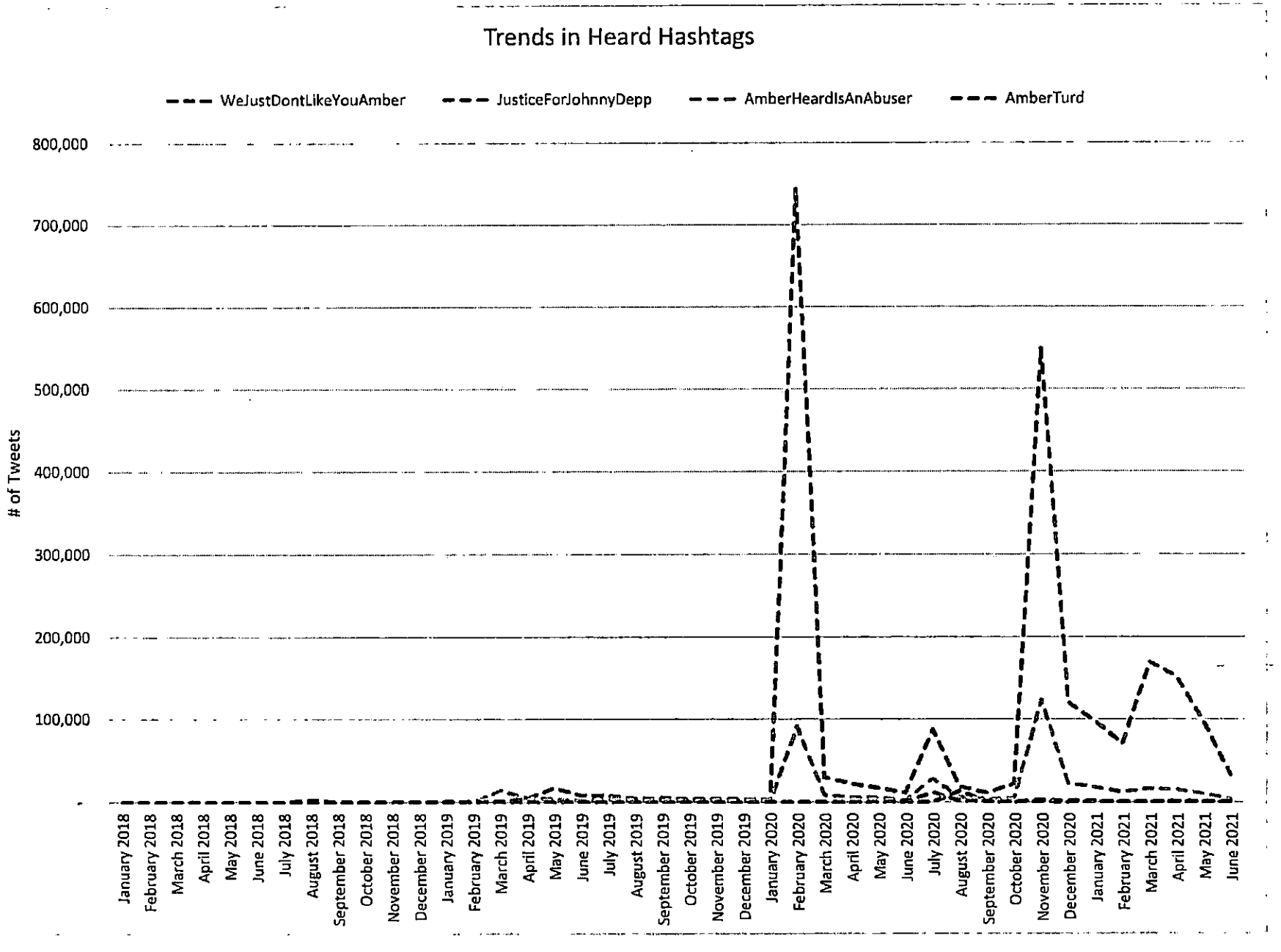
Trends in Heard Hashtags
WeJustDontLikeYouAmber
JusticeForJohnnyDepp
AmberHeardIsAnAbuser
AmberTurd
# of Tweets
800,000
700,000
600,000
500,000
400,000
300,000
200,000
100,000
January 2018
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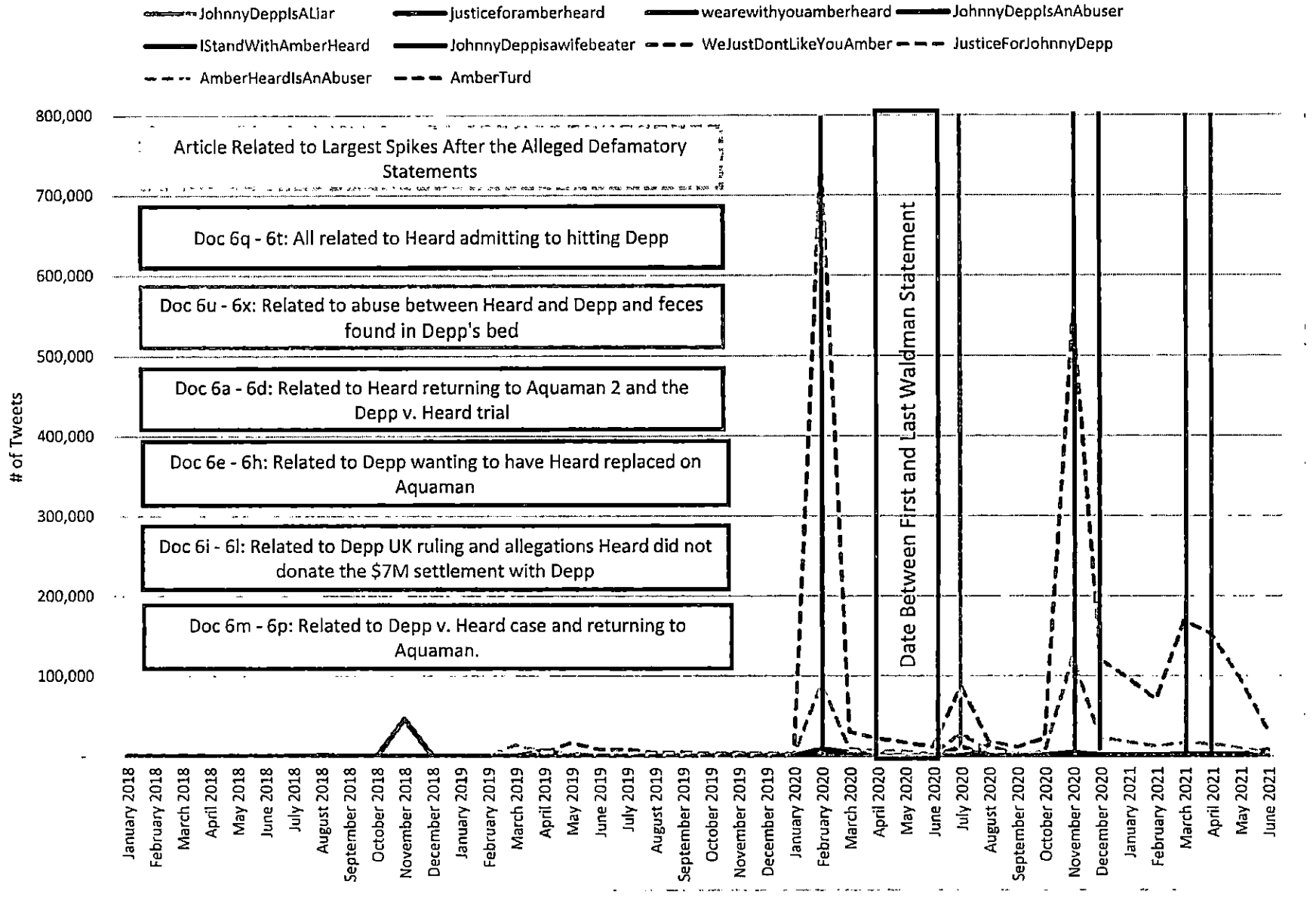
Review of Spikes in Heard Hashtags



