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Transcript of Hearing

Date: October 16, 2020
Case: Depp, II -v- Heard

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Transcript of Hearing
Conducted on October 16, 2020

<p>1 VIRGINIA: 2 IN THE CIRCUIT COURT FOR FAIRFAX COUNTY 3 -----x 4 JOHNNY C. DEPP, II, 5 Plaintiff, 6 v. Case No. CL2019-0002911 7 AMBER LAURA HEARD, 8 Defendant. 9 -----x 10 11 Hearing on Motions 12 Before the HONORABLE BRUCE D. WHITE, Judge 13 Conducted Virtually 14 Friday, October 16, 2020 15 12:30 p.m. EST 16 17 18 19 20 Job No.: 329142 21 Pages: 1 - 38 22 Transcribed by: Bobbi J. Fisher, RPR, CET</p>	<p>1 APPEARANCES 2 ON BEHALF OF THE PLAINTIFF MR. DEPP: 3 BENJAMIN G. CHEW, ESQ. 4 BROWN RUDNICK, LLP 5 601 Thirteenth Street, NW, Suite 600 6 Washington, DC 20005 7 (202) 536-1700 8 9 ON BEHALF OF THE DEFENDANT MS. HEARD: 10 ELAINE CHARLSON BREDEHOFT, ESQUIRE 11 CHARLSON BREDEHOFT COHEN & BROWN, PC 12 11260 Roger Bacon Drive, Suite 201 13 Reston, VA 20190 14 (703) 318-6800 15 16 J. BENJAMIN ROTTENBORN, ESQUIRE 17 WOODS ROGERS, PLC 18 10 South Jefferson Street, Suite 1400 19 Roanoke, VA 24011-1319 20 (540) 983-7600 21 22</p>
<p>1 Hearing on Motions before the HONORABLE BRUCE D. 2 WHITE, Judge, conducted virtually. 3 4 5 Pursuant to Docketing, before Shaylah Lynn Kiser, 6 Digital Court Reporter. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 INDEX 2 PAGE 3 Argument by Mr. Chew 5 4 Argument by Ms. Bredehoft 12 5 Further Argument by Mr. Chew 34 6 7 8 9 EXHIBITS 10 (None.) 11 12 13 14 15 16 17 18 19 20 21 22</p>

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<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 MR. CHEW: Good morning, Your Honor.</p> <p>3 MS. BREDEHOFT: Good afternoon, Your</p> <p>4 Honor.</p> <p>5 THE COURT: We're on time.</p> <p>6 MR. CHEW: Good afternoon, Your Honor.</p> <p>7 THE COURT: Madame court reporter? There</p> <p>8 we go.</p> <p>9 (The court reporter was duly sworn.)</p> <p>10 THE COURT: Any preliminary matters or</p> <p>11 are we ready to go? (Indiscernible).</p> <p>12 MR. CHEW: I'm ready too.</p> <p>13 THE COURT: (Indiscernible) plea in bar</p> <p>14 to the Defendant's counterclaims.</p> <p>15 ARGUMENT ON BEHALF OF THE PLAINTIFF</p> <p>16 MR. CHEW: Thank you, Your Honor. Again,</p> <p>17 this is Ben Chew for Plaintiff, Johnny Depp. I'd</p> <p>18 like to reserve a minute, if I could, for reply.</p> <p>19 (Indiscernible) so I'll move quickly.</p> <p>20 The Court should sustain the demurrer to</p> <p>21 all three counts and grant Mr. Depp's plea in bar</p> <p>22 as to five of the eight statements set forth in</p>	<p style="text-align: right;">7</p> <p>1 and she asserted anti-SLAPP immunity in her plea in</p> <p>2 bar filed on September 5th, 2019, and more</p> <p>3 recently, she cites it in her fifth affirmative</p> <p>4 defense in her answer in grounds of defense filed</p> <p>5 on August 10th, 2020. So she understands it's a</p> <p>6 defense.</p> <p>7 Ms. Heard has acknowledged that Tyler is</p> <p>8 on point but her attempt to distinguish it at pages</p> <p>9 4 and 5 of her opposition fails, as Count 1 of her</p> <p>10 counterclaim is clearly the direct inverse of</p> <p>11 Mr. Depp's affirmative claims.</p> <p>12 Moving to Count 2 for defamation, Your</p> <p>13 Honor, the Court should sustain the demurrer to all</p> <p>14 eight statements, which refer -- which I will refer</p> <p>15 to by the exhibit letters in her counterclaim.</p> <p>16 That is Exhibits A through H; each one has a</p> <p>17 separate statement. Your Honor should dismiss that</p> <p>18 for several reasons. First, as Your Honor is</p> <p>19 aware, Virginia courts routinely hold that</p> <p>20 statements that someone is a liar or perpetrated a</p> <p>21 hoax are statements of opinion, and, therefore, are</p> <p>22 not actionable. See the Schaecher case at 290 Va.</p>
<p style="text-align: right;">6</p> <p>1 Count 2 of the counterclaims for defamation.</p> <p>2 First, the Court should sustain the demurrer to</p> <p>3 Count 1 for declaratory judgment because</p> <p>4 Ms. Heard's request for relief is merely a defense</p> <p>5 to Mr. Depp's affirmative claims, and, therefore,</p> <p>6 should be dismissed. See Tyler vs. Cashflow, where</p> <p>7 Judge Moon dismissed a counterclaim for declaratory</p> <p>8 judgment in which the defendant argued that it was</p> <p>9 not liable for defamation because it was merely a</p> <p>10 defense, masquerading as a counterclaim. That's</p> <p>11 precisely what Ms. Heard did here.</p> <p>12 At paragraph 59 of her counterclaim, she</p> <p>13 seeks a declaration that her December 2020 op-ed is</p> <p>14 immunized by the Virginia anti-SLAPP statute. From</p> <p>15 Virginia law, it's very clear that anti-SLAPP</p> <p>16 immunity is a defense to a defamation claim, not</p> <p>17 the basis for a cause of action. See Steele v.