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CLERK, CIRCUIT COURT
FAIRFAX, VA

Transcript of Hearing

Date: May 28, 2021
Case: Depp, II -v- Heard

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Transcript of Hearing
Conducted on May 28, 2021

<p>1 VIRGINIA: 2 IN THE CIRCUIT COURT FOR FAIRFAX COUNTY 3 -----x 4 JOHN 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 PENNEY AZCARATE, Judge 13 Conducted Virtually 14 Friday, May 28, 2021 15 11:35 a.m. EST 16 17 18 19 20 Job No.: 377021 21 Pages: 1 - 42 22 Transcribed by: Bobbi J. Fisher, RPR</p>	<p>1 A P P E A R A N C E S 2 ON BEHALF OF THE PLAINTIFF MR. DEPP: 3 BENJAMIN CHEW, ESQ. 4 CAMILLE VASQUEZ, ESQ. 5 BROWN RUDNICK, LLP 6 601 Thirteenth Street, NW, Suite 600 7 Washington, DC 20005 8 (202) 536-1700 9 10 ON BEHALF OF THE DEFENDANT MS. HEARD: 11 ELAINE CHARLSON BREDEHOFT, ESQUIRE 12 CHARLSON BREDEHOFT COHEN & BROWN, PC 13 11260 Roger Bacon Drive, Suite 201 14 Reston, VA 20190 15 (703) 318-6800 16 17 J. BENJAMIN ROTTENBORN, ESQUIRE 18 WOODS ROGERS, PLC 19 10 South Jefferson Street, Suite 1400 20 Roanoke, VA 24011-1319 21 (540) 983-7600 22</p>
<p>1 Hearing on Motions before the HONORABLE PENNEY 2 AZCARATE, Judge, conducted virtually. 3 4 5 Pursuant to Docketing, before Sarah Loiler, Digital 6 Court Reporter. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 I N D E X 2 PAGE 3 Argument by Ms. Bredehopt 5 4 Argument by Mr. Chew 24 5 Further Argument by Ms. Bredehopt 32 6 7 8 9 E X H I B I T S 10 (None.) 11 12 13 14 15 16 17 18 19 20 21 22</p>

<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 THE COURT: We are here on the motions</p> <p>3 today filed by Ms. Heard as far as amending the</p> <p>4 plea in bar and the answer and also request to stay</p> <p>5 discovery. All right. So I have read the motions,</p> <p>6 but anything you want to add to that,</p> <p>7 Ms. Bredehopt, since it's your motions?</p> <p>8 MS. BREDEHOFT: Thank you, Your Honor.</p> <p>9 And just for introduction purposes, Your Honor,</p> <p>10 Elaine Bredehopt, and with me is Ben Rottenborn.</p> <p>11 We represent Amber Heard.</p> <p>12 THE COURT: Okay. I'm sorry. Let me</p> <p>13 just swear in your court reporter. I'm sorry.</p> <p>14 (The court reporter was duly sworn.)</p> <p>15 THE COURT: Okay. Thank you. I'm sorry,</p> <p>16 Ms. Bredehopt. Go ahead.</p> <p>17 MS. BREDEHOFT: Okay. Thank you, Your</p> <p>18 Honor. And just for clarification, Your Honor,</p> <p>19 it's a motion for leave to -- we filed the amended</p> <p>20 answer and grounds of defense, supplemental plea in</p> <p>21 bar, and also to request a hearing and briefing</p> <p>22 schedule as well as stay discovery, just for --</p>	<p style="text-align: right;">7</p> <p>1 violence against Ms. Heard, in many instances</p> <p>2 causing Ms. Heard to fear for her life.</p> <p>3 In March of 2019, Mr. Depp brought this</p> <p>4 defamation action against Ms. Heard because, as the</p> <p>5 letter opinion attached to Mr. Depp's opposition to</p> <p>6 this motion holds, Ms. Heard implied that she had</p> <p>7 been the victim of domestic violence at the hands</p> <p>8 of Mr. Depp.</p> <p>9 In this action, Mr. Depp bears the burden</p> <p>10 of proving by clear and convincing evidence that he</p> <p>11 has never -- not even once, much less 12 times --</p> <p>12 committed domestic violence against Ms. Heard.</p> <p>13 Now, Mr. Depp appealed the UK judgment</p> <p>14 with the London High Court, which was denied, and</p> <p>15 then appealed to the UK Court of Appeals. Mr. Depp</p> <p>16 took issue with the findings and also claimed to</p> <p>17 have new evidence, including whether Ms. Heard, not</p> <p>18 yet paying the full 7 million of her pledge to the</p> <p>19 ACLU and Children's Hospital, was relevant to</p> <p>20 whether she had been repeatedly beaten by Mr. Depp.</p> <p>21 The UK Court of Appeals denied Mr. Depp's</p> <p>22 appeals, stating, quote, "The hearing before</p>
<p style="text-align: right;">6</p> <p>1 technically.</p> <p>2 In June 2018, Plaintiff, Mr. Depp, chose</p> <p>3 to file a libel action against "The Sun" newspapers</p> <p>4 and their Editor in Chief, Dan Wootton, after they</p> <p>5 called Mr. Depp a wife-beater and published that</p> <p>6 Mr. Depp had engaged in serious domestic violence</p> <p>7 against Amber Heard on a number of occasions,</p> <p>8 causing Ms. Heard to fear for her life.</p> <p>9 Mr. Depp elected to file that action in</p> <p>10 the United Kingdom where the burden of proof was on</p> <p>11 the defendants to prove that the statements were</p> <p>12 true. Mr. Depp heavily litigated the UK action,</p> <p>13 including aggressive discovery in motions practice,</p> <p>14 a three-week trial, Mr. Depp and Ms. Heard each</p> <p>15 taking the stand for four days, submitting multiple</p> <p>16 witness statements. There were a number of other</p> <p>17 multiple witnesses and witness statements and</p> <p>18 testimony and extensive legal argument throughout.</p> <p>19 The Court took the matter under</p> <p>20 advisement for more than three months then issued a</p> <p>21 129-page, 585-paragraph opinion finding that</p> <p>22 Mr. Depp committed at least 12 acts of domestic</p>	<p style="text-align: right;">8</p> <p>1 Nicol J was full and fair and he gave thorough</p> <p>2 reasons for his conclusions, which have not been</p> <p>3 shown even arguably to be vitiated by any error of</p> <p>4 reproach or mistake of law."</p> <p>5 That decision became final, with all of</p> <p>6 its amendments, on April 6, 2021, Your Honor. So</p> <p>7 the entire world can now say forever that Mr. Depp</p> <p>8 is a wife-beater and has engaged in at least 12</p> <p>9 separate acts of domestic violence against Amber</p> <p>10 Heard, causing her to fear for her life; yet</p> <p>11 Mr. Depp, the same plaintiff in the UK action as in</p> <p>12 this action, litigating whether he was a</p> <p>13 wife-beater and whether he committed acts of</p> <p>14 domestic violence against Amber Heard, is</p> <p>15 maintaining in this lawsuit, where he possesses the</p> <p>16 burden of proof by clear and convincing evidence,</p> <p>17 that Amber Heard has never been the victim of</p> <p>18 domestic violence and that she damaged his</p> <p>19 reputation by implying that Mr. Depp had committed</p> <p>20 at least one act, never mind 12, of domestic</p> <p>21 violence against her.</p> <p>22 Of significance, Your Honor, is that</p>

