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CLERK, CIRCUIT COURT
FAIRFAX, VA

Transcript of Jury Trial - Day 22

Date: May 24, 2022
Case: Depp, II -v- Heard

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

1 (6648 to 6651)

<p>6648</p> <p>1 VIRGINIA: 2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY 3 -----x 4 JOHN C. DEPP, II, : 5 Plaintiff and : 6 Counterclaim Defendant, : 7 v. : Civil Action No.: 8 AMBER LAURA HEARD, : CL-2019-0002911 9 Defendant and : 10 Counterclaim Plaintiff. : 11 -----x 12 HEARING 13 BEFORE THE HONORABLE PENNEY AZCARATE 14 Fairfax, Virginia 15 Tuesday, May 24, 2022 16 9:00 a.m. EDT 17 TRIAL DAY 22 18 19 20 Job No.: 443906. 21 Pages: 6648 - 7049 22 Reported by: Judith E. Bellinger, RPR, CRR</p>	<p>6650</p> <p>1 A P P E A R A N C E S 2 3 ON BEHALF OF THE PLAINTIFF AND COUNTERCLAIM 4 DEFENDANT: 5 BENJAMIN G. CHEW, ESQUIRE 6 ANDREW C. CRAWFORD, ESQUIRE 7 BROWN RUDNICK LLP 8 601 Thirteenth Street NW 9 Suite 600 10 Washington, D.C. 20005 11 202.536.1700 12 13 CAMILLE M. VASQUEZ, ESQUIRE 14 SAMUEL A. MONIZ, ESQUIRE 15 BROWN RUDNICK LLP 16 2211 Michelson Drive 17 7th Floor 18 Irvine, CA 92712 19 949.440.0234 20 21 22</p>
<p>6649</p> <p>1 Held at: 2 3 4 CIRCUIT COURT OF FAIRFAX COUNTY 5 4110 Chain Bridge Road 6 Courtroom 5J 7 Fairfax, Virginia 22030 8 703.691.7320 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>6651</p> <p>1 2 A P P E A R A N C E S C O N T I N U E D 3 4 JESSICA N. MEYERS, ESQUIRE 5 BROWN RUDNICK LLP 6 7 Times Square 7 New York, NY 8 212.209.4938 9 10 REBECCA MACDOWELL LECAROS, ESQUIRE 11 WAYNE DENNISON, ESQUIRE 12 BROWN RUDNICK LLP 13 One Financial Center 14 Boston, MA 02111 15 617.856.8149 16 17 18 19 20 21 22</p>

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2 (6652 to 6655)

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2		2	By Ms. Vasquez 6929
3	A P P E A R A N C E S C O N T I N U E D	3	By Ms. Bredehoft 6951
4	ON BEHALF OF THE DEFENDANT AND COUNTERCLAIM	4	By Ms. Vasquez 6964
5	PLAINTIFF:	5	EXAMINATION OF RICHARD J. SHAW, M.D. PAGE
6		6	By Ms. Calnan 6968
7	ELAINE CHARLSON BREDEHOFT, ESQUIRE	7	By Mr. Nadelhaft 7011
8	ADAM S. NADELHAFT, ESQUIRE	8	By Ms. Calnan 7014
9	CHARLSON BREDEHOFT COHEN BROWN &	9	EXAMINATION OF JENNIFER HOWELL (VIA VIDEO) PAGE
10	NADELHAFT, P.C.	10	By Ms. Bredehoft 7015
11	11260 Roger Bacon Drive	11	By Ms. Vasquez 7017
12	Suite 201	12	By Ms. Pintado 7024
13	Reston, VA 20190	13	EXAMINATION OF CANDIE DAVIDSON-GOLDBRONN (VIA VIDEO)
14	703.318.6800	14	By Mr. Moniz 7026
15		15	By Ms. Bredehoft 7030
16	J. BENJAMIN ROTTENBORN, ESQUIRE	16	
17	WOODS ROGERS PLC	17	
18	10 South Jefferson Street	18	
19	Suite 1400	19	
20	P.O. Box 14125	20	
21	Roanoke, VA 24011	21	
22	540.983.7540	22	
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2	EXAMINATION OF WALTER HAMADA (VIA VIDEO) PAGE	2	Offered Admitted
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5	EXAMINATION OF DAVID A. KULBER, MD, FACS (VIA WEBEX)	5	1903 6955 6957 (redacted)
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3 (6656 to 6659)

<p>6656</p> <p>1 PROCEEDINGS</p> <p>2 THE BAILIFF: All rise. Please be</p> <p>3 seated and come to order.</p> <p>4 THE COURT: All right. Good morning.</p> <p>5 All right. It's my understanding that defense is</p> <p>6 resting; is that correct?</p> <p>7 MS. BREDEHOFT: Correct, Your Honor.</p> <p>8 THE COURT: All right. I'm not going</p> <p>9 to bring the jury out just to take them back in,</p> <p>10 so after we finish our motions and they come out,</p> <p>11 I'll let you say that -- yeah. Okay.</p> <p>12 MS. BREDEHOFT: Okay.</p> <p>13 THE COURT: Let's just do it that way.</p> <p>14 MS. BREDEHOFT: Thank you, Your Honor.</p> <p>15 THE COURT: All right. So based on</p> <p>16 them resting, you have a motion?</p> <p>17 MR. CHEW: Yes, Your Honor.</p> <p>18 THE COURT: And I did receive your memo</p> <p>19 ahead of time, so I have reviewed that.</p> <p>20 MR. CHEW: Thank you. And I provided</p> <p>21 it, too, to the other side last night, so they</p> <p>22 have it as well.</p>	<p>6658</p> <p>1 anti-SLAPP statute, as she is not entitled to</p> <p>2 immunity under the statute. Because we know that</p> <p>3 the Court has carefully reviewed our motion</p> <p>4 papers, I will just hit some of the salient</p> <p>5 points.</p> <p>6 THE COURT: Thank you, sir.</p> <p>7 MR. CHEW: Thank you, Your Honor. I</p> <p>8 would mention, however, Your Honor, that because</p> <p>9 this is not included in our brief, that there is</p> <p>10 no record evidence whatsoever that Mr. Depp even</p> <p>11 saw any of the three statements that Mr. Waldman</p> <p>12 made prior to being served with the counterclaims</p> <p>13 in this action, which we believe is relevant to</p> <p>14 many of the legal standards.</p> <p>15 And as Your Honor is aware, Ms. Heard</p> <p>16 had signaled for the past week that she was</p> <p>17 planning to call Mr. Depp in her case-in-chief,</p> <p>18 and it was our anticipation that she would try to</p> <p>19 fill what we believe is a gaping hole in -- with</p> <p>20 respect to the elements of her proof. Again,</p> <p>21 there's no record evidence whatsoever that</p> <p>22 Mr. Depp ever saw any of the three statements</p>
<p>6657</p> <p>1 THE COURT: Okay. I have that. Okay.</p> <p>2 Yes, sir?</p> <p>3 MR. CHEW: I haven't received anything</p> <p>4 from them. I don't know whether they filed</p> <p>5 anything.</p> <p>6 THE COURT: I think it's just going to</p> <p>7 be oral arguments. Yes, sir.</p> <p>8 MR. CHEW: Good morning, Your Honor,</p> <p>9 may it please the Court, Ben Chew for plaintiff</p> <p>10 Johnny Depp. Mr. Depp hereby moves to strike</p> <p>11 defendant, Amber Heard's counterclaims because</p> <p>12 Ms. Heard has not proven by clear and convincing</p> <p>13 evidence that Mr. Waldman made the three allegedly</p> <p>14 defamatory statements with actual malice.</p> <p>15 THE COURT: Right. But clear and</p> <p>16 convincing is not my motion to strike standard.</p> <p>17 MR. CHEW: Understood, Your Honor, and</p> <p>18 we have cited the standard in our brief.</p> <p>19 THE COURT: Okay. Okay. Thank you.</p> <p>20 MR. CHEW: Moreover, Your Honor, the</p> <p>21 Court should also strike defendant's claim for</p> <p>22 immunity and attorneys' fees based on Virginia's</p>	<p>6659</p> <p>1 about which Ms. Heard is purportedly suing him for</p> <p>2 a hundred million dollars.</p> <p>3 As Your Honor is aware, the elements of</p> <p>4 defamation are as follows:</p> <p>5 One, publication of.</p> <p>6 Two, an actionable statement with.</p> <p>7 Three, the requisite intent.</p> <p>8 See <i>Tharpe versus Saunders</i>, 285 Va. 476</p> <p>9 at 2013.</p> <p>10 The requisite intent for defamation</p> <p>11 against a public figure is actual malice. That</p> <p>12 is, the statement must be made with knowledge that</p> <p>13 it was false or with reckless disregard of whether</p> <p>14 it was false or not. See <i>Sanders v. Harris</i>, 213</p> <p>15 Va. 369 at 372, a 1972 case.</p> <p>16 See also <i>Jackson v. Hartig</i>, 274 Va. at</p> <p>17 2019 [sic].</p> <p>18 Reckless disregard, as Your Honor is</p> <p>19 aware, "is not measured by whether a reasonably</p> <p>20 prudent person would have published or would have</p> <p>21 investigated before publishing.... There must be</p> <p>22 sufficient evidence to permit the conclusion that</p>

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4 (6660 to 6663)

<p style="text-align: right;">6660</p> <p>1 defendant in fact entertained serious doubts as to 2 the truth of his publication," St. Amant versus 3 Thompson, 390 U.S. Supreme Court 727 at 731. 4 Your Honor, the evidence shows that 5 Ms. Heard cannot prevail on her claim because she 6 cannot and did not establish that Mr. Waldman made 7 the statements with actual malice. 8 Mr. Waldman testified that he conducted 9 extensive investigation and reasonably believed 10 that the three statements he made were true. 11 Ms. Heard presented nothing, nothing to contradict 12 that undisputed fact. 13 Ms. Heard has no evidence of direct 14 liability because, obviously, Your Honor, we need 15 to talk about direct and vicarious liability, but 16 it bears noting that she has no evidence of direct 17 liability and cannot prove actual malice by 18 Mr. Waldman when making the three statements at 19 issue. 20 It is undisputed that Mr. Depp did not 21 make any of the three statements at issue in 22 Ms. Heard's counterclaim. Moreover, in order for</p>	<p style="text-align: right;">6662</p> <p>1 she finally asserted her counterclaims, most of 2 which have already been dismissed by opinion 3 letter of this court. 4 Whereas here, there is no evidence of 5 direct liability, Ms. Heard must rely on the 6 theory of vicarious liability to hold Mr. Depp 7 liable for the actions -- or statements, rather, 8 of his purported agent, Mr. Waldman. Vicarious 9 liability is, by definition, "liability for the 10 tort of another person." 11 So to hold Mr. Depp liable for 12 Mr. Waldman's statements, Ms. Heard must establish 13 that Mr. Waldman himself committed all the 14 elements of defamation. 15 I know the Court's familiar with this 16 so I'll try to run through it quickly. See Parker 17 versus Carilion Clinic, 296 Va. 319 at 332, a 2018 18 case: "Vicarious liability is liability for the 19 tort of another person. It necessarily follows 20 that a claimant cannot make out a case for 21 vicarious liability against an employer without 22 first proving that the employee committed a tort</p>
<p style="text-align: right;">6661</p> <p>1 Mr. Depp to be liable for the conduct of his -- 2 one of his attorneys, there must be some showing 3 that he directed, participated, or otherwise 4 authorized Mr. Waldman to make the statements at 5 issue. There is no such evidence on the record 6 that Mr. Depp directed or otherwise authorized 7 Mr. Waldman to make the three allegedly defamatory 8 statements at issue in the counterclaims. 9 Indeed, there is no evidence of any 10 communication or coordination between Mr. Depp and 11 Mr. Waldman regarding the counterclaim statements 12 or anything else. 13 For this reason as well, Your Honor, 14 Ms. Heard cannot meet her burden of proving that 15 Mr. Waldman was acting within the scope of his 16 employment as -- or agency on behalf of Mr. Depp. 17 Again, it bears noting that there's no 18 evidence that Mr. Depp even saw the statements by 19 Mr. Waldman until he was sued -- served with the 20 counterclaims well into this case. It was more 21 than a year after Mr. Depp filed his complaint and 22 Ms. Heard lost a series of motions to dismiss that</p>	<p style="text-align: right;">6663</p> <p>1 within the scope of his employment." See also 2 Roughton Pontiac Corp. versus Alston, 236 Va. 152 3 at page 156. 4 Which standard Ms. Heard has not met, 5 and, Your Honor, we cite a string cite -- citation 6 to cases from other jurisdictions which, 7 obviously, are not binding on the Court but we 8 believe are influential. We presented those to 9 the Court for its review. 10 It is Ms. Heard's burden to prove by 11 clear and convincing evidence, or ultimately, to 12 prove actual malice by Mr. Waldman, not Mr. Depp. 13 And while it is well settled law in Virginia, as 14 Her Honor has pointed out, pointed out last week, 15 that an agent's knowledge can be imputed to a 16 principal -- and this is the Allen Realty Corp. 17 versus Holbert case, 227 Virginia 441 at 446. 18 Ms. Heard's counsel cannot cite any 19 case law stating that a principal's knowledge is 20 imputed to an agent. In other words, Mr. Waldman 21 must have made the statements knowing that they 22 were false or with reckless disregard as to</p>