</p> <p>18 Goodman, Judge Lauck's case, and Smithfield Foods,</p> <p>19 which is Judge Payne, both from the Eastern</p> <p>20 District of Virginia in Richmond, both cases cited</p> <p>21 at page 1, footnote 1 of our reply.</p> <p>22 And, indeed, Ms. Heard understands this,</p>	<p style="text-align: right;">8</p> <p>1 83 at page 91, 2015, and the Owens case cited at</p> <p>2 page 3 of our reply, footnote 2.</p> <p>3 Ms. Heard has cited no authority to the</p> <p>4 contrary. Because all eight statements, Exhibits A</p> <p>5 through H, call Ms. Heard a liar or say she</p> <p>6 perpetrated a hoax and are, therefore,</p> <p>7 nonactionable opinion, the Court should sustain the</p> <p>8 demurrer to Count 2 in its entirety.</p> <p>9 Second, and as an independent grounds,</p> <p>10 the Court should sustain the demurrer as to all</p> <p>11 eight statements because they are all fair and</p> <p>12 accurate accounts of issues in Mr. Depp's lawsuit</p> <p>13 against Ms. Heard, and are, therefore, immune from</p> <p>14 a defamation claim. See the Bull versus</p> <p>15 Logetronics case, 323 F. Supp. 115, Eastern</p> <p>16 District of Virginia, 1971. Here, Mr. Depp, at</p> <p>17 pages -- at paragraphs 32 through 61 of his</p> <p>18 complaint, extensively describe how Ms. Heard faked</p> <p>19 her alleged facial injury and lied about Mr. Depp</p> <p>20 wrecking the penthouse. Mr. Depp's version of</p> <p>21 events, by the way, is supported by the testimony</p> <p>22 of Officer Siontz (ph) and Hayden (ph) that has</p>

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<p>1 already been introduced in this case. 2 Third, Statements B through H are 3 protected from liability on an independent grounds 4 because they were made in defense of Ms. Heard's 5 false claims of abuse in the December 2018 op-ed. 6 See the Haycox v. Dunn case, 200 Va. 212, 1958. 7 Statement A, the November 18th GQ article 8 was in defense to Ms. Heard's earlier false claims 9 of abuse. And contrary to Ms. Heard's assertion, 10 Statement F, Mr. Waldman sword-and-shield statement 11 is, indeed, a fair summary of the complaint -- see 12 paragraph 5 of the complaint -- and, therefore, 13 immune from liability and, also, not actionable 14 because it's an opinion and/or hyperbole. Again, 15 see the Schaecher case, please, 290 Va. 83 at 81 16 where the Court found that, quote, "Lying and 17 manipulating facts to her benefit," unquote, was 18 not actionable. 19 Even if any of these eight statements 20 were actionable -- and we contend that none of them 21 is actionable -- five of the eight; that is, 22 Statements A through E are statements -- Statements</p>	<p>1 Finally, Your Honor, Statement A, 2 Mr. Depp's November 18th GQ article was published 3 prior to the December 2018 op-ed, so Mr. Depp's 4 complaint that was filed on March 1, 2019, could 5 not possibly have tolled as to Statement A. 6 Moving lastly, Your Honor, to Count 3, 7 Defendant Heard fails to state a claim under the 8 Virginia Computer Crimes Act for three reasons. 9 Number one: She identifies no authority supporting 10 her position that the alleged smear campaign 11 constitutes a, quote, "threat of an immoral or 12 unlawful act," unquote, as required by the statute. 13 Rather, she only cites in her opposition two cases 14 involving potential tortious interference 15 liability, which would be a far cry from a claim 16 for violating this very serious criminal statute. 17 Second, Mr. Depp's private text messages 18 do not contain the type of obscene language 19 proscribed by the statute. See the Earhart v. 20 Commonwealth case cited at page 2 of our reply 21 where the Court held that the repeated use of the 22 F-word you, unquote, and "whore" -- the word</p>
10	12
<p>1 A through E are barred by Virginia's one-year 2 statute of limitations for defamation, and the 3 Court should sustain the plea in bar as to 4 Statements A through E. It is undisputed that 5 Ms. Heard filed her counterclaims on August 10th, 6 2020, so all statements prior to August 10th, 2019, 7 are time-barred. And these are their own 8 allegations as to when the statements were 9 published. 10 That knocks out Statements A through E. 11 Ms. Heard does not cite a single case holding that 12 the filing of a lawsuit for defamation tolls the 13 statute on a counterclaim for defamation based on 14 different statements made by different people 15 published by different media entities at a 16 different time. Indeed, Your Honor, the 17 overwhelming authority holds that two defamation 18 claims arising from different publications do not 19 arise from the same transaction and occurrence such 20 that the former tolls the statute of limitations 21 for the latter. And please see the English 22 Boiler & Tube case cited at page 4 of our reply.