

Planet Depos
We Make It Happen™

FILED
CIVIL PROCESSING

2022 JUN 10 10 2: 21

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

Transcript of Hearing

Date: October 29, 2021

Case: Depp, II -v- Heard

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

23993

Transcript of Hearing
Conducted on October 29, 2021

1	3
1 VIRGINIA:	1 A P P E A R A N C E S
2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY	2 ON BEHALF OF THE PLAINTIFF:
3 -----x	3 BENJAMIN G. CHEW, ESQUIRE
4 JOHN C. DEPP, II, :	4 BROWN RUDNICK
5 Plaintiff, :	5 601 Thirteenth Street, Northwest
6 v. : Case No. :	6 Suite 600
7 AMBER LAURA HEARD, : CL-2019-0002911	7 Washington, D.C. 20005
8 Defendant. :	8 (202) 536-1700
9 -----x	9
10	10
11	11
12	12
13 HEARING	13
14 Before the Honorable PENNEY AZCARATE	14
15 Fairfax, Virginia	15
16 Friday, October 29, 2021	16
17 11:35 a.m.	17
18	18
19	19
20 Job No.: 409115	20
21 Pages: 1 - 71	21
22 Reported by: Carol A. Lowe, RPR	22
2	4
1 Hearing held at:	1 A P P E A R A N C E S C O N T I N U E D
2	2 ON BEHALF OF THE DEFENDANT:
3	3 J. BENJAMIN ROTTENBORN, ESQUIRE
4 CIRCUIT COURT OF FAIRFAX COUNTY	4 WOODS ROGERS
5 4110 Chain Bridge Road	5 10 South Jefferson Street
6 Courtroom 5J	6 Suite 1400
7 Fairfax, Virginia 22030	7 Roanoke, Virginia 24038
8 (703) 691-7320	8 (540) 983-7707
9	9
10	10 DAVID E. MURPHY, ESQUIRE
11	11 CHARLSON, BREDEHOFT, COHEN & BROWN
12	12 11260 Roger Bacon Drive
13	13 Suite 201
14	14 Reston, Virginia 20190
15	15 (703) 318-6800
16	16
17	17
18	18
19	19
20	20
21	21
22	22

<p style="text-align: right;">5</p> <p>1 PROCEEDINGS 2 (The court reporter was sworn.) 3 THE COURT: All right. This is the 4 matter of Depp versus Heard. This comes on the 5 motion to compel -- motion to compel for the 6 mobile devices, production of original devices and 7 operating system drives, cloud backups and also 8 metadata. So, yes, sir, go ahead, Mr. Chew. 9 MR. CHEW: Yes, Your Honor. Thank you, 10 Your Honor. May it please the Court, Ben Chew for 11 plaintiff Johnny Depp. 12 As the Court is aware and just stated, 13 we're here on Mr. Depp's motion to compel 14 Ms. Heard's devices, drives, cloud backups and 15 defendant's cross-motion for same. 16 With the Court's leave -- with Your 17 Honor's leave, I would like to address Mr. Depp's 18 motion -- 19 THE COURT: Okay. 20 MR. CHEW: -- use most of my time for 21 that -- 22 THE COURT: Okay.</p>	<p style="text-align: right;">7</p> <p>1 nexus between the party seeking imaging claims and 2 its need to obtain a mirror image of the hard 3 drives. 267 F.R.D. 443, District of Connecticut, 4 2010. 5 Finally, Your Honor, as Your Honor is 6 aware, multiple cases have found that where, as 7 here, a party is alleged to have used her devices 8 to commit a wrong or in this case a fraud imaging 9 is necessary. See Ameriwood from the Eastern 10 District of Missouri at asterisk four. 11 Applying this authority the Court should 12 grant Mr. Depp's motion and enter the proposed 13 order the Court has in front of you because the 14 original devices and hard drives are crucial to 15 Mr. Depp's proving the negative of Ms. Heard's 16 false abuse claims and showing that, as he has 17 claimed from the outset -- that her photographs 18 are phony. 19 The chronology is clear, Your Honor. In 20 May of 2016 Mr. Depp informed Ms. Heard that he 21 wanted a divorce. Ms. Heard immediately had her 22 friends call the police and make false claims of</p>
<p style="text-align: right;">6</p> <p>1 MR. CHEW: -- and then address 2 Ms. Heard's motion after Mr. Rottenborn has stated 3 that. 4 May I please approach, Your Honor, just 5 to give the Court a copy -- 6 THE COURT: Sure. 7 MR. CHEW: -- of the proposed order? 8 THE COURT: All right. 9 MR. CHEW: Thank you. 10 THE COURT: Thank you, sir. 11 MR. CHEW: Your Honor, the Court should 12 grant plaintiff's motion because Virginia law and 13 persuasive federal authority hold that where, as 14 here, computer files are at issue and relevant 15 forensic imaging is appropriate. See Albertson v. 16 Albertson, 73 Virginia Circuit Court 94, 2007, 17 where Judge MacKay ordered extraction of data from 18 devices where the veracity of the computer files 19 is at issue. 20 Similarly, Your Honor, the federal 21 district court in Connecticut in the Genworth case 22 ordered imaging because there was a sufficient</p>	<p style="text-align: right;">8</p> <p>1 abuse. 2 Officers Saenz and Hadden came to the 3 scene. They found no injury upon Ms. Heard and no 4 disruption to the penthouses. Ms. Heard and her 5 friends then fabricated photos that she used to 6 obtain an ex parte TRO and a seven million dollar 7 divorce settlement which Ms. Heard falsely 8 testified in London she gave to the ACLU and, more 9 scandalously, to the Children's Hospital of Los 10 Angeles; sick children with cancer. 11 Ms. Heard's counsel has repeatedly used 12 these phony photographs at deposition. For 13 example, at the depositions of Officers Saenz and 14 Hadden who disavowed the photographs, said they 15 did not depict what they saw Ms. Bredehoft has 16 used them to -- in a -- in a brazen attempt to -- 17 to show that their disinterested, credible 18 testimony was not true. 19 Another example of Ms. Heard's using 20 these photos and bogus screenshots was Exhibit 2 21 to her motion to transfer venue which was her very 22 first appearance in this court where she attached</p>

<p style="text-align: right;">9</p> <p>1 screen -- purported screenshots of text without 2 any metadata and phony photographs. So our 3 expert, Brian Neumeister, cannot verify the actual 4 sender, the recipient, the date, the time, the 5 location or the text. 6 Mr. Neumeister's preliminary 7 investigation shows that a number of the 8 photographs have been run through a photo -- a 9 photo editing application called Photo 3 that can 10 easily manipulate images such as showing bruises 11 where none actually existed. 12 And, indeed, The Sun's own expert 13 concluded at page 11, footnote 11 of his report -- 14 and that's Attachment 9 to Ms. Heard's 15 opposition -- that Ms. Heard's photographs that 16 purportedly show injuries to her face from 17 December 2015 were manipulated three years later. 18 This is a direct quote from The Sun's 19 expert report. Photos from iPad Pro 10.5 were 20 created on or after 6 October 2018. As such, any 21 editing of the trial bundle versions would have 22 been on or after 6 October 2018.</p>	<p style="text-align: right;">11</p> <p>1 think that's going to be a problem. 2 As set forth in paragraph seven, page 6 3 of our proposed order, we propose that the 4 conciliator, Steve Cochran, or another third -- 5 another neutral third-party attorney weed out 6 irrelevant or privileged materials before -- 7 before they're produced to Mr. Neumeister or 8 anybody at our firm. 9 Ms. Heard's objections are invalid. 10 First, Mr. Depp no longer seeks everything over a 11 seven-year period but has identified specific time 12 frames tied to Ms. Heard's allegations of abuse. 13 And if Your Honor would look very 14 briefly to page 3, there's a table set forth -- 15 this is paragraph 5-A on page 3 -- that shows the 16 limited intervals during those seven years. I'll 17 just take the first one as an example. 18 The only time intervals for which we're 19 seeking are late two thousand -- are -- for 2012 20 and 2013, for example, are December 15, 2012, to 21 January 15, 2013, again from March 6, 2013, to 22 April 5, 2013 -- that's a month -- and then</p>
<p style="text-align: right;">10</p> <p>1 So Ms. Heard or someone on her behalf 2 doctored those photographs three years later. 3 When that came up in her testimony in London 4 Ms. Heard falsely denied it. In short, Your 5 Honor, without forensic imaging Mr. Neumeister 6 cannot properly assess or verify Ms. Heard's data. 7 Our proposed order setting forth the 8 protocol resulted from productive meet-and-confers 9 that Your Honor ordered between Mr. Neumeister and 10 Ms. Heard's expert, Julian Ackert, and 11 accommodates all of Ms. Heard's legitimate privacy 12 concerns. 13 One, we propose that Mr. Ackert, 14 Ms. Heard's expert, do the actual imaging and 15 extraction. So it would be Ms. Heard's own expert 16 who would actually do the imaging and extracting. 17 All that we ask -- and we respectfully submit that 18 this is critical -- is that Mr. Neumeister be 19 allowed to participate remotely via Zoom to ensure 20 that, A, the process is done correctly and, B, 21 that Mr. Ackert uses the proper tools. And they 22 actually speak the same language. So I don't</p>	<p style="text-align: right;">12</p> <p>1 finally June 1 through June 30, 2013. Those are 2 the only intervals for those two years. 3 So we're not seeking seven years. And 4 it was right that we should whittle them down. 5 And we did. And they're -- they're tailored to 6 Ms. Heard's allegations of abuse. 7 And Ms. Bredehoft has told you many 8 times that she only has to prove one. So we have 9 to disprove all of the ones that she has 10 fabricated. And, by the way, those allegations 11 are ever shifting. 12 Second, we are not seeking all 13 communications with 37 people. As stated, we have 14 proposed strict temporal limitations and a culling 15 or weeding out by Mr. Cochran. 16 Third, the Albertson case is directly on 17 point because Mr. Depp, like the successful party 18 in Albertson, seeks targeted access to computer 19 files not carte blanche. 20 Fourth, Ms. Heard's complaints of burden 21 are premature and strained. There's nothing 22 novel. And these two experts -- ours works for</p>