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5 (6664 to 6667)

<p style="text-align: right;">6664</p> <p>1 whether they were false. And Mr. Depp's knowledge 2 cannot be imputed to him. There is no evidence in 3 the record that Mr. Waldman knew the counterclaim 4 statements were false. Indeed, Mr. Waldman did 5 not even know Mr. Depp or Ms. Heard at the time of 6 any of the alleged incidents at issue and, thus, 7 had no personal knowledge of what transpired. And 8 this is reflected in the trial transcript that 9 Mr. Waldman met Mr. Depp first in October of 2016, 10 long after the fact.</p> <p>11 Nor is there any evidence in the record 12 that Mr. Waldman subjectively entertained any 13 serious doubts about the falsity of the 14 counterclaim statements. Quite the opposite, the 15 evidence shows that it's rebutted that 16 Mr. Waldman had very reasonable grounds to 17 believe, and he did believe and will to his dying 18 day, that Ms. Heard's claim of abuse were patently 19 false. Mr. Waldman testified at length about 29 20 witnesses he believed disapproved Ms. Heard's 21 false claims of abuse. See the transcript at 22 page 6008 to 6012, and I won't run through all of</p>	<p style="text-align: right;">6666</p> <p>1 Mr. Waldman acted in malice in making the 2 allegedly defamatory statements. He was not 3 present for the alleged incidents; he has no 4 personal knowledge of any of the alleged 5 incidents. What Mr. Waldman knows is a product of 6 the legal work he did -- the sleuthing he did on 7 behalf of Mr. Depp.</p> <p>8 Ms. Heard cannot possibly show that 9 Mr. Waldman acted with actual malice, and her 10 defamation claim must fail.</p> <p>11 Two, Mr. Waldman is an independent 12 contractor, not an employee. It is axiomatic, 13 Your Honor, that a person who hires an independent 14 contractor is not liable for the independent 15 contractor's actions. See <i>Sanchez versus Medicorp</i> 16 <i>Health System</i>, 270 Va. 299 at 344: "An 17 independent contractor is a person who is engaged 18 to produce a specific result but who is not 19 subject to the control of the employer principal 20 as to the way to bring about that result." See 21 <i>Atkinson versus Sachno</i>, 261 Va. 378 [sic] at 284; 22 that's a 2001 case. "An outside lawyer retained</p>
<p style="text-align: right;">6665</p> <p>1 that.</p> <p>2 But his testimony, the two trained 3 police officers, Officers Saenz and Hadden, were 4 called to the penthouse on May 21, 2016, and saw 5 no signs of injury on Ms. Heard's face, as well as 6 "Ms. Heard's own witnesses who have testified in 7 various forms at various times that there were no 8 injuries to her face whatsoever between May 21st 9 and May 27th, 2016, when she walked into court 10 with her publicist, her lawyer, her former best 11 friend who no longer speaks with her for a 12 no-notice ex parte TRO."</p> <p>13 Some of the witnesses who Mr. Waldman 14 has cited, they include Laura Divenere; Melanie 15 Inglessis, who as Your Honor recalls is -- was 16 Ms. Heard's makeup artist who decided to end any 17 professional or personal association with 18 Ms. Heard; Samantha McMillen; Hilda Vargas; Isaac 19 Baruch; Trinity Esparza; Cornelius Harrell; 20 Alejandro Romero; and Brandon Patterson, just to 21 name a few.</p> <p>22 No reasonable jury could find that</p>	<p style="text-align: right;">6667</p> <p>1 by a client in connection with litigation is an 2 independent contractor."</p> <p>3 See <i>King versus Dalton</i>, 895 F. 4 Supp. 831, Eastern District of Virginia, 1995, 5 where Judge Ellis, a legendary jurist known by all 6 Virginia practitioners, held that "a law firm 7 attorney working with a client is nonetheless an 8 independent contractor and is not an employee of 9 the client corporation." In that case the 10 employee was a corporation, but the same logic 11 applies when it's an individual like Mr. Depp.</p> <p>12 That was Mr. Waldman's role. Indeed, 13 clients hire lawyers to obtain specific results or 14 to try to obtain specific results. But they do 15 not control the means by which the results are 16 accomplished. Lawyers, as Your Honor has reminded 17 us, are subject to professional obligations to 18 exercise independent professional judgment. We 19 are not at the whim of our clients, as much as we 20 want to serve them. See Virginia State Bar 21 Professional Guidelines, Rule 1.2 and 2.1. And 22 just to quote 2.1, "In representing a client, a</p>

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6 (6668 to 6671)

<p>6668</p> <p>1 lawyer shall exercise independent professional 2 judgment." 3 Mr. Waldman is, as a matter of law, an 4 independent contractor, and Mr. Depp cannot be 5 held responsible for any alleged tort by his 6 attorney, particularly for statements about which 7 he was unaware until he was sued for them. 8 Mr. Waldman testified, and it's 9 un rebutted, that he has an -- he has his own law 10 firm, he's not an employee of Mr. Depp, Mr. Depp 11 and/or none of his loan-out companies have issued 12 him a W-2, and Mr. Waldman provides legal services 13 to clients other than and in addition to Mr. Depp, 14 and that's found at the transcript page 6020 15 through -21. 16 All of that is un rebutted by Ms. Heard. 17 Mr. Waldman's statements, the third 18 reason for which we respectfully submit the 19 counterclaim should be stricken, is that 20 Mr. Waldman's statements were protected opinion. 21 And I won't run through all of that, but very 22 briefly, taken in their proper context, the</p>	<p>6670</p> <p>1 were buried well into article in which both points 2 of view were clearly expressed, and Mr. Waldman 3 was clearly identified not as an independent 4 expert on the U.S. Constitution, but is one of 5 Mr. Depp's attorneys. 6 See Chaves, 230 Va. 112 at page 119: 7 "The most unsophisticated recipient of such a 8 claim," i.e., any reader of the British tabloid, 9 "made by a competitor against another could only 10 regard it as a relative statement of opinion 11 grounded upon the speaker's obvious bias." 12 Mr. Waldman has never done -- never did 13 anything to hide his support of and belief in 14 Mr. Depp. 15 Finally, Your Honor, and for the 16 rest -- ultimately, Mr. Waldman's statements 17 reflect the existence of two competing narratives 18 and are merely his subjective view about events 19 that he never claims to have witnessed, and there 20 was no doubt about that. 21 Turning to the second part of the 22 argument, which will be more abridged, Ms. Heard</p>
<p>6669</p> <p>1 counterclaim statements are nonactionable 2 expressions of opinion entitled to protection 3 under the First Amendment. See Gertz versus 4 Robert Welch, Inc., 418 U.S. 323 at 339. That's a 5 1974 case from the United States Supreme Court. 6 See also Schaecher v. Bouffault, a 7 Virginia Supreme Court case found at 290 Va. 83, a 8 2015 case, noting that where "all sides of the 9 issue as well as the rationale for the speaker's 10 view were exposed, the exertion of deceit 11 reasonably could be understood only as the 12 speaker's personal conclusion," and finding in an 13 accusation of deceit to be opinion. 14 In context, Your Honor, any reporter or 15 any reasonable reader would understand and expect 16 a lawyer associated with Mr. Depp, as Mr. Waldman 17 was, to challenge Ms. Heard's version of the 18 inherently controversial events of the parties' 19 marriage, just as Ms. Heard's lawyers were quoted 20 challenging Mr. Depp. And Your Honor will 21 remember the context of these quotes that were in 22 a British tabloid where Mr. Waldman's statements</p>	<p>6671</p> <p>1 is not entitled to anti-SLAPP immunity. As a 2 threshold matter, Virginia Code 3 Section 8.01-223.2, which is, as Your Honor well 4 knows as the Virginia anti-SLAPP statute amended 5 most recently in 2019, provides in relevant part, 6 "The immunity provided by the section shall not 7 apply to any statements made with actual or 8 constructive knowledge that they are false or with 9 reckless disregard for whether they are false." 10 Here, in addition to Mr. Depp's 11 testimony, several witnesses have testified that, 12 A, they never witnessed Mr. Depp abuse Ms. Heard, 13 and, B, that they observed Ms. Heard without any 14 injuries, marks, bruising, swelling, et cetera, 15 during periods when Ms. Heard claimed to have 16 injuries, marks, bruises, et cetera. 17 Such witnesses include but are not 18 limited to Isaac Baruch, Kate James, Dr. David 19 Kipper, Nurse Debbie Lloyd, Officers Saenz and 20 Hadden, Officer William Gatlin, and former U.S. 21 Marine Starling Jenkins. 22 Ms. Heard's request for anti-SLAPP</p>

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7 (6672 to 6675)

<p style="text-align: right;">6672</p> <p>1 immunity should be stricken, and even if there 2 were disputing -- even if there were disputed. 3 facts as to that, the anti-SLAPP immunity does not 4 apply because the defamatory implication of 5 Ms. Heard's statements are not solely relating to 6 a matter of public concern, as is required under 7 the statute. 8 As has become quite clear, Your Honor, 9 Mr. Depp is not suing about any of the public 10 policy commentary made by the ACLU when it drafted 11 the op-ed and Ms. Heard put her name to it. What 12 he is suing about here are the three statements 13 that were directed at him. He has no issue with 14 women's rights. He supports women's rights. In 15 fact, he was the one, Your Honor, as Your Honor 16 knows, who made that first hundred thousand-dollar 17 contribution to the ACLU, and he made it also to 18 the CHLA. 19 MR. ROTTENBORN: Your Honor, at this 20 point I'm going to object. Mr. Chew has largely 21 just read his brief and confined his arguments to 22 those directed in the motion, but like we saw with</p>	<p style="text-align: right;">6674</p> <p>1 wanted to time this thing with the release of 2 Aquaman, which was her first film of any 3 significance in terms of popularity, and -- to do 4 that. That's very clear. So the charade that 5 this had something to do with public policy is 6 risible, and that is not why the anti-SLAPP 7 protections were enacted. They were enacted to 8 protect the rest of the article, not what Mr. Depp 9 is suing about. 10 As generally analyzed by the courts, a 11 matter of public concern is one which relates to 12 "a matter of political, social, or other concern 13 to the community," as opposed to a matter of only 14 "personal interest." That's Connick versus Myers, 15 461 U.S. 138 at page 146. 16 Instead, the defamatory implication at 17 issue in each of the three states -- statements at 18 bar relate to the personal grievances between 19 Mr. Depp and Ms. Heard, which does not rise to the 20 level of a matter of public concern with broader 21 implications for society beyond the two litigants 22 in this action any more than Mr. Waldman's</p>
<p style="text-align: right;">6673</p> <p>1 the last motion to strike, he's now directing his 2 arguments to something other than what's at issue 3 here. And I would object because I think making 4 an argument not to you but to the cameras, it 5 threatens -- it's disrespectful to the Court and 6 everyone's time, and it also threatens to 7 undermine the integrity of this process and risks 8 the jury being influenced by outside factors. 9 THE COURT: It's his argument. I'll 10 allow him to do it. Thank you. 11 MR. ROTTENBORN: Thank you. 12 MR. CHEW: Thank you, Your Honor. As I 13 was trying to say, what Mr. Depp is suing about 14 are the three statements, and it's very clear, 15 despite the pious opening statement that -- about 16 the First Amendment, that with the testimony of 17 Terence Dougherty and the emails that were 18 admitted as exhibits, that the ACLU and Ms. Heard 19 were conspiring to make it very clear that those 20 three statements were related to Mr. Depp because, 21 otherwise, nobody had any interest in the article. 22 And it's crystal clear from that. They</p>	<p style="text-align: right;">6675</p> <p>1 statements. I mean, adding the gloss of public 2 policy might immunize the statements that relate 3 to public policy, but those are not at issue here. 4 Mr. Depp agrees with those statements. We're 5 talking about the three statements that they very 6 intentionally and very cleverly put in to make it 7 clear the implication that it was about Mr. Depp. 8 They had lawyers from the ACLU working 9 around the clock with Eric George to make -- to be 10 as clever about this as possible. And Your Honor 11 remembers the testimony of Mr. Dougherty about the 12 consternation at the ACLU when they realized that 13 USA Today and everybody else who read the article 14 knew darn well that this was about Mr. Depp. 15 This cannot be protected by the 16 anti-SLAPP statute. It is a cynical runaround, 17 and I think now that we have the undisputed 18 evidence from the ACLU in the form of the 19 testimony of Terence Dougherty, who is not only 20 their corporate representative; he was their 21 general counsel. He is a brainiac lawyer. They 22 knew exactly what they were doing, Your Honor, and</p>

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8 (6676 to 6679)

