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CLERK, CIRCUIT COURT
FAIRFAX, VA

Transcript of Hearing

Date: January 8, 2021
Case: Depp, II -v- Heard

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

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Transcript of Hearing
Conducted on January 8, 2021

<p>1 VIRGINIA: 2 IN THE CIRCUIT COURT FOR FAIRFAX COUNTY 3 -----x 4 JOHN C. DEPP, II, : 5 Plaintiff, : 6 v. : Civil Action No. 7 AMBER LAURA HEARD, : CL-2019-0002911 8 Defendant. : 9 -----x 10 11 Hearing before THE HONORABLE BRUCE D. WHITE 12 Conducted Virtually 13 Friday, January 8, 2021 14 11:05 a.m. EST 15 16 17 18 19 20 Job No.: 336310 21 Pages: 1 - 35 22 Reported By: Paul P. Smakula</p>	<p>1 A P P E A R A N C E S 2 ON BEHALF OF PLAINTIFF DEPP: 3 BENJAMIN G. CHEW, ESQUIRE 4 BROWN RUDNICK LLP 5 601 Thirteenth Street Northwest 6 Suite 600 7 Washington, D.C. 20005 8 (202) 536-1785 9 10 ON BEHALF OF DEFENDANT HEARD: 11 J. BENJAMIN ROTTENBORN, ESQUIRE 12 WOODS ROGERS PLC 13 10 South Jefferson Street, Suite 1400 14 P.O. Box 14125 15 Roanoke, Virginia 24038 16 (540) 983-7600 17 18 19 20 21 22</p>
<p>1 Hearing before THE HONORABLE BRUCE D. WHITE, 2 conducted virtually: 3 4 5 6 7 8 9 Pursuant to notice, before Paul P. Smakula, 10 Notary Public in and for the State of Maryland. 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 A P P E A R A N C E S C O N T I N U E D 2 ON BEHALF OF DEFENDANT HEARD: 3 ELAINE CHARLSON BREDEHOFT, ESQUIRE 4 CHARLSON, BREDEHOFT, COHEN & BROWN 5 11260 Roger Bacon Drive 6 Suite 201 7 Reston, Virginia 20190 8 (703) 318-6800 9 10 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 THE COURT: Good morning, everybody. We</p> <p>3 have motions to compel depositions, motion to</p> <p>4 quash, motion for protective order, motions for</p> <p>5 sanctions. I'm ready to hear you all when you're</p> <p>6 ready.</p> <p>7 MR. ROTTENBORN: Okay. Thank you, Your</p> <p>8 Honor. I guess what I'll do, since there are two</p> <p>9 motions, I'll just address both our affirmative</p> <p>10 motion and our response to their motion for</p> <p>11 protective order in my opening remarks, saving a</p> <p>12 few minutes for rebuttal, if that works.</p> <p>13 THE COURT: Sure. And I'll mute so you</p> <p>14 get no feedback or little feedback.</p> <p>15 MR. ROTTENBORN: Thank you, Your Honor.</p> <p>16 So to -- at the outset, I wanted to say we're not</p> <p>17 seeking a two-day deposition of Mr. Waldman</p> <p>18 anymore in light of the Court's ruling on the</p> <p>19 counterclaim. We believe one day would be</p> <p>20 sufficient since we won't be exploring as many of</p> <p>21 the issues that were alleged in the counterclaims</p> <p>22 anymore. But really the issues for today are</p>	<p style="text-align: right;">7</p> <p>1 But Mr. Waldman, who was copied on that</p> <p>2 email, could easily have respond and clarified his</p> <p>3 position, but he didn't do that. Nor was any</p> <p>4 authority or an address for service of a subpoena</p> <p>5 provided, which we explicitly asked for. And that</p> <p>6 was significant because when Mr. Waldman was</p> <p>7 admitted in this case, the address that was listed</p> <p>8 was a D.C. office for something -- I think it was</p> <p>9 called the Endeavor Law Group or something like</p> <p>10 that. But over the summer papers that were served</p> <p>11 at that address were returned. So that address</p> <p>12 isn't valid anymore, we don't believe.</p> <p>13 And we have yet to receive from the other</p> <p>14 side a valid address for service of a subpoena.</p> <p>15 We don't know where Mr. Waldman is. We think he's</p> <p>16 in California, but I'm not sure. So we provided</p> <p>17 two months' notice. We asked them to explain</p> <p>18 their position. They have plenty of time to move</p> <p>19 for a protective order --</p> <p>20 THE COURT: Can I interrupt you for one</p> <p>21 second, Mr. Rottenborn?</p> <p>22 MR. ROTTENBORN: Of course.</p>