</p>	<p>1 "whore" were not obscene for purposes of this 2 statute. 3 Finally and perhaps thirdly and perhaps 4 most importantly, Your Honor, Ms. Heard cannot cite 5 any case where a Court found liability under the 6 computer harassment statute based on private 7 communications never sent to her. These 8 statements, Your Honor, are texts between Mr. Depp 9 and his friends. Ms. Heard saw them for the first 10 time only when they were produced in discovery. 11 This cannot possibly constitute the requisite, 12 quote, "intent to coerce, intimidate, or harass" 13 her because she never saw them. They were never 14 sent to her. 15 Thank you, Your Honor, and I'll preserve 16 the rest for reply. 17 THE COURT: Thank you. 18 ARGUMENT ON BEHALF OF THE DEFENDANT 19 MS. BREDEHOFT: Good afternoon, Your 20 Honor. Elaine Bredehoff, and with me is Ben 21 Rottenborn. We represent -- 22 THE COURT: Good afternoon to both of</p>

<p style="text-align: right;">13</p> <p>1 you.</p> <p>2 MS. BREDEHOFT: Thank you.</p> <p>3 I'm going to launch right in, Your Honor,</p> <p>4 and go in the same order. I'm going to start with</p> <p>5 the declaratory judgment, which is the -- under the</p> <p>6 SLAPP statute. Your Honor, I think it's important</p> <p>7 to distinguish what SLAPP stands for. It's a</p> <p>8 Strategic Lawsuit Against Public Participation.</p> <p>9 It's designed to burden the defendant with the high</p> <p>10 cost of litigation. That's the ABLV bank and the</p> <p>11 Abbas cases.</p> <p>12 Many states have adopted anti-SLAPP</p> <p>13 provisions with the purpose to stop the harm of</p> <p>14 incurring attorney's fees and costs in litigation</p> <p>15 and the chill associated with it. Most of these</p> <p>16 statutes allow for a particular procedural</p> <p>17 mechanism. And, in fact, most of them have a</p> <p>18 motion that is brought upfront which stays</p> <p>19 everything until it's determined. But Virginia</p> <p>20 does not have that. Virginia decided not to put a</p> <p>21 procedural mechanism in. And, in fact, even when</p> <p>22 they revisited the statute last year, still, did</p>	<p style="text-align: right;">15</p> <p>1 separate lawsuit simultaneously with it, and it</p> <p>2 explained that.</p> <p>3 Now, Ms. Heard's declaratory judgment</p> <p>4 does not turn on the disputed issue of Mr. Depp's</p> <p>5 defamation claim, and that's one of the premises of</p> <p>6 the plaintiff's argument here. It's not the</p> <p>7 inverse like Tyler. In Tyler, what the</p> <p>8 counterclaim says is everything that you're saying</p> <p>9 is wrong, it's false. That's not what the</p> <p>10 anti-SLAPP statute is saying. The anti-SLAPP</p> <p>11 statute is saying that these statements concerned,</p> <p>12 quote, "matters of public concern that would be</p> <p>13 protected under the First Amendment," end of quote.</p> <p>14 Now, this Court is going to determine whether the</p> <p>15 alleged defamatory statements are matters of public</p> <p>16 concern. Once this Court makes that determination,</p> <p>17 the jury determines whether the statements are</p> <p>18 subject to, quote, "actual malice and constructive</p> <p>19 knowledge that they are false and with reckless</p> <p>20 disregard for whether they are false."</p> <p>21 So whether Ms. Heard's SLAPP immunity</p> <p>22 would foreclose further litigation of Mr. Depp's</p>
<p style="text-align: right;">14</p> <p>1 not put any procedural mechanism in.</p> <p>2 So our contention that this enables the</p> <p>3 defendant to choose the proper procedure and</p> <p>4 vehicle to obtain a relief from the statute, rather</p> <p>5 than restricting to what the plaintiff chooses.</p> <p>6 Now, declaratory judgment is an</p> <p>7 appropriate mechanism for enforcing anti-SLAPP</p> <p>8 rights because the statutorily defined purpose of</p> <p>9 declaratory judgment is, quote, "To afford relief</p> <p>10 from the uncertainty and insecurity intended upon</p> <p>11 controversies over legal rights," end of quote, and</p> <p>12 Virginia Code Section 8.01-191 sets that out.</p> <p>13 Now, Ms. Heard is seeking interpretation</p> <p>14 of her rights under Virginia Code Section</p> <p>15 8.01-223.2. Further, to quote, "Declaratory</p> <p>16 judgments are to be liberally interpreted and</p> <p>17 administered with a view -- wide view to make these</p> <p>18 courts more serviceable to the people." That's the</p> <p>19 Reisen case, Your Honor, v. Aetna Life, and it's</p> <p>20 significant here. It's a Virginia Supreme Court</p> <p>21 case from 1983, but it's significant because it not</p> <p>22 only permitted the defense in that case but a</p>	<p style="text-align: right;">16</p> <p>1 claim is not a basis for denying declaratory relief</p> <p>2 here. It has nothing to do with it because it is a</p> <p>3 separate, complete issue, and it's one that she has</p> <p>4 the right for.