<p>6676</p> <p>1 one of the -- he referred to a testimony of a 2 woman at the ACLU who said she had nightmares 3 about Ms. Heard, and he expressed no concern about 4 that. Now that was either because they knew 5 about -- that was either a reference to this game 6 they were playing with the op-ed or the conspiracy 7 they had to cover up her failure to make the 8 donations. The donations became pledges, but 9 now -- but we have evidence that she refused to 10 sign the pledge card. So she's caught either way. 11 Simply stated, Your Honor, Mr. Depp is 12 not suing Ms. Heard for making statements about 13 society in general. I think that's very clear 14 from the record evidence. Mr. Depp is suing her 15 for publicly naming him as an abuser by 16 implication and forever tarnishing his good name, 17 an act that, coming from an ex-spouse, is 18 fundamentally personal in nature. For that reason 19 as well, Your Honor, Virginia's anti-SLAPP statute 20 is not applicable, and based on the foregoing, 21 Your Honor, Mr. Depp respectfully submits that the 22 Court should grant plaintiff's motion to strike</p>	<p>6678</p> <p>1 freely admitted speaking to the press on 2 Mr. Depp's behalf, and he refused to answer 3 question after question about that agency, so he 4 can't use that as a sword now. 5 Mr. Chew puts a lot of emphasis on the 6 fact that Mr. Depp allegedly didn't see the 7 comments that were made that are the subject of 8 the counterclaim. But as Your Honor well knows, 9 whether he saw them or not is not the standard for 10 agency. 11 There's also evidence that Mr. Depp met 12 with the Daily Mail with Mr. Waldman prior to the 13 defamatory statements being made and released. I 14 believe that was in February of 2020, just two 15 months prior. 16 Mr. Waldman also concocted a story that 17 Amber was being investigated for perjury by filing 18 a perjury complaint against her with the LAPD. He 19 disregarded any evidence that he didn't believe 20 would fit in his narrative, that would fit in the 21 story that he was speaking about on behalf of 22 Mr. Depp. And after Mr. Depp lost the U.K.</p>
<p>6677</p> <p>1 the counterclaims and also strike her claim that 2 she is immune under the anti-SLAPP statute. Thank 3 you very much. 4 THE COURT: Thank you. Thank you, sir. 5 Yes, sir. 6 MR. ROTTENBORN: Thank you, Your Honor. 7 As Your Honor knows, the trial court is 8 required to accept as true all the evidence 9 favorable to Amber at this point, as well as any 10 reasonable inference the jury might draw therefrom 11 which would sustain a counterclaim. That's the 12 correct standard here. 13 I'll address the actual malice argument 14 first, the agency argument. Your Honor, there's 15 plenty of evidence in the record from which the 16 jury could determine that Mr. Waldman was 17 Mr. Depp's agent. He made those statements, the 18 statements referred to him as Mr. Depp's attorney. 19 As Your Honor ruled on Friday with respect to the 20 jury instruction conference, an attorney is an 21 agent of his client. Mr. Waldman testified that 22 he's been Mr. Depp's attorney since 2016. He</p>	<p>6679</p> <p>1 proceeding, after Mr. Depp was ruled to be a wife 2 beater by the court, in the United -- the U.K. 3 proceeding, the court there found him to be a wife 4 beater, Mr. Waldman then got an overseas tabloid 5 to run a story claiming that Amber was being 6 investigated for perjury, which simply wasn't 7 true. He walked into the LAPD, filed a complaint 8 for perjury against Ms. Heard, found a media 9 outlet that doesn't follow the two-source rule, 10 and then he had -- led the world to believe that 11 LAPD was investigating Ms. Heard for perjury. 12 That's a shameful and a sickening example, Your 13 Honor, of the lengths that Mr. Depp, through his 14 agent, Mr. Waldman, would go to to smear and to 15 defame Amber Heard, and that continued in the 16 three statements in the counterclaim. 17 Your Honor has heard evidence. I won't 18 go through all the evidence, but Your Honor has 19 heard evidence from Ron Schnell, who's traced the 20 negative hashtags toward Amber Heard online 21 associated with those defamatory statements and 22 notably -- noted the staggeringly high number of</p>

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9 (6680 to 6683)

<p>6680</p> <p>1 them that were associated with Mr. Waldman. 2 Under the principals of the 3 agent/principal relationship in Virginia, Your 4 Honor, when Mr. Waldman made those statements, he 5 was standing in the shoes of Mr. Depp. They are 6 one and the same for the purposes of those 7 statements, as Your Honor discussed at length on 8 Friday. 9 Mr. Waldman made these statements with 10 actual malice. There's plenty of evidence from 11 which the jury could infer that in his own -- both 12 from the actual malice from Mr. Depp and 13 Mr. Waldman's own reckless disregard of facts that 14 didn't support Mr. Depp and his attempts to 15 manufacture false evidence that did. As Your 16 Honor found in the hearing -- I believe it was on 17 March 24th after Your Honor denied Mr. Depp's 18 motion for summary judgment -- Your Honor said, 19 "As to malice, a fact finder could reasonably 20 conclude that Mr. Waldman made the statements with 21 malice because Mr. Waldman has no personal 22 knowledge of the parties' marriage and still made</p>	<p>6682</p> <p>1 there's no evidence in this case of anything 2 otherwise. 3 As to the argument that the 4 counterclaim statements are statements of opinion, 5 the Court has already found twice that they are 6 not statements of opinion, both on January 4th, 7 2021, in its opinion letter denying Mr. Depp's 8 demurrer as to the counterclaim statements, and at 9 the motion for summary judgment hearing in March 10 of this year. 11 As to the anti-SLAPP argument, the 12 Court, again, has already moved that the 13 March 24th, 2021 opinion that the statements are, 14 as a matter of law, regarding matters of public 15 opinion. The Court has already ruled that; 16 therefore, the only remaining issue for anti-SLAPP 17 is whether the intent element of immunity is met. 18 As we discussed on Friday, the intent element of 19 immunity is substantially the same as the actual 20 malice standard, which the evidence in this case 21 easily allows the jury to find in favor of 22 Ms. Heard on that.</p>
<p>6681</p> <p>1 the statements at issue. Nothing in this case has 2 changed that. If anything, the evidence has only 3 made it more clear that that is an inference that 4 the jury can and we believe will find." 5 So, Your Honor, there's no basis to 6 grant a motion to strike on this agency argument. 7 On the actual malice argument, the evidence shows 8 that not only was Mr. Waldman Mr. Depp's agent, 9 but that the two of them conspired to falsely 10 accuse Amber of creating a hoax and falsify 11 evidence that they believed supported their theory 12 and what they wanted to achieve. 13 As Your Honor well knows too, I won't 14 go through all the law, but both agency and malice 15 can be inferred through circumstantial evidence. 16 There's plenty of evidence in the record from 17 which the jury could infer those. 18 Moving on, Your Honor, to the 19 independent contractor -- the Court's already 20 rejected this argument, ruled that an 21 attorney-client have a principal/agent 22 relationship, and as Your Honor said on Friday,</p>	<p>6683</p> <p>1 I won't go through the litany of 2 evidence that supports that Mr. Depp is an abuser 3 here, but I'll touch on a few things that relate 4 to Mr. Chew's argument. 5 One, Mr. Chew was totally 6 misrepresenting Mr. Dougherty's testimony. 7 There's not a single piece of evidence, Your 8 Honor, in this case suggesting that Ms. Heard and 9 the ACLU were somehow conspiring to achieve a 10 defamatory implication to Mr. Depp. That's simply 11 not what Mr. Dougherty said. Mr. Chew is free to 12 argue that to the jury, but that's not what his 13 testimony reflects. 14 Your Honor, there's also plenty of 15 evidence that's been adduced, both in Mr. Depp's 16 claim and in Ms. Heard's counterclaim, that show 17 that absolutely there was -- that the counterclaim 18 statements are 100 percent false. There was no 19 hoax perpetrated. Mr. Depp is an abuser who 20 abused Ms. Heard. She did not conspire with her 21 friends to create a hoax. She did not create a 22 hoax herself.</p>

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10 (6684 to
6687)

<p>1 And just very briefly, some of the 2 evidence that's come up with since the last motion 3 to strike, Your Honor, that Mr. Chew will 4 conveniently disregard in his brief are the 5 testimony of Rocky Pennington, testimony of Josh 6 Drew, testimony of Elizabeth Marz, all of whom 7 completely corroborate Ms. Heard's account of the 8 events of May 21st, 2016. The testimony of 9 Melanie Iglesias [sic], who testified that she 10 covered Ms. Heard -- Ms. Heard's bruises with 11 makeup on -- right after the December 15th 12 incident, that provided ample testimony to support 13 that Ms. Heard often would cover her bruises that 14 were caused by the plaintiff in this case, by 15 Mr. Depp, with makeup. 16 He ignores the evidence of Kristy 17 Sexton. He ignores the evidence of iO Tillett 18 Wright. He ignores the evidence of Whitney 19 Henriquez. All of these witnesses and others have 20 testified extensively about Mr. Depp's abusive 21 behavior toward Ms. Heard, physical abuse, 22 emotional abuse, psychological abuse, verbal</p>	<p>6684</p> <p>1 time. 2 What Mr. Rottenborn said about 3 Mr. Waldman's allegedly going to the LAPD about 4 perjury is a complete non sequitur. If they 5 thought that that were somehow improper conduct, 6 they could have included it in their 7 counterclaims. They included everything else but 8 the kitchen sink, and most of it was thrown out. 9 There was nothing in there about Mr. Waldman going 10 to the LAPD, so that is a very clear non sequitur, 11 red herring, distraction. 12 Number two, when Your Honor ruled on 13 summary judgment on the issue of the 14 counterclaims, Your Honor was dealing with a 15 different standard and a different evidentiary 16 record. At that time, Mr. Waldman had not 17 testified, which is material. Mr. Waldman has now 18 testified for purposes of trial. We have his 19 trial testimony. It's very clear that he did not 20 act with actual malice. They didn't even argue 21 that. So that's pretty clear. 22 And, again, this is consistent, the</p> <p>6686</p>
<p>1 abuse, Your Honor. 2 Mr. Depp's own writings, recordings, 3 pictures, and videos confirm that. The list goes 4 on. There's abundant evidence in the record, Your 5 Honor, from which the jury could, and, again, we 6 believe will find, that Ms. Heard is not liable 7 for defamation to Mr. Depp, and therefore, by 8 definition, she is -- she has not acted with 9 actual malice. And based on the Court's rulings 10 on March 21st -- 24th, 2021, she would be entitled 11 to anti-SLAPP immunity which would permit her to 12 ask the Court to award attorneys' fees against 13 Mr. Depp. 14 So with that, Your Honor, I'm happy to 15 answer any questions the Court has, but -- 16 THE COURT: That's fine. Thank you, 17 sir. All right. 18 MR. ROTTENBORN: -- that covered it. 19 Thank you. 20 THE COURT: Yes, sir? 21 MR. CHEW: Your Honor, I will be brief 22 in deference to the Court's time and the jury's</p>	<p>6685</p> <p>1 third point is that it's all about games. They 2 didn't sue Mr. Waldman on the three statements. 3 They didn't try to fill the hole. They've been 4 telling us for a week that they're going to call 5 Mr. Depp to try to fill the hole in their 6 counterclaims. They didn't do that. 7 And it's very consistent with the 8 game-playing. "Let's go into court after the 9 police have found no problem and after witness 10 after witness, who had no relationship with each 11 other, said there are no visible marks. Let's not 12 give Mr. Depp's lawyer the required 24-hour notice 13 before the TRO. Let's march into court with our 14 publicist, with our lawyer, with our best friend, 15 who no longer talks to her. Let's get a TRO. And 16 when the #MeToo folks say, 'Why are you taking 17 \$7 million from an abuser?' they say, 'I didn't 18 take money from the abuser; I gave it all to 19 charity.' 20 Well, they didn't. I don't think 21 anybody should feel bad about them stiffing the 22 ACLU given what the ACLU did in this case, which</p> <p>6687</p>

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11 (6688 to
6691)