<p style="text-align: right;">6</p> <p>1 service, the propriety of Mr. Depp's protective</p> <p>2 order motion, and does he need to be deposed, do</p> <p>3 we need to take the deposition of Mr. Waldman.</p> <p>4 So I'll start with the issue of service.</p> <p>5 We believe he was properly served, Your Honor. We</p> <p>6 noticed this deposition of him in August, two</p> <p>7 months before the stated date for his deposition</p> <p>8 of October 14th with an email -- and this is in</p> <p>9 the record -- with an email that said we don't</p> <p>10 believe that this requires subpoena, because he's</p> <p>11 an agent of Mr. Depp acting on his behalf and</p> <p>12 subject to his control. But if the other side</p> <p>13 believed a subpoena was required, please provide</p> <p>14 authority and an address for service of that</p> <p>15 subpoena.</p> <p>16 And at the time service by email as it</p> <p>17 remains was agreed to by the parties pursuant to</p> <p>18 the order that's in our papers. Mr. Depp's side</p> <p>19 didn't either. Mr. Chew responded on behalf of</p> <p>20 both him and Ms. Vasquez from Brown Rudnick that</p> <p>21 they were not authorized to accept service for</p> <p>22 Mr. Waldman.</p>	<p style="text-align: right;">8</p> <p>1 THE COURT: Was there an interrogatory or</p> <p>2 any type of a discovery request seeking his</p> <p>3 address or was it simply the communications?</p> <p>4 MR. ROTTENBORN: I don't believe there was</p> <p>5 a discovery request, Your Honor. When we -- our</p> <p>6 position was that the email notice was sufficient</p> <p>7 and we -- you know, we asked them if they thought</p> <p>8 he needed a subpoena to give us the address as a</p> <p>9 matter of courtesy, we expected that they would've</p> <p>10 done that, but they did not do that. So instead</p> <p>11 they just didn't show up.</p> <p>12 And that was right after Your Honor made</p> <p>13 the ruling on Mr. Depp's deposition for not</p> <p>14 showing up to his validly noticed deposition, and</p> <p>15 so we -- just days after that, so we expected that</p> <p>16 there was a chance that Mr. Waldman might show up</p> <p>17 and claim they he had shown up, he was ready to be</p> <p>18 deposed, and we had blown our chance to depose him</p> <p>19 or that potentially he was entitled to fees or</p> <p>20 costs as a result of that. So we had an attorney</p> <p>21 and a court reporter on hand on October 14th to</p> <p>22 take his deposition, and of course he didn't show.</p>

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<p style="text-align: right;">9</p> <p>1 And in the lead up to that, I believe the 2 last it was discussed substantively was on 3 August 25th where Mr. Chew had responded, I 4 believe on August 18th, on behalf of him and we 5 believe just him and Mr. Vasquez before -- we 6 never got a response from Mr. Waldman contending 7 that Waldman shouldn't be deposed. We informed 8 them on August 25th, we'd be willing to work with 9 them on logistics, but we believe we had validly 10 noticed them, and if they disagreed to either 11 provide us the address or they could file the 12 motion. They haven't -- they didn't do that until 13 last week. 14 And so Rule 412D makes very clear that's 15 just not how this is supposed to work. They were 16 supposed to move for a protective order prior to 17 October 14th. They waited two and a half months 18 to do that, and they should know that because 19 we've addressed this very issue with respect to 20 Mr. Depp, who skipped his deposition. So as a 21 result, like I say, we were ready to depose him on 22 October 14th. I believe denying our motion on the</p>	<p style="text-align: right;">11</p> <p>1 Now, the Western District of Virginia has 2 remarked that Shelton shouldn't apply to -- should 3 only apply when you're talking about deposing 4 litigation or trial counsel, which Mr. Waldman is 5 not, or when you're going for litigation strategy, 6 which we're clearly not here. 7 But as an initial matter, Judge, the three 8 actionable statements of defamation by Mr. Depp 9 toward Ms. Heard that Your Honor found could move 10 forward as part of Ms. Heard's counterclaim were 11 all spoken, I believe, by Mr. Waldman. So he's 12 the speaker of these statements. We've alleged 13 that he was making those statements as an agent 14 for Mr. Depp. We have to prove that, obviously, 15 as part of our counterclaim. So we believe that 16 the inquiry about whether or not we should get to 17 depose him can start and stop right there. 18 But the first factor, no other means exist 19 to obtain the information requested, this -- 20 whether or not he's -- like I said, he's the 21 person who's spoken three defamatory statements in 22 the counterclaim, we believe we're entitled to ask</p>