</p> <p>5 Now, her rights have not fully matured.</p> <p>6 That's another argument that they made in their</p> <p>7 brief and came back in their reply. By definition,</p> <p>8 they can't be fully matured while the litigation is</p> <p>9 still going because that is the harm, is the</p> <p>10 litigation.</p> <p>11 Now, Plaintiff claims that we can't point</p> <p>12 to a single Virginia case allowing a counterclaim</p> <p>13 for declaratory relief under anti-SLAPP. He's</p> <p>14 right, because there aren't any. It has never been</p> <p>15 addressed. By the same token, the plaintiff cannot</p> <p>16 point to any Virginia Supreme Courts that says that</p> <p>17 you can or cannot. And that's because it's</p> <p>18 essentially a relatively new statute and Your Honor</p> <p>19 has the honor of really dealing with this issue</p> <p>20 upfront.</p> <p>21 And so I would argue just a couple of</p> <p>22 points of why the declaratory judgment counterclaim</p>

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<p style="text-align: right;">17</p> <p>1 is the most logical procedural vehicle in this 2 case. The first of them is the declaratory 3 judgment is to afford relief from the uncertainty 4 and insecurity attended with controversies over 5 legal rights. Here, the uncertainty is whether the 6 anti-SLAPP statute applies and, therefore, immunity 7 applies. The Court needs to make that declaration, 8 and so that would be very appropriate here. Then 9 and only then does it go to the jury. 10 The second reason, Your Honor -- and I 11 think this is a very compelling one -- the 12 counterclaim is the only way to ensure that the 13 defendant is able to be compensated for losses 14 under the statute in Virginia. Recall we have the 15 non-suit. And so if the plaintiff were to non-suit 16 at any point or even dismiss outright, once the 17 case is dismissed, if it's just brought by a plea 18 in bar, just brought by a defense, then there's no 19 way to remain in and say, "Your Honor, I want this 20 declared this way and may I get attorney's fees for 21 it?" There's nothing within that procedure. You 22 have to arguably go and file an entirely new</p>	<p style="text-align: right;">19</p> <p>1 the plaintiffs have gone to great pains to not 2 quote what the counterclaim says has been said. 3 It's not just an issue of "liar." There are far 4 more serious allegations that are made here. And 5 even in their reply brief, Your Honor, they just 6 make the point of saying, "Oh, liar is not 7 actionable." In fact, that's what they stated 8 today. 9 But I think it's very important to 10 understand it, and Your Honor has said the same 11 thing: Content is everything. You need to be able 12 to look at it. And the Virginia Supreme Court, 13 even in the Schaecher decision, has said that it's 14 actionable if it, quote, "implies an assertion of 15 objective fact." In other words, if we can 16 disprove the facts, then it is not merely opinion. 17 And I think it's worth saying what some 18 of these statements are, not only for here but 19 later for the other points that are made. In 20 paragraph 34 -- this is the GQ interview -- there 21 is, quote, "no truth to Ms. Heard's judicial 22 statements and reviews whatsoever." And he alleged</p>
<p style="text-align: right;">18</p> <p>1 lawsuit and start from scratch again, and that 2 doesn't make any sense, and it certainly is not 3 judicially sound and it's not economically sound 4 from anybody's perspective. 5 Third, there is a justiciable controversy 6 warranting declaratory relief. The harm continues 7 as the lawsuit continues. And, finally, you can 8 have both a defense and a counterclaim. Not only 9 does the Reisen case say that and have even a more 10 historic one, but just look at all the different 11 types of pleadings that we make in addition to 12 pleas in bars for other things, like, quote, "not 13 entitled to the relief requested." That's almost 14 in every affirmative defense. "Statute of 15 limitations," it's in the defense and it's in the 16 plea in bar. Unclean hands. First material 17 breach. All of these suggest that. Absolutely 18 nothing suggests that we cannot proceed under this 19 under declaratory relief. 