<p>6688</p> <p>1 is a monstrosity, but she did stiff the sick and 2 dying children. It is gamesmanship, and that's 3 what she's doing here today. 4 But the law is the law, and they have 5 not fulfilled their burden with respect to the 6 counterclaims. There is virtually no nexus 7 between Mr. Depp and Mr. Waldman as to these 8 statements at issue except for the fact that he is 9 an attorney, and that is not sufficient in a case 10 where they have not even established that Mr. Depp 11 was aware of these statements, and they knew that 12 they couldn't do it and they didn't even try. And 13 it's more of the gamesmanship when Ms. Heard plays 14 word games with Mr. Depp about, "Oh, I didn't 15 punch you, Johnny; I just hit you." 16 Imagine if the shoe were on the other 17 foot and Mr. Depp, a man, was saying to a woman, 18 "Oh, woman, I only hit you; I didn't punch you." 19 And when she -- it was chilling when she warned 20 him on the tape, "You go tell a judge, you go tell 21 a jury that you, a man, were abused. See if 22 they're going to believe that."</p>	<p>6690</p> <p>1 MR. CHEW: I'm finishing up. My point, 2 Your Honor, and it's on point, is that Mr. George 3 made statements supporting Ms. Heard's position. 4 Ms. Kaplan made very clear statements supporting 5 her client's position on the merits, and so did 6 Mr. Waldman, but everybody knows in reading those 7 that those are statements by a partisan. 8 So for the reasons that we've stated 9 and reasons set forth in the brief, we 10 respectfully submit that the Court should grant 11 the motion to strike. Or in light of the fact 12 that Mr. Depp may reappear, at the very least, 13 take these motions under advisement until the 14 close of all evidence. 15 Thank you, Your Honor. 16 THE COURT: All right. Thank you, sir. 17 All right. In this matter I've 18 reviewed all the defendant's evidence as to her 19 counterclaim, and I've considered the arguments of 20 her counsel and plaintiff's counsel. First, to 21 address a few issues that I believe are outside 22 the motion to strike, and that's as to the SLAPP</p>
<p>6689</p> <p>1 It is an abuse of the system, and she's 2 done it throughout. Finally, Your Honor, 3 Mr. Rottenborn makes an excellent point with which 4 I agree, which was that with respect to each of 5 the three statements, Mr. Waldman was clearly 6 identified, even by the tabloid that printed 7 these, well within articles that had both sides 8 represented, that he was Mr. Waldman's [sic] 9 attorney. Even the reader of a tabloid understand 10 that when you're getting statements from 11 attorneys, it's going to be forwarding their 12 client's point of view. Mr. Waldman is not the 13 only attorney who has spoken out. Robbie Kaplan, 14 who was Ms. Heard's second attorney -- so 15 Ms. Heard started out with Eric George; he made 16 comments to the press. 17 MR. ROTTENBORN: Objection, Your Honor. 18 Again, this is so much further beyond what Your 19 Honor is addressing. 20 MR. CHEW: I'm finishing up, Your 21 Honor. 22 THE COURT: Okay.</p>	<p>6691</p> <p>1 defense, the SLAAP defense is just that; it's a 2 defense, so it's really not considered in a motion 3 to strike. 4 Having said that, we went down that 5 legal road on Friday as far as the SLAPP defense 6 goes as far as jury instructions in this 7 particular case. If the plaintiff prevails, it 8 must be with actual malice; therefore, if it's 9 with actual malice, immunity does not apply under 10 that statute, so we will deal with that with jury 11 instructions, and we have. 12 As to independent contractor, again, I 13 think it's outside the motion to strike; however, 14 Mr. Waldman was plaintiff's attorney since 2016, 15 before the initiation of litigation. There was 16 evidence that Mr. Waldman had a certain role 17 during the prior divorce proceedings and the U.K. 18 case. Additionally, there was evidence that shows 19 his legal representation was broader than just a 20 limited litigation, as outlined in all the cases 21 presenting an attorney as an independent 22 contractor. So the only evidence in this case to</p>

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12 (6692 to
6695)

<p>6692</p> <p>1 this point is that Mr. Waldman was an agent to 2 Mr. Depp, and that is the basis to weigh the 3 motion to strike. 4 As far as the opinions argument, again, 5 I think that is outside the motion to strike. The 6 opinions argument, the Court has already ruled on 7 this matter. As to the three statements that are 8 at issue in the counterclaim, ruled that they were 9 not opinion at the demurrer and at summary 10 judgment, so that argument will not be part of the 11 motion to strike. 12 So when assessing a motion to strike, 13 the Court accepts the favorable evidence adduced 14 as true towards the nonmoving party. The Court 15 cannot reject any inference from the evidence 16 favorable to the nonmoving party unless it would 17 defy logic and common sense. When there is doubt 18 in question, the Court should overrule a motion to 19 strike. Agency may be inferred from the conduct 20 of the parties and from surrounding facts and 21 circumstances. 22 When there's no direct evidence,</p>	<p>6694</p> <p>1 still representing the plaintiff. 2 Taking the surrounding circumstances as 3 a whole, an agency relationship can be inferred, 4 and thus a scintilla of evidence regarding agency 5 must be turned over to the jury. In addition, the 6 jury may infer that Mr. Waldman made these 7 specific statements to a third party to serve as 8 plaintiff by portraying defendant as an opposing 9 litigant in a negative light. It is not disputed 10 that Mr. Waldman published statements and that 11 there is a question as to whether the statements 12 are false, and both parties disagree and have 13 presented conflicting evidence as such. 14 As to actual malice, Mr. Waldman made 15 the counterclaim statements after he met with his 16 client. In addition, there's evidence the 17 plaintiff was with Mr. Waldman at a meeting in 18 February 2020 with the Daily Mail on line. 19 Further, the defendant claimed that she met with 20 Mr. Waldman where he threw the paper containing 21 the counterclaim statements within them. 22 Consequently, there is more than a scintilla of</p>
<p>6693</p> <p>1 circumstances may and usually are relied upon to 2 determine whether an agency relationship exists. 3 A principal is liable for tortious acts of his 4 agent if the agent was performing his principal's 5 business and acting within the scope of agency. 6 If an agent's tortious act arises from their 7 agency relationship as enacted in part to serve as 8 the principal, the principal can be held liable 9 for the tort. 10 Here, the alleged tort is defamation. 11 Besides demonstrating the agency relationship, the 12 defendant must prove Mr. Waldman published an 13 actionable statement, meaning a statement that is 14 both false and defamatory, with the requisite 15 intent. As to agency, Mr. Waldman was plaintiff's 16 attorney at the time that the alleged defamatory 17 statements were made. Mr. Waldman does not deny 18 this, and neither does the plaintiff; moreover, 19 Mr. Waldman made the allegedly defamatory 20 statements about the defendant during the 21 proceedings of this action and interacted with the 22 defendant once the statements were made while</p>	<p>6695</p> <p>1 evidence that a reasonable juror may infer 2 Mr. Waldman made the counterclaim statements while 3 realizing they were false or with a reckless 4 disregard for their truth. 5 It is not my role to measure the 6 veracity or weight of the evidence. The force 7 record in the Virginia Supreme Court have made it 8 crystal clear that actual malice is a question for 9 the fact finder; so therefore, the plaintiff's 10 motion to strike is denied. Okay? 11 MR. CHEW: Thank you, Your Honor. 12 MR. ROTTENBORN: Thank you, Your Honor. 13 THE COURT: Thank you. Is there any 14 other preliminary matter before the jury? 15 MS. BREDEHOFT: Yes, Your Honor. May 16 we approach? 17 THE COURT: Okay. 18 (Sidebar.) 19 THE COURT: All right. 20 MS. BREDEHOFT: Your Honor, two days 21 ago, on Sunday, May 22nd, more than two months 22 after the close of discovery and four days after</p>

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13 (6696 to
6699)

<p>6696</p> <p>1 trial, plaintiff supplemented their witness 2 interrogatory that had asked for the identity of 3 anyone who had knowledge of any of the claims or 4 defenses in this case, among other topics. And 5 there was a court order that was entered on 6 August 10th, 2020, ordering them to provide those. 7 Plaintiff included the following people for the 8 first time: Morgan Night, Jenna Price, Lydia 9 Fuller, Miroslava Chavez, Kate Moss, David Kulber, 10 and Morgan Tremaine. 11 Plaintiff then added several of these 12 individuals to their list of people they are 13 calling today and tomorrow, specifically David 14 Kulber, Morgan Night, Kate Moss, Morgan Night, and 15 Lydia Fuller. 16 Defendant is severely prejudiced by 17 these last-minute additions, many of whom we have 18 no idea who they are, our client doesn't know who 19 they are, many of them. We have no opportunity to 20 conduct any discovery, no opportunity to conduct 21 any depositions, and Your Honor may recall that we 22 moved to compel on our other witness interrogatory</p>	<p>6698</p> <p>1 it says, "Identify each mental health or physical 2 health care provider that you saw or consultant 3 who examined you or provided treatment or services 4 to you from January 1, 2010 to the present. State 5 the reason and duration." And as you'll note, and 6 this is their response, Dr. Kulber is not 7 identified. 8 In addition to this, Your Honor, one of 9 the people -- 10 MR. ROTTENBORN: Nor did they ever 11 produce medical records. 12 MS. BREDEHOFT: Right, right. 13 MR. ROTTENBORN: Nor did they ever 14 produce medical records for Dr. Kulber in response 15 to at least four document requests that we could 16 cite for Your Honor. 17 MS. BREDEHOFT: Thank you, yes. And I 18 do have those requests. First request, No. 43, 19 "All documents pertaining to the three surgeries 20 to reconstruct a finger," and the second request, 21 No. 6, "All medical records from physical and 22 mental health providers." Number 7, "All</p>
<p>6697</p> <p>1 that says, "Please state what their knowledge is, 2 identify the knowledge." The plaintiff objected 3 to it on the basis of "Why bother? We're at the 4 end of discovery," and Your Honor then denied it. 5 Well, if they had had to, at the least 6 a minimum, respond to that, then even on Sunday, 7 they would have had to tell us what those people's 8 knowledge is, but we're way too late. Your Honor 9 has not even allowed us to have pictures in that 10 were produced after March 1, and now they have all 11 these other people. Now, with respect to David 12 Kulber as well, he was Mr. Depp's apparently 13 treating physician in LA, in Los Angeles, for his 14 finger, and we had a specific interrogatory, Your 15 Honor -- 16 THE COURT: Uh-huh. 17 MS. BREDEHOFT: -- you have all the 18 interrogatories, a set of it. So we have compiled 19 all of their interrogatory responses for the 20 supplemental, but if Your Honor would go to the 21 fourth tab, to the second page, and this was 22 responded to by plaintiff in January of 2022. And</p>	<p>6699</p> <p>1 correspondence or records received or sent from 2 health care providers," and Number 9, "All 3 documents, communications concerning the alleged 4 injury to your finger." 5 Then on top of that, Your Honor, we 6 found on social media last night -- we didn't even 7 know who this person was, Morgan Night -- 8 THE COURT: Are we still talking about 9 Dr. Kulber? 10 MS. BREDEHOFT: No. This one's another 11 one of the ones that -- 12 MR. ROTTENBORN: Moved on. 13 THE COURT: I haven't ruled on that one 14 yet, but okay. 15 MS. BREDEHOFT: Actually I'm hoping you 16 will rule on all of these, Your Honor, because 17 none of them were identified. 18 THE COURT: Well, you agree rebuttal 19 witnesses can come in that haven't been 20 identified? 21 MS. BREDEHOFT: Your Honor, only, only 22 if there's a reason or not having identified them</p>

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14 (6700 to
6703)

<p style="text-align: right;">6700</p> <p>1 in response to interrogatory. 2 THE COURT: Right. If something came 3 up in trial. 4 MS. BREDEHOFT: But we had a clear 5 interrogatory that said any defenses or claim -- 6 THE COURT: For Dr. Kulber? 7 MS. BREDEHOFT: Well, all of them. 8 THE COURT: Well, you don't know what's 9 going to come up in the trial testimony, so 10 rebuttals, you can't -- 11 MS. BREDEHOFT: Your Honor -- 12 THE COURT: It's the same -- I think 13 you gave it to me. 14 MS. BREDEHOFT: Sorry. I gave it to 15 you. So the significance of this one, Your Honor, 16 is this is a tweet by Morgan Night, one of the 17 people they've identified to testify, and it's 18 clear that he's been watching the trial. He has a 19 picture of Johnny Depp testifying, then he says in 20 his tweet that -- 21 MR. ROTTENBORN: ThatUmbrellaGuy. 22 MS. BREDEHOFT: Yeah, it's</p>	<p style="text-align: right;">6702</p> <p>1 Whitney down -- 2 MR. CHEW: It referred to the false 3 allegation. 4 THE COURT: That's a rebuttal evidence. 5 MR. CHEW: Yes. 6 THE COURT: It would be rebuttal 7 evidence. 8 MS. BREDEHOFT: What would be the 9 rebuttal? 10 MR. CHEW: The rebuttal would be that 11 Johnny didn't push her down the steps, that was 12 the clear inference. She was trying -- because no 13 other woman has ever accused Johnny -- 14 THE COURT: So Kate Moss is a different 15 issue. 16 MS. BREDEHOFT: But Ms. Heard didn't 17 testify that he did. She just said, "That's what 18 came to my mind." 19 MR. CHEW: Yes, she did. 20 THE COURT: Excuse me? 21 MR. CHEW: Sorry, Your Honor. 22 THE COURT: Okay. I wrote it down</p>
<p style="text-align: right;">6701</p> <p>1 ThatUmbrellaGuy, and then Morgan Night is 2 commenting from ThatUmbrellaGuy, "That never 3 happened. I was with them all night. Amber was 4 the one acting all jealous and crazy." So he's 5 responded to this tweet that has what Mr. Depp is 6 testifying to in this trial, so he's clearly 7 violated the witness rule in any event. So in 8 response to Your Honor, we would be severely 9 prejudiced by these individuals. Kate Moss was 10 somebody that Mr. Depp dated. 11 THE COURT: I know. We can't do these 12 all in one time, at one point. 13 MS. BREDEHOFT: Oh, I'm sorry. 14 THE COURT: Kate Moss, though, that's a 15 rebuttal. I know Ms. Heard said something about 16 Kate Moss. 17 MR. CHEW: Yeah. What she said -- 18 MS. BREDEHOFT: What Ms. Heard said was 19 she thought about Kate Moss when she saw that 20 Mr. Depp -- 21 THE COURT: Right. 22 MS. BREDEHOFT: -- was about to push</p>	<p style="text-align: right;">6703</p> <p>1 because I didn't know what was going on because 2 she said she was on the stairs, and she says, "all 3 of a sudden, I heard Kate -- I thought of Kate 4 Moss on the stairs." That gave a negative 5 connotation, and even to me, I'm like, Oh, does 6 that mean that something happened with Kate Moss 7 on the stairs? And I have no idea. So I thought 8 that, the jury might have thought that; they're 9 entitled to that rebuttal. So next person. 10 MS. BREDEHOFT: Well, just if I may, 11 Your Honor, just to make my record, they would 12 have known that knowledge before. 13 THE COURT: She didn't know Ms. Heard 14 was going to testify to it, did she? 15 MS. BREDEHOFT: She testified to that 16 in the U.K., Your Honor. 17 MR. CHEW: Good luck. She changes 18 their story every five minutes. 19 MR. ROTTENBORN: I think to the extent 20 that the prior discovery requests said "all people 21 with knowledge," they've been on notice since the 22 U.K. about them.</p>