Transcript of Hearing
Conducted on October 29, 2021

4 (13 to 16)

<p style="text-align: right;">13</p> <p>1 the DOD, but her expert is good as well -- they do 2 this every day. And they've done it many times. 3 There's nothing unusual about this. 4 And Mr. Depp is willing to take -- 5 strike that. Mr. Depp is willing to pay 100 6 percent of the reasonable cost by the third-party 7 reviewer whether that's Mr. Cochran or another 8 third-party reviewer appointed by the Court. 9 Fifth, the fact that Mr. Ackert may have 10 forensically imaged, as he sets forth in his 11 affidavit accompanying their opposition, is 12 irrelevant. 13 Tellingly, Mr. Ackert provides no detail 14 whatsoever on the manager -- on the manner of the 15 imaging he did; what software he used, what method 16 he used or even which devices he imaged. He just 17 said that he did some imaging. 18 As Mr. Neumeister, Mr. Depp's expert, 19 points out, not all images are created equal. And 20 the particular protocol and methodology that's set 21 forth in Mr. Depp's proposed order are what is 22 minimally necessary to do the job, to actually</p>	<p style="text-align: right;">15</p> <p>1 which -- who did not do anything to dispute 2 Ms. Heard's account. They simply said that they 3 observed something different. That's a jury 4 argument. And I'll get into that in a second. 5 But what you didn't hear, Your Honor, 6 was any evidence that -- or anything other than 7 Mr. Chew's, Mr. Depp's speculation, their theory 8 of the case that every single incident of abuse 9 that Ms. Heard alleged was a hoax. 10 The Virginia rules do not support this 11 type of unprecedented -- virtually unprecedented 12 intrusive type of discovery based on the 13 equivalent of a tinfoil hat conspiracy theory 14 which is all that there is here. 15 There's -- there's one piece of evidence 16 in front of the Court here which is Mr. Ackert's 17 declaration. What you hear from Mr. Chew about 18 this is manipulated, this is a hoax, this is 19 false, that's his argument. His expert 20 declarations which were served in February are not 21 evidence. They're what he hopes his expert will 22 be able to show.</p>
<p style="text-align: right;">14</p> <p>1 obtain and verify the raw data to assess for -- 2 for -- to assess for manipulation that The Sun's 3 own expert testified occurred here. The best 4 source of the imaging are the original images not 5 an imaging of prior imaging. 6 And I would reserve any additional time 7 for rebuttal. Thank you, Your Honor. 8 THE COURT: All right. Thank you. Yes, 9 sir. 10 MR. ROTTENBORN: Good morning, Your 11 Honor. Ben Rottenborn here on behalf of the 12 defendant Amber Heard. With me today is David 13 Murphy also on behalf of the defendant. 14 May I take my mask off? 15 THE COURT: Yes. Yes, sir. 16 MR. ROTTENBORN: Thank you. 17 Your Honor, what -- what you heard from 18 Mr. Chew this morning was the same argument that 19 Mr. Chew makes at every hearing which is getting 20 into the merits; asking the Court to take his word 21 for it that all of these allegation of abuse are a 22 hoax; talking about Officers Saenz and Hadden</p>	<p style="text-align: right;">16</p> <p>1 But importantly -- and although the 2 target is moving because they've narrowed what 3 they're seeking substantially in the proposed 4 order since we filed our brief and Mr. Ackert's 5 declaration, it still doesn't come anywhere close 6 to what is appropriate in Virginia under Rule 7 4:1(b)(1) and (3) which talk about are there more 8 convenient, less burdensome ways, talk about 9 proportionality and undue burden of getting the 10 same information. 11 And I want to be very clear on something 12 here, Your Honor. We're not saying you don't get 13 anything. We're not saying we're not going to 14 produce any native files or anything like that. 15 That -- that rule goes both ways. 16 What we're saying is that to ask for 17 carte blanche -- essentially the -- the procedure 18 that they propose which until this morning when he 19 proposed a narrowed order was essentially his 20 expert doing all the imaging, unfettered access by 21 someone other than Ms. Heard to her entire hard 22 drives from devices that -- you know, dating back</p>

Transcript of Hearing
Conducted on October 29, 2021

5 (17 to 20)

<p style="text-align: right;">17</p> <p>1 to 2012, well before discovery or -- or litigation 2 could have been contemplated, and asking for 3 things -- you know, 344 different days between '12 4 and '16, all communications with 38 individuals 5 over a period of seven years, far beyond what this 6 Court has already denied Mr. Chew -- in -- in 7 denying him in a prior motion to compel the Court 8 rejected the request for all communications 9 between Ms. Heard and her partner or any other 10 person on six different topics. 11 And now he's saying, well, we want for 12 these specific time periods, understanding that 13 they've been narrowed slightly for today -- we 14 want everything. And not only do we want 15 everything, it's also important, Your Honor, to -- 16 to recognize there's no allegation by Mr. Depp 17 that Ms. Heard has done anything inappropriate in 18 discovery, that she hasn't produced what's been 19 requested. 20 We're objecting to these requests 21 because they're vastly overbroad; but, again, 22 there's no -- there's no evidence that something</p>	<p style="text-align: right;">19</p> <p>1 Mr. Ackert said in his declaration -- and I have a 2 copy if Your Honor would like me to hand it up, 3 but I think you have it. 4 Mr. Ackert says this -- you know, in his 5 experience this could total in the hundreds of 6 thousands or millions of documents. He also 7 testified in his -- in his affidavit that these 8 documents have already been imaged, have already 9 been reviewed, have already been produced for 10 responsiveness. And there's no allegation that 11 they haven't. 12 Mr. Cochran is not -- with all due 13 respect to Mr. Cochran, he's been very helpful as 14 a conciliator. One person is not qualified to -- 15 to come into a case, get access to hundreds of 16 thousands or millions of documents and review 17 those. There's no time for that, Your Honor. 18 Even if you put together a team, there's 19 no precedence in the case law that Mr. Chew cites 20 to have one third party based on a record like 21 this -- one third party make judgment calls on 22 relevance.</p>
<p style="text-align: right;">18</p> <p>1 has been changed or withheld from production that 2 would otherwise be relevant. And there's no 3 precedent for the Court just based purely on 4 speculation to grant a request like this. 5 And I'll get into our proposal in a 6 minute; but, you know, we have grave concerns 7 about the nature of this, Your Honor, and, again, 8 addressed slightly by the fact that, you know, on 9 the day of the hearing Mr. Chew is now saying, 10 well, your expert will do the imaging, not ours. 11 But we have concerns with a couple things. 12 Number one, Your Honor, the documents 13 that would be gathered by this are wholly outside 14 the bounds of this case. They're not -- they're 15 not ordered by any relevance or responsiveness. 16 What they're saying is image an entire computer, 17 entire phones, however many exist, and then -- and 18 then let a third party review those. There's no 19 justification for that here. 20 They want Mr. Cochran to review all the 21 data for relevance, for privilege, for work 22 product, for privacy issues. This could be, as</p>	<p style="text-align: right;">20</p> <p>1 He's only seen a snapshot of the case. 2 He would be barred from further conciliation 3 presumably because he's now in this reviewing 4 documents that he doesn't know whether they might 5 be privileged. He doesn't know whether 6 communications may be gathered as part of work 7 product. 8 And that's why, Your Honor, discovery 9 works the way that it does where each side is 10 trusted to take its obligation seriously, to 11 comply with its obligations. And there have been 12 no allegations that we have not done so. 13 We take those obligations very 14 seriously. We've searched for, we've forensically 15 imaged and we've produced documents. And Mr. -- 16 Mr. -- Mr. Cochran is not in the position that we 17 are to make judgment calls on relevance, 18 responsiveness, privilege; things of that nature. 19 And, in addition, it gives Mr. Cochran a 20 financial incentive in this case. He's going to 21 be paid a hundred percent by Johnny Depp and then 22 expected to -- to conciliate issues later in the</p>

