

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

Civil Action No.: CL-2019-0002911

FILED

2021 SEP 24 PM 1:08

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

OPPOSITION TO MOTION TO COMPEL INDEPENDENT
MENTAL EXAMINATION OF DEFENDANT AMBER LAURA HEARD

FILED UNDER SEAL

(Pursuant to the Stipulated Amended Protective Order entered by the
Court on June 21, 2021)

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

Civil Action No.: CL-2019-0002911

**OPPOSITION TO MOTION TO COMPEL INDEPENDENT
MENTAL EXAMINATION OF DEFENDANT AMBER LAURA HEARD**

Elaine Charlson Bredehoft (VSB No. 23766)
Adam S. Nadelhaft (VSB No. 91717)
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Counsel to Defendant Amber Laura Heard

Ms. Heard opposes Mr. Depp’s motion to compel a Rule 4:10 mental examination of her (an exam that would be in no way independent), because Mr. Depp will not agree to a 4:10 Exam of him. Ms. Heard simply seeks fairness and for both sides to be treated equally, which Depp refuses to allow. As will be shown below, both parties are in the same position in this litigation. They both have claims for defamation and both parties designated experts related to medical and mental health issues. A legally consistent and equitable approach requires that both sides be allowed a 4:10 Exam of the other under the same conditions or neither side be allowed a 4:10 Exam of the other party. A legally consistent and equitable approach is all Ms. Heard seeks.

I. Either No Party Has Placed His/Her Mental Health at Issue, or Both Parties Have.

Mr. Depp’s Motion falsely claims Ms. Heard has placed her mental condition at issue while Mr. Depp has not. The truth is that both sides have designated medical experts who opine on each party’s mental health. These designations have either placed both of their medical/mental conditions at issue, or neither has.

In opposing Ms. Heard’s prior request (in November 2019) to take a 4:10 Exam of Mr. Depp, counsel for Mr. Depp argued it should not go forward because “[t]here is no freestanding claim for either intentional or negligent infliction of emotional distress. All there are are counts for defamation.” **Ex. 1 at 20.** Ms. Heard is in the same position, yet Mr. Depp is requesting a 4:10 Exam of her. Ms. Heard has no freestanding counterclaim for either intentional or negligent infliction of emotional distress. Just like Mr. Depp, Mr. Heard has a counterclaim for defamation. Since their claims are the same, the parties should be treated the same.

At the hearing relating to Ms. Heard’s first request for a 4:10 Exam of Mr. Depp, Former Chief Judge White held “the request seems to me to be an effort to have a medical assessment by an expert who would then be offered as a witness to testify as to the credibility of one of the parties.

And I don't find that to be appropriate or helpful." *Id.* at 27. Now, Mr. Depp seeks to have Dr. Curry perform a 4:10 Exam of Ms. Heard, even though Dr. Curry already concluded that "Ms. Heard exhibits patterns of behavior that suggest her allegations of abuse against Depp are false." **Ex. 2, at 13-14.** It is plain as day that Mr. Depp is seeking to use Dr. Curry to testify as to the credibility of Ms. Heard, which Former Chief Judge White held was inappropriate.