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15 (6704 to
6707)

<p style="text-align: right;">6704</p> <p>1 THE COURT: Rebuttal witnesses, I'm 2 going to allow rebuttal witness if there's a nexus 3 to it, but as far as -- that's why they need to be 4 separate. Dr. Kulber, if you have an issue where 5 they didn't provide him as in discovery as a 6 medical person -- 7 MS. BREDEHOFT: Right. Let's take the 8 first thing. 9 THE COURT: -- can you respond to that 10 one? 11 MS. VASQUEZ: May I address Dr. Kulber? 12 THE COURT: Yes. Okay. 13 MS. MEYERS: Your Honor, first of all, 14 Dr. Kulber, so we identified documents in response 15 to this interrogatory. Dr. Kulber's name and 16 contact information is reflected in those -- 17 MS. VASQUEZ: And medical records. 18 MS. MEYERS: -- communications. There 19 are medical records. There's communications 20 between Dr. Kulber and -- I apologize -- between 21 Dr. Kulber and -- 22 (Simultaneous speech between unknown</p>	<p style="text-align: right;">6706</p> <p>1 Dr. Kulber being Mr. Depp's hand surgeon in LA -- 2 THE COURT: Do you have that -- 3 MS. MEYERS: -- after the Australia 4 incident. 5 THE COURT: All right. Do you have 6 that anywhere in here as far as identifying 7 Dr. Kulber? 8 MS. MEYERS: I believe our supplemental 9 responses identified the documents themselves, but 10 we can confirm what that -- he is reflected in 11 those. 12 MS. BREDEHOFT: Still wouldn't have 13 identified -- 14 MR. ROTTENBORN: Your Honor, if I may, 15 I don't believe his name is in any interrogatory 16 response, and also under 8.01399, to the extent -- 17 they didn't produce medical records that we've 18 seen. There's a few emails back and forth with 19 Dr. Kipper, but to the extent that they want to 20 have him testify as to treatment or diagnosis, 21 they have to produce -- here's a copy for you 22 all -- they have to produce -- those things have</p>
<p style="text-align: right;">6705</p> <p>1 speakers.) 2 MS. MEYERS: -- Dr. Kipper and 3 Mr. Depp's nurse, Debbie Lloyd. And the only -- 4 we are bringing Dr. Kulber for a very limited 5 rebuttal purpose. 6 THE COURT: What's the rebuttal 7 purpose? 8 MS. MEYERS: So both Ms. Heard and 9 Whitney testified that Mr. Depp, on the stairs 10 incident, was wearing a hard cast and was able to 11 hit them. Dr. Kulber's just going to testify that 12 his hand was in a soft cast and he had a pin in 13 it. He's just going to testify to the state of 14 his hand on that specific -- at that specific time 15 period. 16 THE COURT: Okay. And you're saying 17 these Bates numbers -- because I can't tell -- 18 correspond to his medical records? 19 MS. MEYERS: I believe they are, Your 20 Honor. I cannot -- I can't say for certain, but I 21 know that there are documents that we would have 22 identified in response to this that do reflect</p>	<p style="text-align: right;">6707</p> <p>1 to be contemporaneously documented under Virginia 2 law, or else he can't testify to those things. 3 We've never gotten -- other than a handful of 4 emails, I don't believe we've gotten any medical 5 records, so if he's going to testify it was a soft 6 cast or whatever, that -- 7 THE COURT: You would have to have had 8 that as medical records. Well, they're saying 9 these Bates stamps are those medical records, but 10 I don't know. If they are those medical records, 11 then I think he could testify -- 12 MR. ROTTENBORN: If they want to 13 represent to the Court, then -- 14 MS. MEYERS: I know that there are 15 communications between Dr. Kipper. I cannot 16 represent that they -- 17 THE COURT: If there are no medical 18 records, he can't testify. 19 MS. VASQUEZ: We need to check. 20 MS. MEYERS: We need to check. 21 THE COURT: Okay. Agreed? 22 MR. CHEW: We need to check.</p>

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Conducted on May 24, 2022

16 (6708 to
6711)

<p>6708</p> <p>1 THE COURT: I'm assuming he's not your 2 first witness, so he only testifies if you have 3 turned over those medical records -- not emails, 4 but medical records -- to the defense. 5 MR. ROTTENBORN: And even if they have, 6 also he's not identified in interrogatory, so -- 7 that we've seen. So if they -- 8 THE COURT: Right. He's identified in 9 medical records. 10 MR. ROTTENBORN: Yeah, but they say -- 11 if you say "Identify all your treatment 12 providers," and they say -- they don't put any 13 names and they just list a Bates range, I don't 14 think that's identifying him specifically. 15 THE COURT: Did you identify him as a 16 treatment provider? Well, you can look at that 17 too. 18 MR. ROTTENBORN: So those were in two 19 designations. 20 MS. BREDEHOFT: No. And Your Honor has 21 the -- 22 THE COURT: Okay. Well, if he's been</p>	<p>6710</p> <p>1 trailer was not damaged to the degree that was -- 2 THE COURT: That the trailer was not? 3 MS. VASQUEZ: Yes. In response to both 4 Ms. Henriquez, Whitney Henriquez, and Ms. Heard 5 that both claimed the trailer was trashed, he will 6 testify that that's incorrect. He will also 7 testify that -- I mean, I understand we have to 8 make a proffer, but this seems -- 9 THE COURT: No, that's fine. 10 MS. VASQUEZ: Now, the date, Your 11 Honor, first of all, I don't even know if this is 12 Mr. Night's tweet -- Twitter account. 13 MS. BREDEHOFT: It's the Umbrella Guy's 14 Twitter account, and he's saying this. And then 15 Morgan Higby Night is responding to him right down 16 there. 17 MS. VASQUEZ: That's April 21st, Your 18 Honor. 19 MS. BREDEHOFT: Right. Which is in the 20 middle of trial. 21 MS. VASQUEZ: Okay. He's a rebuttal 22 witness, meaning he stepped forward after this</p>
<p>6709</p> <p>1 identified as a treatment provider and the medical 2 records were turned over, he can testify. If he 3 hasn't, then he can't testify. Leave it at that. 4 MS. BREDEHOFT: Thank you, Your Honor. 5 THE COURT: All right. Now, let's go 6 on to Morgan somebody, I assume -- 7 MS. BREDEHOFT: -- Night. Morgan Night 8 is the next one. 9 THE COURT: -- Morgan Night. 10 MS. BREDEHOFT: Now, this person 11 apparently, based on the tweet, was somebody who 12 either owns or is a manager at Hicksville. Well, 13 Hicksville has been in this case all along. We've 14 always argued that he trashed the trailer. 15 THE COURT: Right. 16 MS. BREDEHOFT: And then on top of it, 17 we have this. 18 THE COURT: You're going to give it to 19 me a third time. That's okay. 20 So Mr. Wyatt is a rebuttal witness for 21 what? 22 MS. VASQUEZ: He will testify that the</p>	<p>6711</p> <p>1 time, he stepped forward in May, Your Honor. 2 MS. BREDEHOFT: That doesn't make any 3 difference. They still have the witness. 4 MR. ROTTENBORN: But the rationale for 5 witnesses or potential witnesses not watching the 6 trial doesn't change if someone is a rebuttal 7 witness or not, and we would ask -- 8 MS. VASQUEZ: They weren't identified. 9 MR. ROTTENBORN: -- that any witnesses 10 that Your Honor allows to testify to be voir dired 11 before they testify. 12 THE COURT: Well, here's the issue with 13 this one because it's televised: I mean, there's 14 an issue; if you don't even know you're a witness, 15 yet, how can you be... 16 MR. ROTTENBORN: I understand that, but 17 it's still manifestly unfair. The same rationale 18 for prejudice applies whether someone is a 19 rebuttal witness or known, and it's particularly 20 someone like these people on an issue that's been 21 -- Hicksville has been at issue since the first 22 day of this lawsuit. So to the extent that they</p>

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28111

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Conducted on May 24, 2022

17 (6712 to
6715)

<p style="text-align: right;">6712</p> <p>1 thought they -- and they've known about the 2 allegations of the trailer being trashed since day 3 one of this lawsuit. So to the extent -- 4 MS. BREDEHOFT: Kristy Sexton testified 5 too, and she was deposed two years ago. 6 MR. ROTTENBORN: If they thought, We 7 might need to call Morgan Night to testify to 8 this, they should -- they've known this; this 9 isn't something that came up anew. 10 THE COURT: You just said that he came 11 forward in May. 12 MS. VASQUEZ: He came forward in May, 13 and since then, I have asked him to please -- 14 MR. ROTTENBORN: Your Honor -- 15 MS. VASQUEZ: -- not be -- 16 MR. ROTTENBORN: -- the fact that the 17 trial is televised shouldn't create prejudice to 18 our side, Your Honor. I mean, the fact that the 19 trial is televised shouldn't create prejudice to 20 this side just because the witness has watched -- 21 THE COURT: No. I understand that. 22 But the judge weighs on the rule of witness and on</p>	<p style="text-align: right;">6714</p> <p>1 the testimony. He was contacted by somebody else 2 that worked at -- 3 THE COURT: Okay. This was April 21st. 4 Like I said, I have to weigh it. 5 MR. ROTTENBORN: Hicksville has already 6 come into the trial by April 21st. So he has the 7 benefit -- unlike any other witness, he has the 8 benefit of knowing what the testimony is on 9 Hicksville. 10 MR. CHEW: He could cross-examine him 11 on that. 12 MR. ROTTENBORN: And -- 13 THE COURT: This says, "Johnny Depp 14 will be accused." He would've had to have -- 15 MR. CHEW: He can cross-examine him. 16 THE COURT: He said -- 17 (Simultaneous speech between unknown 18 speakers.) 19 MS. BREDEHOFT: If I may, Your Honor, 20 Kristy Sexton was deposed two years ago, and she 21 testified to the trailer park. We also got a 22 court order with Judge --</p>
<p style="text-align: right;">6713</p> <p>1 how it has affected the witnesses. If you have a 2 rebuttal witness who didn't know they were a 3 witness, I can't bind them to the rule on 4 witnesses at the beginning of the trial if they 5 don't know. I would have to bind the whole world. 6 So I understand he came forward in May. 7 If you want to voir dire him outside the presence 8 of the jury on that issue of how much he's seen 9 and how much his prejudice is for the rule of 10 witnesses is discretionary, and I can do that. 11 MR. ROTTENBORN: Well, and I would ask 12 that they not speak to him before he gets on the 13 stand. 14 THE COURT: Well, she told him since 15 May -- 16 MS. VASQUEZ: I don't remember the 17 exact date. It's very -- recent, Your Honor. 18 THE COURT: -- not to watch the trial. 19 MS. VASQUEZ: Yes, I did. As soon as 20 we identified him as a potential witness, I did 21 instruct him, per Your Honor's ruling, to please 22 do not watch any of the trial, do not watch any of</p>	<p style="text-align: right;">6715</p> <p>1 THE COURT: I'm still talking about 2 Mr. Night. 3 MS. BREDEHOFT: Right. 4 THE COURT: We can just do this one at 5 a time. 6 MS. BREDEHOFT: Right. No, no. And 7 she testified to the trailer being trashed. This 8 was -- they would have had knowledge, and we had a 9 court order that ordered them to produce any 10 documents relating to the damage to the trailer. 11 So that -- they should have and would have reached 12 out to him at that time. 13 THE COURT: He came forward on his own, 14 so I'm going to -- again, I'm just going to weigh 15 that, okay? We're going to see what happens with, 16 you know, that. I can't bind him to the rule on 17 witnesses if he wasn't a witness at the time. I 18 can voir dire him outside the presence of the jury 19 and see what he has seen of the trial, and I can 20 weigh it from there. 21 MS. BREDEHOFT: And, Your Honor, also 22 since this was on April 21, over a month ago, and</p>

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18 (6716 to
6719)