20 The second claim, Your Honor, is 21 defamation. And I think the most important point 22 here, Your Honor, is that it almost appears that</p>	<p style="text-align: right;">20</p> <p>1 that Ms. Heard fabricated the bruising on her face 2 and perjured herself in connection with the 2016 3 DVRO. 4 Paragraph 42 alleges -- and this is April 5 12, 2019 -- Ms. Heard committed, quote, 6 "Defamation, perjury, and filing and receiving a 7 fraudulent temporary restraining order demand with 8 the Court," end of quote. 9 Paragraph 43, quote: "Ms. Heard 10 continues to defraud her abuse hoax victim, 11 Mr. Depp, the Me Too movement she masquerades as 12 the leader of and other really abuse victims 13 worldwide." 14 Paragraph 44, Ms. Heard, quote, "went to 15 court with painted-on bruises to obtain a temporary 16 restraining order on May 27th. And, further, 17 Ms. Heard's battered face was a hoax." 18 Paragraph 45, quote: "Amber Heard and 19 her friends in the media used fake sexual violence 20 allegations as both a sword and a shield, depending 21 on their needs. They had selected some of her 22 sexual violence hoax facts as a sword, inflicting</p>

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<p style="text-align: right;">21</p> <p>1 them on the public and Mr. Depp." 2 Paragraph 46: "Quite simply, this was an 3 ambush, a hoax. They set Mr. Depp up by calling 4 the cops, but the first attempt didn't do the 5 trick. The officers came to the penthouses, 6 thoroughly searched and interviewed, and left after 7 seeing no damage to face or property. So Amber and 8 her friends spilled a little wine and wrecked the 9 place up, got their stories straight under the 10 direction of a lawyer and publicist, and then 11 placed a second call to 9-1-1." 12 Paragraph 47 says, committing a, quote, 13 "abuse hoax," end of quote. 14 And it goes on with paragraph 48 and 49. 15 But I think it's important, Your Honor, 16 to understand this not only for purposes that this 17 is far more than a generic calling somebody a liar. 18 This is very specific and can be demonstrably 19 disproven, and it's not just opinion, it is 20 something that, under the cases that we have cited, 21 is quite actionable. 22 The second argument that the plaintiff</p>	<p style="text-align: right;">23</p> <p>1 "privilege." Instead, what they're asking for are 2 qualified privileges of different natures, and a 3 qualified privilege attaches to, quote, 4 "communications between persons on a subject in 5 which the persons have an interest or duty," end of 6 quote. 7 Significantly on that, Your Honor, the 8 Court determines, as a matter of law, whether the 9 communication is qualifiedly privileged, and 10 sometimes that may not be able to be determined 11 until you have a lot more evidence. But the 12 question of whether the qualified privilege was 13 lost or abused is a question for the jury, so it's 14 not a basis for a demurrer under any circumstance 15 here. 16 Now, based on Mr. Depp's briefs and the 17 argument of counsel today, they're claiming that 18 they're immune because of this fair summary 19 privilege and the holding of Bull vs. Logetronics, 20 which was an Eastern District of Virginia case in 21 1971 and is not binding on this case. But we went 22 through a pretty significant analysis, Your Honor,</p>
<p style="text-align: right;">22</p> <p>1 contends in defamation is this concept of immunity 2 and privilege. And I think there's a lot of 3 confusion, Your Honor, over what constitutes 4 immunity and what constitutes privilege here, and I 5 think it's important. The absolute judicial 6 immunity only applies to words spoken or written in 7 a judicial proceeding that are relevant and 8 pertinent to the matter under inquiry. Well, it 9 doesn't allow them to go to the press, Your Honor, 10 and that's what these all are. They're press 11 articles. So there's no judicial immunity. The 12 only extension that the Virginia Supreme Court has 13 permitted on that is in the Mansfield v. Bernabei 14 case, and Your Honor may recall that with Judge 15 Ney. That was an instance where counsel for one 16 had written a letter to counsel for the other, and 17 they determined, under those circumstances, 18 pre-litigation, that that would apply. 19 So judicial immunity is not something 20 that's at issue here today, and as we pointed out 21 in our brief, they don't really argue it but they 22 kind of interchange the word "immunity" and</p>	<p style="text-align: right;">24</p> <p>1 in our opposition about what that was, and it's 2 very specifically the privilege requires that the 3 article be a fair and accurate account of the 4 record. 5 Now, Your Honor heard me going back and 6 reading what we had alleged had been said by Mr. 7 Depp and Mr. Waldman on his behalf. None of those 8 would be reasonably a fair and accurate account of 9 the record. 10 Also in Logetronics, it's a very, very 11 thick case, Your Honor, but one of the things 12 that's important is there was a taking of evidence 13 and a determination made after reviewing 14 significant evidence to make the determination 15 unfair and accurate. 16 The other thing that was important on 17 that, Your Honor, is the next part of the ruling in 18 Logetronics was that calling somebody a crook 19 required more evidence, and they were going to have 20 to look at the content. 21 Now, some of Mr. Depp's defamatory 22 statements are made in November of 2018, before the</p>