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<p style="text-align: center;">9</p> <p>1 Mr. Depp contended in the UK action that "The Sun" 2 editorial published eight months prior to 3 Ms. Heard's op-ed was, quote, "career ending." So 4 the UK judgment is going to come in no matter what 5 challenges. But we believe Virginia law permits 6 the UK judgment to be applied in this court as a 7 matter of law, resulting in the dismissal of 8 Mr. Depp's defamation claims based on the 9 principles of res judicata, comity, defensive 10 collateral estoppel, and issue of preclusion. 11 Ms. Heard reached out to Mr. Depp's 12 counsel, seeking their consent to file the amended 13 answer and grounds of defense and supplemental plea 14 in bar, requesting a hearing and briefing schedule 15 on the supplemental plea in bar and stayed 16 discovery pending the ruling on the supplemental 17 plea in bar. After counsel for Depp refused to 18 consent, on April 13, Your Honor, a week after the 19 UK judgment was fully final, Ms. Heard filed the 20 pleadings and this motion. 21 Now, prior to arguing the substantive 22 issues of whether this Court may apply, as a matter</p>	<p style="text-align: center;">11</p> <p>1 courts are overwhelmed with backlog from COVID-19 2 pandemic and the impact of the pandemic has had on 3 the entire court system, including trials, 4 litigants, civil, criminal. Any relief would 5 surely be welcomed and embraced. 6 The amount of judicial resources expended 7 in this case and still ahead is mind-boggling. 8 Ending or significantly curtailing this litigation 9 would absolutely promote the ends of justice. 10 There are many discovery motions still to come, six 11 currently that we have queued up and ready to file. 12 The parties have long since used all of their 13 interrogatories and RFAs. Multiple sets of RFPs 14 have been exchanged. Databases of documents have 15 been exchanged. 26 depositions have already been 16 taken and many, many, motions have been filed and 17 argued. There will likely be over 20 experts in 18 this case, Your Honor. The parties have each spent 19 literally millions of dollars in attorney's fees 20 and costs and will continue this pace into the next 21 year leading up through trial unless this 22 litigation is curtailed.</p>
<p style="text-align: center;">10</p> <p>1 of law, the UK judgment to this proceeding, the 2 correct procedural step is for us to move for leave 3 to amend the answer and grounds of defense and to 4 supplement the plea in bar to plead these defenses. 5 That's the first part of this motion. 6 Under Rule 1:8, leave to amend should be 7 liberally granted in furtherance of the ends of 8 justice. As Judge Bellows noted in re: 9 Multi-Circuit Episcopal Church property litigation 10 back in 2008, a Court's primary consideration in 11 deciding whether to allow an amendment is whether 12 the opposing party will be prejudiced by allowing 13 the amendment. 14 Significantly, Mr. Depp does not argue 15 that he was prejudiced by these amendments nor can 16 he. It was his UK lawsuit, and we are nearly a 17 year from trial, when the parties are prepared to 18 try the case only three months away when the trial 19 was continued in February because of the COVID-19. 20 The amendments will further the ends of 21 justice. This is currently scheduled for a 22 four-week jury trial next April in a time when the</p>	<p style="text-align: center;">12</p> <p>1 Now, Mr. -- another issue that's very 2 significant here, Your Honor, as part of the ends 3 of justice is Mr. Depp, through Adam Waldman, his 4 counsel, whose pro hac vice status was revoked in 5 this case because he leaked confidential 6 information to the press, is selectively trying to 7 relitigate specific acts of domestic violence 8 already determined by the UK court to have taken 9 place, trying to stir up the press and prejudice a 10 future jury. 11 The latest claim by Waldman on his social 12 media and published multiple times in the press is 13 that the LAPD is allegedly investigating Amber 14 Heard for perjury on one of the 12 incidents -- the 15 May 21, 2016 -- and she faces jail time of at least 16 four years. That's what Mr. Waldman is publicly 17 claiming. Never mind that the statute of 18 limitations for perjury in California is three 19 years and has long since expired, so an 20 investigation, much less charges, much less a 21 conviction, much less jail time, are 22 impossibilities. Never mind that the LAPD does not</p>