<p style="text-align: right;">6716</p> <p>1 we just got him identified two days ago, I would 2 want Your Honor to voir dire when he first came 3 forward, when he first communicated -- 4 THE COURT: Both of you can ask 5 questions. That's fine. 6 MS. BREDEHOFT: Right. But if they 7 waited until two days before, you know, they're 8 putting on their rebuttal witnesses and they knew 9 for a month, then I think that's manifestly 10 unfair. They have a duty to timely supplement 11 their witness interrogatory, and if they became 12 aware of them, they needed to timely supplement. 13 We're severely prejudiced by this. We have no 14 opportunity to examine him, to take a 15 deposition -- 16 MR. ROTTENBORN: We can't talk -- 17 THE COURT: These are rebuttal 18 witnesses, then you wouldn't have any opportunity 19 to examine them. That's what rebuttal witnesses 20 are. 21 MR. ROTTENBORN: But if they were on 22 notice that he may be a rebuttal witness a month</p>	<p style="text-align: right;">6718</p> <p>1 just told the Court that he was instructed not to 2 watch the trial a month ago and that's -- 3 THE COURT: I've made my ruling. He's 4 going to be able to testify. If I find that -- 5 he's a rebuttal witness, and we'll talk to them 6 about the rule of witnesses and see where we're 7 at, I don't know. Okay? 8 MR. CHEW: Thank you, Your Honor. 9 THE COURT: All right. Next one. 10 MS. BREDEHOFT: The next one's Jenna 11 Price. We have no idea who this person is. 12 MS. VASQUEZ: She's not testifying, 13 Your Honor. 14 THE COURT: She's not testifying. Next 15 one. 16 MS. BREDEHOFT: Okay. Lydia Phillip. 17 MS. VASQUEZ: She's not testifying. 18 THE COURT: These are my favorite ones. 19 MS. BREDEHOFT: All right. We've 20 talked about Kate Moss. We've talked about David 21 Kulber. Morgan Tremaine. 22 MS. VASQUEZ: He's testifying.</p>
<p style="text-align: right;">6717</p> <p>1 ago and sandbagged us in supplementing their 2 discovery responses, we could have sought a 3 deposition of him. We could have asked the 4 Court -- 5 THE COURT: You know how trials go. I 6 know you didn't have -- 7 MR. ROTTENBORN: But Hicksville's been 8 at issue more than two days, Your Honor, and -- 9 MS. BREDEHOFT: It's two years. 10 MS. VASQUEZ: Your Honor, I spoke to 11 him for the first time yesterday. Last night 12 after court was the first time I spoke to him. 13 THE COURT: Rebuttal is a different 14 beast, and I know you know that, Mr. Rottenborn. 15 MR. ROTTENBORN: I understand that, but 16 Ms. Vasquez just said she was -- I thought you 17 said you instructed him a month ago and stepped 18 forward. 19 MS. VASQUEZ: I have not had an 20 opportunity to speak with him. 21 THE COURT: He came forward in May. 22 MR. ROTTENBORN: I understand, but she</p>	<p style="text-align: right;">6719</p> <p>1 MS. BREDEHOFT: I have no idea who that 2 is. 3 MS. VASQUEZ: He worked for TMZ, and he 4 will testify that TMZ did receive the video from 5 Ms. Heard, also was directed to be there on 6 May 27th, 2016, to take certain pictures of her 7 face, where she would be. I mean -- 8 THE COURT: This is rebuttal evidence? 9 MS. VASQUEZ: -- that's rebuttal. 10 THE COURT: Okay. Next. 11 MS. BREDEHOFT: Again, Your Honor, they 12 still would have known that information and should 13 have identified it in an interrogatory response. 14 THE COURT: During trial things happen. 15 Those are rebuttal witnesses. Next one. The 16 objection's overruled. 17 MS. BREDEHOFT: That's the last one, 18 Your Honor, but I would -- 19 THE COURT: Okay. I got a big one 20 about -- 21 MS. VASQUEZ: Dr. David Kulber, Your 22 Honor --</p>

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19 (6720 to
6723)

<p>6720</p> <p>1 THE COURT: What about this new 2 Neumeister witness? 3 MS. VASQUEZ: -- I confirmed the X-rays 4 are -- 5 THE COURT: I've got this three times 6 in my folder. 7 MALE SPEAKER: What is this? 8 MS. BREDEHOFT: Oh, oh. He's going to 9 argue that the fourth -- 10 MS. VASQUEZ: We're not ready to argue 11 that. 12 MS. BREDEHOFT: Okay. 13 THE COURT: We'll do that tomorrow. 14 MS. BREDEHOFT: So next one is Jennifer 15 Howell, Your Honor. Jennifer Howell is by 16 deposition designation, and, Your Honor, I have 17 the pages that we're actually showing. None of 18 these are on legitimate rebuttal testimony, and 19 Your Honor may recall excluding our Bercovici 20 because he wasn't on rebuttal, so let me just go 21 through these. So first of all, the testimony of 22 Amber does not rebut or contradict Amber's</p>	<p>6722</p> <p>1 The third one, plaintiff designated 2 Howell 299:3 through 11, in which Ms. Howell 3 testified that she received an anonymous donation 4 of 250,000, and she believed the anonymous donor 5 was Elon Musk. Defendant was designated at 345:12 6 through 22 in which Ms. Howell testifies she 7 received a check from Fidelity Charitable with a 8 note saying it was in honor of Amber Heard. This 9 is consistent with Amber's testimony that she 10 donated \$250,000 with him, but it was not going to 11 count to any overall pledge. This donation is 12 unrelated and outside the 6.8 million, and it's 13 not rebuttal testimony. 14 The next one, Your Honor, please bear 15 with me. They have testimony -- they've 16 designated testimony regarding Whitney that 17 doesn't rebut as well. The first of those is 12:5 18 through 14, and the other one that's virtually the 19 same is 229:1 through 4 -- 14, which states that 20 Jennifer Howell is the CEO of the Art of Elysium. 21 Whitney testified trial day 19, transcript 247:21 22 to 248:1, "She's the founder of the Art of Elysium</p>
<p>6721</p> <p>1 testimony or anything in this case. They 2 designated Howell 231:3 through 20 in which Ms. 3 Howell testifies that she met Amber Heard at the 4 Pineapple Express premiere in 2008. Neither Amber 5 nor Whitney were asked when Amber met Jennifer 6 Howell. It's not a legitimate rebuttal. The next 7 one -- 8 THE COURT: I'm sure it's just not 9 meeting Jennifer Howell that's the rebuttal. 10 What's the -- I mean, I don't know. 11 MS. BREDEHOFT: It's not a rebuttal 12 when she met Amber Howell -- Amber Heard because 13 Amber Heard never testified whether she met 14 Ms. Howell or not. She was never even asked about 15 Ms. Howell. 16 Their next one is they designated 255:2 17 through 9. Ms. Howell states that she never 18 showed -- that Amber never showed her photographs 19 or told her that Depp was abusive to her. Amber 20 never testified that she confided in Ms. Howell, 21 showed Ms. Howell photographs, or told her that 22 Depp was abusive to her. So it's not rebuttal.</p>	<p>6723</p> <p>1 nonprofit, right? 2 "She is." 3 So that doesn't rebut. Then they 4 designated Howell at 29:6 through 30:13 which 5 states that Whitney lived with Ms. Howell from 6 May 2014 -- 15 to April 2016. Whitney 7 testified -- and this is, again, day 19 8 transcript 248, 5 through 9 -- and these are all 9 questions they asked in cross-examination: 10 "Around May 2015, you actually moved in with 11 Ms. Howell, right?" 12 And she says, "May 2014?" 13 They say, "Yes." 14 THE COURT: I'm not going to go through 15 the whole deposition. So you're saying it's not a 16 rebuttal witness. What's this person -- 17 MS. VASQUEZ: She is a rebuttal witness 18 to both Whitney and Ms. Heard as to the stairs 19 incident and her -- Ms. Enriquez's, what we will 20 call perjurious testimony, that Ms. Heard was 21 actually abusive towards Mr. Depp. That Ms. Heard 22 was abusive toward Mr. Depp.</p>

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20 (6724 to
6727)

<p>6724</p> <p>1 MS. BREDEHOFT: There's no testimony 2 that's designated that comes in on that. There's 3 nothing. There's nothing in the designation. 4 MS. VASQUEZ: There is an email that 5 Your Honor sustained the objection. And 6 Ms. Howell testifies as to why she sent the email 7 to Ms. Henriquez, and she explains that -- and 8 Your Honor did allow that testimony -- so but we 9 believe that that is -- 10 MS. BREDEHOFT: It has no context. It 11 says she sent an email. 12 THE COURT: I'm going to allow this. 13 MR. CHEW: Thank you, Your Honor. 14 MS. VASQUEZ: Thank you, Your Honor. 15 THE COURT: Next one. 16 MS. VASQUEZ: Dr. Kulber's X-rays that 17 were just shown to the hand surgeon, Dr. Moore, 18 yesterday came from Dr. Kulber. Those were 19 medical records. Those were the X-rays from 20 Dr. Kulber. 21 MR. ROTTENBORN: Okay. A couple 22 points, Your Honor. Those were attached to the</p>	<p>6726</p> <p>1 if those are the only records he produced, if what 2 they're going to do is get him to get up there and 3 say it was a hard cast, the X-rays don't show 4 that. 5 And if you see the first sentence of 6 subsection B, "If the physical condition of the 7 patient is at issue in a civil action, the 8 diagnoses, signs and symptoms, observations, 9 evaluation, histories, or team plan the 10 practitioner obtained or formulated as 11 contemporaneously documented," so the medical 12 record -- whatever they're going to have him 13 testify about has to be in medical records that 14 were produced. So if it's just X-rays, that's 15 not related to -- 16 THE COURT: We'll see when they come 17 out. 18 MS. VASQUEZ: And, Your Honor, I have 19 to be fair, I have to read it, but I would submit 20 that he's actually a fact witness and not 21 testifying as a medical expert. He -- 22 THE COURT: You still have to produce</p>
<p>6725</p> <p>1 Australia medical records. Number 2 -- so 2 Dr. Kulber's in LA. Number 2, there's nothing. 3 They still didn't identify him in the 4 interrogatory responses. 5 THE COURT: Did you identify him? 6 MS. VASQUEZ: I need to confirm that, 7 Your Honor, but -- 8 MR. ROTTENBORN: They didn't. I mean, 9 you can do it -- 10 MS. BREDEHOFT: And I have -- 11 THE COURT: They're going to confirm. 12 MR. ROTTENBORN: All right. Okay. And 13 then the other thing that I would say is even if 14 the X-rays are attached -- even if, like, let's 15 say those did come -- 16 THE COURT: So they didn't identify it 17 in the designations. 18 MS. BREDEHOFT: They have not, Your 19 Honor. 20 MR. ROTTENBORN: Right. But one more 21 point. If you look at the statute, even if the 22 X-rays relayed were Dr. Kulber's medical records,</p>	<p>6727</p> <p>1 medical records. I would have to agree with that 2 argument. Okay. 3 MR. ROTTENBORN: This is fact witness. 4 MR. CHEW: We'll check, Your Honor. 5 Thanks. 6 THE COURT: Any other ones? 7 MR. ROTTENBORN: Could we just get -- 8 it would be helpful if they could confirm that by, 9 like, the morning break or something. Because 10 otherwise, we have to prepare that. 11 THE COURT: We'll see. 12 MR. ROTTENBORN: Okay. 13 THE COURT: I'll let them -- 14 MR. ROTTENBORN: All right. Thank you. 15 MS. BREDEHOFT: So for the two that 16 they are going to -- that Your Honor's allowing 17 in -- 18 THE COURT: Three, actually. 19 MS. BREDEHOFT: -- they do get to -- 20 THE COURT: There's the video 21 deposition of Ms. Moss, and Mr. Night we're going 22 to have to talk about.</p>

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21 (6728 to
6731)