Mr. Depp claims he needs Ms. Heard to undergo a 4:10 Exam because Ms. Heard has placed her mental health at issue when Ms. Heard designated Dr. Dawn Hughes as an expert, who will testify to the PTSD Ms. Heard suffered from the domestic partner violence she endured from Mr. Depp. As an initial matter, an expert testifying as to PTSD Ms. Heard suffered is not opining, as Dr. Curry apparently seeks to do, on the truth or falsity of Ms. Heard's claims that Depp abused her. She is simply expressing an opinion on Ms. Heard's PTSD, which the jury is entitled to hear and evaluate as the ultimate factfinder. But if Ms. Heard placed her mental health at issue with the designation of Dr. Hughes, then Depp has placed his mental health at issue with his expert designations. Dr. David Kipper, whom Depp identified in his Expert Disclosures "has served as Mr. Depp's treating physician for more than six years," **Ex. 2 at 21**, diagnosed Depp with Primary Dopamine Imbalance; ADHD, Bipolar 1, Depression, Insomnia, and chronic substance abuse disorder. **Ex. 3 at 3.** At Dr. Kipper's deposition, at Mr. Depp's counsel's request, Dr. Kipper testified these were his diagnoses and he possessed the qualifications to make these diagnoses. **Ex. 4 at 170-78.** Mr. Depp's Expert Disclosures states "Dr. Kipper is expected to testify as to the *pharmacological effects of the medications prescribed on Mr. Depp*, as well as medical opinions reached during the course of Depp and Ms. Heard's treatment. In so doing, Dr. Kipper may rely on his expertise and experience as a medical doctor practicing internal medicine." **Ex. 2 at 21**

(emphasis added). The parties' designation of medical experts should be treated in the same way.¹

Mr. Depp argues that Dr. Curry should be able to perform a mental exam of Ms. Heard because Dr. Hughes spent 25 hours with Ms. Heard and no one from Depp's side has been able to examine Ms. Heard. Yet Mr. Depp will not allow a 4:10 Exam of him even though Dr. Kipper has treated and examined Depp for over six years and claims to have opinions about his medical and mental health as well as to the pharmacological effects of medication on Depp, but no one for Ms. Heard has been able to examine Mr. Depp. If Mr. Depp is allowed to have his doctor of choice examine Ms. Heard, Ms. Heard should have the same right as Mr. Depp. Mr. Depp plans to have Dr. Kipper testify as an expert to how Mr. Depp's mental disorders and the medications prescribed to Mr. Depp affected his relationship with Ms. Heard, his tendencies toward violence, and his memories (or lack thereof) of the events that occurred with Ms. Heard. Ms. Heard should have the same right as Mr. Depp (if he is allowed) to have her doctor examine Depp under Rule 4:10.

Finally, the situation is entirely different than it was in November 2019, when Former Chief Judge White denied Ms. Heard's request for a 4:10 Exam. At the time of the hearing, on November 15, 2019, Mr. Depp had not identified Dr. Kipper as an expert, and claimed at the hearing that Dr. Kipper was only a fact witness. *Id.* at 20:14. Mr. Depp had also not identified Dr. Curry as an Expert to claim Ms. Heard is lying, which is contrary to Judge White's admonition that experts should not opine on credibility. **Ex. 1 at 27**. The circumstances have changed by Depp's own

¹ Judge White previously recognized that Depp's Complaint, alone, placed Depp's mental condition at issue, stating: "I think that the complaint is broad enough to place these things in issue, places [Mr. Depp's] mental condition in, issue, even though it may or may not really be an issue in this case, nevertheless it's put in the complaint for a purpose." **Ex. 5 at Tr. 26:15-18**. Since Judge White made this finding based on the allegations in Depp's Complaint, Depp has unquestionably confirmed that his mental condition is, in fact, at issue through his February 16, 2021 Designation/Identification of Expert Witnesses and Dr. Kipper's deposition testimony.

making. Indeed, comparing Mr. Depp’s expert disclosures of November 4, 2019 (before the hearing with Former Chief Judge White) to his disclosures on February 16, 2021, reveals that Mr. Depp now intends to call Dr. Kipper as an expert on Mr. Depp’s psychological disorders and the “effect of medications” on Depp and his conditions, and further intends to call Dr. Curry to testify as to Ms. Heard’s purported diagnoses and that “Ms. Heard exhibits patterns of behavior that suggest her allegations of abuse against Mr. Depp are false.” **Att. 2 at 13-14.** Just as Ms. Heard identified Dr. Hughes as an expert, Mr. Depp made a conscious choice to identify Dr. Kipper as an expert. The effect of these choices on whether a 4:10 Exam should be allowed should be the same – either they both should be precluded from undertaking a 4:10 Exam, or they both should be ordered to undergo a 4:10 Exam under the same conditions.