<p style="text-align: right;">13</p> <p>1 even investigate perjury ever. Never mind that the 2 LAPD has repeatedly denied there's any 3 investigation of Amber Heard. And never mind that 4 we have pictures of her injuries and the property 5 damage with the metadata from that May 2016 6 incident. 7 This is what we will face for the next 8 year: More intentional fabrications and deliberate 9 misinformation trying to confuse the public, 10 prejudice the jury, inflict harm on Amber Heard and 11 incite the Depp fans to violence. To end this 12 would very much further the ends of justice. 13 Now, Mr. Depp, in his five pages of his 14 opposition, the only thing he does is try to 15 present his arguments on the next substantive issue 16 here, trying to prevent Amber Heard from ever 17 briefing or ever arguing the legal authorities and 18 being able to present her dispositive defenses. 19 He cites as the sole reason for this 20 Court to deny the motion for leave to file the 21 amended answer and grounds of defense and 22 supplemental plea in bar that permitting the</p>	<p style="text-align: right;">15</p> <p>1 second is that comity should not be extended as a 2 basis for applying preclusive effects. 3 These issues are complex, Your Honor. 4 They involve case-specific inquiries to determine 5 proper application and include a rather substantial 6 body of law, which is why we have asked for a 7 hearing date and a long briefing schedule. It is 8 significant to note that Mr. Deep, while citing 9 Rule 1:6(a) for the proposition that it is -- and I 10 put in quotation marks -- "black letter law" -- end 11 of quote -- that the parties must be, quote, 12 "identical or in privity with each other," end of 13 quote, that is not the correct statement of the 14 law, and Mr. Depp fails to cite for Your Honor even 15 1:6(d) in the same rule that says, quote, "The law 16 of privity is heretofore articulated in case law in 17 the Commonwealth of Virginia and is unaffected by 18 this rule and remains intact. For purposes of this 19 rule, party or parties, including all main parties 20 and those in privity." 21 So, in other words, they're saying the 22 case law controls. We are not restricting. We are</p>
<p style="text-align: right;">14</p> <p>1 amendments, the hearing, and the briefing would be 2 futile. Now, the standard on futility is whether, 3 as a matter of law, amending would be legally 4 futile or is presently apparent that the amendment 5 is futile. That's the case that is also cited by 6 Mr. Depp in here. It's Bore (ph) v. Board of 7 Supervisors. It's a circuit court opinion. 8 The examples of something that's futile 9 are, for example, when there's a clear statute of 10 limitations expiration and it's obvious on its 11 face. A second one, which Judge Bellows confronted 12 in that Multi-Circuit Episcopal Church case is 13 where it was, quote, "Clear from the face of the 14 pleadings that the statute at issue does not apply 15 to litigation between private parties but only to 16 litigation in which a government entity is a 17 party." There was a very obvious thing that you 18 could see upfront. 19 Now, Mr. Depp advances two arguments to 20 support his futilely argument. The first of those 21 is that res judicata is not applicable because the 22 parties were not identical or in privity, and the</p>	<p style="text-align: right;">16</p> <p>1 not taking it away. 2 Now, in addressing privity, for example, 3 in Lane v. Bayview Loan Servicing, which is a 4 Virginia Supreme Court from -- opinion from 2019, 5 the Virginia Supreme Court analyzed the trial 6 court's sustaining a plea in bar on the grounds of 7 res judicata and explained that, quote, "Privity 8 centers on the closeness of the relationship in 9 question. Privity as used in the context of res 10 judicata or collateral estoppel does not embrace 11 relationships between persons or entities but, 12 rather, it deals with a person's relationship to 13 the subject matter of the litigation. Whether 14 privity exists is determined on a case-by-case 15 examination of the relationship and interests of 16 the parties," end of quote. 17 Subject matter is a big here, Your Honor. 18 Whether Amber Heard was the victim of domestic 19 violence at the hands of Mr. Depp, which, as the 20 London court, chosen by Mr. Depp, has found that 21 Ms. Heard was 12 times; here, one time is enough. 22 Another Virginia Supreme Court that has</p>