<p style="text-align: right;">25</p> <p>1 complaint was ever filed and before Ms. Heard's 2 op-ed was ever filed, so they can't claim it there. 3 And then, as I have already pointed out and I think 4 is pretty obvious, none of these statements that we 5 are claiming are actionable constitute any type of 6 a fair and accurate reporting. 7 This Haycox v. Dunn, 1958 Virginia 8 Supreme Court, of self-defense is also a factual 9 one that would have to be determined later and also 10 would be subject to the jury's determination of 11 abuse. But how can they claim that they are 12 responding to an attack by Ms. Heard. First, they 13 can't claim it in the GQ article because it's 14 before her op-ed, but the op-ed, again, doesn't 15 name him specifically, and he brings the lawsuit to 16 bring his point there if he needs relief. 17 All of these statements -- and that's why 18 I read them to Your Honor -- are very clearly far, 19 far beyond that. They have chose to choose this 20 judicial system. They filed the suit in March of 21 2019, and they should respect the judicial process 22 and try this case in the judicial process. Your</p>	<p style="text-align: right;">27</p> <p>1 questions of fact for juries. They must be decided 2 in a factual context, not on demurrer. So demurrer 3 would be inappropriate for these. 4 Now, it is our argument, Your Honor, as 5 we start with the threatened or illegal or immoral 6 act, because I think it's important to look at that 7 one first. This is something that, as we said in 8 Moter, must be decided by fact-finders what 9 constitutes the quote -- let me back up here. 10 So it only requires proof of a, quote, 11 "threatened illegal act, a violation of the 12 criminal code, oral code, or code of immoral act, a 13 violation of," quote, "society's social code 14 reflecting its collective sense of moral 15 propriety," end of quote. 16 And then the -- this is the Moter court, 17 and it goes on -- "The existence of a threat, as 18 well as the immortality of the threatened act must 19 be decided by fact-finders who have the opportunity 20 to see and hear the "living record", end of quote, 21 end of quote. 22 So start there, Your Honor, because what</p>
<p style="text-align: right;">26</p> <p>1 Honor has even said many times "I don't want this 2 case tried in the press," yet that's exactly what 3 they're doing. There's no privilege attached to 4 that. 5 Now, with respect to the Computer Crimes 6 Act, Your Honor, I think that there's some very 7 important things that have to be pointed out here. 8 It's with the intent to coerce, intimidate, or 9 harass any person that there are three disjunctive 10 manners in which this can be done, and if any of 11 those are issues of fact, then that would be 12 sufficient to defeat the demurrer. 13 The first is communicate obscene, vulgar, 14 profane, lewd, lascivious, or indecent language. 15 The second -- and it's an "or," Your Honor -- make 16 any suggestion or proposal of an obscene nature. 17 The third -- and it's an "or" again -- threaten any 18 illegal or immoral act. 19 Now, significantly, we have cited Moter 20 v. Commonwealth, Your Honor. That says very 21 importantly you don't have to have -- require proof 22 of obscenity for the third one and all of these are</p>	<p style="text-align: right;">28</p> <p>1 we have here is we have an online smear campaign 2 that has two change.org petitions: One to remove 3 Ms. Heard as an actress in the Aquaman movie 4 franchise, one to remove her as a spokeswoman for 5 L'Oreal. "A significant number of the accounts 6 that have signed the petition are conspicuously 7 fake or highly suspicious." That's at paragraph 9. 8 In addition, the change.org petitions 9 were modified to make it appear that far more 10 people signed the petitions than actually did and 11 were amplified by foreign language social media 12 accounts to target Ms. Heard. Using fake social 13 media accounts to sign a petition violates the 14 society's social code reflecting its collective 15 sense of moral impropriety. To us, that one, in 16 and of itself does it without anything else. 17 Now, in the reply brief, Mr. Depp has 18 argued that it can only be a criminal, but as I 19 cited right from the Moter case, Your Honor, there 20 are three different ways. It can be an illegal 21 act, a criminal code, or proof of immoral act. It 22 doesn't require just criminal code.</p>