II. If a Mental Examination is Ordered, Ms. Heard Requests Reasonable Conditions and that they be the Same for Both Ms. Heard and Mr. Depp

If a 4:10 Exam is ordered, Ms. Heard respectfully requests that the same conditions be ordered for both. Some of the conditions Mr. Depp proposes are not reasonable under the circumstances. Ms. Heard proposes the following:

1. The 4:10 Exam shall not ever be called or referred to as an Independent exam.²
2. The 4:10 Exam shall not exceed fourteen (14) hours over the course of two days, in which each day shall include a one (1) hour lunch break, two fifteen (15) minutes breaks in the morning, two fifteen (15) minutes breaks in the afternoon, and any other breaks as needed and agreed to between the examiner and the party.
3. The 4:10 Exam shall be conducted via Zoom given the risks of the COVID-Delta variant to all parties involved and shall not be held in a law firm under any

² Dr. Curry is clearly not independent – she is being paid by Mr. Depp, and has apparently already determined, without examining Ms. Heard, that she is lying.

circumstances. Ms. Heard has a new baby who is obviously not immunized, and under the circumstances of COVID, this lessens the risk. We will agree to the same for Mr. Depp.

4. Each party shall be allowed to have the other side's expert observe the examination over Zoom, not on camera. This will allow both parties assurances that the 4:10 Exams are conducted properly, especially given the expert opinions already given.

5. The 4:10 Exam shall be conducted during two days in either the first or second weeks of December beginning at 9:00 a.m. Pacific Time or other dates, times, and locations mutually agreed upon.

6. The 4:10 Exam shall consist of a one-on-one examination and clinical interview, and include appropriate testing as determined by the medical examiner chosen to perform the 4:10 Exam based on their training, experience, expertise, and review of relevant materials.

7. The scope of the 4:10 Exam shall be what is addressed in the parties' expert opinions as designated on February 16, 2021 (and in any deposition or other format).

8. The Rule 4:10 examiner shall prepare and serve a report on the other side within thirty (30) days of completion of the 4:10 Exam.

9. For all testing administered, the expert shall provide the test questions administered to the party, the answers given by the party and any computerized analysis of the answers, including any computerized diagnoses. The opposing expert shall provide the same within five days after the report is provided (to avoid tainting to Rule 4:10 exam).

10. The medical examiners chosen to perform the 4:10 Exam will make themselves available for deposition for up to 5 hours, by Zoom, on mutually agreeable dates and times.

Ms. Heard simply asks for fairness. Either no 4:10 Exam should be ordered, or 4:10 Exams should be ordered for both parties under the conditions described above.

Dated this 24th day of September 2021.

Respectfully submitted,

Amber L. Heard



Elaine Charlson Bredehoft (VSB No. 23766)
Adam S. Nadelhaft (VSB No. 91717)
Clarissa K. Pintado (VSB No. 86882)
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Counsel to Defendant and Counter-Plaintiff
Amber Laura Heard

CERTIFICATE OF SERVICE

I certify that on this 24th day of September 2021, a copy of the foregoing was served by email, pursuant to the Agreed Order dated August 16, 2019, as follows:

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Exhibit 1

FILED UNDER SEAL

(Pursuant to the Stipulated Amended Protective Order entered by the
Court on June 21, 2021)

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

-----X

JOHNNY C. DEPP, II,)

Plaintiff,)

-vs-)

NO. CL-2019-0002911

AMBER LAURA HEARD,)

Defendant.)

-----X

Hearing

BEFORE THE HONORABLE BRUCE D. WHITE

Fairfax, Virginia

Friday, November 15, 2019

11:19 a.m.