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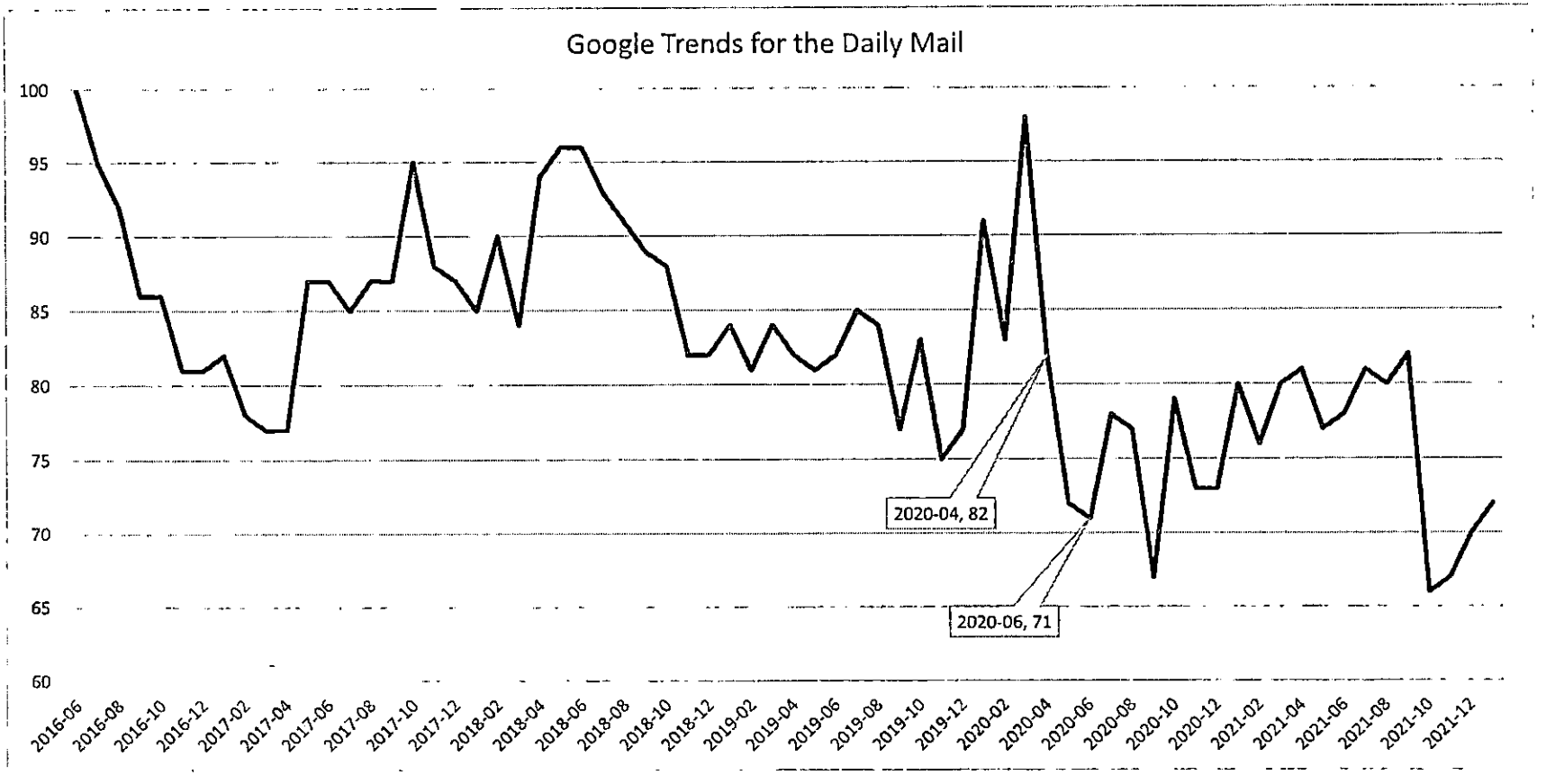
Google Trends Analysis For the Daily Mail Related to the Waldman Statements

Exhibit G, Schedule 5a

Source: Documents 9d (Google Trends - Daily Mail)



Analysis of Searches for Daily Mail		
Measure	Interest Rating	Notes
Average	82	Average interest between May 27, 2016 to February 7, 2020
April 2020	82	Implies searches for "Daily Mail" were below average in this month
June 2020	71	Implies searches for "Daily Mail" were below average in this month

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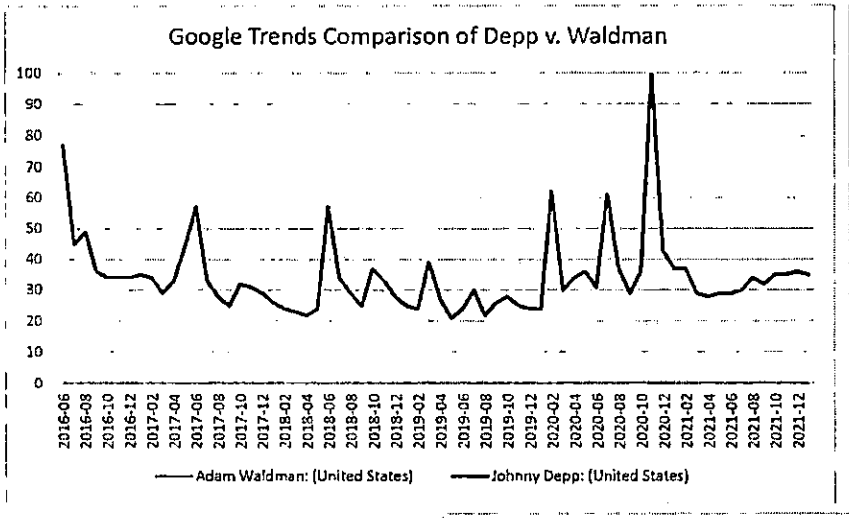
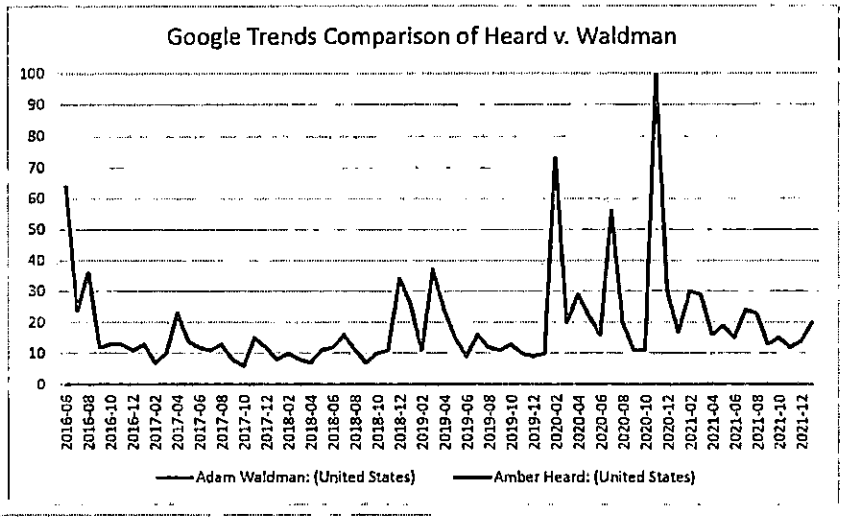
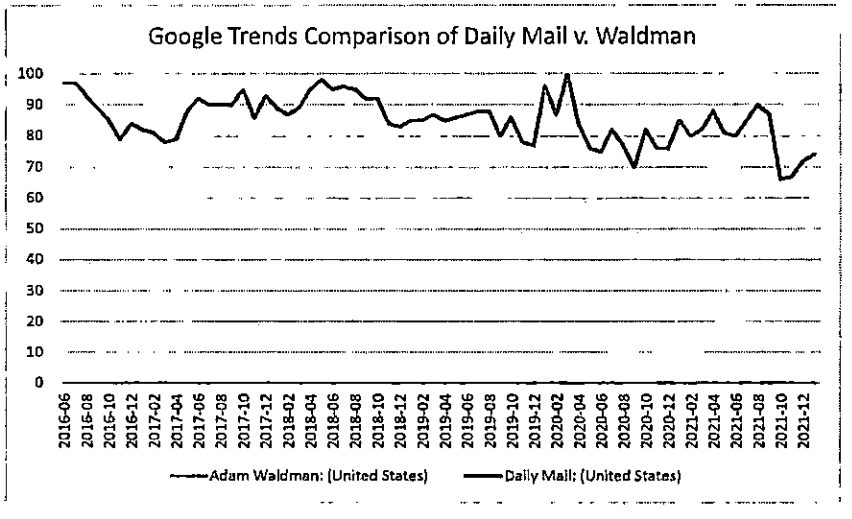
Google Trends Comparison of Adam Waldman

Exhibit G, Schedule 5b

Source: Documents 9a - 9c (Google Trends Files)







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Review of Tweets Provided by Schnell

Exhibit G, Schedule 6

Source: Document 2b - Key Term Search From Schnell API Data (Data based on Schnell's Hard Drive of Tweets using the Heard Hashtags)

Summary of Key Terms Used in Tweets Using Heard Hashtags

	#JusticeForJohnnyDepp	#AmberHeardIsAnAbuser	#WeJustDontLikeYouAmber	#AmberTurd	Total of All Hashtags
Abuse Hoax	498	245	3	3	749
Sexual Violence Hoax	0	0	0	0	0
Fake Sexual Violence	434	0	0	0	434
Total Key Terms Used	932	245	3	3	1,183
Waldman	164,463	46,125	3,502	3,642	217,732
Total Tweets Per Hashtag Data	1,484,447	279,851	16,623	25,271	1,806,192
% Key Term / Total Tweets	0.06%	0.09%	0.01%	0.02%	0.07%
% Waldman / Total Tweets	11.08%	16.48%	13.86%	21.91%	12.05%

Analysis of Schnell Tweets Using the Key Terms

Abuse Hoax	Sexual Violence Hoax	Fake Sexual Violence	Waldman	Folder	File Name
5	0	0	299	AmberHeardIsAnAbuser	10393
42	0	0	457	AmberHeardIsAnAbuser	10394
21	0	0	439	AmberHeardIsAnAbuser	10395
22	0	0	3,772	AmberHeardIsAnAbuser	10396
4	0	0	2,661	AmberHeardIsAnAbuser	10397
59	0	0	1,587	AmberHeardIsAnAbuser	10398
0	0	0	845	AmberHeardIsAnAbuser	10399
18	0	0	3,893	AmberHeardIsAnAbuser	10400
0	0	0	1,001	AmberHeardIsAnAbuser	10401
74	0	0	31,171	AmberHeardIsAnAbuser	10402
0	0	0	0	AmberTurd	10403
0	0	0	0	AmberTurd	10404
0	0	0	0	AmberTurd	10405
0	0	0	1126	AmberTurd	10406
0	0	0	609	AmberTurd	10407
0	0	0	396	AmberTurd	10408
0	0	0	68	AmberTurd	10409
0	0	0	141	AmberTurd	10410
0	0	0	36	AmberTurd	10411
3	0	0	1266	AmberTurd	10412
5	0	0	1965	JusticeForJohnnyDepp	10413
62	0	0	874	JusticeForJohnnyDepp	10414
140	0	0	3,485	JusticeForJohnnyDepp	10415
12	0	0	18,269	JusticeForJohnnyDepp	10416
114	0	0	14224	JusticeForJohnnyDepp	10417
26	0	0	5,931	JusticeForJohnnyDepp	10418
2	0	0	5,967	JusticeForJohnnyDepp	10419
		File is corrupt -		JusticeForJohnnyDepp	10420
23	0	0	5,445	JusticeForJohnnyDepp	10421
114	0	2	108,303	JusticeForJohnnyDepp	10422
0	0	0	3,005	WeJustDontLikeYouAmber	10423
3	0	0	167	WeJustDontLikeYouAmber	10424
0	0	0	81	WeJustDontLikeYouAmber	10425
0	0	0	218	WeJustDontLikeYouAmber	10426
0	0	0	0	WeJustDontLikeYouAmber	10427
0	0	0	31	WeJustDontLikeYouAmber	10428

Note

Data includes tweets between 2009 and 2021. The Total Tweets field above only includes tweets from January 1, 2018 to June 15, 2021. Therefore, the percentages of Key Term or Waldman usage is inflated.