<p style="text-align: right;">10</p> <p>1 grounds of service would render 412D meaningless 2 because they had two months' notice. Mr. Waldman 3 clearly he was a recipient of the email with the 4 notice, they could have teed this up much sooner. 5 So I believe that covers the service and 6 the procedure part of this, and now I'll talk 7 about why we need him. He admits that he's an 8 agent of Mr. Depp, both before and after his pro 9 hac vice revocation. The fact that his pro hac 10 vice has been revoked doesn't get him off the 11 hook, because as Mr. Depp's agent and his 12 attorney, as they've -- papers detail in email 13 from him, that he's the attorney both for Mr. Depp 14 and Mr. Depp's companies, which significantly are 15 companies that they're putting forth in response 16 to our discovery requests relating to damages. 17 So admitting he's an agent for both of 18 those, Mr. Depp individually and Mr. Depp's 19 companies, and under the Shelton factors, which 20 I'll go ahead and discuss because Mr. Depp 21 discusses those in his brief. We believe he's 22 clearly able to be deposed.</p>	<p style="text-align: right;">12</p> <p>1 him questions about that, about nonprivileged 2 facts relating to that. He's the one speaking to 3 third parties in the press, including as recently 4 as last -- just restarted his Twitter assaults and 5 campaign just last week -- and I'm not sure if 6 Your Honor has seen any of that -- but he's -- 7 with relation to a number of matters, but 8 including the charitable donation issue, which as 9 I understand it is no longer a grounds for appeal 10 in the UK, so the alleged emergency of getting 11 those de-designated was so that Mr. Waldman could 12 spew facts about those, and the documents 13 themselves on Twitter. 14 He's also re-tweeted the Op-ed that 15 Mr. Depp is suing Ms. Heard for, thereby 16 republishing it, so we're entitled to ask him 17 questions about damages relating to that. Depp 18 has -- we've tried to get some of this information 19 from Mr. Depp in his three-day long deposition. 20 He said that Mr. Depp doesn't run -- Ms. Depp said 21 he doesn't run the social media side of things, 22 others run it for him, so we have not gotten that</p>

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<p style="text-align: right;">13</p> <p>1 information from Mr. Depp. Mr. Waldman very 2 clearly is not acting as Mr. Depp's lawyer most of 3 the time. When he's out tweeting these things, 4 he's not -- he's never -- when he was in this case 5 he didn't make an appearance, he never 6 participated in the litigation process at all. 7 Now he's out of the case, he's simply making 8 public statements in the same way that a PR agent 9 would or something like that. 10 And Mr. Depp, in his deposition he refused 11 to respond when he was asked if Mr. Waldman was 12 authorized to make these statements on his behalf. 13 So we've alleged that he made these statements as 14 Mr. Depp's agent, we need to prove that, and we 15 believe that Mr. Waldman is critical to that. If 16 -- the second Shelton factor, Your Honor, is 17 whether the information sought is relevant and 18 nonprivileged. 19 Again, we're not -- we don't intend to ask 20 about litigation strategy. Obviously there may be 21 some attorney-client privilege assertions. We'll 22 take those seriously, of course. I believe the</p>	<p style="text-align: right;">15</p> <p>1 statements that Mr. Waldman made -- have made to 2 third parties, including the Daily Mail and other 3 publications in which he made these actionable 4 defamatory statements that fall well outside the 5 realm of attorney-client privilege. So we have no 6 intention of going there, but there's plenty of 7 nonprivileged stuff to ask him about, both in his 8 capacity as a nonlawyer who's -- a lawyer who's 9 doing nonlegal work in this case, and his 10 communications with third parties. And I believe 11 I've discussed why the information is crucial to 12 the preparation of the case, Your Honor, so with 13 that I'll reserve the rest of my time for 14 rebuttal. 15 THE COURT: Thank you. Mr. Chew. 16 MR. CHEW: Good morning, Your Honor. May 17 it please the Court, Ben Chew for plaintiff, 18 Johnny Depp. The Court should deny defendant's 19 motion to compel Mr. Waldman's deposition in order 20 Ms. Heard to reimburse Mr. Depp for the cost in 21 attorneys' fees in responding to what defendant's 22 counsel knows is a frivolous motion.</p>