Transcript of Hearing
Conducted on October 29, 2021

6 (21 to 24)

<p style="text-align: right;">21</p> <p>1 case fairly on behalf of both sides. That's not 2 appropriate, Your Honor. And it's just not 3 workable.</p> <p>4 In the Albertson v. Albertson case, Your 5 Honor, the court didn't provide this sort of 6 unfettered access. Among the very narrow 7 categories the court granted, the producing party, 8 not some third party -- the producing party got to 9 go through and review the files and provide that 10 to the requesting party. And that's how discovery 11 works.</p> <p>12 And it's not inconsistent with an 13 alternative that we've proposed for both sides 14 which is to have, as Mr. Ackert says on paragraphs 15 12 and 13 of his declaration -- says, let's have 16 the experts talk. Let's see what's been 17 forensically imaged. And then let's have the 18 experts figure out the best way to produce that 19 and to get that to each side. That's appropriate, 20 Your Honor.</p> <p>21 And I will note that in Mr. -- 22 Mr. Depp's brief they admit that this should cut</p>	<p style="text-align: right;">23</p> <p>1 is in any case where there's a photo at issue or 2 there's a text message at issue, a phone call at 3 issue -- in any case all that the other side has 4 to do is say, well, that -- that's manipulated, 5 it's been altered, it's a hoax, we need to 6 forensically image everything and that that would 7 be appropriate. And that is just not what the 8 rules call for.</p> <p>9 Importantly, Your Honor, Mr. Depp's 10 purported expert, Brian Neumeister, in his expert 11 declaration which Your Honor has seen he didn't 12 identify a single piece of information that 13 justifies this intrusive thing.</p> <p>14 Instead, all that is in there is -- 15 there's a blanket statement that the majority of 16 the multimedia are, quote, not authentic without 17 explaining what that means. And -- and remember 18 that phrase, because I'll get to that in a second 19 in the context of the RFAs.</p> <p>20 He also talks about a hypothetical 21 world. He says it's easy to alter metadata and 22 photos. He said audio recordings can be altered</p>
<p style="text-align: right;">22</p> <p>1 both ways. Their proposal as set forth in their 2 brief is that each party get the documents, the 3 native documents, with appropriate metadata and 4 all that language that the IT experts speak more 5 than Mr. Chew and -- and me; get those documents 6 that each party is requesting.</p> <p>7 And so, you know, part of our motion is 8 that whatever -- if the Court orders this, that -- 9 that it's mutual; but, you know, again, we cite 10 cases on page 3 of our brief, Your Honor, that 11 it's just not appropriate except in a very, very 12 rare case for this sort of thing to be ordered.</p> <p>13 And it's simply alleging that there's 14 deficiencies in production which there haven't 15 been here or alleging something of the nature that 16 Mr. Chew is alleging, that all these things are a 17 hoax without any supporting evidence of that, 18 that -- that that is somehow enough to trigger a 19 departure from the normal rules of discovery.</p> <p>20 And to be clear, Your Honor, if -- if 21 the Court adopted anything close to Mr. Chew's 22 proposal, what -- what that essentially is saying</p>	<p style="text-align: right;">24</p> <p>1 and that some photographs were passed through an 2 editing application called Photo 3 which could 3 be -- we don't know what Photo 3 is. I don't know 4 what that is. But if you, you know, make a copy 5 of a photo on your phone and send it, then that 6 can show up in the metadata as it's been somehow 7 manipulated when it hasn't been.</p> <p>8 And there's no -- we've asked them. In 9 the meet-and-confers we've asked them, identify 10 what you're talking about, what photos. They 11 haven't been able to do it. They haven't been 12 able to identify a single photograph that they 13 claim specifically. We say, what specifically do 14 you want. They can't do it.</p> <p>15 And there's a reason that, despite the 16 fact that we put an affidavit in evidence -- that 17 you don't see any evidence sworn from 18 Mr. Neumeister today. Because this is all a 19 fishing expedition, Your Honor. They have no 20 evidence of that. And they're asking for a grave 21 departure from the rules.</p> <p>22 So it's clear what's going on here.</p>

Transcript of Hearing
Conducted on October 29, 2021

7 (25 to 28)

<p style="text-align: right;">25</p> <p>1 They're hoping beyond hope that the evidence isn't 2 real, but they have absolutely no basis to say it 3 isn't. Their expert testimony wouldn't be 4 admissible as is. It's a declaration. That's all 5 it is. We've asked them numerous times for 6 specificity. 7 And, you know, if Your Honor asks the 8 parties to -- to give specific lists of what you 9 think is wrong, that's certainly something that 10 we're willing to do. And we've offered to do that 11 in the meet-and-confers. We've asked numerous 12 times. And they haven't been able to identify 13 anything. 14 It's important to remember also in the 15 UK -- and I know Mr. -- what -- what Mr. Chew's 16 response is going to be -- that Mr. Depp through 17 his attorneys said that an analysis of the digital 18 images will not yield much more, if anything. 19 Now, Mr. Chew has tried to use this UK 20 judgment and the UK proceedings as both a sword 21 and a shield in this case; but that's a statement 22 made on his behalf in the UK where he said an</p>	<p style="text-align: right;">27</p> <p>1 accurate depiction of the image displayed in the 2 photograph to the extent there is a depiction of 3 any injury or injuries in the image. 4 Now, as Your Honor knows, if you deny 5 something, you have to state a basis for the 6 denial. Here they just said, we're unable, we -- 7 we don't know, we're agnostic about that. Okay. 8 Fair enough. So now we have to authenticate those 9 maybe through testimony at trial, but we also know 10 that they have no basis to dispute that. They 11 have no good faith basis for that. 12 Now, in February of 2021, three months 13 later, they filed this bare bones declaration from 14 their expert who talks about in a hypothetical 15 world certain things can be altered and it looks 16 like some of Ms. Heard's stuff has been altered 17 without -- with no specificity. 18 And even to this -- the meet-and-confer 19 two weeks ago with him on the line we said, what 20 has been altered. And he couldn't -- he couldn't 21 name anything; couldn't answer that. 22 So if Mr. Depp really believed that,</p>
<p style="text-align: right;">26</p> <p>1 analysis of all the digital images will not yield 2 much more, if anything. That type of behavior has 3 to mean something. Those type of behaviors, 4 admissions have to mean something, Your Honor. 5 I would ask for permission to hand up 6 one discovery document that I think is relevant as 7 well. Your Honor, these are requests for 8 admission that Ms. Heard served on Mr. Depp last 9 fall. We received responses to these on November 10 10th, 2020. 11 And what these are are -- you know, in 12 many cases you -- you use RFAs to try to get 13 authenticity admissions. So there's hundreds of 14 photographs or recordings that we ask Mr. -- Mr. 15 Depp to authenticate that have been produced by 16 Ms. Heard in this case. And they responded for 17 each of these. We asked whether they're accurate, 18 genuine and authentic. 19 They responded to each of these by 20 refusing to admit or deny, didn't say either one, 21 and saying they are unable to admit or deny that 22 the photograph or recording is a true, genuine and</p>	<p style="text-align: right;">28</p> <p>1 what he said in Mr. Neumeister's declaration, that 2 it wasn't just a shot in the dark, he had an 3 obligation to supplement his RFA responses eight 4 months ago, Your Honor. 5 The whole purpose of these RFAs is to 6 isolate and pinpoint the exact issues and disputes 7 on authenticity so the parties can work through 8 them without coming to court. But to have an 9 expert opine, come in and say just as a blanket 10 matter that everything is falsified and -- and I 11 should get to forensically image every device that 12 exists, that's a fishing expedition. That's what 13 it is. 14 And -- and they ignored their 15 obligations under the rules to supplement. And 16 now they're asking this Court to order the type of 17 discovery order that should be reserved for the 18 rarest of circumstances. 19 Text messages; same thing. In the UK 20 trial there were text messages that were produced 21 that were identical from Ms. Heard and Mr. Depp 22 and that were testified about. They have no</p>