Data represents 1 tweet. The data API pulls the tweet and a snippet of the tweet.

Data regarding Waldman is likely inflated as the term Waldman is counted multiple times in 1 tweet due to Waldman being part of a Twitter handle, hashtag, and the text within the tweet.

EXHIBIT H

CONFIDENTIAL

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REBUTTAL REPORT

RESPONSE TO THE OPINIONS OF DAWN HUGHES, PHD, ABPP

Date of Report: February 8, 2022
Re: *John C. Depp, II v. Amber L. Heard*
Civil Action No.: CL-2019-0002911
Circuit: Fairfax County

This report is confidential and cannot be released without permission of the Court.

I. EXPERT QUALIFICATIONS

Dr. Curry is a clinical and forensic psychologist licensed in California and Hawaii. She has 15 years of experience conducting research, therapy, and psychological evaluations pertaining to trauma, violence, and relationships. Dr. Curry earned her Master's and Doctorate degrees in clinical psychology from Pepperdine University. She also completed a post-doctoral Master of Science degree in Clinical Psychopharmacology at Alliant University, making her one of only 500 psychologists to fulfill this requirement for prescription authority in certain states and military jurisdictions.

Dr. Curry completed an *American Psychological Association (APA)–Accredited* doctoral internship at Tripler Army Medical Center, where she was one of only two civilian interns admitted to the otherwise all-military cohort. Under the purview of the Department of Defense, the U.S. Department of Veterans Affairs, and the National Institute for PTSD and Combat Psychology in Bethesda, she received intensive training in combat and military psychology, neuropsychological assessment, and the evaluation and treatment of PTSD.

Dr. Curry subsequently completed a two-year post-doctoral residency at Hawaii State Hospital (HSH), a locked psychiatric facility for individuals with severe mental illness who are involved with the criminal justice system. While at HSH, Dr. Curry became a certified forensic evaluator for the state of Hawaii, providing court-ordered evaluations and testimony related to a wide range of criminal matters. She also implemented new hospital programming to address the high rate of trauma among individuals in forensic mental health settings. Specifically, Dr. Curry led evidence-based treatment programs[1] for female survivors of complex trauma,[2] served as Co-Chair of the Hospital's Board for Trauma-Informed Care, obtained an institutional grant from the national Substance Abuse and Mental Health Services Association (SAMHSA), and led a hospital-wide transition to a Trauma-Informed model of care to reduce reliance on physical restraint and seclusion methods of behavior management.

Dr. Curry's commitment to social justice work has contributed to her wide breadth of professional experience. Since 2011, Dr. Curry has served on the advisory board for the University of California Center for Unconventional Security Affairs (CUSA); participating in interdisciplinary research and program development to address global security issues of poverty, disease, violence, warfare, and environmental sustainability. She is also a long-time member of the Peruvian American Medical Society (PAMS), a non-profit organization comprised of healthcare providers and other volunteers who conduct "medical missions" within the post-war community of Ayacucho, Peru. Dr. Curry's related research on culturally-response trauma interventions in Peru following the twenty-year Sendero Luminoso guerrilla war received awards from the American Psychological Association and Psychology Beyond Borders.

Dr. Curry is the owner and Executive Director of the Curry Psychology Group (CPG), the leading[3] multispecialty mental health center in Orange County, California. As a therapist, she continues to

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[1] "Seeking Safety" is a structured, evidence-based therapy program designed to help people recover from trauma and co-occurring substance use issues.

[2] "Complex trauma" is a term that refers to a series of traumatic events that occur over a long period of time such as months or years.

[3] Based on the referral base, daily patient average, and practice valuation of private, independent, outpatient/ "office visit" healthcare settings offering multispecialty mental health services (*i.e.*, treatment of adults, children, couples, and families; psychological evaluation [neuropsychological, forensic, and military-specific disability and/or fitness-for-duty] workshops and courses) in Orange County, CA.

contract with the Department of Defense, ensuring that service members, veterans, and their families have access to high-quality, evidence-based treatment and evaluation services. Dr. Curry also provides pro-bono counseling services to Afghan refugees and female trauma survivors in partnership with CUSA and the charitable organization, Pathways, respectively. Her specialties include individual therapy with a particular focus on grief, trauma, and relationships; and the Gottman Method of Couples Therapy. Dr. Curry has completed all three levels of clinical training and more than 1000 hours of supervised practice in this highly research-based method. In addition, she is a Gottman Educator and Workshop Leader, working with couples to manage transitions to parenthood, substance use issues, high levels of conflict, sexual problems, betrayal, military-related stressors, and trauma/PTSD.

Dr. Curry regularly serves as an expert witness and independent evaluator for state courts, law enforcement agencies, the U.S. military, and private attorneys. She has completed hundreds of psychological evaluations for civil and criminal matters, serving as an expert for prosecutors, criminal defendants, and civil parties. The majority of her forensic work focuses on trauma and interpersonal violence issues, including stalking, sexual assault, physical assault, sexual harassment, intimate partner violence (IPV), child abuse, and secondary trauma issues of substance use and reckless endangerment.

II. INTRODUCTION

In all fields of science, transparency is the means by which creditability is earned. Furthermore, credibility is not based on a scientific opinion's persuasiveness but the rigorousness of its underlying methods (Martingale & Gould, 2013). This critical distinction was underscored in *Daubert*, in which the court noted:

> "The inquiry envisioned by Rule 702 is, we emphasize, a flexible one. Its overarching subject is the scientific validity—and thus the evidentiary relevance and reliability—of the principles that underlie a proposed submission. *The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate.*"[4]

As scientists, forensic psychologists avail themselves of these governing rules and standards by accurately reporting our data and procedures (Martingale & Gould, 2013). Furthermore, our ethical guidelines state that forensic psychologists make "readily available for inspection all data which they considered, regardless of whether the data supports their opinion, subject to and consistent with court order, relevant rules of evidence, test security issues, and professional standards (AERA, APA, & NCME, in press; Committee on Legal Issues, American Psychological Association, 2006; Bank & Packer, 2007; Golding, 1990) (APA, 2013)."[5]

Forensic psychologists also "recognize the importance of documenting all data they consider with enough detail and quality to allow for reasonable judicial scrutiny and adequate discovery,"[6] and they "seek to make available all documentation . . . that might reasonably be related to the opinions to be expressed" (APA, 2013; APA; 2017).[7]

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[4] Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 594-95 (1993) (emphasis added).

[5] See SGFP Guideline 11.01: Accuracy, Fairness, and Avoidance of Deception

[6] See SGFP Guideline 10.06: Documentation and Compilation of Data considered

[7] See SGFP Guideline 10.07: Provision of Documentation; See also, EPPCC Standard 9.04: Release of Test Data

Despite these standards, deficiencies in psychological evaluations remain difficult for non-psychologists to detect, in part due to the specialized nature of forensic assessment. In addition, psychometric test materials are typically shielded from discovery because of copyright protections or the professional requirement that psychologists maintain "secrets of the trade." In these instances, scientific peer-review is a valuable method for preserving accountability and good psychological science within the courtroom (Welner et al., 2012).

III. REBUTTAL REVIEW

Dr. Dawn Hughes' forensic psychological evaluation[8] of the defendant, Ms. Amber Heard, does not withstand scrutiny. Dr. Hughes used invalid[9] and scientifically unreliable[10] test measures, misrepresented the meaning of results on these measures, ignored clear evidence that Ms. Heard engaged in exaggeration and minimization of symptoms on two different tests, and reached conclusions that were inadequately substantiated, irrelevant to the underlying legal question, and beyond the scope of psychological science. The following rebuttal report aims to review and explain these deficiencies and their implications for the overall reliability of Dr. Hughes' opinions.

1. Extended Duration Between Evaluation Dates

1.1. Page six of Dr. Hughes' report indicates that she conducted a psychological examination of Ms. Heard on five separate occasions. Four of the evaluation dates occurred in 2019 (September 26th, October 11th, November 8th & 11th). A fifth evaluation appointment occurred more than fourteen months later, on January 18, 2021. Based on the dates noted on the test materials that Dr. Hughes provided to me for review, it appears that all testing was completed on the first date of the evaluation, September 26, 2019.

[8] The terms "assessment," "evaluation," and "examination" will be used interchangeably in the report to refer to the investigation of an individual's personality, psychological problems, adjustment, and functioning in important areas of life by means of interviews, observations of behavior, and administration of psychological tests.