<p style="text-align: right;">14</p> <p>1 parties will be able to work those out and take 2 those as they come. But Mr. Depp claims in his 3 briefing that anything that might possibly have to 4 do with these statements that Mr. Waldman made is 5 attorney-client privileged because Mr. Waldman 6 wasn't Mr. Depp's attorney until after the alleged 7 abuse happened, but that's not true. 8 Now, we're certainly not going to ask 9 Mr. Waldman about what did Mr. Depp tell you. 10 That's not our intention here. But, you know, 11 there is an issue, Your Honor, that when he's out 12 talking to the press, when he's out making these 13 statements that Your Honor has found are 14 actionable defamation that can proceed as a claim, 15 that you can't make these indiscriminate 16 statements to the press and tweet things on social 17 media whenever you want and then hide behind the 18 veil of privilege whenever someone wants to ask 19 you about those. 20 And so we're going to have to take this 21 step wise in his deposition, but we believe that 22 there's a broad swath of information, including</p>	<p style="text-align: right;">16</p> <p>1 Ms. Heard did not cite any authority, no 2 Virginia Supreme Court rule, no Virginia code 3 provision, no Virginia case that supports 4 defendant's utterly false contention that sending 5 a notice of deposition to a party's counsel 6 somehow constitutes effective service on a 7 nonparty witness. And that's because defendant's 8 counsel knows that Rule 4:5 requires that to 9 compel a nonparty witness like Mr. Waldman she had 10 to do two things. Number one, she had to prepare 11 a valid subpoena to the third-party witness. And 12 two, she needed to properly serve that subpoena on 13 the third-party witness. 14 Rule 4:5A states in pertinent part, quote, 15 the attendance of witnesses may be compelled by 16 subpoena, unquote. The cases that's cited by both 17 cases all refer to Court's compelling or not 18 compelling third-party witnesses who have been 19 properly served with subpoenas. Applying this 20 authority, Your Honor, the Court should deny the 21 motion to compel and grant plaintiff's motion for 22 protective order because it is undisputed that in</p>

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<p style="text-align: right;">17</p> <p>1 violation of Rule 4:5, Ms. Heard never prepared a 2 third-party subpoena for Mr. Waldman, rather she 3 prepared a notice for deposition. 4 And as Mr. Rottenborn pointed out, a 5 notice of deposition would be effective service 6 for a party like Mr. Depp, which we found out to 7 our detriment for which he paid sanctions on time 8 and after which he appeared for three full days of 9 deposition. And Mr. Rottenborn misspoke when he 10 said that Mr. Depp refused to answer questions at 11 his deposition. The only questions he refused to 12 answer were the ones I instructed him not to 13 answer. 14 So a notice of deposition would be 15 effective with respect to Mr. Depp or Ms. Heard, 16 but it's not -- and therefore the Court could 17 compel that. But the Court has no authority under 18 Rule 4 to compel an ineffective void ab initio 19 notice of deposition, which is not effective as to 20 a third-party witness. And there is nothing, as 21 Your Honor is well aware, in Rule 4:5 or any other 22 authority that says attorneys or former attorneys</p>	<p style="text-align: right;">19</p> <p>1 Instead, Ms. Bredehoft sent me the notice of 2 deposition on August 12th, 2020. And I responded 3 fairly clearly fewer than three later. I said, 4 quote -- and this is Exhibit A to our opposition 5 and Exhibit A in support of our motion for 6 protective order, quote, as a threshold matter, we 7 are not -- emphasis on original -- authorized to 8 accept service for Mr. Waldman. To the extent 9 that Ms. Heard seeks to pursue this, which for 10 reasons set forth below would be improper. She 11 would have to serve him with a valid subpoena, on 12 which we should be copied. 13 For these three threshold reasons, Your 14 Honor, the Court should deny the motion to compel 15 because it cannot compel Mr. Waldman's attendance 16 when Ms. Heard never prepared much less served a 17 valid subpoena compelling him to appear in what 18 for him is a foreign jurisdiction. And, Your 19 Honor, I have great respect for Mr. Rottenborn, 20 but to suggest somehow that the parties' email 21 protocol somehow vitiates the rules of the Supreme 22 Court of Virginia is a frivolous argument. The</p>