Transcript of Hearing
Conducted on October 29, 2021

<p style="text-align: right;">29</p> <p>1 evidence that there are text messages that were 2 altered. That's just the -- the hope and a prayer 3 that they have, Your Honor. That's their theory 4 of the case. There's no evidence of that. 5 There's no preservation notices seeking 6 the preservation of these devices. And it's 7 important to note that they're seeking stuff on 8 devices that date back to 2012. I don't have my 9 phone that I used in 2012, you know. Everything 10 that Ms. Heard has and had when -- at the 11 appropriate time was collected and -- and imaged; 12 but things dating back to 2012, I don't know if 13 those exist. 14 Now, when it comes to Officers Saenz and 15 Hadden -- and I'll -- I'll wrap up soon and -- and 16 then either proceed to our motion or see if Your 17 Honor has questions. 18 But when it comes to -- to Officers 19 Saenz and Hadden, at every single hearing Mr. Chew 20 says Officers Saenz and Hadden didn't see any 21 marks on Ms. Heard's face. That's a -- that's an 22 argument he can make to the jury, but it doesn't</p>	<p style="text-align: right;">31</p> <p>1 know Your Honor has read them; but instances where 2 Johnny Depp hit Ms. Heard so hard that blood ended 3 up on the wall, that he was on a plane and he was 4 blacked out from alcohol and cocaine and he kicked 5 her and threw a boot at her. 6 You don't hear Mr. Chew talk about it 7 being a hoax when Mr. Depp referred to himself as 8 the monster and slapped Ms. Heard across the face 9 and knocked her to the floor. 10 I could go on, Your Honor, but all of 11 these things are things that unlike this 12 conspiracy theory that is based on not a shred of 13 evidence -- every single one of these things has 14 been found by a fact-finder to have occurred. And 15 you don't hear any argument that those are hoaxes. 16 And so I just wanted to address that, 17 because every single hearing Mr. Chew makes a 18 closing argument about Officers Saenz and Hadden 19 without addressing anything else. 20 So if you look at the evidence, Your 21 Honor, if you look at Mr. Ackert's declaration 22 which is in evidence, he talks about the Herculean</p>
<p style="text-align: right;">30</p> <p>1 disprove my client's claims which are true. They 2 are very true, Your Honor. 3 Officers Saenz and Hadden didn't dispute 4 the photos. They simply said that they didn't 5 observe the marks on her face that appear on those 6 photos; which makes sense because they observed 7 her immediately in the aftermath of the incident. 8 Those photos were taken later. And sometimes it 9 takes a while for bruises to appear. 10 But, Your Honor, that's an issue of 11 credibility. It's not an issue of authenticity. 12 It doesn't prove a hoax. It's an argument that 13 Mr. Chew can make to a jury. 14 And what's interesting to me, Your 15 Honor, is that you only see -- every time we talk 16 about their theory of the case he says that the 17 May '16 incident was -- was falsified and was a 18 hoax because of what Officers Saenz and Hadden 19 didn't see. 20 What you don't hear about are the 11 21 other incidents of abuse that the UK court found 22 had happened that are in our plea in bar brief. I</p>	<p style="text-align: right;">32</p> <p>1 effort. He talks about how this would be 2 virtually impossible for one person to do. He 3 talks about how there are ways to do this. 4 Let's get an inventory of what's been 5 imaged. Let's have the experts talk. And if you 6 need specific documents, specific images, then 7 let's do that and have the experts figure out a 8 way to do it. 9 But to have Mr. Neumeister, Mr. Depp's 10 forensic expert, get -- get to micromanage 11 Ms. Heard's discovery process when there's been no 12 finding by a court there's been any discovery 13 things that have been -- happened inappropriately 14 in discovery from Ms. Heard, that when there's 15 been no shred of evidence that they haven't gotten 16 what they've asked for -- except obviously we're 17 fighting over this because it's vastly 18 overbroad -- and when the proposed solution of one 19 person without knowledge of the case is completely 20 unworkable, Your Honor, that's just -- there's no 21 support for that in the law, in discovery cases in 22 Virginia or based on the record in this case.</p>

33

1 And the last thing I'll say is this
2 isn't just -- we're not trying to be
3 obstructionist. Again, we will -- we will provide
4 under the appropriate framework based on
5 appropriate discovery protocols -- we will provide
6 and we would expect them to provide what each side
7 needs.
8 But we have one more very serious
9 concern in this case which is that Mr. Depp's
10 lawyer, his -- his former lawyer who was kicked
11 out of this case, has already been found by the
12 court to have violated the protective order.
13 There's been rampant leaking to the press of
14 things.
15 And, frankly -- and I understand that
16 Mr. Chew today is now saying that his experts
17 won't have access to this information, but he's
18 saying that they get to -- to manage the process.
19 But we have grave concerns with anyone
20 other than Ms. Heard's legal team and IT team
21 having access to things that have no relevance to
22 the case, because we've seen this movie before.

34

1 And we've seen things that have been leaked in
2 violation of the protective order by -- by Ms. --
3 not Mr. Chew but -- but Mr. Depp's other counsel.
4 And so we do have grave concerns from that
5 standpoint.
6 With that, Your Honor, I will -- unless
7 Your Honor has any questions, I can either address
8 our motion --
9 THE COURT: Well, why don't we --
10 MR. ROTTENBORN: -- next or --
11 THE COURT: They're separate motions.
12 MR. ROTTENBORN: Okay.
13 THE COURT: So let's just do them
14 separately. It's easier.
15 MR. CHEW: Very briefly, Your Honor.
16 THE COURT: Yes, sir.
17 MR. CHEW: And I will not spend much
18 time on the opposition to the other --
19 THE COURT: Okay.
20 MR. CHEW: -- but I -- I will be brief.
21 THE COURT: That's fine. I think we had
22 set this for an hour anyway. So...

35

1 MR. CHEW: Thank you, Your Honor.
2 Seven quick points. With respect to the
3 hoax, Ms. Heard has sued Mr. Depp for a hundred
4 million dollars in her counterclaims suing him for
5 allegedly defamatory statements made -- made by
6 Mr. Waldman where Mr. Waldman says in words or
7 substance that Ms. Heard has fabricated
8 photographs and purported evidence of this.
9 So this is central. The whole issue of
10 the authenticity of the photographs and the
11 screenshots of the texts are absolutely essential
12 to the case.
13 And Mr. Rottenborn sets up a strawman.
14 Mr. Rottenborn says we haven't proven manipulation
15 and that's the standard, we have to prove
16 manipulation. That's not the standard.
17 In the Albertson case and the other
18 cases that we've cited the issue before the Court
19 is whether there is a nexus between what the party
20 seeking imaging wants and its claims. It has
21 always been core to Mr. Depp's claims that these
22 photographs are false. And that's the standard.