[9] The term "validity" is used in this report to refer to how accurately a test measures what it intends to measure.

[10] The term "reliability" is used in this report to refer to how consistent and dependable a test is. A test is considered reliable if it provides approximately the same results for a person each time its administered to them.

1.2. The significant amount of time that passed between the first and last date of Dr. Hughes' evaluation of Ms. Heard is atypical and warrants explanation in Dr. Hughes' subsequent report. Furthermore, Dr. Hughes should have communicated any potential implications of her deviation from standard procedure.[11] However, Dr. Hughes' report does not address why she examined Ms. Heard over five separate appointments, nor why the appointments were spaced over a sixteen-month duration.

1.3. Completing an evaluation over an extended period can lead to several issues that impact the accuracy of the opinions rendered. First, Dr. Hughes does not identify the date of her report. In general, the evaluation report is started within two to four weeks of the examination while the content of the interview and observations of the examinee's behavior are fresh in the examiner's mind. As time goes on, it becomes more likely that the examiner's memory of the evaluation will become less accurate. Furthermore, psychological test instruments offer a "snapshot" of the examinee's mental status at the time the test was administered. Test results eventually become "stale" and may no longer represent the examinee's current psychological status as time passes. The accuracy of an evaluation that occurs over an extended duration can also be affected by changing situational factors in an examinee's life. Although there are always limitations in any scientific endeavor, experts are expected to communicate the potential impact of these limitations. To this end, professional practice standard 9.06 requires that psychologists account for factors "that might affect psychologists' judgments or reduce the accuracy of their interpretations" and that "they indicate any significant limitations of their interpretations (APA, 2017).[12] Dr. Hughes does not address any such limitations in her report.

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[11] See SGFP Guideline 10.03: Appreciation of Individual Differences: "When interpreting assessment results, forensic practitioners consider the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences that might affect their judgments or reduce the accuracy of their interpretations (EPPCC Standard 9.06). Forensic practitioners strive to identify any significant strengths and limitations of their procedures and interpretations;"

See also EPPCC Standard 9.06, Interpreting Test Results.

[12] See EPPCC Standard 9.06, Interpreting Assessment Results; See also, EPPCC Standards 2.01b and c, Boundaries of Competence; See also, EPPCC Standard 3.01, Unfair Discrimination.

2. Inappropriate Referral Question[13]

2.1. The referral question is the critical first step in forensic assessment and subsequently defines the entire structure and focus of the evaluation (Conroy, 2006; DeMier, 2013; Grisso, 2008). Page two of Dr. Hughes' report offers the following description of the referral purposes that guided her evaluation of Ms. Heard:

> "Dr. Hughes was asked to conduct a forensic psychological evaluation of Ms. Heard to assess for the dynamics and consequences of intimate partner violence that may have been present in her relationship with her now ex-husband, Mr. Depp, and to assess for any psychological consequences stemming from the defamatory statements to the media made by Mr. Depp through his attorney and agent, Adam Waldman" (p. 2).

2.2 The above statement can be organized into three distinct referral purposes:

- 2.1.1. To "assess for the *dynamics* [emphasis added] . . . of intimate partner violence"
- 2.1.2. To "assess for the... *consequences* [emphasis added] of intimate partner violence"
- 2.1.3. To "assess for any *psychological consequences* [emphasis added] stemming from the defamatory statements to the media made by Mr. Depp through his attorney and agent, Adam Waldman."

2.3 Dr. Hughes' first aim, to assess the "dynamics" of intimate partner violence (IPV), is not an appropriate goal for a forensic psychological evaluation. Professional practice standards[14] and extensive bodies of literature emphasize the critical importance of structuring the evaluation

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[13] The term "referral question" is used interchangeably with the terms "evaluation purpose," "legal question" and "psycholegal question;" all of which refer to the goal, or underlying premise, of the forensic psychological evaluation. The legal question defines the structure and focus of the evaluation, including the procedures utilized, types of data to be collected, and the focus of the report.

[14] SGFP *Guideline 10.01: Focus on Legally Relevant Factors* states: "Forensic examiners seek to assist the trier of fact to understand evidence or determine a fact in issue, and they provide information that is most relevant to the psycholegal issue; and SGFP *Guideline 11.04: Comprehensive and Accurate Presentation of Opinions in Reports and Testimony*: The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed.

around a psycholegal[15] issue that is present before the court (APA, 2013; Martingale & Gould, 2013; DeMier, 2013; Grisso, 2008; Melton et al., 2018; Skeem & Golding, 1998). Dr. Hughes' purported goal of assessing for dynamics of IPV has no basis in statutory law nor is it associated with any established methods of evaluation. It is also beyond the scope of a psychological examination which focuses on individual factors rather than the "dynamics" of an event (Martingale & Gould, 2013; DeMier, 2013; Grisso, 2008; Melton et al., 2018; Skeem & Golding, 1998).

2.4 In any case that pertains to IPV, the question for the psychologist is never whether IPV has occurred—that is the responsibility of the factfinder. Rather, psychologists can gather information and provide opinions based on the presence or absence of individual factors correlated with IPV and characteristics that are "protective" or serve to mitigate against the potential risk for violence.

3. Data and Conclusions are Irrelevant to the Psycholegal Purpose

3.1. Although Dr. Hughes' initial referral reason is flawed, her other two reasons for the evaluation—to assess for "consequences[16] of intimate partner violence" and "psychological consequences of defamatory statements"—pertain to the relevant psycholegal question of *emotional injury*.[17] Nonetheless, the subsequent focus of Dr. Hughes' report fails to remain within the parameters of this psycholegal issue.[18] More specifically, Dr. Hughes over-relies on

[15] The term "psycholegal" is used throughout this report to refer to intersecting psychological knowledge and legal concepts. It is a primary consideration in forensic evaluation reports, and constrains the focus of the procedures, data reporting, and opinions to those which directly bear upon issues presented before the court.

[16] Although Dr. Hughes does not indicate whether the "consequences" she aims to assess are psychological in nature, it is assumed this was her meaning when she used the term.

[17] "Psychological injury" "emotional injury" and "mental injury" are terms that are used interchangeably to refer to harm in the form of substantial symptoms of distress and impairments in functioning.

[18] SGFP Guideline 10.01: *Focus on Legally Relevant Factors* states: "Forensic practitioners provide information that is most relevant to the psycholegal issue. In reports and testimony, forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, and address their opinions and recommendations to the identified psycholegal issues (American Bar Association & American Psychological Association, 2008; Grisso, 1986, 2003; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007);"

a diagnostic label (*i.e.,* PTSD)[19] while excluding relevant information about Ms. Heard's functional abilities,[20] includes inappropriate and unscientific assertions that Mr. Depp perpetrated IPV against Ms. Heard, and substantiates opinions with inaccurate and unreliable test measures.[21] The inclusion of irrelevant information in the evaluation report can distract from pertinent data, introduce undue prejudice, and violate the privacy and dignity of the parties involved (Foote et al., 2020; Kane & Dvoskin, 2011; Koch et al., 2006; Melton et al., 2018). Moreover, Dr. Hughes' lack of adherence to the psycholegal question of emotional injury in her evaluation opposes extensive bodies of empirical literature and professional standards of practice, as discussed further below (Foote et al., 2020; Kane & Dvoskin, 2011; Koch et al., 2006; Melton et al., 2018).[22]

3.2. ***Structure of an emotional injury evaluation.*** To assess emotional injury, a forensic psychologist assesses whether there are identifiable signs of distress present and whether these signs relate time-wise to a proximate cause. In all personal injury evaluations, diagnostic labels are peripheral to the primary goal of identifying whether an examinee has experienced a

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Also, SGFP Guideline 11.04: *Comprehensive and Accurate Presentation of Opinions in Reports and Testimony*: "The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed;"

See also, EPPCC Standard 4.04, *Minimizing Intrusions on Privacy.*

[19] See section 3.3 for further discussion related to the problem of overreliance on diagnostic labels in an emotional injury evaluation.

[20] The term "functional abilities" is used to refer to an individual's ability to engage in and carry out tasks across multiple life areas (*e.g.*, employment, relationships, financial management, self-care, household duties, and recreation/hobbies). It is the primary focus of many tort-related examinations as it can demonstrate "how much" a person has been emotionally harmed, based on the amount of change that has occurred in their daily activities from before the trauma and after. As such, it coincides with legal constructs relevant to tort cases including "damages," "compensability," and "proximal cause." It is always the goal of the forensic examiner to utilize methods of evaluation and focus their report on the data that coincide with these types of specific legal issues, or whichever are most relevant to the case at hand.

[21] See section 4 of the present report for further discussion.

[22] SGFP Guideline 10.01: *Focus on Legally Relevant Factors* states: "Forensic practitioners provide information that is most relevant to the psycholegal issue. In reports and testimony, forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, and address their opinions and recommendations to the identified psycholegal issues (American Bar Association & American Psychological Association, 2008; Grisso, 1986, 2003; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007);" and SGFP Guideline 11.04: *Comprehensive and Accurate Presentation of Opinions in Reports and Testimony*: The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed; also EPPCC Standard 4.04, *Minimizing Intrusions on Privacy.*

decline in *functioning*[23] after a purported injury or trauma (Foote et al., 2020; Kane & Dvoskin, 2011; Koch et al., 2006; Melton et al., 2018). First, the forensic psychologist can assess whether a change has occurred by comparing the examinee's pre-trauma and post-trauma functioning abilities. Next, by examining the extent of the differences across different life domains, the psychologist can quantify "how much" the examinee has changed. In this way, the information the evaluator provides to the court is directly relevant to assisting the factfinder in legal decisions of "damages," "compensability," and "proximal cause" (Foote et al., 2020; Kane & Dvoskin, 2011; Koch et al., 2006; Melton et al., 2018). In all assessments of psychological injury, the forensic evaluator's aim is *not to determine whether a purported trauma occurred*, but rather *if there is a functional limitation that was caused by the alleged trauma* (Pietz, 2020).