<p style="text-align: right;">17</p> <p>1 also made clear that the issue cannot easily be 2 spotted for futility is Nero v. Ferris, which is a 3 1981 Virginia Supreme Court case. And it says 4 quote, "There is no fixed definition of privity 5 that automatically can be applied to all cases 6 involving res judicata issues. While privity 7 generally involves a party so identical in interest 8 with another that he represents the same legal 9 right, a determination of just who are privies 10 requires a careful examination into the 11 circumstances of each case." Thus, a full briefing 12 and argument is needed for the Court to be fully 13 apprised of the law and the application to this 14 case. 15 Now, with respect to mutuality, the 16 Virginia courts have applied exceptions to the 17 traditional rule of mutuality, including defensive 18 collateral estoppel. The Virginia Supreme Court 19 espouses applying mutuality as justice requires 20 rather than as a mechanistically -- and, Your 21 Honor, I had to practice that word for three days 22 before I could say "mechanistically" -- applied</p>	<p style="text-align: right;">19</p> <p>1 those, but I will represent to the Court that we 2 have multiple cases that are Virginia Supreme Court 3 decisions that have applied it in the past. 4 The cases that are cited by Mr. Depp are 5 either non-binding, distinguishable or both. I 6 already pointed out the flaw with the Rule 1:6. 7 But with respect to Columbia Gas that they cited, 8 it specifically notes itself, quote, "Virginia has 9 no generally prevailing definition of privity to be 10 used when applying the doctrine of res judicata to 11 individual cases." 12 In that particular case, there was a 13 situation where, in the previous one, they said the 14 defendants had -- were or could have adjudicated -- 15 there was no rights for them to have adjudicated 16 the rights in that lawsuit and a very different set 17 of facts. The Rawlings v. Lopez (2004) is 18 distinguishable because it said, quote, "The record 19 reflects no relationship existing between the 20 appellants and the driver that would have permitted 21 the driver to assert the appellants' legal rights 22 during that first suit." That's not the case here.</p>
<p style="text-align: right;">18</p> <p>1 doctrine. And that's Bates v. Devers, which is a 2 1974 Virginia Supreme Court. There, they said the 3 policy underlying mutuality is to ensure a litigant 4 that he will have a full and fair day in court on 5 any issue essential to an action in which he is a 6 party. But as is the case with any other judicial 7 doctrine grounded in public policy, the mutuality 8 doctrine should not be mechanic -- uh-oh -- 9 mechanistically -- there, I got it that time -- 10 applied when it is compellingly clear from the 11 prior record that the party in the subsequent civil 12 action against whom collateral estoppel is asserted 13 has fully and fairly litigated and lost an issue of 14 fact which was essential to the prior judgment." 15 And they cited a Fourth Circuit opinion in relying 16 on that back in 1974. And, Your Honor, that's very 17 much the case we have here. 18 Now, the Virginia Supreme Court has also 19 applied exceptions to the general rule of 20 mutuality, privity, and allowed defensive 21 collateral estoppel on a number of cases. And if 22 Your Honor wants me to go into those, I can cite</p>	<p style="text-align: right;">20</p> <p>1 Now, with respect to comity, Your Honor, 2 that makes -- Mr. Depp makes two sub points 3 relating to that. He says, first, comity is not 4 extended to judgments like the UK judgment that are 5 founded on the unique laws of a foreign 6 jurisdiction, and U.S. courts decline to accept the 7 actual findings of foreign court where the parties 8 are not the same or in privity. This is not a 9 correct statement of Virginia law. And, in fact, 10 the Commonwealth of Virginia has specifically 11 applied the doctrine of comity to a judgment from 12 the UK in Ugh (ph) vs. All (ph) in 1980, granting 13 comity to English visitation modification, and that 14 Virginia Supreme Court said specifically here that 15 they found that the UK and Virginia's legal system 16 to be, quote, "reasonably comparable" end of quote. 17 That Court also stated, quote, "Virginia's 18 jurisprudence is deeply rooted in the ancient 19 precedence, procedures, and practices of the 20 English system of justice. A substantial portion 21 of the common law of England and the writs remedial 22 and judicial, given by any statute or act of</p>

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6 (21 to 24)