36

1 And we've clearly -- with respect, we've met that
2 standard.
3 But let's adopt the Rottenborn standard
4 that is not the standard in Virginia. And he says
5 we've never alleged that Ms. Heard manipulated
6 data. That's simply not true. And you heard that
7 today.
8 The Sun's own expert -- now, that's a
9 very different case, very different standards of
10 evidence. Basically there are none. Basically
11 there are no evidentiary standards in London.
12 But The Sun's own expert said at
13 footnote 11, page 11 Amber or somebody at
14 Ms. Heard's direction manipulated photographs of
15 her alleged injuries in 2015, these were
16 manipulated sometime after October 6th, 2018.
17 So if there's this evidentiary standard,
18 if there's -- the Rottenborn standard which
19 doesn't exist is the standard, well, there's an
20 incident, there's an admission by The Sun's own
21 expert that there was manipulation.
22 And why would someone manipulate? If

Transcript of Hearing
Conducted on October 29, 2021

10 (37 to 40)

<p style="text-align: right;">37</p> <p>1 someone were really injured, why would she 2 manipulate the image? And why would she then lie 3 about it? Why wouldn't she explain why she 4 manipulated the issue? 5 The second evidence of that is 6 Mr. Neumeister has said, yes, these photographs, 7 just as The Sun's expert had concluded -- it is 8 obvious that some of these photographs that she -- 9 Ms. Bredehoft uses at every deposition, not only 10 the officers' -- that was just an example -- have 11 been manipulated, have passed through an editing 12 machine. 13 And Mr. Rottenborn calls them into -- to 14 task because he can't -- he can't be more 15 specific. Well, he can't be more specific because 16 he's using doctored images. Both of the experts 17 agree that the best way to do this, the only way 18 to do this is to have the original data. That's 19 the only way. 20 And if -- if these were authentic, 21 Ms. Heard should have no problem with this at all; 22 but she knows they're not. She knows she doctored</p>	<p style="text-align: right;">39</p> <p>1 missed. 2 So the theory is that Officers Saenz and 3 Hadden who didn't even know that they were 4 investigating Johnny Depp -- because Ms. Heard got 5 wet -- cold feet and didn't make a complaint or 6 even mention it. 7 So, you know, the notion -- you know, 8 her -- her -- her explanation is that -- is that 9 they are lying or that they are blind the same way 10 when she spent the night in jail for beating up 11 one of her serial girlfriends -- the -- the 12 arresting officer there she accused of being 13 homophobic. 14 Well, the problem with that theory was 15 that the officer there happened to be gay. And 16 she said in words or substance, I didn't arrest 17 Ms. Heard because I'm homophobic, I arrested her 18 because she -- I didn't like her beating up her 19 girlfriend. 20 So that's -- you know, she -- she is 21 suing Mr. Depp for a hundred million dollars 22 saying that his allegation that this is a hoax is</p>
<p style="text-align: right;">38</p> <p>1 them just the way she lied about the charity; just 2 the way her own expert said she -- she doctored 3 the images. 4 So we have met the -- oh, the third -- 5 the third instance of proof, not that we need to 6 meet the standard, is the officers' testimony; 7 because it's not just that the officers did not 8 see the bruise on Ms. Heard's face which wasn't 9 seen by any of the other people living at the 10 penthouses during that point. They didn't see the 11 mayhem. 12 Ms. Bredehoft uses at -- at all the 13 depositions photographs of utter pandemonium in 14 the penthouses where the alleged incident occurs. 15 Wine is all over the wall. Pictures are smashed. 16 The officers would have to have been blind, blind 17 not to see that. 18 Now, I could see where maybe they didn't 19 see the discoloration of the face; but they sure 20 as heck would have been seen. They should have 21 seen -- they would have seen all the mayhem in the 22 apartment. That is impossible to have -- to have</p>	<p style="text-align: right;">40</p> <p>1 a hoax; but she can't then having seeked -- 2 seeking a hundred million dollars from our client 3 prevent our client from having the ability to test 4 the proof of the fact that it's a hoax. And I'll 5 be very quickly with the rest. 6 This is Albertson. These are narrowly 7 tailored. The Court has seen page 3 of our 8 proposed order. We're not asking for seven years. 9 Did we originally do that? Yes. But we narrowed 10 that. 11 And we didn't narrow it this morning. 12 We narrowed it in the original proposed order that 13 we -- we submitted along with our motion. And we 14 narrowed it further in the proposed order that we 15 sent Your Honor and Ms. Heard's counsel yesterday 16 morning. 17 So they've had plenty of time to review 18 it. And it's not a surprise. I'm sure they've 19 discussed it with Mr. Ackert as we have discussed 20 it with Mr. Neumeister. And what this reflects is 21 what Mr. Neumeister -- and he does get along with 22 Mr. Ackert -- is -- is what's minimally necessary.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

24003

Transcript of Hearing
Conducted on October 29, 2021

<p style="text-align: right;">41</p> <p>1 And just hitting a couple of more 2 points, first of all, I don't think Mr. Cochran 3 deserves any of the aspersions that were cast upon 4 his character. I'm sure he could do a very fair 5 job. 6 But to the extent that it would in any 7 way compromise his neutrality, then we would 8 recommend that the Court propose another neutral 9 third-party attorney who would have no role as 10 conciliator. And this could be a one off for him 11 or her. And I don't know why Mr. Depp is being 12 called to -- to task for saying he's willing to 13 pay for it. This shows that he's willing to 14 accommodate anything. 15 But he's fighting for his life here. 16 She destroyed his life. She extorted a seven 17 million dollar settlement from him; agreed to be 18 quiet about her false allegations. And then she 19 violated that because she knew she needed a new 20 role in life now that she was no longer Mr. Depp's 21 wife. She wanted to be the poster child for the 22 me too, you know, the Jussie Smolett of the me too</p>	<p style="text-align: right;">43</p> <p>1 have the forensic imaging we can admit or deny. 2 And we'll be happy to do that. 3 Mr. Neumeister is not a hired gun. He 4 is out for the truth. The logo for their company 5 is In Data There Is Truth. We just want to know 6 what's real and what's fake. And because they are 7 an essential part of Mr. Depp's defense in this 8 case and an essential part of Ms. Heard's 100 9 million dollar counterclaim -- she says it's not a 10 hoax. 11 Well, then prove it. Prove it's not a 12 hoax. If these are real photographs, well, then, 13 you know, we're going to be in a much different 14 situation. But if these are real photographs, she 15 should want to be able to prove them. 16 And if she doesn't have her -- her 17 device from 2012, well, then that's the answer. 18 She can only produce for imaging and extraction 19 what she's got; but then she's going to have 20 another argument as to what happened and whether 21 that's spoliation or not. 22 But, Your Honor, we have bent over</p>
<p style="text-align: right;">42</p> <p>1 movement. 2 And Mr. Depp, I respectfully submit, 3 should be able to test the veracity of these 4 photographs that are being used to hang him. The 5 images are easily manipulated, as Mr. Neumeister 6 has testified. And Mr. Ackert knows they can be. 7 And that's another reason why it's necessary to do 8 this. 9 And finally, Your Honor, I think Mr. 10 Rottenborn -- and I like Mr. Rottenborn, but I 11 think his last point about the RFAs really proves 12 why we need the -- the extraction and imaging 13 here. 14 They ask -- they -- they gave these 200 15 photographs. And -- and they come fast and 16 furious as do the allegations. In no way do we 17 agree or concede that any of these other incidents 18 which change with the weather are -- are true. 19 We are called to task because we won't 20 admit that these fake photographs that were 21 produced by Ms. Heard are authentic. How can we? 22 How can we admit or deny? We don't know. Once we</p>	<p style="text-align: right;">44</p> <p>1 backwards because it's our duty, number one, and, 2 number two, because this is so desperately 3 important for Mr. Depp; because a couple of months 4 from now you're going to see these proposed 5 photographs on the exhibit list. And we're going 6 to have an in limine fight. Let's figure out 7 whether they are authentic. 8 And, again, with respect to Mr. 9 Rottenborn's point about us seeing it, under our 10 proposal it's his expert who's going to have 11 access to this. We're not going to see any of it 12 until it goes through the weeding out process that 13 will be done by Mr. Cochran or whoever else the 14 Court appoints. We won't even see it until that 15 person, an officer of this court, has determined 16 that they are relevant and not privileged. 17 Your Honor, we respectfully submit 18 and -- and request that the Court grant Mr. Depp's 19 motion. 20 THE COURT: All right. Thank you. 21 We're done with this motion. Okay. All right. 22 So as far as Mr. Depp's motion today,</p>

Transcript of Hearing
Conducted on October 29, 2021

12 (45 to 48)