<p>6728</p> <p>1 MS. BREDEHOFT: And we'll get to voir 2 dire on all three of those when they -- 3 THE COURT: No, not all three, 4 Mr. Night. The others are done. 5 MALE SPEAKER: That's good. 6 FEMALE SPEAKER: We'll get all of them? 7 THE COURT: One's a deposition. 8 MS. BREDEHOFT: Oh, oh, not Howell. I 9 wasn't talking about Howell. I was talking 10 about -- 11 THE COURT: No. We're not voir diring 12 her. The only one that will be voir dired is 13 Mr. Night. 14 MS. BREDEHOFT: Not Morgan Tremainne, 15 since they didn't identify him till Sunday and 16 Ms. Heard testified -- 17 THE COURT: No. The only one voir 18 diring is Mr. Night, to see where we are, okay? 19 MS. VASQUEZ: Thank you, Your Honor. 20 MR. CHEW: Thank you, Your Honor. 21 MR. ROTTENBORN: Thank you, Your Honor. 22 THE COURT: Okay.</p>	<p>6730</p> <p>1 this is by deposition, so we may need the -- 2 THE COURT: Oh, okay. 3 MR. CHEW: I apologize. I should have 4 provided notice. 5 THE COURT: That's all right. 6 MR. CHEW: Thank you, Your Honor. 7 THE COURT: If we could get the video. 8 REBUTTAL 9 WALTER HAMADA, 10 Being first duly sworn, was examined 11 and testified as follows: 12 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND 13 COUNTERCLAIM DEFENDANT 14 BY MR. CHEW: 15 Q Mr. Hamada, what -- do you work for 16 Warner Brothers Entertainment, Inc.? 17 A Yes, I do. 18 Q In what capacity? 19 A My title is president of DC-based film 20 productions for Warner Brothers. 21 Q -- what, if anything, did you do to 22 prepare to testify for Warner Brothers as to</p>
<p>6729</p> <p>1 (Open court.) 2 THE COURT: All right. Are we ready 3 for the jury, then? 4 MS. BREDEHOFT: Yes, Your Honor. 5 THE COURT: Okay. 6 (Whereupon, the jury entered the 7 courtroom and the following proceedings took 8 place.) 9 THE COURT: All right. Good morning, 10 ladies and gentlemen. I apologize. We had a few 11 housekeeping matters to take care of, but thank 12 you. You can have your seat. 13 All right. Your next witness. 14 MS. BREDEHOFT: Your Honor, on behalf 15 of defendant and counterclaimant, Amber Heard, we 16 rest. 17 THE COURT: All right. Thank you. All 18 right. Rebuttal evidence? 19 MR. CHEW: Yes. Your Honor, Mr. Depp 20 calls Walter Hamada of Warner Brothers. 21 THE COURT: All right. Mr. Hamada. 22 MR. CHEW: Your Honor, just to clarify,</p>	<p>6731</p> <p>1 topics 2 through 18? 2 A I did not do anything to prepare for 3 this other than my -- the meeting that I had with 4 the attorneys. 5 Q Did Warner Brothers have a contract 6 with Amber Heard to perform in Aquaman 2? 7 A Yes. There was a -- we had an 8 agreement for her for Aquaman 2. 9 Q Do you know what it is? 10 A Looks like a standard contract between 11 an actor and the studio. 12 Q And which actor was involved in this -- 13 which actor was a party to this contract? 14 A Amber Heard. It was a contract for 15 Amber Heard for the role of Mera in Aquaman and 16 its sequels. 17 Q Which studio contracted with Amber 18 Heard? 19 A Warner Brothers. 20 Q When did you come to be the president 21 of DC? 22 A At the beginning of 2018, 2018.</p>

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22 (6732 to
6735)

<p>6732</p> <p>1 Q Mr. Hamada, was Ms. Heard ever released 2 by Warner Brothers from the Aquaman 2 contract or 3 what you call the option agreement? 4 A No. 5 Q Was she released from her Aquaman 2 6 contract on or about February 22, 2021? 7 A No. 8 Q Was Ms. Heard rehired for Aquaman 2 by 9 Warner Brothers? 10 A No. 11 Q Did Ms. Heard receive a pay increase 12 for Aquaman 2? 13 A No. 14 Q Why not? 15 A As a rule, as a company, we make 16 these -- we go through a lot of trouble when we 17 make our deals with our actors. When we get 18 options, we get options on them for subsequent 19 movies, and I think traditionally, prior to me 20 joining the company, every option was 21 renegotiated. And one of the things that we were 22 trying to put a reining on was not renegotiating</p>	<p>6734</p> <p>1 character of Orm, Arthur being Jason Momoa, Orm 2 being Patrick Wilson. So they were always the two 3 co-leads of the movie. 4 Q Did Warner Brothers ever plan to 5 portray Ms. Heard as the co-lead in Aquaman 2? 6 A No. The movie was always pitched as a 7 buddy comedy between Jason Momoa and Patrick 8 Wilson. 9 Q Was Ms. Heard cast in Aquaman? 10 A Yes, she was. 11 Q Was Ms. Heard cast in Aquaman 2? 12 A Yes, she was. 13 Q Was Ms. Heard paid for her services in 14 Aquaman 1? 15 A Yes. 16 Q Was Ms. Heard paid for her services in 17 Aquaman 2? 18 A Yes. 19 Q Was her compensation for Aquaman 2 20 affected in any way by anything said by Johnny 21 Depp? 22 A No.</p>
<p>6733</p> <p>1 every deal with the understanding that people come 2 in and make these deals and they have an 3 understanding that there will be options and that 4 there's a deal in place, and there was a big part 5 of our philosophy that we were going to hold 6 people to their options moving forward. 7 Q But did Warner Brothers, at any point 8 in time, reduce Ms. Heard's role in Aquaman 2? 9 A The role in the film that -- the size 10 of the role in the film that she has was 11 determined in the early development of the script, 12 which would have happened in 2018, I would say. 13 Q Well -- 14 A So and from there, beyond normal 15 development for the role, sort of the character's 16 involvement in the story is sort of what it was 17 from the beginning. 18 Q Was her role ever reduced for any 19 reason? 20 A No. I mean, again, from the early 21 stages of development of the script, the movie was 22 built around the character of Arthur and the</p>	<p>6735</p> <p>1 Q Was her compensation for Aquaman 2 2 affected by anything said by Adam Waldman? 3 A No. 4 Q Was her compensation for Aquaman 2 5 affected by anything said by anybody representing 6 Johnny Depp? 7 A No. 8 Q Was there any delay in Warner Brothers 9 exercising the option to cast Ms. Heard in 10 Aquaman 2? 11 A Yes, there was. 12 Q How long a delay was there? 13 A I don't know. Probably weeks. 14 Q What was the cause of the delay? 15 A There were conversations about 16 potentially recasting. 17 Q Who was the producer? 18 A Peter Safran. 19 Q Who was the director? 20 A James Wan. 21 Q Did Warner Brothers believe that those 22 concerns were legitimate?</p>

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23 (6736 to
6739)

<p>6736</p> <p>1 A Yeah. I mean, I have no reason not to 2 believe the director or the producer of the movie. 3 Q And you are testifying today, as a 4 representative of Warner Brothers, correct? 5 A Yes, I am. 6 Q What, if any, creative concerns did 7 Warner Brothers have about casting Amber Heard as 8 Mera in Aquaman 2? 9 A It was the concerns that were brought 10 up at the wrap of the first movie, production of 11 the first movie, which is the issue of chemistry. 12 Did the two have a chemistry? You know, I think 13 editorially, they were able to make that 14 relationship work in the first movie, but there 15 was a concern that it took a lot of effort to get 16 there and would we be better off recasting, 17 finding someone who had a bit of more natural 18 chemistry with Jason Momoa and move forward from 19 that point. 20 Q Did Warner Brothers take any steps 21 affirmatively to audition other actresses for the 22 role of Mera in Aquaman 2?</p>	<p>6738</p> <p>1 Q At any time from the beginning of 2 history through today, did Warner Brothers ever 3 release Ms. Heard from the Aquaman 2 contract? 4 A No. 5 Q At any point in time from the beginning 6 of history to today, did Warner Brothers rehire 7 Ms. Heard for Aquaman 2? 8 A No. Because we just picked up her 9 option. 10 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND 11 COUNTERCLAIM PLAINTIFF 12 BY MS. BREDEHOFT: 13 Q And when is the last time you spoke 14 with Rob Cowan relating in any manner to -- 15 whether to exercise the option on Amber Heard for 16 Aquaman 2? 17 A It would have been same time that I was 18 having this conversation with Peter Safran. 19 Q So -- 20 A In 2020. 21 Q Did you speak with Zack Snyder at all 22 relating to whether to exercise the option for</p>
<p>6737</p> <p>1 A No, we did not. 2 Q Other than the creative concerns and 3 concerns about chemistry you testified about, was 4 there any other reason Warner Brothers delayed in 5 picking up Ms. Heard's option for Aquaman 2? 6 A No. It was all concerns about whether 7 she was the right fit of casting for the movie. 8 Q What role, if any, did Ms. Heard's 9 dispute with Johnny Depp have in Warner Brothers's 10 delay picking -- in picking up Ms. Heard's option 11 for Aquaman 2? 12 A There was none from our end. 13 Q At any point in time, was Warner 14 Brothers considering paying Ms. Heard more money 15 for Aquaman 2 than is set forth in the option 16 contract you previously identified? 17 A No. As I said, we were determined to 18 hold our actors to their option agreements. 19 Q Would Warner Brothers have paid 20 Ms. Heard more money on Aquaman 2 if it had picked 21 up her option earlier? 22 A No.</p>	<p>6739</p> <p>1 Amber Heard on Aquaman 2? 2 A No. I have not had any conversations 3 with Zack Snyder. 4 Q Did you speak at all with Jason Momoa 5 in preparation for your deposition today? 6 A No. 7 Q Have you ever spoken with Jason Momoa 8 about any issues relating to chemistry between he 9 and Amber Heard? 10 A Yes. 11 Q When did you speak with Jason Momoa 12 about chemistry issues between he and Amber Heard? 13 A It would have been in that same time 14 period where we were -- prior to green-lighting 15 the movie. 16 Q Now, you were asked some questions 17 about scripts. Did you review any of the drafts 18 of the script for Aquaman 2? 19 A Yes. 20 Q When? 21 A Part of my role is I read all of the 22 drafts to the scripts as they come in.</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

24 (6740 to
6743)

<p>6740</p> <p>1 Q When was the first script for Aquaman 2 2 you looked at? 3 A Oh, boy. I cannot tell you. Probably 4 in 2018, latter part of 2018 would be my guess. 5 Q And how many versions of the script had 6 been written by the beginning of 2021 for 7 Aquaman 2? 8 A Oh, there were probably half dozen 9 drafts of the script. 10 Q What, if any, did Rob Cowan say to you 11 about chemistry, what specifically about the 12 chemistry between Amber Heard and Jason Momoa? 13 A Just the fact that they didn't really 14 have a lot of chemistry together. You know, the 15 reality is it's not uncommon on movies for two 16 leads to not have chemistry, and that it's sort of 17 movie magic and editorial, the ability to sort of 18 put performances together, and with the magic of, 19 you know, a great score and how you put the pieces 20 together, you can fabricate, sort of, that 21 chemistry. And so I think in -- at the end of the 22 day, I think if you watch the movie, they look</p>	<p>6742</p> <p>1 happier. And so it was sort of the -- it's just 2 the magic of postproduction: Editing, sound, 3 sound design, music, et cetera. 4 Q And what do you mean by "fabricating" 5 though? I mean, were they literally falsifying? 6 Or were they just picking the best music? 7 A No. 8 Q Let me finish my question. 9 Were they picking the best music and 10 picking the best looks because that's their job 11 and that's what you do on every scene? 12 A That is what we do in postproduction. 13 That's what filmmakers do. But, yeah, this is on 14 any production, you're doing that. You're putting 15 formats together. Sometimes it's easier than 16 others. This one was more difficult because of 17 the lack of chemistry between the two. But they 18 were able to -- James Wan and the editor were able 19 to get it to a place where the end result actually 20 works, and it's great. 21 Q In fact, that's the job of every 22 filmmaker, right, is to put all the combinations</p>
<p>6741</p> <p>1 like they had great chemistry, but I just know 2 that through the course of the postproduction, 3 that it took a lot of effort to get there. 4 Sometimes you don't. Sometimes it's very easy, 5 and you just put the, you know, characters on the 6 screen together, and they work. And sometimes 7 it's harder, and so... 8 Q Can you give me anything more specific 9 about what it was with Amber Heard and Jason Momoa 10 that was difficult for the chemistry? 11 A No. Because it's like what makes a 12 movie star a movie star? Like, you know it when 13 you see it, and the chemistry wasn't there. 14 Q Now, you've used the term "fabricated" 15 a number of times. What did you do to fabricate 16 the chemistry between Amber Heard and Jason Momoa? 17 A Well, those are just -- it's editorial. 18 A good editor and a good filmmaker can pick the 19 right takes, can pick the right moments and put 20 scenes together. Again, score is a big, you know, 21 the music in the scene makes a different. You can 22 make a happy scene feel sadder or a sad scene feel</p>	<p>6743</p> <p>1 together to make the most successful production? 2 A Absolutely. 3 Q Showing you what has been marked as 4 Exhibit Number 5. It's ALH18247. And this is a 5 text message exchange between James Wan and Amber 6 Heard. And you mentioned James Wan was the 7 director of Aquaman 2; is that correct? 8 A Yes. 9 Q And Aquaman, the first one, correct? 10 A That's right. 11 Q All right. And James is texting to 12 Amber on August 25, 2018, "You rated really high 13 with the audience!!" 14 Do you see that? 15 A Yes. 16 Q This is August 25, 2018. What's going 17 on on August 25, 2018, that would cause a director 18 to send a text messages to Amber saying -- 19 A Maybe test screening. So during our 20 postproduction of the movie, we test the movie 21 with an audience, and the audience tells us what 22 they like and what they didn't like. So that's</p>

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25 (6744 to
6747)