<p style="text-align: center;">21</p> <p>1 parliament, made in the aid of the common law, have 2 been legislatively incorporated in the law of this 3 commonwealth," end of quote. Moreover, there's no 4 privity requirement for comity, Your Honor. 5 Now, my last point here is that a stay in 6 discovery pending the ruling on the supplement plea 7 in bar makes sense in this case and should be 8 granted. The Court -- this Court has discretion 9 under Rule 4:1(d)(2) to suspend discovery pending 10 the resolution of the plea. If the Court rules in 11 favor of Defendant Amber Heard on this and applies 12 the UK judgment, the complaint will be dismissed. 13 Mr. Depp's law firm has offices in 14 California and New York, Your Honor, and is 15 currently aggressively pursuing third parties on 16 issues that will be rendered completely moot by the 17 dismissal of this complaint. There's no prejudice 18 whatsoever, and significantly here, Your Honor, 19 there is no claim of prejudice by Mr. Depp in his 20 opposition. He does not even mention it so he 21 cannot claim it now. 22 But the parties, Your Honor, were</p>	<p style="text-align: center;">23</p> <p>1 would want to queue those up over the next few 2 months and have those decisions made and be able to 3 obtain that additional discovery for my defense of 4 the case. 5 So, obviously, this would be important 6 for Court resources here. There's nothing right 7 now that Mr. Depp has in the queue. There's no 8 meet-and-confer that they have had with us. The 9 only motion they had was the one that Your Honor 10 decided, and we are producing our supplemental 11 today on that, so there's nothing more that needs 12 to be done there. 13 An enormous amount of resources, 14 including this Court's very precious resources 15 after COVID-19, are being devoted to this case. If 16 there's a sound legal basis for applying the UK 17 decision and dismissing the complaint, which we 18 believe there is and we will demonstrate it through 19 the long briefing and hearing, Ms. Heard should be 20 provided the opportunity to fully brief and argue 21 this to the Court so the Court can make a studied, 22 fully apprised decision.</p>
<p style="text-align: center;">22</p> <p>1 prepared to try this case on May 17th. We received 2 notice with less than three months. We received it 3 after February 17th that we had to have a new trial 4 date. We were ready to go to trial within three 5 months at that time. We're now almost 11 months 6 from trial. Staying this for two to three months 7 to be able to fully brief, fully hear and let the 8 Court have time to decide this is not going to 9 prejudice either parties in this case. In fact -- 10 and I'm going to quote Mr. Depp's counsel in an 11 earlier hearing when he said that, when trial at 12 that time was seven and a half months away, quote, 13 "No exigency exists," end of quote. 14 The only motions in the queue, Your 15 Honor, after meet-and-confers, are all of ours. We 16 have motions to compel on three sets of RFPs, we 17 have two sets of RFAs, we have two sanctions 18 motions partially because a number of things were 19 given to us during a deposition that related to the 20 deposition. All of those would be rendered moot. 21 There would be no reason for me to bring those if 22 we are going to win this motion. But, otherwise, I</p>	<p style="text-align: center;">24</p> <p>1 Now, the proposed order, Your Honor, that 2 I submitted yesterday sets out a suggested briefing 3 schedule, and it has with it -- it has us having 25 4 pages and the opposition 25 and ten for reply, 5 since we're the moving party. And I set those out 6 and suggested those as June 14, June 28, and July 7 7 for those, and then I also have a blank for when 8 the Court would schedule the hearing. I believe, 9 Your Honor, that the hearing would last about two 10 to three hours. I think, with the long -- there 11 are a lot of cases, Your Honor. I will represent 12 that. There are many cases that are involved in 13 this case, and I think the 25 pages is a reasonable 14 amount in this instance because of the complexity 15 of these and the number of cases involved. And I 16 do think it would probably take two to three hours 17 for both sides to fully air this. And so that's 18 what I have requested in here. And I have 19 requested the stay of the discovery pending the 20 decision on that. 21 Thank you, Your Honor. 22 THE COURT: All right. Thank you, ma'am.</p>