<p style="text-align: right;">29</p> <p>1 And the second thing that I thought was 2 interesting is because we said, in our brief, that 3 a tort -- you know, if it's a violation of a tort, 4 like tortious interference, that would be 5 sufficient. And they argued in the reply brief 6 that that's not illegal. Well, the last time I 7 checked, you know, just about everything I have 8 been doing is filing causes of action when 9 something's illegal. It's still illegal under the 10 civil laws, and that's sufficient. But, even then, 11 we have a third prong which is just against 12 society's social code. 13 The next part is the sufficiently 14 obscene, vulgar, profane, lewd, lascivious, and 15 indecent actions. Barson v. Commonwealth really 16 set that out, and we set that out in our brief. 17 And it really goes to the prurient nature, and it's 18 important because of what Mr. Depp's counsel argued 19 today and in the reply brief. They have argued 20 that they brought up the Earhart case and they 21 brought up the English case. 22 First of all, the English case was an</p>	<p style="text-align: right;">31</p> <p>1 supposed to be used as precedential value. It's 2 not binding on this Court anyway because it's 3 Fourth Circuit, but... 4 THE COURT: I understand that, but what 5 you basically said is I can't use that. You know, 6 I can't think about it and can't have it in my 7 mind. Maybe you're right. 8 MS. BREDEHOFT: I can't control that, 9 Your Honor, clearly. Clearly. And maybe I -- 10 THE COURT: Well, I'm not trying to take 11 up your time. Mr. Chew's got a minute left, and 12 you have got a minute left. 13 MS. BREDEHOFT: Oh, boy. Okay. 14 In any event, so the Earhart case and the 15 ones that were in their footnote, Your Honor, were 16 not cases of -- where there was a prurient issue, 17 and they clearly have indicated -- the Virginia 18 Supreme Court has clearly indicated that that is a 19 question for the jury. 20 The last question they make is if you 21 have between private people. There's no 22 restriction on the Computer Crimes Act between</p>
<p style="text-align: right;">30</p> <p>1 unpublished opinion that's not permitted to be 2 used, but the Earhart case, in particular, the case 3 that they're talking about, is -- 4 THE COURT: Let me slow you down just a 5 minute, Ms. Bredehopt, because we're getting fairly 6 close to our time limit, and I heard you say 7 something; I just didn't understand it. An 8 unpublished opinion is not to be used? Is that 9 what your -- you believe the law is? 10 MS. BREDEHOFT: Your Honor, I have the 11 English -- it's a decision without published 12 opinion, is the English Boiler & Tube. So there 13 wasn't a published opinion on it. 14 THE COURT: You said it's not to be used. 15 Does that mean I cannot consider it in any fashion? 16 MS. BREDEHOFT: Well, Your Honor, I -- 17 THE COURT: I don't understand about your 18 argument. 19 MS. BREDEHOFT: Maybe I'm -- this is a 20 Fourth Circuit one, but my understanding is, when 21 they choose not to publish an opinion, that it's 22 not supposed to be used for any purpose. It's not</p>	<p style="text-align: right;">32</p> <p>1 private people. The intent of what was intended, 2 who the recipient is, most of these don't have 3 anything to do with -- they weren't designed at 4 Ms. Heard, but they don't have to be. 5 Let me go to the plea in bar very 6 quickly. Statute of limitations. March 19, 2019, 7 Mr. Depp filed his complaint, and he alleged, in 8 his words, quote, "Depended on the central premise 9 that Ms. Heard was a domestic abuse victim and that 10 Mr. Depp perpetrated domestic violence against her 11 during their relationship and marriage, as 12 Ms. Heard had testified when she, quote, 'publicly 13 accused Mr. Depp of domestic abuse in 2016 when she 14 appeared in Court with an apparently battered face 15 and obtained a temporary restraining order against 16 Mr. Depp'." 17 All of the claims that we have arise out 18 of this, and that's what the statute allows, and we 19 have cited very strong authority for this. They do 20 not have strong authority from that on this one, 21 Your Honor. It's all very, very clearly this type. 22 The cases they cite are talking about</p>