Job No.: 273271

Pages: 1 - 29

Reported by: Theresa R. Hollister, CCR

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Hearing held at:

Fairfax County Circuit Court
4110 Chain Bridge Road
Courtroom 5H
Fairfax, Virginia 22030
(703) 691-7320

Pursuant to notice, before Theresa R.
Hollister, Certified Court Reporter and Notary
Public for the Commonwealth of Virginia.

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A P P E A R A N C E S

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P R O C E E D I N G S

(Court reporter duly sworn by the Court.)

THE COURT: Okay, thank you all. Go ahead and note your appearances. Please.

MR. TREECE: Good morning, Your Honor. Joshua Treece from Woods Rogers on behalf of Ms. Heard. With me is Ben Rottenborn also on behalf of Ms. Heard.

THE COURT: Good morning.

MR. ROTTENBORN: Good morning, Your Honor.

MR. CHEW: Good morning, Your Honor. May it please the court. Ben Chew for Mr. Depp.

THE COURT: Good morning.

Okay, I'm ready when you all are.

MR. TREECE: Thank you.

Your Honor, we're here today on Ms. Heard's motion for an independent medical examination of Mr. Depp, pursuant to Virginia Rule 4:10. As the court is aware, Rule 4:10 provides that when the mental condition of a party is in controversy, the court, on a motion by the adverse

1 damages. There is no freestanding claim for either
2 intentional or negligent infliction of emotional
3 distress. All there are are counts for defamation.

4 Nor is there any specific allegation of
5 particular mental injury. In fact, there was none.
6 In these circumstances, a Colorado court has held
7 that where this is here there is only garden variety
8 allegation of emotional damages, the production of
9 medical records is appropriate, but an IME is not.
10 And that's precisely what Your Honor has already
11 ordered Mr. Depp to do. And what Mr. Depp has done.
12 And included in the records that will be produced
13 today, if they haven't been already, are the records
14 of Dr. Kipper. Dr. Kipper is also a fact witness.
15 We expect him to testify that he saw, he personally
16 witnessed violence between the couple, but the
17 violence was initiated by Ms. Heard. And Mr. Depp
18 did not even respond physically to that violence.
19 He will testify to that as a fact witness. So this
20 is a case of be careful what you wish for.

21 But more fundamentally, Your Honor,
22 Virginia courts and courts outside Virginia reject

1 2016 declaration, assertions in the 2016
2 declaration.

3 THE COURT: Your time is up.

4 MR. TREECE: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Request for an IME is denied. In this
7 case, the medical records of Mr. Depp have been
8 ordered to be produced. I assume will be produced
9 if they've not already been produced. The request,
10 in this case -- I don't want to characterize
11 anyone's actions badly, but to some extent the
12 request seems to me to be an effort to have a
13 medical assessment by an expert who would then be
14 offered as a witness to testify as to the
15 credibility of one of the parties. And I don't find
16 that to be appropriate or helpful. We have a jury
17 that will be in this case and they can be the
18 factfinders as to the credibility of the witness.
19 So I find no good cause shown for the IME in this
20 case and deny that request.

21 Would you do an order and note whatever
22 exceptions you all might have to it and pass that

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CERTIFICATE OF SHORTHAND REPORTER

I, Theresa R. Hollister, the court reporter before whom the foregoing hearing was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

Theresa R. Hollister



Theresa R. Hollister
Court Reporter

Exhibit 2

FILED UNDER SEAL

(Pursuant to the Stipulated Amended Protective Order entered by the
Court on June 21, 2021)

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

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Civil Action No.: CL-2019-0002911

PLAINTIFF'S DESIGNATION/IDENTIFICATION OF 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 June 27, 2019, and in response to Interrogatory No. 15 in Ms. Heard's First Set of Interrogatories dated October 7, 2019, hereby designates and identifies his 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, specifically Ms. Heard, have yet to occur—Plaintiff reserves the right to supplement this 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

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 Expert Designation, Ms. Heard has yet to grant access to the original devices, including mobile devices and computers (including laptops and iPads), as well as access to the operating system drives and cloud backups of these original devices for purposes of performing a physical extraction and direct examination of all relevant data from the original devices as requested in Mr. Depp's Seventh Set of Requests for Production, dated February 12, 2021, to Ms. Heard.