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<p style="text-align: right;">25</p> <p>1 All right. Mr. Chew? 2 MR. CHEW: Thank you, Your Honor. Good 3 morning, Your Honor. May it please the Court. Ben 4 Chew and Camille Vasquez for Plaintiff Johnny Depp. 5 Mr. Depp respectfully submits to the Court that it 6 should deny Ms. Heard's latest motion for leave, 7 especially her new proposed plea in bar on the 8 grounds of futility. 9 In qualifying the liberal standard on 10 amendment, the Supreme Court of Virginia stated, 11 quote, "The trial courts are invested with the 12 authority to deny leave to amend where the 13 amendment would be irrelevant, immaterial, or 14 futile, as a matter of law." 15 Quoting Brown v. Jacobs 289 Va. 209 at 16 page 219: Applying Brown in the two circuit court 17 cases in Mr. Depp's opposition brief, the Court 18 should deny Ms. Heard's latest Hail Mary attempt to 19 dismiss this case, which would be her third, as 20 futile. Ms. Heard's plea in bar on res judicata, 21 collateral estoppel, and comity are clearly dead on 22 arrival, and that is based only principles that we</p>	<p style="text-align: right;">27</p> <p>1 Sun" tabloid, and, two, Dan Wootton, who was "The 2 Sun" reporter that wrote the article at issue. 3 Here in Fairfax, as Your Honor is aware, 4 Mr. Depp sued only Ms. Heard, a non-party in 5 London. There is no issue as to privity here. 6 These parties are completely unrelated. And not 7 only is Ms. Heard's latest proffered plea in bar 8 futile because the parties in the two cases are 9 completely distinct but also for the independent 10 reason that the claims and causes of action are 11 completely different. 12 It is undisputed, as admitted by 13 Ms. Heard and stated again in the claim form we 14 submitted yesterday, that Mr. Depp's London action 15 arose out of Mr. Wootton's article in "The Sun" 16 tabloid that appeared on April 28, 2018. Ms. Heard 17 is not even quoted in that article and has nothing 18 to do with it whatsoever; whereas Mr. Depp sued 19 here on five entirely different statements by 20 Ms. Heard herself with collusion from the ACLU made 21 in the op-ed that they had published in "The 22 Washington Post" on December 18th, 2018, almost</p>
<p style="text-align: right;">26</p> <p>1 all learned in our first year of law school from 2 our civil procedure professors; to wit, for Case 1 3 to have any preclusive effect on Case 2, the 4 parties and the causes of action in both cases have 5 to be identical. Indeed, Rule 1:8 of the rules of 6 the Supreme Court of Virginia requires, quote, "the 7 same opposing party or parties on any claim or 8 cause of action that arises from the same conduct, 9 transition, or returns." 10 In Rollins versus Lopez, the Supreme 11 Court of Virginia made clear that these 12 requirements applied both to res judicata and 13 collateral estoppel, as did Judge Gibney in the 14 Columbia Gas case. Applying this black letter 15 Virginia law, the Court should deny Ms. Heard's 16 motion because it's undisputed that the defendants 17 in the London case and this case are different. 18 Mr. Depp did not sue Ms. Heard in London; rather, 19 as Ms. Heard admits and is listed in the claim form 20 that we sent to the Court yesterday, the defendants 21 in the London case were two: One, the news 22 group -- newspapers LTD of London, which owns "The</p>	<p style="text-align: right;">28</p> <p>1 eight months later than Mr. Wootton's completely 2 distinct article. 3 It is undisputed that the statements at 4 issue in London and those statements here are 5 different causes of action as a matter of law. See 6 the English Boiler & Tube versus W.C. Rouse case, 7 172 F.3d 872, Fourth Circuit (1999), which held 8 that two separate instances of defamation, even if 9 they regard the same subject matter, do not arise 10 from the same transaction or occurrence. 11 So they strike out on both of the 12 necessary elements for res judicata and collateral 13 estoppel, which is the parties are different -- 14 they have to be the same -- and the causes of 15 action are different and they have to be the same. 16 The London court applied different laws, 17 different procedures, different evidentiary 18 standards. There were no experts there. The 19 London court had no power whatsoever to compel 20 Ms. Heard to appear. There was no deposition of 21 Ms. Heard. The direct examinations were done by 22 declaration, and that's where Ms. Heard -- now</p>

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<p style="text-align: right;">29</p> <p>1 everyone admits -- committed perjury about not 2 giving any of the \$7 million she testified in 3 London. She did that by a declaration. The Court 4 had no way to verify that, and the appellate court, 5 by the way, did confirm that that was a falsehood. 6 Ms. Heard's comity argument is futile for 7 the exact same reasons that doom res judicata and 8 collateral estoppel as a matter of law. She cannot 9 cite a single case in support of her position on 10 res judicata, collateral estoppel, or comity. And 11 Ms. Bredehoff is right about one thing: There was 12 substantial meet-and-confer before she filed her 13 motion, and she admitted to us that there's not a 14 single case anywhere that supports her position. 15 She euphemistically says, Well, maybe this is just 16 a case of first impression. Well, that's actually 17 not true. We have cited a number of cases which 18 show why she strikes out as a matter of law. 19 And particularly with respect to comity, 20 as to which she cites not a single case, the United 21 States Supreme Court closed the door on her comity 22 argument in Hilton versus Guyot, 159 U.S. 113 at</p>	<p style="text-align: right;">31</p> <p>1 motions to dismiss, which, quite frankly, had a lot 2 more basis than this. This has no basis 3 whatsoever. At least her first two motions to 4 dismiss, one was to transfer it, the other was 5 demurrer and plea in bar, and even though the Court 6 denied those, those were arguable. But, even then, 7 the Court did not stay discovery. Similarly, when 8 Mr. Depp moved to dismiss Ms. Heard's 9 counterclaims, all of which was granted except to 10 three statements in Count 2 of her counterclaims, 11 there was no stay in discovery. There's no reason 12 to stay discovery. 13 And to the extent that the Court is 14 willing to entertain a briefing schedule, which it 15 should not, since there is not a single case 16 supporting their position or you would have heard 17 it from Ms. Bredehoff, it should be a very short 18 briefing schedule. And 25 pages of nothing is 19 still nothing. Your Honor, if anything, they 20 should have 15 pages, we should have 25 on reply, 21 and argue it on July 2nd. 22 But, Your Honor, we don't get there</p>
<p style="text-align: right;">30</p> <p>1 186 where the Court held that comity is not 2 extended to foreign judgments based on the unique 3 laws of that jurisdiction. 4 It's undisputed -- and Ms. Bredehoff just 5 stated today that the laws in England on defamation 6 are completely distinct than they are in Virginia. 7 More recently, Your Honor, in the case of Amica 8 Life Insurances versus Barber, a federal court in 9 Illinois held that, as with res judicata and 10 collateral estoppel, comity requires identical 11 parties and identical issues or causes of action. 12 So the same two requirements apply. And that's 488 13 F.Supp. 2d 750 at page 757. 14 Here, defendants in the two cases are 15 completely distinct. There's no issue of comity. 16 And the causes of action are completely distinct as 17 a matter of law. Accordingly, the Court should 18 deny defendant's motion as futile. And even if the 19 Court were inclined to grant defendant's motion, 20 which it absolutely should not, there is no reason 21 whatsoever to stay discovery. The Court did not 22 stay discovery during Ms. Heard's prior two failed</p>	<p style="text-align: right;">32</p> <p>1 because this is clearly futile. Thank you, Your 2 Honor. 3 THE COURT: Thank you, Mr. Chew. 4 Anything further, Ms. Bredehoff? 5 MS. BREDEHOFT: Your Honor, I would -- in 6 addition to the fact that I just cited a whole 7 bunch of cases that absolutely support the 8 position, this is an example of Mr. Chew making 9 representations. And I was able to pull this up. 10 On April 12, in our email exchanges back 11 and forth on filing the amended plea in bar -- the 12 supplemental plea in bar and amended -- Mr. Chew 13 just represented to the Court that I said there 14 were no cases and that this would be a case of 15 first impression. In fact, I'm going to read to 16 Your Honor what I wrote as part of that email. 17 Quote: "On the demand for our 18 authorities for the underlying issues we intend to 19 raise in our pleadings, that is not the issue on 20 the motion for leave, but I am happy to discuss 21 this with you. I believe your email ignores the 22 concept of privity altogether. Some of the</p>