3.3. ***Overreliance on a diagnostic label.*** The professional obligation of a forensic evaluator is to provide the factfinder with an objective presentation of the examinee's functioning per an underlying psycholegal issue (*i.e.*, emotional injury) (Martingale & Gould, 2013). As previously stated, the core inquiry in assessing psychological harm is how the alleged injury *impacts the individual's functioning* (Melton et al., 2018). Dr. Hughes deviates from this psycholegal framework by diagnosing Ms. Heard with PTSD while excluding information about Ms. Heard's functional capacity. Although a diagnosis is not inappropriate *per se*, it is considered "ethically and legally precarious" (Greenberg, Shuman, and Meyer, 2004, p. 10) due to its tendency to mislead or distract from the more relevant issues of the evaluation (McLearin, Pietz & Denney, 2004; Melton et al., 2018). In other words, a diagnosis may help to categorize distress, but it in no way demonstrates whether Ms. Heard experienced a decline in functioning after alleged IPV (Greenberg, Shuman, & Meyer, 2004; Melton et al., 2018). Per SGFP Guideline 10.01, forensic psychologists "consider the problems that may arise by using a clinical diagnosis in some forensic contexts and consider and qualify their opinions and testimony appropriately" (APA, 2013, SGFP Guideline 10.01). As such, the decision to include a diagnosis in a forensic evaluation report must be made carefully and accompanied with an explanation of the potential limitations it can cause. Dr. Hughes did not abide by

[23] The term "functioning" is used to refer to an individual's ability to engage in and carry out tasks across multiple life areas (e.g., employment, relationships, financial management, self-care, household duties, and recreation/hobbies).

these principles. Instead, she diagnosed Ms. Heard with PTSD using an inadequate test[24] and failed to warn the factfinder of the associated limitations.

3.4. ***Omission of relevant information of Ms. Heard's functional abilities.*** Mental injury evaluations are comprehensive, requiring multiple sources of data by which to compare the person's overall functioning before and after the alleged harm (Denney, 2012; Kane & Dvoskin, 2011; Weiner & Otto, 2013). In cases in which PTSD or traumatic stress is alleged, best practices recommend that records be sought to establish the examinee's pre-trauma functioning from "birth to the day before" the alleged trauma (*i.e.*, "day-before analysis") (Kane & Dvoskin, 2011; Melton et al., 2018). Several inferences can be made by comparing the individual's pre- and post-trauma functioning. First, if there is an identifiable change, the amount of change and the scope of the impairments will represent the severity of the injury. If the change occurred after the alleged trauma *and* enough data exists to reliably rule out the influence of other current mental conditions or traumatic life events (*e.g.*, childhood abuse, serious accidents, natural disasters, sudden losses, violent crimes), then causation can be reasonably implied (Foote et al., 2020; Kane & Dvoskin, 2011; Melton et al., 2018). It is therefore critical that all relevant history is explored and disclosed. In doing so, the psychologist is guided by Ethical Principle B of *Fidelity and Responsibility,* as well as Principle C: *Integrity*, and Standard 5.01 regarding the *avoidance of false or deceptive statements* (APA, 2017). In addition, Specialty Guidelines 11.01 and 11.04 provide guidance regarding *accuracy, fairness, and avoidance of deception* and *comprehensive and accurate presentation of opinions in reports*, respectively (APA, 2013).

3.5. Dr. Hughes' report does not address the issue of Ms. Heard's pre- or post-trauma functioning. Furthermore, Dr. Hughes failed to include information about Ms. Heard's self-reported exposure to trauma in childhood and her pre-existing mental health conditions,[25] both of which bear significantly upon the determination of a present mental injury. The inclusion of such data demonstrates that the evaluator has weighed all possible causes for an individual's purported distress (Melton et al., 2018; Kane & Dvoskin, 2011). Finally, Dr. Hughes' failure to rule-out alternative hypotheses opposes the ethical duty of psychologists to "avoid partisan

[24] See section 5.6 of this report for a discussion of the PTSD symptom checklist Dr. Hughes employed.
[25] See nursing notes of Erin Boerum, R.N. (AH_TDP_00016929-59).

presentation" of data and "treat all participants . . . weigh all data, opinions, and rival hypotheses impartially" (APA, 2013, SGFP Guideline 1.02: Impartiality and Fairness).

3.6. ***Irrelevant scientific framework opinions.*** An expert can be hired to provide scientific framework testimony, or "general scientific testimony," about topics within their general area of expertise. In such cases, the expert offers educative scientific research to help the factfinder understand relevant specialized knowledge (Faigman, Monahan, & Slobogin, 2014; Foote, 2020; Faust, Grimm, Ahern, & Sokolik, 2010; Goodman & Croyle, 1989). A forensic psychologist who offers scientific framework testimony may or may not evaluate one or more parties involved in the case.

3.6.1. If an evaluation is ***not*** conducted, psychologists must "appropriately limit the nature and extent of their conclusions or recommendations" (EPCCC Standard 9.01, APA, 2017). While this does not prevent psychologists from applying their specialized knowledge to hypothetical questions about individuals in the case, they should not render opinions about either party. Furthermore, psychologists must convey the potential inaccuracy of the views offered in a hypothetical context (APA, 2017; Faigman et al., 2014; Foote, 2020).[26] Dr. Huhges provides opinions about Mr. Depp in her evaluation report that are not substantiated by an examination of the plaintiff. Moreover, she fails to make clear the limitations of her opinions.

3.6.2. On the other hand, if an evaluation *is* conducted, the psychologist must limit all opinions—including scientific framework testimony—to the evaluation's

[26] See EPCCC Standard 9.01, Bases for Assessments, "(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.) (b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence, and 9.06, Interpreting Assessment Results.) (c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations" (APA, 2017).

underlying psycholegal question. This core principle of *relevance* is emphasized throughout the professional literature and standards of psychological practice (APA, 2013; APA, 2017; Grisso, 2010; Rocchio, 2020; Martingale & Gould, 2013; Melton et al., 2018).[27] In accordance with Guideline 10.01 of the *Specialty Guidelines for Forensic Psychology*: "Forensic practitioners provide information that is most relevant to the psycholegal issue. In reports and testimony, forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs and address their opinions and recommendations to the identified psycholegal issues (American Bar Association & American Psychological Association, 2008; Grisso, 1986, 2003; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007)" (APA, 2013). In other words, when a forensic psychologist conducts an evaluation, they must limit their conclusions to the assessment results and refrain from inserting other opinions (Rocchio, 2020).

3.6.3. Dr. Hughes conducted a psychological evaluation and included scientific framework opinions in her report. However, in opposition to the aforementioned professional standards, Dr. Hughes' scientific framework opinions deviate substantially from the psycholegal purpose of an emotional injury evaluation. Whereas the referral reason underlying Dr. Hughes' evaluation asks whether Ms. Heard is experiencing psychological consequences related to her allegations of IPV and defamation, Dr. Hughes' scientific framework opinions focus instead on the dynamics of the alleged events. To reiterate, the role of the forensic psychologist is to provide scientific information pertaining to an individual's psychological status. The "dynamics" of alleged IPV, as presented by Dr. Hughes, are not relevant to Ms. Heard's psychological functioning. Furthermore, it is not appropriate for a psychologist to opine that an event has occurred, as Dr. Hughes

[27] The issue of relevance is further addressed by SGFP Guideline 11.04, *Comprehensive and Accurate Presentation of Opinions in Reports and Testimony*, which states that, "the specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed," and EPPCC Standard 4.04, which states: "(a) Psychologists include in written and oral reports and consultations, only information germane to the purpose for which the communication is made. (b) Psychologists discuss confidential information obtained in their work only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters" (APA 2013; APA, 2017).

does, because this is a determination that can only be made by the trier of fact. The majority of Dr. Hughes' summarized opinions from pages five and six of her report demonstrate her improper focus on events, rather than Ms. Heard's psychological status:

3.6.3.1. *Opinion number one:* Amber Heard's report of violence and abuse in her relationship with Mr. Depp is consistent with what is known as intimate partner violence, a pattern of manipulation, fear, and control in a relational context that is maintained through the use of multiple abusive behaviors such as physical violence, psychological aggression, coercive control, emotional abuse, and sexual violence (p. 5).

3.6.3.2. *Opinion number two:* The intimate partner violence inflicted upon Ms. Heard by Mr. Depp is categorized as severe because it consists of strangulation, punching, beating up, sexual violence, threats to kill, an increase in frequency and severity of abuse, and serious injuries such as black eye, facial bruising, nose injury, concussion, and loss of consciousness (p. 5).

3.6.3.3. *Opinion number five:* "with respect to intimate partner violence, it is commonly understood that such acts often occur in private with few witnesses and with little external corroboration, however, that does not appear to be the case in this matter. *Dr. Hughes' analysis revealed significant corroborating evidence that is consistent with Ms. Heard's report of intimate partner violence* [emphasis added] including text messages, photographs, video tape, audio files, medical documentation, therapy records, collateral interviews, and witnesses to the aftermath of the violence" (p. 6)

3.6.3.4. *Opinion number six:* "Dr. Hughes will provide expert testimony that is relevant, scientifically based information regarding the common

experiences, perceptions, psychological consequences, and actions of individuals exposed to intimate partner violence as well as their participation, or lack thereof, in procedures and sanctions against their partner. In addition, Dr. Hughes' expert testimony will seek to dispel myths and misconceptions about intimate partner violence that are commonly held by lay persons about what the persons in such a relationship 'should' do or 'shouldn't' do, and why these are not correct assumptions" (p.6).