<p style="text-align: right;">45</p> <p>1 I'm going to grant it in part and deny it in part. 2 And there's actually going to be two parts to my 3 ruling. I do believe that it is narrowly tailored 4 and there's a nexus for the photographs but not 5 for the videos, for the texts or for the emails. 6 So, therefore, I'm going to grant the 7 motion as to the time periods related in paragraph 8 5-A for the photographs of Ms. Heard and also the 9 deleted photographs as well but not to 5-C, D, E, 10 F or G. So I'm only granting it to 5-A and B. So 11 that's the first part of the order. 12 The second part of the order is I will 13 require Ms. Heard's attorneys to provide Mr. 14 Depp's attorneys with an inventory about what they 15 have imaged whether that is photographs, text 16 messages, emails, videos; provide them a list so 17 they can also have those at their disposal to be 18 forensically analyzed in a manner as -- as 19 outlined in the proposed order from Mr. Depp. 20 In addition, I don't want -- as far as 21 paragraph four of the order, that is fine that 22 Mr. Cochran will deal with any disputes arising</p>	<p style="text-align: right;">47</p> <p>1 probably until Monday anyway for -- 2 MR. CHEW: Thank you, Your Honor. 3 THE COURT: -- third-party attorney. 4 MR. CHEW: Well, maybe then if we could 5 have until Wednesday. 6 THE COURT: Okay. That's fine. 7 MR. CHEW: Thank you, Your Honor. 8 THE COURT: Tuesday is a holiday anyway. 9 So that works. 10 MR. CHEW: Thank you, Your Honor. 11 MR. ROTTENBORN: Your Honor -- 12 THE COURT: Thank you. 13 MR. ROTTENBORN: -- I just had one -- 14 one question about the middle part of the ruling 15 relating to the -- 16 THE COURT: Inventory? 17 MR. ROTTENBORN: -- texts -- yes, the 18 inventory. Was your -- can you just explain what 19 that was again? We're going to provide an 20 inventory of the -- 21 THE COURT: Of what you have imaged. 22 MR. ROTTENBORN: Right.</p>
<p style="text-align: right;">46</p> <p>1 from how the experts deal with the images. 2 However, when it does come to the order 3 for paragraph seven, I -- I don't want Mr. Cochran 4 to be the third-party attorney that reviews the 5 extracted data. Therefore, by Monday I will get 6 you the name of an additional neutral third-party 7 attorney who will act upon this case only in that 8 limited scope of reviewing that information. 9 And I think -- does anybody have any 10 questions about that? 11 MR. CHEW: Thank you, Your Honor. May 12 we have until Tuesday to get the Court an order? 13 Because I would -- 14 THE COURT: Well, that's fine since I'm 15 going to -- I need until Monday. So that will be 16 fine -- 17 MR. CHEW: Thank you, Your Honor. 18 THE COURT: -- Tuesday. 19 MR. CHEW: Because we just wanted to 20 have the benefit of the transcript. 21 THE COURT: That's -- that's fine. I 22 just -- I just won't be able to give you a name</p>	<p style="text-align: right;">48</p> <p>1 THE COURT: Right. Now, I don't know if 2 you've imaged any videos or text messages or 3 emails; but whatever you have, just if you could 4 provide that inventory and so -- to their forensic 5 evaluator or to the attorneys so they can look at 6 it so -- with their forensic evaluator and decide. 7 MR. ROTTENBORN: And did you -- did 8 you -- did you then order that they get to pick 9 any of -- what comes after the inventory of that 10 material? A further meet-and-confer -- 11 THE COURT: From -- from that that they 12 can request to have their independent expert 13 analysis of whatever you've already -- 14 MR. ROTTENBORN: Similarly to the 15 photos? 16 THE COURT: Correct. 17 MR. ROTTENBORN: Got it. 18 THE COURT: Correct. 19 MR. CHEW: Thank you, Your Honor. 20 THE COURT: Okay. Any other questions 21 on this one? 22 MR. CHEW: No. Thank you, Your Honor.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

24005

Transcript of Hearing
Conducted on October 29, 2021

13 (49 to 52)

49	1 THE COURT: Okay. All right. Your -- 2 your motion then, sir. 3 MR. ROTTENBORN: Thank you, Your Honor. 4 Your Honor, there's one -- one document 5 I'd like to hand up for this -- 6 THE COURT: Okay. 7 MR. ROTTENBORN: -- motion, if I may. 8 THE COURT: Yes, sir. 9 MR. CHEW: Thank you. 10 THE COURT: And if you want -- would you 11 like to have this back? 12 MR. ROTTENBORN: I'm happy to take it 13 off your hands if you don't -- if you don't want 14 it. 15 THE COURT: The file is big enough as it 16 is. I don't think I need it right now. Thank 17 you. 18 MR. ROTTENBORN: Understood. Thanks. 19 THE COURT: All right. Yes, sir. 20 MR. ROTTENBORN: Thank you, Your Honor. 21 So here we've requested some very 22 specific information and then obviously based	51	1 proposed -- our proposed order on this -- 2 THE COURT: Thank you. 3 MR. ROTTENBORN: -- Your Honor, if I 4 may. 5 MR. CHEW: Thank you. 6 MR. ROTTENBORN: Now, these are two 7 partial recordings that we've received. We've met 8 and conferred on these many times. He has been -- 9 Mr. Depp has been ordered to produce the full 10 version of these. And he hasn't done so. 11 Now, in his brief Mr. Depp says, The Sun 12 produced these documents and -- or these excerpts 13 from the recordings and I don't think I have them. 14 Well, that's belied by his testimony in 15 the UK proceedings which was the first document 16 that I handed to you with the three tabs, Your 17 Honor. In tab one of that document the judge in 18 the UK on page -- on page -- let's see. It was -- 19 I believe it was at the top of page 2. 20 He, Mr. Depp, had to provide a witness 21 statement personally listing all of the recordings 22 that he has that fall within his control. So
50	1 on -- on certain aspects of the Court's ruling 2 would ask for similar information from Mr. Depp, 3 but I'll start with the specific. And then we can 4 go toward the more general. 5 On July 24th, 2020, Ms. Heard requested 6 that Mr. Depp produce all videos, photos, audio 7 recordings and transcripts relating in any manner 8 to his claims or defenses including all metadata 9 and original source info. 10 Mr. Depp agreed to do that in a consent 11 order that was entered on September 14th, 2020. 12 He agreed to provide that. And he hasn't. We've 13 asked him to produce -- to produce devices as well 14 for inquiry, forensic imaging, if the Court 15 ordered that. And he has refused to do that for 16 the very same reasons that Ms. Heard refused to 17 initially do that. 18 Now, what we want -- and I'll start with 19 the -- the specifics. We want the full and 20 complete audio recordings that have been produced 21 as Depp 8271 and Depp 17814. And, actually, I'll 22 also -- I'll also hand up to the Court our	52	1 that's tab one. 2 On tab two his -- one of his counsel in 3 the UK proceeding discusses on page 5 how his 4 legal team had extracted recordings from 5 Mr. Depp's devices that were supplied to their 6 firm by -- by Mr. Depp's other counsel, which 7 is -- you'll see is -- is Mr. Chew's firm, and 8 that they were ordered to go through those audio 9 files and produce anything that had Ms. Heard's 10 voice on it. So she says on March 10th, 2020, 11 we're going through the files and we'll produce 12 anything that has Ms. Heard's voice on it. 13 On tab three which is the sworn 14 statement from the plaintiff in this case, Mr. 15 Depp, on page 2, paragraphs four through eight Mr. 16 Depp says that he instructed his UK counsel to 17 carry out on his behalf the necessary search of 18 all audio and visual files that were previously 19 extracted by his legal representatives, Brown 20 Rudnick, from the devices and storage accounts 21 under his control. 22 He then says that his UK attorneys had