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1 authorities upon which we rely and expect to rely
2 in the underlying hearing on the supplemental plea
3 in bar are Lee v. Spoden, 290 Va. 235, a 2015
4 Supreme Court case; Lane v. Bayview Loan Servicing,
5 LLC, 297 Va. 645, a 2019 case; Bates v. Devers, 214
6 Va. 667 (1974); and Funny Guy, LLC v. Lecego, 293
7 Va. 135, 2017 Virginia Supreme Court case."
8 This is in my email that I sent to him.
9 I didn't say I have no cases. I said I'm happy to
10 discuss it with you and here are five Virginia
11 Supreme Court cases that we intend to rely on,
12 which is exactly the opposite of what he just
13 contended to you now.
14 Your Honor, there's an enormous amount,
15 an enormous body of support in Virginia -- in the
16 Virginia Supreme Court and in the courts -- that
17 stand for the proposition of exactly what we're
18 asking. We believe we have a very, very strong
19 case. We believe we will be able to convince Your
20 Honor to apply the UK decision. But more
21 importantly, Your Honor, at this hearing, we're
22 just asking for leave to file the defenses and the

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1 supplemental plea in bar, asking for that hearing,
2 asking for a briefing schedule, and being given the
3 full opportunity to let Your Honor see all of those
4 cases, understand them, and hear the arguments and
5 the applicability of those.
6 Now, I didn't hear any disagreement from
7 Mr. Chew on the stay of discovery, and I think, in
8 this case, it would be very much warranted,
9 especially with the --
10 THE COURT: I think you're -- just to
11 interrupt you. He did disagree with you about the
12 stay of discovery. He did not think discovery
13 should be stayed.
14 MS. BREDEHOFT: Oh, that might have been
15 when I was printing out my email. My apologies; I
16 must have missed it. But I think, Your Honor,
17 there's no -- in this case, we were ready to go to
18 trial with three months. We were ready. We were
19 already -- in fact, both parties had already
20 disclosed their experts in this case. There can't
21 possibly be a prejudice to them for two to three
22 months, however long it takes Your Honor to make

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1 the decision on this.
2 And we think that the cases we have
3 cited, Your Honor -- and I think I quoted quite
4 well from them -- I think they're quite persuasive
5 that this is exactly the type of case that the
6 Court should apply the UK judgment and dismiss the
7 complaint.
8 How can you possibly have a situation
9 where you brought the suit, you fully litigated it,
10 and the burden of proof is on the other side, and
11 you now forever have been labeled a wife-beater and
12 have committed 12 acts of domestic violence,
13 causing Amber Heard to fear for her life, and yet,
14 in this case, we're supposed to go forward and say
15 that Amber Heard could not imply that she had been
16 the victim of domestic abuse and that he suffers
17 any harm as a result of it. It makes no sense.
18 And I think that Your Honor will be convinced of
19 that.
20 So with respect to the amount of
21 briefing, Your Honor, respectfully, there are a lot
22 of cases. Obviously, we'll go with whatever Your

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1 Honor decides on the number, but I will represent
2 that these are not easy issues. They're complex
3 issues. There are many cases that relate to these
4 very ones, and I tried to give a good smattering of
5 them in this hearing today, but there are even
6 more. And I think it would be helpful -- this is
7 such an important case, Your Honor, such an
8 important decision that I think it would be good to
9 be able to fully prepare that before the Court.
10 THE COURT: All right. Thank you, ma'am.
11 When I look at the motion, on first
12 blush, I must say the requested motion does appear
13 to be futile, but I may be missing something, and
14 therefore, I think it's only right to give a full
15 opportunity to hear the motion and to have the
16 motion briefed and to argue the motion and allow
17 amendments to the answer and grounds of defense.
18 It should be liberally allowed. I'll allow that as
19 well.
20 So what I'm going to do, I'll grant the
21 request for supplemental plea in bar for a motion
22 to dismiss and grant the -- to allow the amended