4. Deficient Psychometric Testing

4.1. ***General standards for forensic psychometric test instruments.*** A higher and more exacting standard of accuracy and relevance of psychological testing is required in forensic evaluations (Martingale & Gould, 2013; Otto & Goldstein, 2013). Forensic psychologists are expected to ensure that the tests they select have been validated with populations that are similar to the subject being examined, to be aware of the underlying studies upon which their test instruments rely, to understand the nature of "normative" (*i.e.*, comparison) groups, and to ensure that their resulting opinions delineate between facts and inferences (Kane & Dvoskin, 2011). Without meeting these explicit requirements, psychologists cannot testify *to a reasonable degree of psychological or scientific certainty*, as Dr. Hughes purports to do,[28] that their assessment results are valid (Kane & Dvoskin).

4.2. ***Criteria for a "forensically relevant" test instrument.*** Furthermore, forensic psychologists use *forensically relevant* test instruments (Heilbrun, Rogers & Otto, 2002). Such instruments were developed to measure clinical constructs and address the questions pertinent to criminal and civil litigation, including the examinee's approach to the test (*i.e.*, accurate self-report). Forensically relevant instruments have undergone *additional* testing to confirm their accuracy in forensic contexts specifically. In addition, they can identify feigning or defensiveness in responding and provide information regarding clinical factors relevant to a personal injury

[28] On page 5 of Dr. Hughes' report, she writes: "Dr. Hughes' opinions are offered to a reasonable degree of psychological probability and/or certainty." Such statements should not be made automatically but rather intentionally, after exploring the impact of weaknesses and limitations within the evaluation (DeMier, 2013).

evaluation (Kane & Dvoskin, 2011). Heilbrun et al. (2002) developed a widely cited list of criteria to help determine whether a psychometric test instrument is appropriate for forensic evaluation. Based on their recommendations, any forensic test method must: (a) be commercially published and distributed; (b) have an available test manual; (c) have demonstrated and adequate levels of reliability and validity for the purpose for which it will be used; (d) have undergone successful peer review; (e) have known decision-making formulas; (f) in general, objective tests and actuarial data are preferable compared to clinical judgment, assuming appropriate research data exist for the test; and (g) assess for response style, which includes both positive or negative impression management (Heilbrun et al., 2002; Foote, 2020).

4.3. ***The importance of response-style assessment.*** Forensic psychological examinees will be incentivized to present themselves in a manner that benefits their outcome in all legal contexts. As a result, they may have conscious or unconscious motivations to sway the evaluation results, even if they intend to be forthright in their responses. Given the increased possibility for examinees to provide "distorted" or inaccurate test responses, the first goal of a forensic evaluation is to establish the validity (*i.e.*, accuracy) of an examinee's self-report on test measures. Furthermore, forensic evaluators are advised to approach the assessment assuming that the examinee's self-report is *not* reliable (Grisso, 2010; Resnick & Knoll, 2018). The accuracy of an examinee's response-style can be gauged with empirically-established assessment tools and measures.[29]

4.4. ***Special significance of assessing response-style with claims of PTSD.*** The use of forensically relevant psychometric test instruments is essential when evaluating PTSD. Research has suggested that 20 to 30 percent of personal injury litigants who purport to have PTSD are feigning the disorder (Guriel & Fremouw, 2003; Lees Haley, 1997). In addition, it seems that PTSD is relatively easy to imitate. Studies in which healthy individuals were asked to attempt to obtain a diagnosis of PTSD on a diagnostic checklist, like the one Dr. Hughes' used with Ms. Heard,[30] found that they were able to do so 86 to 94 percent of the time (Burges &

[29] See EPPCC Standard 9.02: Use of Assessments, & SGFP Guideline 10.02: Selection and Use of Assessment Procedures.

[30] See section 5.6 of this report for discussion of the test Dr. Hughes used to assess Ms. Heard for PTSD.

McMillan, 2001; Lees Haley & Dunn, 1994; Resnick et al., 2018; Slovenko, 1994). Despite these highly relevant risks to accuracy in forensic assessment of PTSD, Dr. Hughes concluded that Ms. Heard has PTSD using an easily-exploitable symptom checklist. It is unclear why Dr. Hughes failed to use more appropriate diagnostic tools[31] that offer a more robust measurement of PTSD symptoms and identify response distortion (Guriel & Fremouw, 2003; Lees Haley, 1997).

4.5. ***Inappropriateness of "checklist" measures.*** Symptom checklists are not appropriate for use in forensic evaluations. They have high "face validity," meaning their purpose is obvious and they "show" what they intend to measure. In legal settings, the face-valid nature of symptom checklists is hugely leading. This enables the measures to be easily exploited by forensic examinees who have a high incentive to present themselves in a manner that will benefit their case (Glancy et al., 2015; Matto et al., 2019; Resnick & Knoll, 2018; Wang & Gorenstein, 2013; Medoff, 2010). Such checklists cannot detect or resist any form of disingenuous response. This is because they were developed for use in treatment settings, not a comprehensive forensic assessment. In treatment settings, the use of face-valid symptom checklists is non-problematic, as patients are assumed to be interested in obtaining proper care and are, therefore, taken at their word about the symptoms they're experiencing. Therefore, checklists are given to patients so they can "check off" the items that pertain to them and assist the provider in determining appropriate interventions. However, these types of measures lack accuracy, reliability and are typically non-relevant to the purpose of a forensic evaluation. As such, consensus within the forensic psychology specialty is that they are not appropriate for use in evaluations (Burges & McMillan, 2001; Lees-Haley & Dunn, 1994; Resnick et al., 2018; Slovenko, 1994).

4.6. Dr. Hughes used not one but eight checklist measures in her evaluation of Ms. Heard. Her inclusion of these test methods opposes professional standard 9.02, which states that psychologists "administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate" and "use assessment instruments whose validity and reliability have been established for use with members of the

[31] See my evaluation report of Ms. Heard for a description of forensically-relevant test instruments for diagnosis of PTSD.

population tested" (APA, 2017). Moreover, her reliance on face-valid measures opposes important bodies of empirical literature, professional practice guidelines, and legal rules requiring the use of scientifically supported, validated, and reliable test instruments for forensic evaluation (Foote & Lareau, 2013). Furthermore, her substantiation of opinions with the results of such measures introduces unknowable margins of error and seriously compromises the foundation upon which psychological opinions are rendered and legal decisions are made.

5. Misrepresentation of Psychometric Test Validity

5.1. Dr. Hughes misrepresented the tests she used, overstating their validity and relevance to the present matter while omitting discussion of their limitations and purpose. A summary of each of the measures Dr. Hughes describes in her report is presented below.[32]

5.2. ***The Danger Assessment Scale:*** On page eight of her evaluation report, Dr. Hughes describes the Danger Assessment Scale as "an empirically validated measure specifically designed to assess for risk factors that have been associated with severe and lethal intimate partner violence." This statement fails to acknowledge the invalidity of the test *for the purpose in which it was being used* (*i.e.*, in Dr. Hughes' forensic psychological evaluation of Ms. Heard). In forensic evaluation, validity is not approached as an abstract concept but rather one which fundamentally pertains to the current psycholegal purpose. Whereas Dr. Hughes' describes several checklists as "valid," none are valid as forensic test measures.

5.2.1. The Danger Assessment Scale is a 20–item checklist designed to be administered by nursing staff to women presenting in emergency departments with injuries from possible IPV. The patient is given a 20-item questionnaire and asked to check off the risk factors for lethality that are present in her relationship (*e.g.*, "does he own a gun?"). This measure was conceptualized to help women in abusive relationships overcome their denial and minimization of the abuse so they might subsequently accept resources for support and intervention. It is a high face-value checklist, meaning that it is obvious

[32] Dr. Hughes' report only references 4 of the 11 test measures she utilized in her assessment of Ms. Heard. A full review of the test methods Dr. Hughes' employed, and Ms. Heard's results is included in my court-ordered IME report.

that it intends to assess for the lethality of intimate partner violence. It also does not control for the potential that an examinee might attempt to exaggerate their experiences, nor has it been validated for use in forensic psychological evaluations. This measure has no resistance to response distortion and fails to meet the psychometric test standards for forensic evaluation (Heilbrun et al., 2002; Glancy et al., 2015; Matto et al., 2019; Resnick & Knoll, 2018; Wang & Gorenstein, 2013; Meldoff, 2009).

5.3. ***Abusive Behaviors Observations Checklist (ABOC):*** The ABOC is a checklist designed to facilitate therapy for survivors of IPV. This face-valid inventory provides the patient with descriptions of various forms of abuse and the adaptations that survivors commonly make in their thinking and behavior. Its purpose is to help survivors recognize the types of abuse they experienced, understand the behaviors and cognitions that they may have utilized to cope with the violence, and thus better articulate and process their experiences in therapy. There is no research to support the accuracy or relevancy of this test for use in forensic psychological evaluations.

5.4. ***Conflict Tactics Scale – 2 (CTS-2):*** The Revised Conflict Tactics Scale is a checklist designed for researching family violence and conflict. It is also commonly used as part of an initial patient intake by social workers and case managers. It asks 39 questions about the respondent's behavior and 39 questions about the partner's behavior. The respondent indicates how often each behavior has occurred using an 8-point scale. This similarly-exploitable scale is not appropriate for use in forensic psychological evaluations.