Mr. Neumeister's CV is attached hereto as **Exhibit D**. He is being compensated for his work at the rate of \$575 per hour; none of his compensation is contingent on the opinions he renders or the outcome of the litigation.

5. **Shannon J. Curry, PsyD, Clinical Psychologist, Curry Psychology Group, 200 Newport Center Drive, Suite 204, Newport Beach, California 92660.** Dr. Curry is a clinical psychologist with extensive experience and clinical and research 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.

Dr. Curry will testify concerning Ms. Heard’s behavior in the context of her relationship with Mr. Depp, including Ms. Heard’s abuse of Mr. Depp. Specifically, Dr. Curry is expected to draw upon her experience and expertise as a clinical and forensic psychologist as well as her review of current and relevant peer-reviewed scientific literature to testify as to the following:

- a. Ms. Heard exhibits patterns of behavior that are consistent with co-occurring Cluster B Personality Disorder traits, especially Borderline Personality Disorder (“BPD”);
- b. Ms. Heard repeatedly and characterologically perpetrated severe physical and psychological Intimate Partner Violence (“IPV”) toward Mr. Depp over the course of their relationship; and

- c. Ms. Heard exhibits patterns of behavior that suggest her allegations of abuse against Mr. Depp are false.

Dr. Curry's opinions will be based on a review of documentary evidence and deposition and trial testimony, including the deposition testimony of Ms. Heard in the 2016 divorce proceeding between Ms. Heard and Mr. Depp and the deposition testimony of Mr. Depp in this case, the documents, video and audio recordings, photographs, and text messages produced by Mr. Depp and Ms. Heard including documents submitted by Ms. Heard to obtain a temporary restraining order against Mr. Depp in 2016, the arrest records of Ms. Heard for domestic abuse against Ms. Tasya van Ree, and documents relating to Ms. Heard and her involvement, including any donations, to the American Civil Liberties Union, the documents produced by the Children's Hospital of Los Angeles, and the medical records produced by Dr. David Kipper, Dr. Connell Cowan, and Dr. Alan Blaustein. Dr. Curry's opinions will also be based on current and relevant peer-reviewed scientific literature. A full list of references that Dr. Curry has relied on thus far to form her opinion is attached hereto as **Exhibit E**.

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 Expert Witness 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 Expert Designation, the following depositions have yet to occur: Dr. David Kipper, Ms. Debbie Lloyd, Ms. Erin Falati, Ms. Heard's treating psychologists and physicians, Ms. Heard, and Ms. Tasya van Ree.

Depp's favor on his career going forward. In so doing, Ms. Baum may rely on her expertise in the entertainment industry and her experience as a publicist in that industry.

5. **Dr. David Kipper, MD, 153 South Lasky Drive, Beverly Hills, California 90210.** Dr. Kipper has been practicing internal medicine for decades and has served as Mr. Depp's treating physician for more than six years. Dr. Kipper also served as Ms. Heard's treating physician while Ms. Heard was in a relationship with Mr. Depp. Dr. Kipper is expected to testify as to the pharmacological effects of the medications prescribed on Mr. Depp, as well as medical opinions reached during the course of Mr. Depp and Ms. Heard's treatment. In so doing, Dr. Kipper may rely on his expertise and experience as a medical doctor practicing internal medicine.

Respectfully submitted,



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Dated: February 16, 2021

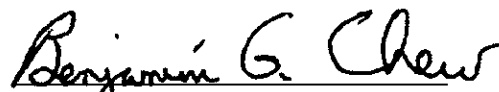
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February 2021, I caused copies of the foregoing to be served by email (per written agreement between Parties) on the following:

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Counsel for Defendant Amber Laura Heard


Benjamin G. Chew