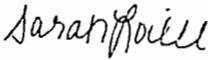

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37	1 answer and grounds of defense. I will note, 2 however, if it does come after everything and that 3 I am right, at this point, that it is futile and 4 not based on any sound legal basis, I mean, it will 5 be sanctionable. I just want to make sure we all 6 understand that. 7 But, again, I may be missing something, 8 and I want the opportunity to have a full hearing 9 and have the issue briefed. 10 As far as discovery, the rule does give 11 the Court the discretion, and there's no basis to 12 stay discovery, so discovery will be ongoing while 13 we prepare for this motion. 14 All right. So I have here that the 25 15 pages is fine. You said you can -- Ms. Bredehoff, 16 you can get that by June 14th; is that correct? 17 MS. BREDEHOFT: That's correct, Your 18 Honor. 19 THE COURT: All right. And then, 20 Mr. Chew, can you respond with your 25 pages by 21 June 28? 22 MR. CHEW: Yes, Your Honor, for sure.	39	1 THE COURT: That's a Thursday. Oh, is it 2 a Friday? 3 MS. BREDEHOFT: Yeah, it's a Friday. 4 July 22nd is the Thursday. 5 THE COURT: July 22nd. Could you do July 6 22nd, Counsel? 7 MR. CHEW: Yes, Your Honor. 8 MS. BREDEHOFT: I can, yes. 9 THE COURT: All right. Let's go ahead 10 and make it July 22nd. Let's just make it at 10 11 a.m. on that date, if that works for everybody. 12 MS. BREDEHOFT: It does. 13 THE COURT: All right. We will set it up 14 for July 22nd. 15 Just to let you know, I'm not sure if 16 we're still going to be virtual by July 22nd or if 17 that's going to be in-person, but I will keep you 18 updated on that as well. Okay? 19 MS. BREDEHOFT: Thank you, Your Honor. 20 We appreciate it. Thank you very much. 21 THE COURT: All right. Anything further 22 from this then?
38	1 THE COURT: All right. And, again, 2 Ms. Bredehoff, I want to give you full opportunity 3 to raise all of what you wish to raise, so I'll 4 give you the ten pages also by July 7th. 5 MS. BREDEHOFT: Thanks, Your Honor. 6 THE COURT: You said you need two hours 7 or three hours -- we can set it for three hours. 8 All right? Do you have a time that you're looking 9 at? Give me a little time to look through all of 10 that information that's coming my way, but we 11 can -- 12 MS. BREDEHOFT: Your Honor, the week of 13 July 19th or the week of July 26th. That would 14 give Your Honor a couple of weeks. Two or three 15 weeks. 16 THE COURT: That's fine. I just have a 17 criminal trial that starts, for seven days, on July 18 28th. So if we want to do it before then -- 19 MR. CHEW: Your Honor, would July 23rd be 20 possible? 21 THE COURT: July 23rd. 22 MS. BREDEHOFT: That's a Friday.	40	1 MR. CHEW: Nothing, Your Honor. Thank 2 you very much. 3 THE COURT: Thank you. And if you can 4 just get a different order with my rulings on it 5 and send it to Mr. Chew and then send it to me, 6 that would be perfect. 7 MS. BREDEHOFT: Okay. I will. Thank 8 you, Your Honor. 9 THE COURT: All right. 10 MR. CHEW: Thank you, Your Honor. 11 THE COURT: Have a good day. 12 MS. BREDEHOFT: You too. 13 (The above hearing concluded at 12:13 14 p.m.) 15 16 17 18 19 20 21 22

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11 (41 to 44)

<p style="text-align: center;">41</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC</p> <p>2</p> <p>3 I, Sarah Loiler, the officer before whom</p> <p>4 the foregoing deposition was taken, do hereby</p> <p>5 certify that said proceedings were electronically</p> <p>6 recorded by me; and that I am neither counsel for,</p> <p>7 related to, nor employed by any of the parties to</p> <p>8 this case and have no interest, financial or</p> <p>9 otherwise, in its outcome.</p> <p>10 IN WITNESS WHEREOF, I have hereunto set my</p> <p>11 hand and affixed my notarial seal this 28th day of</p> <p>12 May, 2021.</p> <p>13</p> <p>14 </p> <p>15 _____</p> <p>16 SARAH LOILER, Notary Public</p> <p>17 for the Commonwealth of Virginia</p> <p>18</p> <p>19 Notary Registration No.: 7838018</p> <p>20 My Commission Expires: 11/30/2023</p> <p>21</p> <p>22</p>	
<p style="text-align: center;">42</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2</p> <p>3 I, Bobbi J. Fisher, do hereby certify that</p> <p>4 the foregoing transcript is a true and correct</p> <p>5 record of the recorded proceedings; that said</p> <p>6 proceedings were transcribed to the best of my</p> <p>7 ability from the audio recording and supporting</p> <p>8 information; and that I am neither counsel for,</p> <p>9 related to, nor employed by any of the parties to</p> <p>10 this case, and I have no interest, financial or</p> <p>11 otherwise, in its outcome.</p> <p>12</p> <p>13 </p> <p>14 _____</p> <p>15 Bobbi J. Fisher, RPR</p> <p>16 NCRA Registered Professional Reporter (RPR)</p> <p>17 Prepared: May 28, 2021</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	