<p style="text-align: right;">18</p> <p>1 are treated differently than any other third-party 2 witnesses for purposes of the subpoena 3 requirement. 4 And even if the Court were to depart from 5 the rules of the Supreme Court of Virginia and 6 find that somehow a notice of deposition unserved 7 is somehow effective on Mr. Waldman, the one 8 Ms. Bredehoft prepared is still defective under 9 Rule 4:5II because it calls on Mr. Waldman to 10 appear at her offices in Reston, Virginia, which 11 as Your Honor knows is in Fairfax County. 12 Rule 4:52 requires a nonparty witness like 13 Mr. Waldman to appear where he resides, where he 14 has a business, or where he is employed unless he 15 otherwise agreed. Here it's undisputed that 16 Mr. Rottenborn just told you that Mr. Waldman does 17 not reside in Fairfax County, he does not work 18 there, he has no business there, and he certainly 19 has not agreed to appear for deposition. 20 Third, the Court should deny the motion 21 because it is undisputed that the defective notice 22 of deposition was never served on Mr. Waldman.</p>	<p style="text-align: right;">20</p> <p>1 email service protocol to which he is referring is 2 that when we file motions with the court, we do it 3 -- we serve each other by email. That does not in 4 any way excuse nor has anybody even suggested that 5 that vitiates the responsibilities to serve 6 subpoenas. We have several witnesses in 7 Ms. Heard's camp for whom they've told us to go 8 pound sand, including her anonymous donor who 9 doesn't accept service, and we're out of luck 10 unless and until we serve that. 11 And as far as providing authority to 12 Ms. Bredehoft, who's been practicing here longer 13 than I have, when she knows that this is 14 defective, is reversing the burden. We told her 15 that it is -- that she's wrong under the rules. 16 We've had six or seven meet and confers, both 17 before she filed the frivolous motion and after. 18 And she admitted to Ms. Vasquez -- it's 19 Ms. Vasquez, not Mr. Vasquez -- and me that he has 20 no authority for this. But she does it anyway, 21 because she can. 22 And in this context, Your Honor,</p>

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<p style="text-align: right;">21</p> <p>1 defendant's request for sanctions and untenable 2 and absurd because defendant's counsel knows that 3 even if the court were to order Mr. Waldman to 4 appear, it cannot and should not sanction Mr. Depp 5 because Mr. Waldman is not, quote, an officer, 6 director, or managing director, unquote -- and 7 this is the language of Rule 4:12 -- of Mr. Depp 8 or any of his three earn-out entities as required 9 under that rule. Indeed, Mr. Waldman is not even 10 an employee of Mr. Depp or any of his entities. 11 So there is no basis upon which even if 12 the court were to order Mr. Waldman to appear 13 without -- in violation of the rules that 14 sanctions would be appropriate. Turning very 15 briefly, Your Honor, to Mr. Depp's motion for a 16 protective order. The Court should grant that 17 motion because the same arguments apply. 18 Moreover, to the extent that Ms. Heard ever does 19 prepare proper subpoena and does serve it on 20 Mr. Waldman, the deposition would still be 21 inappropriate because under Virginia case law 22 depositions of counsel -- of opposing counsel are</p>	<p style="text-align: right;">23</p> <p>1 was there, we've got Mr. Depp, and Mr. Rottenborn 2 just conceded that Mr. Depp testified for three 3 days about what did and what did not happen. We 4 have Isaac Baruch, Mr. Baruch was an eyewitness, 5 he lived in the condominium, and he said Ms. Heard 6 absolutely fabricated this event, that he saw her 7 for each of the five days after the alleged 8 incident, saw no bruises on her until her makeup 9 artist painted them on her before she appeared in 10 People magazine. He's been deposed in this case. 11 We have Officer Saiontz, whose testimony Your 12 Honor has already admitted for purposes of this 13 trial. She testified there were no marks on 14 Ms. Heard and there was no damage in the condos. 15 We have Officer Hadden, whose testimony has 16 already been admitted in this trial who said the 17 same thing. And we've got the makeup artist, who 18 we haven't been able to serve, which is our 19 burden. 20 And Mr. Rottenborn, with respect, is 21 incorrect. Mr. Waldman can't offer anything with 22 respect to what happened on that day in May -- on</p>