Transcript of Hearing
Conducted on October 29, 2021

<p style="text-align: right;">53</p> <p>1 carried out an analysis to determine which audio 2 and visual recordings needed to be disclosed. And 3 then in paragraph seven he lists two recordings 4 that came from his devices that had been extracted 5 and reviewed. 6 That completely belies Mr. Depp's brief 7 where he says, we don't know what -- what you're 8 talking about with these audio recordings, they 9 came from The Sun, The Sun produced them as part 10 of the trial bundle. 11 Now, I don't know if the two audio 12 recordings that we're seeking are the two 13 recordings here; but the bottom line is, Your 14 Honor, Mr. Depp has audio recordings that were in 15 his possession, custody and control that we do not 16 believe he's produced. 17 And in the brief in response to our 18 motion Mr. Depp says, I don't have those 19 recordings anymore and they must have come from 20 The Sun. 21 Now, bear in mind that these recordings 22 are leaked partial transcripts of calls that</p>	<p style="text-align: right;">55</p> <p>1 is seeking that supports his allegations. 2 And he's claimed in written documents 3 that this abuse, this alleged abuse, by Ms. Heard 4 of Mr. Depp is, quote, unquote, documented. And 5 all he's produced is a PDF format version of that. 6 And in his brief now he says, well, but I don't 7 have control over those documents, they appear to 8 have been produced by Sean Bett who is his body 9 guard who's also represented by Brown Rudnick. 10 So those are within his possession, 11 custody and control even if they're within the 12 hands of his agent, Your Honor. And he's refusing 13 to produce them. Mr. Bett works for Mr. Depp. 14 Mr. Depp has produced these documents claiming 15 that they're evidence of abuse by Ms. Heard. And 16 then when it comes time to get the metadata he 17 says, oh, they're not mine, they're not mine, I 18 don't have them. He should be ordered to produce 19 those. 20 Again, Your Honor, he's -- he's -- he 21 consented to an order on September 14, 2020, to 22 produce all of these things. And yet he continues</p>
<p style="text-align: right;">54</p> <p>1 weren't leaked by Ms. Heard, to our knowledge; 2 that, consistent with every other leak in this 3 case, was very likely leaked by Mr. Depp. 4 But then when it comes time to produce 5 them -- and we've been asking for these for a 6 year, Your Honor; produce us what you have. Now 7 they're saying, well, we don't know what you're 8 talking about. So we want those documents. 9 And we believe that Mr. Depp should be 10 held in contempt for not producing those. He's 11 been asked to produce them for over a year. And 12 he hasn't. And everything he said in his brief 13 about not having those is belied by his sworn 14 statement in the UK. And that's -- it's a pattern 15 that we see, Your Honor. 16 With respect to the -- the next category 17 of documents, we ask for the photos that he 18 identified as Depp 11757 through 59 and 11814 that 19 he's produced; but he's only produced those in PDF 20 format. We've asked him for native versions of 21 those including all metadata type of forensic 22 imagery that -- that -- information that Mr. Depp</p>	<p style="text-align: right;">56</p> <p>1 to refuse to do that. So we believe that he 2 should be ordered to produce those. 3 And then finally, Your Honor, just 4 generally we've -- we've asked for native versions 5 and all metadata and portions of forensic images 6 of all devices containing any evidence that Depp 7 contends support his allegations or claims or 8 defenses in this case. 9 THE COURT: Isn't that clearly 10 overbroad? 11 MR. ROTTENBORN: It's the same thing 12 that they've asked for until today when they 13 narrowed this; but, I mean, they asked for all 14 communications with 38 people for years -- 15 THE COURT: Which is overbroad. 16 MR. ROTTENBORN: -- and years. 17 Fair enough, Your Honor. But what 18 we're -- what we're saying is anything that -- 19 any -- any photo that he is going to produce in 20 discovery or that he has that he's going to -- 21 photo or audio recording, consistent -- or email, 22 consistent with what Your Honor just ordered --</p>

Transcript of Hearing
Conducted on October 29, 2021

<p style="text-align: right;">57</p> <p>1 anything that he has produced that he's going to 2 use to contend that Ms. Heard abused him or he's 3 going to use to try to undermine Ms. Heard's 4 allegations of abuse or show that were false, he 5 ought to produce native versions of that. 6 That's -- that's what we're saying, Your 7 Honor. Anything that's -- it's -- it's -- if we 8 have to produce it, he should have to produce it. 9 Now, we don't know -- we've -- we've 10 asked for the specific things here. And maybe 11 that's as far as Your Honor is willing to go 12 today. And I think that we should get that. 13 To the extent that there are further 14 specific things, you know, we will, of course, 15 identify that because it's been our position that 16 he wasn't specific enough in what he requested and 17 that he made a clearly overbroad request. 18 So, you know, I understand if -- if 19 that's Your Honor's position today; but we believe 20 that he should have to produce data form -- format 21 documents. And -- and, you know, again, we can go 22 through and we can take a look at other things</p>	<p style="text-align: right;">59</p> <p>1 aware, including Ms. Heard's hundred million 2 dollar counterclaim is whether Ms. Heard's alleged 3 injuries from Mr. Depp are real or fake. 4 Mr. Depp argued from the start that a 5 large number of the photographs Ms. Heard herself 6 produced are phony. The only way to verify that 7 is targeted imaging. The Court has addressed 8 that. We appreciate that. 9 By contrast, Mr. Depp's injuries are not 10 central to this case nor was it Mr. Depp who 11 produced the photographs that Mr. Rottenborn just 12 referred to but rather photographs produced by a 13 third party. 14 These were photographs of a partially 15 severed finger that was caused when Ms. Heard 16 threw a vodka bottle at him while he was -- not 17 while he was actually shooting Pirates of the 18 Caribbean 5 but while they were in Australia 19 together for which Ms. Heard apologized. 20 Finally, Ms. Heard has not alleged that 21 Mr. Depp manipulated any images. We very clearly 22 allege that Ms. Heard has, in fact, concocted or</p>
<p style="text-align: right;">58</p> <p>1 that he may have produced that we don't have the 2 metadata for and request that. And if -- if we 3 need to come back at a later date, we can. 4 But we believe that at a minimum the -- 5 the logic that the Court is applying to Mr. Depp's 6 motion should apply equally to -- to this. Thank 7 you. 8 THE COURT: Thank you. All right. Yes, 9 sir. 10 MR. CHEW: Thank you, Your Honor. I 11 will be less loquacious in responding to the 12 motion, but -- and I will address each of his 13 points. 14 The Court should deny Ms. Heard's 15 halfhearted tit for tat motion on the devices. As 16 with the IME motions, Ms. Heard argues a false 17 equivalency. Indeed, she argues that neither side 18 needs forensic imaging; but that if Mr. Depp gets 19 it, then she should get it too irrespective of the 20 fact that the parties are not similarly situated 21 in this regard. 22 The heart of the case, as Your Honor is</p>	<p style="text-align: right;">60</p> <p>1 people on her behalf have concocted photographs. 2 Accordingly, the requisite nexus between 3 Ms. Heard's allegations and the imaging she 4 requests is utterly absent here. 5 With that said, Mr. Depp does not object 6 to providing native files of documents, 7 photographs, you know, in his possession, in -- if 8 they are in his possession and identified by Ms. 9 Heard. So that's not -- they're pushing an open 10 door there. 11 Finally, the Court should deny 12 Ms. Heard's baseless demand for sanctions. As 13 Ms. Bredehoft who attended the entirety of the 14 London trial and stood next to Ms. Heard on the 15 courthouse steps when she spoke to the media while 16 the court was still in session -- it was not Mr. 17 Depp who originally produced the potentially 18 doctored audio recordings. 19 On that we agree with Mr. Rottenborn. 20 These do appear to be partial conversations, Depp 21 8271 and Depp 17815. Strike that. 17814. But 22 Ms. Heard herself -- and if the Court will bear</p>

Transcript of Hearing
Conducted on October 29, 2021

16 (61 to 64)