5.5. Despite the inadequacy of the two measures mentioned above for use in a forensic evaluation, Dr. Hughes states that Ms. Heard's results on these two checklists "revealed the presence of severe IPV including physical abuse, physical injury, sexual violence and abuse, coercion and threats, intimidation, isolation, and minimization and denial of the abuse" (p. 8).

5.6. ***Posttraumatic Stress Disorder Checklist for DSM-5 (PCL-5):*** The PCL-5 was developed by the VA as a brief screening checklist for PTSD. All DSM-5 PTSD symptoms are listed. The patient checks off which symptoms they are experiencing according to one of the offered

severity ratings. It is intended for use in treatment settings only and identifies a potential need for further diagnostic testing with the CAPS-5. It is not designed for forensic purposes. Similar to the aforementioned measures, the PCL-5 has no resistance to response distortion by the examinee and fails to meet the psychometric test standards for forensic evaluation (Heilbrun et al., 2002; Glancy et al., 2015; Matto et al., 2019; Resnick & Knoll, 2018; Wang & Gorenstein, 2013; Meldoff, 2009).

5.7. Despite this, Dr. Hughes inaccurately concludes on page eight of her report that Ms. Heard's responses on the PCL-5 "support a DSM-5 diagnosis of Posttraumatic Stress Disorder with an etiology of the intimate partner violence she experienced by her former partner, Mr. Depp." This inferential leap directly violates professional Standard 9.01, which states, "when [the instrument's] validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation" (APA, 2017).

5.8. Dr. Hughes does not reference any other test results in her report. Her statements about the measures discussed here oppose professional standards of practice, including Standard 9.06, which states: "When interpreting assessment results, including automated interpretations, psychologists take into account the *purpose* of the assessment" (APA, 2017) (emphasis added). In addition, her repeated misrepresentation of test instruments and results opposes professional ethics of accuracy, fairness, and avoidance of deception. In particular, SGFP Guideline 11.01 states: "When providing reports and other sworn statements or testimony in any form, forensic practitioners strive to present their conclusions, evidence, opinions, or other professional products in a fair manner. Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence contrary to their own position or opinion" (APA, 2013).

6. Misrepresentation of Test Results

6.1. Ethical Standard 9.01(a) states, "Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony on information and techniques sufficient to substantiate their findings" (APA,

2017). In accordance with this standard, the evaluating psychologist must limit their conclusions to those results supported by the evaluation and not go beyond the data when explaining assessment results.[33] As specified in Specialty Guideline 11.02, care should also be taken to carefully "distinguish observations, inferences, and conclusions. Forensic practitioners are encouraged to explain the relationship between their expert opinions and the legal issues and facts of the case at hand" (APA, 2013).

6.2. Dr. Hughes misrepresented the meaning of Ms. Heard's scores on invalid test measures while seeming to ignore significant scores on more reliable instruments (Heilbrun et al., 2002; Grisso, 2003; Foote & Lareau, 2013; Kane & Dvoskin, 2011).[34] She presented the results of one symptom checklist as supportive of "a DSM-5 diagnosis of Posttraumatic Stress Disorder with an etiology of the intimate partner violence she experienced by her former partner, Mr. Depp." Dr. Hughes also administered two other checklists about experiences of intimate partner violence. Based on nothing more than Ms. Heard's endorsement of the items presented on these checklists, Dr. Hughes reported that the measures "revealed the presence of severe IPV"[35] and "that Ms. Heard was in a very serious situation with Mr. Depp and at

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[33] SGFP Guideline 11.04: Comprehensive and Accurate Presentation of Opinions in Reports and Testimony states: "Forensic practitioners avoid offering information that is irrelevant and that does not provide a substantial basis of support for their opinions, except when required by law;" see also, EPPCC Standard 4.04.

[34] EPPCC Standard 9.01, *Bases for Assessments* states, "(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)."

Also, EPPCC Standard 9.02, *Use of Assessments* states: "(a) Psychologists administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques. (b) Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation;"

Also, EPPCC Standard 9.08, *Obsolete Tests and Outdated Test Results*, states: "(b) Psychologists do not base [their assessment or intervention] decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose."

[35] On page eight of her evaluation report, Dr. Hughes writes: "For an assessment of intimate partner violence (IPV) related behaviors, Ms. Heard was administered the Abusive Behavior Observation Checklist (ABOC) and the Conflict Tactic Scale2, both of which measure common characteristics of intimate partner abuse. Results revealed the presence of severe IPV including physical abuse, physical injury, sexual violence and abuse, coercion and threats, intimidation, isolation, and minimization and denial of the abuse."

risk for serious, repetitive, and deadly intimate partner violence."[36] Such conclusions far exceed any reasonable inference that can be drawn from these measures, especially when provided to an examinee in a forensic context.

6.3. Furthermore, Dr. Hughes' inferences are irrelevant to the underlying legal purpose of the evaluation—to determine the presence and causality of an emotional injury. To be clear, in all assessments of psychological injury, the forensic evaluator's aim is *not to determine whether a purported trauma occurred* but rather *if there is a functional limitation that was caused by the alleged trauma* (Pietz, 2020). In this way, *causality* is merely the evaluation of symptom severity over time—it does not involve determinations that an event did or did not occur.[37]

6.4. ***Ignoring clear evidence of response distortion by Ms. Heard.*** Dr. Hughes appears to ignore clear evidence that Ms. Heard engaged in response distortion, or inaccurate self-descriptions, on two objective test measures. On one of the tests designed to measure trauma-related distress, there was evidence of significant exaggeration of symptoms. On another test that measures general personality and psychopathology, Ms. Heard obtained validity scores consistent with attempts at favorable self-presentation. A more detailed discussion about Ms. Heard's response-style on these measures is provided below:

6.4.1. *Trauma Symptom Inventory – 2 (TSI 2):* The TSI-2 is an objective test designed to capture a broad range of symptoms that may be associated with trauma. Ms. Heard's scores on the TSI-2 are consistent with significant overreporting of trauma-based symptoms (ATR = 87, 98th percentile). She endorsed an extremely high number of "atypical symptoms," or symptoms and experiences that are rarely reported, even in the most severe trauma cases. Specifically, Ms. Heard's endorsement of unlikely symptoms was higher than 98% of other test takers. Individuals who have obtained a similar score may be intentionally

[36] On page eight of her evaluation report, Dr. Hughes writes: "[Ms. Heard] was also administered the Danger Assessment Scale, a 20-item measure that assesses for risk factors that have been associated with homicides in violent relationships. The Danger Assessment Scale revealed that Ms. Heard was in a very serious situation with Mr. Depp and at risk for serious, repetitive, and deadly intimate partner violence."

[37] See the previous discussion on the structure and purpose of an emotional injury evaluation in Section 2.4 of this report.

exaggerating symptoms or they may tend to "experience and/or report symptoms as being more intense than others do" (Briere, 2011).

6.4.2. *Personality Assessment Inventory (PAI):* The PAI is a 344-item standardized psychometric test of adult personality and psychopathology (symptoms of mental illness). It is designed to evaluate a person's patterns of thinking, emotion, motivation, behavior, and symptoms of mental illness. Ms. Heard elevated a scale on the PAI which suggests she attempted to portray herself as relatively free of shortcomings (PIM = 57). She may also have significantly minimized her use of illicit substances (DRG = 62).

6.5. Despite these clear indications of response distortion (*i.e.*, "faking good" and "faking bad"), Dr. Hughes inaccurately states in her report that "psychological testing revealed that [Ms. Heard] approached the evaluation in a forthright matter with no evidence of malingering or feigning psychological distress. Additionally, Ms. Heard did not appear to distort or exaggerate the information she provided" (p. 5, opinion four). By forcefully presenting only the data which supported her position and withholding clear yet potentially contradictory evidence, Dr. Hughes presented her findings in a manner that violates the trust placed in experts to provide impartial and scientific opinions to assist the trier of fact (Martingale and Gould, 2013).

7. Inappropriate Statements of Opinion

7.1. Science is precise in nature and forensic psychologists are trained to avoid language that inappropriately implies something other than what is accurate and intended (Otto, DeMier, Boccaccini, 2014). Therefore, it is important to acknowledge Dr. Hughes' inappropriate and repetitive use of presumptive and prejudicial language when describing the plaintiff, whom she did not examine, and in her unnecessarily detailed and graphic descriptions[38] of *alleged*

[38] SGFP Guideline 10.01: *Focus on Legally Relevant Factors* states: "Forensic practitioners provide information that is most relevant to the psycho-legal issue;" also, SGFP Guideline 11.04: *Comprehensive and Accurate Presentation of Opinions in Reports and Testimony.* "Forensic practitioners are encouraged to limit discussion of background information that does not bear directly upon the legal purpose of the examination or consultation. Forensic practitioners avoid offering information that

incidents of IPV, which she fails to qualify as such. Instead, Dr. Hughes repeatedly misrepresents descriptions of IPV between Ms. Heard and Mr. Depp as factual, thus introducing potential prejudice and violating the privacy and dignity of both parties for reasons irrelevant to her purpose as an examiner. To reiterate, it is never the psychologist's task to determine that IPV occurred, nor is it appropriate for an expert to advocate for any specific party or sociopolitical purpose. Our role is only to assist the factfinder by providing sound and objective scientific knowledge so that they may decide the legal and moral issues before the court. Therefore, Dr. Hughes' failure to separate facts from inferences is unscientific, highly misleading, and violates multiple rules of professional practice (APA, 2013; APA, 2017; Bush, Connell, and Denney, 2020; Grisso, 2010; Melton et al., 2018).[39]

7.2. Dr. Hughes' first noted use of language that is inappropriate in a forensic report was identified on page two, in her statement that she was asked "to assess for any psychological consequences *stemming from the defamatory statements to the media made by Mr. Depp through his attorney and agent, Adam Waldman* [emphasis added]." This statement inappropriately conveys that defamation has occurred when the matter has not yet been tried in court. While one poorly worded sentence might be otherwise attributed to careless error, almost every page of Dr. Hughes' report contains similarly presumptive and pejorative statements about the plaintiff. A selection of examples are presented below:

7.2.1. "On June 24, 2020, *Depp, through Waldman, falsely accused Ms. Heard* [emphasis added] in the Daily Mail of committing an 'abuse hoax' against Depp" (p. 2, footnote 47).