<p style="text-align: right;">22</p> <p>1 highly disfavored and allowed only as a last 2 resort. And that showing has not been here. And 3 Ms. Heard fails to meet any of the three Shelton 4 criteria, which the eighth circuit -- has been 5 cited by Virginia federal courts as instructive. 6 And as Mr. Rottenborn, to his credit, 7 referred to, this is especially true in light of 8 the Court's letter opinion dismissing the vast 9 majority of Ms. Heard's counterclaims. Dismissing 10 Counts I and III in their entirety and the 11 absolute nonsense, ridiculous allegations about 12 Mr. Waldman and Russian bots. That's all gone. 13 Which is probably a favor to Ms. Heard. And 14 dismissing five of the eight statements at issue. 15 So let's go to the statements at issue. 16 Those three statements by Mr. Waldman focus on 17 Ms. Heard's abuse hoax, particularly her abuse 18 hoax about what did not happen on May 21, 2016. 19 So the first criteria, as Your Honor is aware of, 20 does Ms. Heard have other means to obtain the 21 information about what happened on May 21, 2016? 22 Well, let's see. We've got Ms. Heard, she</p>	<p style="text-align: right;">24</p> <p>1 that evening of May 21, 2016, because he did not 2 even first meet Mr. Depp until October of 2016, 3 five months later. Which brings us to the second 4 Shelton criterion, Your Honor, which they fail as 5 well. Does what Mr. Waldman know about this, is 6 that relevant? Yes. But under the second Shelton 7 criterion, it has to be relevant and not 8 privileged. Whatever Mr. Waldman has discovered 9 about what happened five months before he met 10 Mr. Depp is clearly privileged. 11 Third, and we've already addressed this, 12 the third Shelton criterion is that this 13 information would have to be crucial to the 14 preparation of defendant's case. Don't see how 15 hearsay information gathered by lawyers, which 16 Mr. Rottenborn and Ms. Bredehoff could just as 17 easily obtain on their own could be crucial to 18 their case. 19 Finally, Your Honor, it would be 20 appropriate for this Court -- and we haven't asked 21 that for that before, we don't do that, they've 22 had several motions to compel that Your Honor has</p>

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<p style="text-align: right;">25</p> <p>1 denied, and we don't ask for sanctions because we 2 think generally it's a waste of the Court's times, 3 but we think in this case imposition of sanctions 4 is appropriate here because they know they have no 5 valid basis to proceed. 6 Ms. Heard has a anonymous donor who tried 7 to bail her out of perjury in London. We now know 8 since Your Honor and we last convened that she 9 lied about the ACLU, the documents that they 10 reluctantly coughed up showed that she lied about 11 that. No \$7 million contribution of the 12 Children's Hospital of Los Angeles, are you 13 kidding me, and the ACLU. She didn't do that. 14 But she's got an anonymous donor. So she can 15 continue to file frivolous motions because there's 16 cost to her, Your Honor. Mr. Depp does not have 17 an anonymous donor, this is coming out of his 18 pocket. 19 And finally, Your Honor, I would refer to 20 Rule 4:12A4, which at the states, if the motion -- 21 in this case Ms. Heard's motion to compel 22 Mr. Waldman's deposition, which she never even</p>	<p style="text-align: right;">27</p> <p>1 compel something that was invalid ab initio. 2 The Court certainly, properly, compelled 3 Mr. Depp to prepare for his deposition because a 4 properly served notice of deposition to a 5 deposition was proper, and we should have moved in 6 advance. But here this was improper ab initio, 7 and they know it, Your Honor. Thank you, Your 8 Honor. 9 THE COURT: Mr. Rottenborn, you may go 10 ahead. 11 MR. ROTTENBORN: Thank you, Your Honor. 12 I'm going to try to confine my comments to the 13 issues that are relevant to this motion. I'm not 14 going to, unlike Mr. Chew, try to litigate this 15 whole case. I will say we vehemently disagree 16 with his recitation of the facts of what happened 17 in May of 2016 and any other time. And the notion 18 that there's an anonymous donor who's paying our 19 client's legal fees is absurd and false, so I'm 20 going to say that. 21 But confining myself to this motion, Your 22 Honor, we asked them about this in August. This</p>