<p style="text-align: right;">61</p> <p>1 with me, the actual sequence was as follows. 2 What Ms. Heard did was produce all of 3 the documents from the Fairfax case, the discovery 4 that had been done at that point. In other words, 5 she produced all of her own documents which 6 included these two partial tape recordings and all 7 of the documents Mr. Depp had produced including 8 documents that were covered by the limited scope 9 of confidential under the protective order 10 including documents that related to Mr. Depp's 11 medical records. 12 Why did we not jump up and down about 13 that and move for an order to show cause? Because 14 Mr. Depp's British counsel, Schillings, agreed 15 with the court that they wouldn't do that; that 16 the court was interested in having all the 17 documents. So -- and that was binding on me even 18 though I was not a part of that case. That's why 19 we didn't come here and seek an order to show 20 cause. 21 So -- and those were -- those were 22 documents that were actually confidential. The --</p>	<p style="text-align: right;">63</p> <p>1 kind of a Tinker to Evers to Chance full circle. 2 We produced all the documents back to her. So 3 those were these two recordings. And this could 4 be -- I'm not casting aspersions. This could be 5 an honest disagreement, because there were a lot 6 of recordings flying around. 7 But Depp 8271 and Depp 17814, Ms. 8 Vasquez and I called Joelle Rich who is a partner 9 at Schillings. And we said, what's the deal with 10 these two documents or these two recordings. She 11 said, yes, these originated from The Sun. 12 And we're speculating a bit but not much 13 to surmise that The Sun would have obtained them 14 from Ms. Heard, because it did not obtain them 15 from us. And that was the providence of that. So 16 that's what we have. And I think Ms. Bredehoff 17 knows that. I know she's on vacation, but she 18 certainly knows that because she was there on the 19 ground at the time. 20 So we would ask, Your Honor, with -- 21 with the caveat about these photographs of Mr. 22 Depp's -- the injury to his finger -- you know, we</p>
<p style="text-align: right;">62</p> <p>1 the documents that had been found to have been 2 used improperly by someone on Mr. Depp's side were 3 documents that had been noted, stamped 4 confidential but were not, in fact, confidential. 5 They were innocuous deposition testimony. I'm not 6 understating that, but it was a different kettle 7 of fish. 8 But the point is Ms. Heard produced all 9 of those documents to The Sun. The Sun then 10 produced them back to Mr. Depp in the context -- 11 or Mr. Depp's British counsel which was 12 Schillings. Mr. Depp then, as Your Honor may 13 recall -- Mr. Depp was ordered later in this case 14 to produce the trial bundles. 15 In other words, Your Honor -- I think it 16 was Your Honor -- ordered Mr. Depp to produce the 17 trial bundles of his own and Ms. Heard's. I 18 objected unsuccessfully saying, you know, 19 Ms. Heard already has this; but the Court ordered 20 us to do it. And that was appropriate. And we 21 did it. 22 So we then produced back to Ms. Heard;</p>	<p style="text-align: right;">64</p> <p>1 would ask that the Court deny that motion. Thank 2 you, Your Honor. 3 THE COURT: Thank you. Yes, sir. 4 MR. ROTTENBORN: Your Honor, I don't 5 think the Court wants to -- to adjudicate how 6 the -- you know, what the story is with everything 7 that was produced in the UK trial. 8 But what we have before you is a sworn 9 statement from Mr. Depp saying that he had two 10 audio recordings that were extracted from his 11 devices. And we don't have those. We don't know 12 if we have those. 13 And anything that was produced by The 14 Sun in this case -- and I will say I completely 15 disagree with Mr. Chew's recitation of Ms. Heard's 16 actions and -- and whether she violated this 17 Court's protective order in any way. 18 But what -- what I can tell you -- and I 19 don't think Mr. Chew would -- as -- as much as he 20 tries to -- to sugarcoat it, he will tell you that 21 the judge in the UK found that Mr. Depp had been 22 woefully inadequate in his discovery production,</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

24009

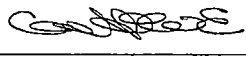
Transcript of Hearing
Conducted on October 29, 2021

17 (65 to 68)

<p style="text-align: right;">65</p> <p>1 threatened dismissal of Mr. Depp's case and barred 2 there from being any sort of action taken in the 3 U.S. against Ms. Heard relating to anything. 4 So that -- that's the story that 5 happened in the -- in the -- in the UK as far -- 6 as far as I know. I obviously was not there for 7 the trial, but I've read the court's orders on 8 that. 9 So that's -- that's what happened. Mr. 10 Depp didn't abide by his discovery obligations and 11 was nearly sanctioned with dismissal for not 12 producing things. 13 Again, all we're asking for, Your Honor, 14 is the same treatment as Mr. Depp. He said on 15 page 3 of his motion which the Court has already 16 heard and ruled on -- but he said his procedure 17 was that both parties could each proffer the 18 requested material for forensic imaging. 19 I hear Your Honor this morning 20 expressing that there needs to be some specificity 21 in what that request is. And we'll go back and 22 I'm sure that we'll have more specific requests</p>	<p style="text-align: right;">67</p> <p>1 attempt by Ms. Heard or The Sun to do anything 2 inappropriate, but what you see in Mr. Depp's 3 conduct is this circular reasoning. As soon as we 4 ask for something he says, well, it's not mine, 5 either my agent has it or The Sun produced 6 something. 7 And it's -- it's a little bit troubling 8 to have information that has been leaked by 9 someone other than our client; has been produced 10 by a third party who presumably -- and we've 11 talked to The Sun's counsel. They didn't -- 12 these -- these recordings weren't provided by my 13 client the -- in the -- in the first instance. 14 These recordings were leaked somewhere not by my 15 client. And then they're out there. 16 And then when we ask for the metadata 17 and the native files for those they say, well, 18 we -- we weren't the ones who produced them 19 because a third party gathered them from -- after 20 they had been leaked. 21 So, again, Your Honor, all we're asking 22 is for the documents that either support the</p>
<p style="text-align: right;">66</p> <p>1 for native images, forensic imaging of certain 2 documents and that if the Court -- you know, if 3 the Court orders Mr. Depp to do something or us to 4 do something that Mr. Depp should have to do it. 5 I do want to say one -- one last thing 6 about the -- you've heard a lot about the UK. And 7 I just didn't -- didn't want to let this -- this 8 go unaddressed; which is that The Sun's counsel in 9 the UK did not say that documents -- that -- that 10 only edited versions of photographs exist. 11 Mr. Chew cited to footnote 11. This is 12 Exhibit 9 to our response to his motion; but it's 13 relevant to this from the standpoint of anything 14 that's out there that bears on either party's 15 claims or defenses if it's specifically identified 16 the party should get. 17 But as The Sun's expert testified, 18 the -- the images that Mr. Chew represented to 19 this Court only existed in edited form also 20 existed in unedited form. And that's on page 11 21 of -- of Exhibit 9. 22 And so there's -- there's been no</p>	<p style="text-align: right;">68</p> <p>1 claims or defenses of either party in this case 2 that are in Mr. Depp's possession and that he's 3 agreed to produce in a consent order from a year 4 ago. 5 We're asking for the Court to -- to not 6 only grant the specific requests that we have 7 today; but, you know, hopefully through that, the 8 granting of that motion, Mr. Depp's side will get 9 the picture that you can't just obfuscate and say 10 that you don't have things that you do. Thank 11 you. 12 THE COURT: All right. Thank you, sir. 13 All right. In this matter as far as 14 mutuality goes, because it's ordered in one case 15 for one side, I'm -- I'm going to deny that 16 request at this time. There still has to be a 17 nexus shown when -- when you're asking for those 18 types of items in discovery. And -- and, again, I 19 do find that the ask is overbroad and there is no 20 specificity to that. 21 As to the specific items, the full 22 recording, it's -- it's -- Mr. Chew states that</p>

Transcript of Hearing
Conducted on October 29, 2021

18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 that full recording is not in the possession of 2 Mr. Depp and that they have turned over the 3 recordings of Mr. Depp and -- and Ms. Heard that 4 they have in their possession. 5 In addition, the photographs that were 6 identified, 11757 through 59 and 11814, again, 7 Mr. Chew states that those are not -- the original 8 native files are not in the possession of 9 Mr. Depp. He does point to where they are in 10 possession if they are still in possession of that 11 person, but -- so I can't order something that's 12 not in his possession. 13 However, I can order that any native 14 files of photographs and videos that are in Depp's 15 possession that have been turned over in 16 discovery, they should be provided; not just the 17 PDF files but the native files with the metadata 18 on any of those items that have been handed over, 19 in possession, which I assume are all the audio 20 recordings of Mr. Depp and Ms. Heard and all 21 photographs pertaining to this case as far as 22 injuries. All right?</p>	<p style="text-align: right;">71</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER 2 I, CAROL A. LOWE, the court reporter 3 before whom the foregoing hearing was taken, do 4 hereby certify that the foregoing transcript is a 5 true and correct record of the proceedings; that 6 said proceedings were taken by me stenographically 7 and thereafter reduced to typewriting under my 8 supervision; and that I am neither counsel for, 9 related to, nor employed by any of the parties to 10 this case and have no interest, financial or 11 otherwise, in its outcome. 12 13 14 15 16 17 18  19 _____ 20 Carol A. Lowe, RPR 21 22</p>
<p style="text-align: right;">70</p> <p>1 MR. CHEW: Thank you, Your Honor. 2 THE COURT: So if you want to make that 3 one full order on Wednesday -- 4 MR. CHEW: We'll do -- we will do that. 5 THE COURT: -- that will be fine. Okay. 6 MR. CHEW: Thank you very much, Your 7 Honor. 8 THE COURT: All right. Is there 9 anything further at this time? 10 MR. CHEW: No. No. Thank you. 11 MR. ROTTENBORN: No. Thank you. 12 THE COURT: All right. We'll be in 13 recess. Thank you. 14 (Off the record at 12:41 p.m.) 15 16 17 18 19 20 21 22</p>	