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<p style="text-align: right;">33</p> <p>1 republication after another lawsuit, and we're not 2 arguing republication. Those are just inapposite. 3 Let me finish with anti-SLAPP statute. 4 And this is important, and it was, I think, 5 conceded by them because it was not addressed in 6 their reply. They don't have -- and they have put 7 it before this Court, but all of these statements 8 are personal in nature. None of them are on a 9 matter of public concern that would be protected by 10 the First Amendment. They're all very, very 11 clearly personal to Mr. Depp, personal between he 12 and his former wife, saying she's lying, she's 13 wrong, etc. There's nothing there that's of value 14 of public concern for First Amendment, and I think 15 they have conceded that, and I would ask the Court, 16 therefore, to grant that plea in bar. 17 I think we have more than sufficiently 18 laid out what we need to in this complaint, Your 19 Honor, and I would ask that the demurrers and the 20 pleas in bar be denied. 21 THE COURT: Thank you. 22 Mr. Chew?</p>	<p style="text-align: right;">35</p> <p>1 our Virginia Computer Crimes Act, a tort is not a 2 crime, number one, and number two, Ms. Heard cannot 3 cite any case where a court found liability under 4 the computer harassment statute based on private 5 communications that were never sent to her. There 6 could have been no harassment. Not saying these 7 were pretty emails, pretty texts, but they were 8 never sent to her. There was no threat. These 9 were emails or texts, rather, among friends, and 10 she can't cite a single case where that has formed 11 a predicate for liability under the Virginia 12 Computer Crimes Act. 13 Thank you, Your Honor. 14 THE COURT: Thank you. Both of you -- I 15 know you have the court reporter there, and what 16 I'd like to do, if it's okay with you-all -- I know 17 you're going to send me the transcript anyway -- 18 but if you'll send me a copy of the transcript of 19 today's arguments, and I'll go through them and 20 come up with a ruling for you on all those things. 21 I'm not sure when that will be, but y'all can get 22 that up and be fine. You don't need to expedite</p>
<p style="text-align: right;">34</p> <p>1 FURTHER ARGUMENT ON BEHALF OF THE PLAINTIFF 2 MR. CHEW: Very briefly, Your Honor. 3 Ms. Bredehoff concedes she doesn't have a single 4 case that would allow declaratory judgment action 5 for an anti-SLAPP defense. We have cited Steel v. 6 Goodman and Smithfield Foods, both from the Eastern 7 District of Virginia. At page 1, footnote 1 of our 8 reply brief, it says that anti-SLAPP is a defense. 9 It's not -- it cannot support an affirmative cause 10 of action. 11 Two, she concedes that Tyler v. Cash Flow 12 is on point, and that's where Judge Moon dismissed 13 the counterclaim saying -- for a declaratory 14 judgment and precisely what you have here, saying 15 it was a defense masquerading as a counterclaim. 16 Third, all of Statements A through E from 17 the GQ article through the People magazine in July 18 3, 2019, were all published more than one year 19 prior to Ms. Heard's filing for counterclaims. 20 They're clearly barred by the one-year statute of 21 limitations. 22 And, finally, Your Honor, with respect to</p>	<p style="text-align: right;">36</p> <p>1 the transcript of today's hearing. Okay? 2 MR. CHEW: Thank you very much, Your 3 Honor. 4 THE COURT: Thank you all. Hope everyone 5 has a good weekend and stay safe. 6 MS. BREDEHOFT: Thank you, Your Honor. 7 Take care. 8 (At 1:02 p.m., the above hearing 9 concluded.) 10 11 12 13 14 15 16 17 18 19 20 21 22</p>

<p style="text-align: center;">37</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 3 I, SHAYLAH LYNN KISER, the officer before 4 whom the foregoing deposition was taken; do hereby 5 certify that said proceedings were electronically 6 recorded by me; and that I am neither counsel for, 7 related to, nor employed by any of the parties to 8 this case and have no interest, financial or 9 otherwise, in its outcome. 10 IN WITNESS WHEREOF, I have hereunto set my 11 hand and affixed my notarial seal this 16th day of 12 October, 2020. 13 <i>Shaylah L. Kiser</i> 14 _____ 15 SHAYLAH LYNN KISER 16 17 18 19 20 21 22</p>	
<p style="text-align: center;">38</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 3 I, Bobbi J. Fisher, do hereby certify that 4 the foregoing transcript is a true and correct 5 record of the recorded proceedings; that said 6 proceedings were transcribed to the best of my 7 ability from the audio recording and supporting 8 information; and that I am neither counsel for, 9 related to, nor employed by any of the parties to 10 this case, and I have no interest, financial or 11 otherwise, in its outcome. 12 <i>Bobbi Fisher</i> 13 _____ 14 Bobbi J. Fisher, RPR, CET 15 NCRA Registered Professional Reporter (RPR) 16 AAERT Certified Electronic Transcriber No. CET-1148 17 October 16, 2020 18 19 20 21 22</p>	