7.2.2. "*The intimate partner violence inflicted upon Ms. Heard by Mr. Depp* [emphasis added] is severe because it consists of strangulation, punching, beating up, sexual violence, threats to kill, an increase in frequency and severity of abuse, and

is irrelevant and that does not provide a substantial basis of support for their opinions, except when required by law;" see also, EPPCC Standard 4.04, *Minimizing Intrusions on Privacy.*

[39] See SGFP Guideline 11.01: Accuracy, Fairness, and Avoidance of Deception; Also, EPPCC Standard 5.01; Also, SGFP Guideline 11.02: Differentiating Observations, Inferences, and Conclusions; Also, SGFP Guideline 11.04: Comprehensive and Accurate Presentation of Opinions in Reports and Testimony; Also, EPPCC Standard 4.04.

serious injuries such as black eye, facial bruising, nose injury, conclusion, and loss of consciousness" (p. 5).

7.2.3. "The Danger Assessment Scale *revealed that Ms. Heard was in a very serious situation with Mr. Depp and at risk for serious, repetitive, and deadly intimate partner violence* [emphasis added]" (p. 8)

7.2.4. Page 8: "Results *revealed the presence of severe IPV* [emphasis added] including physical abuse, physical injury, sexual violence and abuse, coercion and threats, intimidation, isolation, and minimization and denial of the abuse" (p. 8)

7.2.5. "*Mr. Depp repeatedly demonstrated not only his ability, but his willingness, to use multiple and serious forms of physical assaults and sexual violence against Ms. Heard* [emphasis added] which decreased her psychological functioning and increased her fear and helplessness" (p. 10)

7.2.6. "*Mr. Depp's abuse of Ms. Heard* [emphasis added] was punctuated and exacerbated by his chronic addiction to drugs and alcohol" (p. 11)

7.2.7. "*This substance-fueled rage* [emphasis added] also pulled for Ms. Heard to adopt a caretaking role with Mr. Depp and offer herself and others repeated excuses for his behavior thereby obfuscating *the abuse and the harm caused to her* [emphasis added]" (p. 11)

7.2.8. "*Mr. Depp's psychological instability* [emphasis added], as evidenced by his chronic substance abuse, *erratic violent outbursts, deranged* [emphasis added] writing on walls, tables, mirrors, etc., repeated property damage, frequent throwing of objects, *acts of violence toward himself and self-harm* [emphasis added], and withdrawal from the relationships for long periods of time where he was unreachable, among others, are *not only highly dysfunctional, but forms of psychological abuse, intimidation, and emotional manipulation* [emphasis added]" (p. 11)

7.2.9. "*Mr. Depp's instability required Ms. Heard to continue to deal with days of chaos and trauma* [emphasis added], always trying to calm Mr. Depp first, and then seek safety for herself second. *The unpredictability, volatility, and severity of Mr. Depp's behavior* [emphasis added] increased Ms. Heard's fear of him and *his ability to maintain power and control in the relationship* [emphasis added] (p. 12).

7.2.10. "This evaluation *revealed significant sexual violence perpetrated by Mr. Depp* [emphasis added] toward Ms. Heard" (p. 12)

7.2.11. "*the intimate partner violence perpetrated by Mr. Depp* [emphasis added] toward Ms. Heard was serious, severe, and dangerous" (p. 13)

7.2.12. "*Mr. Depp also engaged in serious sexual violence during instances of rage and violence in which he forcibly* [emphasis added] penetrated Ms. Heard's vagina with the neck of a liquor bottle *during one of the most violent episodes in their relationship. Other times, he forcibly and violently* [emphasis added] thrust his fingers up her vagina, moved her body by holding onto her vagina, and yelled obscenities at her. *None of these acts were to initiate sex and none of them consensual. Quite the contrary, they were acts of sexual violence reflecting an abuse of Mr. Depp's power and control over her, and specifically perpetrated to humiliate and subjugate Ms. Heard. These repeated sexual violations* [emphasis added] were often accompanied by vulgar and degrading verbal assaults toward her."

7.2.13. *"There were two very serious abusive incidents worth noting* [emphasis added] in which Ms. Heard thought Mr. Depp could kill her. The first time was in Australia in March 2015 when *Mr. Depp engaged in an all-out assault upon her* [emphasis added] whereby, he hit her, slapped her, threw her around, pinned her on her back on a counter, squeezed her neck strangling her, ripped off her nightgown, and *raped her with a Jack Daniels bottle* [emphasis added] while screaming over and over again, 'You ruined my life. I hate you. I'm going to fucking kill you'" (p. 14)

7.2.14. "Then, in December 2015 in Los Angeles, *Mr. Depp perpetrated another severe assault against Ms. Heard wherein he repeatedly punched and slapped her with his ring-adorned hands, dragged her by the hair across the apartment, headbutted her, and strangled her* [emphasis added] while yelling 'I fucking hate you. I hate you. I'm going to fucking kill you'" (p. 14)

7.2.15. "In addition, *Mr. Depp actively sabotaged Ms. Heard's efforts* [emphasis added] at self-care and external support, vilifying and sometimes excommunicating those individuals with whom she relied on" (p. 16)

7.3. The language used by Dr. Hughes in her evaluation report does not represent the neutral and detached manner expected of a forensic psychologist reporting their objective results (Bush, Connell, & Denney, 2013; Martingale & Gould, 2013). Moreover, Dr. Hughes' pattern of presenting data and conclusions in absolute terms opposes professional ethics of accuracy, fairness, and avoidance of deception (APA, 2013; APA, 2017; Bush, Connell, and Denney, 2020; Grisso, 2010; Melton et al., 2018).[40]

IV. Conclusion

Dr. Hughes' report demonstrates overt deficiencies and raises serious questions regarding the overall appropriateness of how her evaluation of Ms. Heard was conducted and the validity and reliability of its results.

[40] SGFP Guideline 11.01, "When providing reports and other sworn statements or testimony in any form, forensic practitioners strive to present their conclusions, evidence, opinions, or other professional products in a fair manner. Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence contrary to their own position or opinion (EPPCC Standard 5.01);" also, SGFP Guideline 11.02, Differentiating Observations, Inferences, and Conclusions: "In their communications, forensic practitioners strive to distinguish observations, inferences, and conclusions. Forensic practitioners are encouraged to explain the relationship between their expert opinions and the legal issues and facts of the case at hand;" also, EPPCC: 9.06 Interpreting Assessment Results: "When interpreting assessment results, including automated interpretations, psychologists take into account the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences, that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant limitations of their interpretations. (See also Standards 2.01b and c, Boundaries of Competence, and 3.01, Unfair Discrimination)"

Nonetheless, Dr. Hughes raises several important issues in her report related to the scientific knowledge of IPV. Specifically, she discusses the powerful forces that maintain a survivor's attachment to their abuser.[41] She also describes current research-based models for understanding the dynamics of IPV and how power and control are the primary features which characterize multiple variations of abusive behavior. These descriptions of IPV assist in dispelling common myths about what constitutes IPV and how a survivor "should" behave. That being said, this scientific information was not clearly linked to the underlying psycholegal purpose of her evaluation of Ms. Heard, i.e., to identify the presence of any emotional injury and its relatedness to Ms. Heard's allegations against Mr. Depp. As such, the introduction of this scientific principles is extraneous and irrelevant to Dr. Hughes' role as an elevator.

The role of a psychologist in the courtroom does not involve sociopolitical advocacy, nor is our helpfulness based on the persuasiveness of our position. Rather, our assistance to the trier of fact is only as valuable as the objectivity of our opinions and the soundness of the foundation upon which they rest.

In discussing this, forensic psychologist Thomas Martindale (2001) wrote:

> There is an important difference between an expert opinion and a personal opinion. When an expert has formulated an opinion, it is reasonably presumed that the expert has drawn upon information accumulated and published over the years. The defining attributes of an expert opinion relate not to the credentials held by the individual whose fingers type the words or from whose mouth the words flow; rather, the requisite characteristics relate to the procedures that were employed in formulating the opinion and the body of knowledge that forms the foundation upon which those procedures were developed. If the accumulated knowledge of the expert's field was not utilized, the opinion expressed is not an expert opinion. It is a personal opinion, albeit one being expressed by an expert. (p. 503).

[41] See page 9 and portions of pages 15 and 16 of Dr. Hughes' report for her discussion of the science of IPV, particularly as it relates to the cyclic nature of intimate partner violence and how the intermittent periods of relief between violent episodes serve to reinforce the survivor's sense of hope and attachment to her abusive partner; as well as adaptive mechanisms that are commonly employed by survivors in violent relationships.

Report not valid unless signed.

Shannon J. Curry, PsyD, MSCP
Clinical & Forensic Psychologist

February 8, 2022
Date

APPENDIX I: REFERENCES

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