<p style="text-align: right;">26</p> <p>1 bothered to prepare a subpoena is denied, the 2 Court shall, after opportunity for hearing, 3 require the moving party, Ms. Heard, or the 4 attorney advising the motion, Ms. Heard's counsel, 5 or both of them to pay to the party or deponent 6 who opposed the motion the reasonable expenses in 7 opposing the motion, including attorneys' fees. 8 That, Your Honor, is clear authority for the court 9 to impose sanctions on Ms. Heard, have her 10 reimburse Mr. Depp for the cost of our having to 11 respond to the motion to compel and the motion for 12 sanctions, because even if Your Honor somehow 13 found that Mr. Waldman had to appear, there was no 14 basis to sanction Mr. Depp, who has no control 15 over Mr. Waldman. 16 Your Honor, we respectfully submit that 17 the message needs to be sent here that they can't 18 keep filing. You're going to hear another 19 frivolous motion we're not going to talk about, 20 but a message has to be sent here, Your Honor. 21 There was no basis to compel Mr. Waldman. They 22 knew he wasn't showing up. And the Court can't</p>	<p style="text-align: right;">28</p> <p>1 is what lawyers should be able to work out as a 2 matter of professional conduct and professional 3 courtesy. Mr. Waldman received the same email 4 that Mr. Chew received and Ms. Vasquez received. 5 He could've emailed us if he wasn't authorized to 6 accept service for himself as an agent of 7 Mr. Depp, which he has admitted even after his pro 8 hac vice was revoked when he sought to attend 9 Mr. Depp's deposition. Mr. Chew told us that he 10 was -- represented both Mr. Depp and his 11 companies, including the companies that they've 12 put forward as evidence of damages here. He 13 could've sent us -- he could've updated his 14 address with the court, which I'm fairly certain 15 you have an obligation to do but didn't. 16 So the one address that we had, things 17 were getting returned, was not valid. So when 18 Ms. Bredehoff sent the email as a matter of 19 courtesy asking them if they disagreed that this 20 was sufficient service of notice of deposition to 21 send an address. If you think we need to subpoena 22 you, send us the address, and they never did that.</p>

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<p style="text-align: right;">29</p> <p>1 And if you -- Mr. Waldman, who received and has 2 had constructive notice of this for months, if you 3 disagree that this is defective service on you, 4 let us know and send us an address so we can 5 subpoena you. And this is the type of thing that 6 lawyers should be able to work out as a matter of 7 courtesy. We should have been able to figure this 8 out, but instead they didn't either. 9 Now, obviously Mr. Chew disagreed at the 10 time and now that that was appropriate to depose 11 Mr. Waldman. But if you're going to say -- you 12 know, Mr. Waldman could've spoken up as well and 13 if you're going to put your head in the sand and 14 not appear and not provide an address, then it's 15 reasonable to assume that we don't know what his 16 position was, what Mr. Waldman's position was. 17 And we made clear to Mr. Chew on 18 August 25th that if you disagree, file a motion 19 with the court where we can discuss it before 20 them, but file a motion with the court. Instead 21 they waited until the last week of December to do 22 so. So we've tried to figure this out, Your</p>	<p style="text-align: right;">31</p> <p>1 republished it. So for all of those reasons, Your 2 Honor, we believe that we've tried to do 3 everything that we can here. We certainly don't 4 think if Your Honor denies our motion that any 5 sort of sanctions are warranted. We've tried to 6 work this out. We've tried to get an address so 7 we could subpoena him and we still don't have one. 8 And I would ask Your Honor, if Your Honor 9 denies the motion, to require them to provide us 10 by the close of business today with a valid 11 address for him which he should have updated in 12 the court's files when the D.C. address was no 13 longer valid, which is while he was involved in 14 this case but he didn't. So for all those 15 reasons, Your Honor, we ask that you grant our 16 motion. And subject any questions that Your Honor 17 has, that's all I have. Thank you. 18 THE COURT: Thank you. With regards to 19 the service on Mr. Waldman, I find the service was 20 improper. I find that the rules of court were not 21 complied with. I find it improper that 22 Ms. Bredehoft would in order to have to follow the</p>
<p style="text-align: right;">30</p> <p>1 Honor. As a practical matter, we don't know where 2 he is. If he's in California, we all know if we 3 subpoena him there's going to be some kind of 4 objection and this trial is going to take place 5 before he's ever deposed. 6 I have admitted that we don't need him for 7 as long as we thought we did. But the fact is, 8 Your Honor, he made the statements at issue as an 9 agent of Mr. Depp. He made those statements, and 10 we're entitled to ask him about those statements. 11 And I disagree with Mr. Chew that just because his 12 representation started after those facts, that 13 every single question we could ask is privileged. 14 We're not going to ask him about things that he 15 learned from Mr. Depp, but we're entitled to 16 depose him about certain aspects of those 17 statements, we're entitled to depose him about his 18 communications with the publications that 19 published those statements. We're entitled to 20 depose him about republishing the Op-ed on his 21 Twitter account, which they're going to claim 22 somehow gravely damaged Mr. Depp, yet he</p>	<p style="text-align: right;">32</p> <p>1 rules require the other side to provide her with 2 an address for Mr. Waldman otherwise she has no 3 intention of following the rules of a proper 4 subpoena. As a result of that finding, the motion 5 to quash is granted. The motion to compel is 6 denied. Mr. Waldman was never properly served. 7 The motion for protective order is denied. 8 Mr. Waldman can be deposed if properly served. I 9 find that, although it's a close call, I think the 10 Shelton criteria is appropriate, that that 11 criteria has been met for purposes of this 12 hearing. 13 So far as Ms. Heard's request to sanction 14 Mr. Depp, that motion is denied. I don't find 15 that on this record that he has been shown to be a 16 managing director or managing agent. The 17 remaining issue is the request for sanctions made 18 by Mr. Depp for the failure to follow the rules 19 and file the motion to compel based upon positions 20 related to the initial service. 21 The email where -- that starts as a 22 threshold matter, we are not authorized to accept</p>

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1 service for Mr. Waldman certainly made it clear
2 what their position was, and I can't understand
3 why a proper attempt at service wasn't made other
4 than apparently the excuse offered, we don't know
5 where to do it so we're not going to follow the
6 rules because we don't know where to serve it. I
7 find that improper. The Court awards sanctions in
8 connection with the motion.
9 We'll do as we did before, I'll ask
10 Mr. Chew to submit an affidavit of attorneys'
11 fees. And Ms. Heard will have an opportunity to
12 respond to that. So if you all can get to me in a
13 reasonably short period of time, that would be
14 appreciated.
15 MR. CHEW: Yes. We will do that, Your
16 Honor. If we could have until Monday to get that
17 to you. I think it's going to be very close to
18 the proposed order that we submitted to your law
19 clerk on Wednesday, but I'll work with defendant's
20 counsel and we'll get that into Your Honor on
21 Monday, if that's appropriate.
22 THE COURT: All right. Anything else

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1 further for today then?
2 MR. CHEW: No.
3 THE COURT: Thank you all, take care.
4 MR. ROTTENBORN: Thank you, Your Honor.
5 (Off the record at 11:38 a.m.)
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1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC
2 I, PAUL P. SMAKULA, the officer before whom
3 the foregoing deposition was taken, do hereby
4 certify that the foregoing transcript is a true
5 and correct record of the testimony given; that
6 said testimony was taken by me stenographically
7 and thereafter reduced to typewriting under my
8 direction; that reading and signing was not
9 requested; and that I am neither counsel for,
10 related to, nor employed by any of the parties to
11 this case and have no interest, financial or
12 otherwise, in its outcome.
13
14 IN WITNESS WHEREOF, I have hereunto set my hand
15 and affixed my notarial seal this 8th day of
16 January, 2021.
17 My commission expires: June 18, 2023.
18
19 *Paul P. Smakula*
20 _____
21 NOTARY PUBLIC IN AND FOR
22 THE STATE OF MARYLAND