<p style="text-align: right;">6744</p> <p>1 what he's referring to there.</p> <p>2 Q And they really like Amber Heard,</p> <p>3 correct?</p> <p>4 A Yes, she did. She tested well.</p> <p>5 Q -- billion dollars; is that correct?</p> <p>6 And more specifically, did you play any</p> <p>7 role in the determination to communicate to</p> <p>8 Amber's representatives that Warner Brothers was</p> <p>9 considering not exercising her option?</p> <p>10 A Yeah. Probably in the sense of we had</p> <p>11 the conversations, and I believe, if I recall, we</p> <p>12 had -- that's where Peter Safran offered to reach</p> <p>13 out to the agent and express which direction we</p> <p>14 were leaning.</p> <p>15 Q Have you seen any document that says</p> <p>16 there was any chemistry issues between Amber Heard</p> <p>17 and Jason Momoa in Aquaman 1?</p> <p>18 A Documents? No. Those were all</p> <p>19 conversations.</p> <p>20 Q But if Jason came back and James Wan</p> <p>21 came back, you were guaranteed that Amber Heard</p> <p>22 would be playing Mera, correct?</p>	<p style="text-align: right;">6746</p> <p>1 Kulber's notes were produced at Depp 18263</p> <p>2 through -99.</p> <p>3 MR. ROTTENBORN: Notes or records?</p> <p>4 Those are emails.</p> <p>5 MS. MEYERS: No, no, no. These are his</p> <p>6 notes. I can show you. I have it on my phone.</p> <p>7 MR. ROTTENBORN: We ask them to send</p> <p>8 those to us.</p> <p>9 THE COURT: Sure.</p> <p>10 MS. MEYERS: They're records from</p> <p>11 Cedar...</p> <p>12 MS. VASQUEZ: Cedars-Sinai. He works</p> <p>13 for Cedars-Sinai --</p> <p>14 MS. MEYERS: He works for Cedars-Sinai,</p> <p>15 and it says at the top, "Dr. Kulber."</p> <p>16 MS. VASQUEZ: -- in Los Angeles.</p> <p>17 MR. ROTTENBORN: I'm not sure that any</p> <p>18 of us have seen those before, Your Honor. We just</p> <p>19 asked them to email them to us.</p> <p>20 MS. VASQUEZ: They're Bates-stamped.</p> <p>21 THE COURT: Well, you can email them to</p> <p>22 him, and as soon as we take the morning recess,</p>
<p style="text-align: right;">6745</p> <p>1 A That's correct.</p> <p>2 Q Okay. And Jason Momoa was able to</p> <p>3 negotiate a different compensation structure, was</p> <p>4 he not, for Aquaman 2?</p> <p>5 A That's true. He did renegotiate.</p> <p>6 Q Now, Aquaman was the highest-grossing</p> <p>7 DC film ever for Warner Brothers, was it not?</p> <p>8 A Yes, it was.</p> <p>9 Q What, if any, issues did you have with</p> <p>10 Amber Heard in Aquaman 2?</p> <p>11 A My understanding is actually the</p> <p>12 production went very smoothly.</p> <p>13 THE COURT: All right. Thank you.</p> <p>14 Your next witness.</p> <p>15 MS. MEYERS: Your Honor, we call</p> <p>16 Dr. Kulber next, but I know we have a preliminary</p> <p>17 matter that we need to deal with briefly, if we</p> <p>18 may approach?</p> <p>19 THE COURT: Sure.</p> <p>20 (Sidebar.)</p> <p>21 MS. MEYERS: So, Your Honor, we --</p> <p>22 sorry. Your Honor, we went back and confirmed</p>	<p style="text-align: right;">6747</p> <p>1 you can take a look at them.</p> <p>2 MS. BREDEHOFT: They still haven't</p> <p>3 identified them in the response, Your Honor.</p> <p>4 MS. MEYERS: Well, and, Your Honor, in</p> <p>5 our supplemental response, we referred defendants</p> <p>6 to the medical records in this action which</p> <p>7 contains the responsive information, and one of</p> <p>8 those documents, Depp 1892, is identified here and</p> <p>9 that identifies Dr. Kulber.</p> <p>10 THE COURT: But you never identified</p> <p>11 him in your submission?</p> <p>12 MR. ROTTENBORN: Your Honor, it's not</p> <p>13 hard to list names.</p> <p>14 MS. VASQUEZ: None of the names are</p> <p>15 identified.</p> <p>16 MS. MEYERS: Yeah, we listed the Bates</p> <p>17 numbers that included the information --</p> <p>18 THE COURT: So none of their names?</p> <p>19 MS. VASQUEZ: None of the medical</p> <p>20 providers have been identified by name.</p> <p>21 THE COURT: So none of the medical</p> <p>22 providers were put in there by name; is that</p>

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26 (6748 to
6751)

6748	6750
<p>1 correct?</p> <p>2 MR. ROTTENBORN: I can't speak to that,</p> <p>3 Your Honor. All I can speak to --</p> <p>4 THE COURT: So you didn't object to any</p> <p>5 of the other medical providers?</p> <p>6 MR. ROTTENBORN: I don't know. I don't</p> <p>7 know. I didn't --</p> <p>8 MS. BREDEHOFT: Well, they didn't have</p> <p>9 any other medical providers testify here.</p> <p>10 THE COURT: Well, they, again --</p> <p>11 MS. MEYERS: Dr. Kipper.</p> <p>12 MS. BREDEHOFT: No, no. They didn't</p> <p>13 identify Dr. Kipper, Your Honor. They identified</p> <p>14 him in the witness interrogatories. We had an</p> <p>15 opportunity to depose him.</p> <p>16 THE COURT: Well, as a witness, but I'm</p> <p>17 talking about that your objection is over the</p> <p>18 medical records, and that they didn't identify him</p> <p>19 as a medical provider.</p> <p>20 MR. ROTTENBORN: Your Honor, I can't</p> <p>21 speak to the other -- a lot of the other doctors</p> <p>22 have come in in numerous ways. They've been on</p>	<p>1 Kipper. We already had Blaustein. We already had</p> <p>2 everybody else.</p> <p>3 THE COURT: But they don't identify</p> <p>4 those people here either.</p> <p>5 MS. BREDEHOFT: Well, but they</p> <p>6 identified them in their witness interrogatory, so</p> <p>7 we had them anyway.</p> <p>8 MR. ROTTENBORN: They hadn't given us</p> <p>9 those names. This is totally different.</p> <p>10 MS. BREDEHOFT: Anyway, I mean, we're</p> <p>11 not -- yeah. We're not playing games, Your Honor.</p> <p>12 I mean, if they had identified them already as</p> <p>13 witness interrogatories, then we already knew</p> <p>14 that. But we didn't know about Kulber, and we</p> <p>15 didn't know they were anticipating making him a</p> <p>16 rebuttal witness.</p> <p>17 MS. MEYERS: Your Honor, I would just</p> <p>18 point out that the document that identifies Kulber</p> <p>19 is Depp 1892. That's a document that would have</p> <p>20 been produced very early on in the --</p> <p>21 THE COURT: So these aren't the ones</p> <p>22 that identify him?</p>
6749	6751
<p>1 the radar screen for years. Here, there's --</p> <p>2 MS. BREDEHOFT: We didn't identify</p> <p>3 them.</p> <p>4 MR. ROTTENBORN: It's not hard to have</p> <p>5 an interrogatory response that lists a person by</p> <p>6 name. To just bury it and say, "You better review</p> <p>7 this, and maybe you'll get a name from it," that's</p> <p>8 total sandbagging. It's gamesmanship. It's not</p> <p>9 appropriate, and especially to do it with one</p> <p>10 day's notice when -- especially under 801 -- under</p> <p>11 399, Your Honor, we would need to see the records</p> <p>12 to see what --</p> <p>13 THE COURT: Well, I'm going to give you</p> <p>14 the records. Rule 801, I think, is covered if</p> <p>15 these are the medical records. That's covered.</p> <p>16 FEMALE SPEAKER: Yeah.</p> <p>17 THE COURT: The question, now, is just</p> <p>18 if he was identified as a medical provider.</p> <p>19 MR. ROTTENBORN: That's the paragraph.</p> <p>20 And it doesn't --</p> <p>21 MS. BREDEHOFT: It was January -- that</p> <p>22 was supplemented January 2022. We already had</p>	<p>1 MS. MEYERS: No. So we identified the</p> <p>2 Bates range Depp 1628 through 1927, and within</p> <p>3 that is Depp 1892, which identifies Dr. Kulber.</p> <p>4 It's other medical record from Dr. Kulber.</p> <p>5 MR. ROTTENBORN: I have no idea what</p> <p>6 that is, Your Honor, but it's not hard to put a</p> <p>7 name. This is just -- it's --</p> <p>8 FEMALE SPEAKER: Your Honor, they did</p> <p>9 not object to --</p> <p>10 MS. BREDEHOFT: If they'd put the name,</p> <p>11 we would have known that they were contemplating</p> <p>12 calling him.</p> <p>13 MR. ROTTENBORN: We didn't know that</p> <p>14 there was a name.</p> <p>15 THE COURT: Where's the --</p> <p>16 "Plaintiff refers defendants to the</p> <p>17 medical records produced in this action that the</p> <p>18 plaintiff offered" --</p> <p>19 MS. VASQUEZ: "From which."</p> <p>20 THE COURT: -- "from which information</p> <p>21 responsive to this interrogatory may be obtained,</p> <p>22 specifically (indiscernible)."</p>

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Conducted on May 24, 2022

27 (6752 to
6755)

<p>1 MR. ROTTENBORN: It's not hard to list 2 the name of the doctor. 3 THE COURT: I know. 4 MR. ROTTENBORN: It was coming up for 5 the first time. 6 THE COURT: It appears they complied 7 with it, the response. 8 MS. VASQUEZ: They didn't object, Your 9 Honor. 10 MR. ROTTENBORN: They didn't. We asked 11 them to identify -- well, you don't object to what 12 you don't know. 13 MS. VASQUEZ: From which part? 14 MS. MEYERS: Are you saying you didn't 15 have these documents that we identified? 16 MR. ROTTENBORN: I'm going to keep my 17 comments confined to the Court, but they didn't 18 identify the doctor. We have under -- 399's only 19 covered if what he's going to testify to is in the 20 medical records, and I need a chance to see those. 21 THE COURT: All right. That's what I'm 22 going to do. I'm going to take a break. I'm</p>	<p>6752</p>	<p>1 with you. 2 MS. MEYERS: I'm sending them to you 3 right now. 4 THE COURT: So send them. And we'll 5 look at them and see if that does -- because seems 6 like he's limited to what he's going to testify to 7 is the type of cast it was. So -- 8 MR. ROTTENBORN: Can Your Honor ask 9 them to confirm that? 10 MS. MEYERS: Well, we're going to ask 11 about the state of his hand, but also the cast. 12 MR. ROTTENBORN: Well, that's way 13 different. 14 THE COURT: Well, you need to -- 15 MS. MEYERS: That's rebuttal. 16 THE COURT: I know it's rebuttal, but 17 now because it's medical records, I need to know 18 exactly what you provided. 19 MS. MEYERS: There's a list of notes 20 that cover, it seems like, the full range of his 21 treatment, and I just sent them to them. 22 MS. BREDEHOFT: But he cannot testify</p>	<p>6754</p>
<p>1 going to allow him to testify if it's in those 2 actual medical records, within those medical 3 records, okay? 4 MR. ROTTENBORN: We would ask those 5 be -- are those -- can Your Honor ask them if 6 they're trial exhibits? Because, again -- and if 7 they're not hearsay? 8 THE COURT: This is a rebuttal witness. 9 MR. ROTTENBORN: All right. Are they 10 hear -- based on Your Honor's ruling about medical 11 records and if they're hearsay, he can't testify 12 to what they say. 13 FEMALE SPEAKER: He's testifying about 14 his treatment. 15 THE COURT: He's testifying from his 16 memory, I assume. This is just a discovery issue, 17 and that's what I'm trying to address right now. 18 None of these medical records are coming into 19 evidence. 20 MR. ROTTENBORN: Understood. But we 21 need to see them. 22 THE COURT: Right. I totally agree</p>	<p>6753</p>	<p>1 to that under the rule? 2 THE COURT: What was the rebuttal part? 3 MS. MEYERS: The rebuttal part is the 4 state of Mr. Depp's hand in March 2015 when he 5 supposed -- when Ms. Heard -- Ms. Heard and 6 Ms. Henriquez both testified that Mr. Depp was 7 able to attack them and try to push them down the 8 stairs at the stairs incident in March 2015. 9 Doctor -- and that he was wearing a hard cast at 10 the time. Dr. Kulber is just going to testify 11 that his finger was in a pin, there was a skin 12 graft, and he had a soft cast on at that time, 13 that he had recently performed surgery, 14 essentially, yes. And that was what this hand 15 state was at that time. 16 MS. BREDEHOFT: That's expert 17 testimony. 18 THE COURT: Just that he performed 19 surgery and he had a soft cast on, not a hard 20 cast. 21 MS. VASQUEZ: And pin in it. 22 MS. MEYERS: And pin in it and a skin</p>	<p>6755</p>

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Conducted on May 24, 2022

28 (6756 to
6759)

<p>6756</p> <p>1 graft.</p> <p>2 MR. ROTTENBORN: If there's going to be</p> <p>3 any testimony on what the cause of the finger</p> <p>4 injury was? Because that would be an expert</p> <p>5 opinion.</p> <p>6 MS. MEYERS: I'm going to ask if he has</p> <p>7 a understanding, but --</p> <p>8 THE COURT: No, you're not.</p> <p>9 MS. MEYERS: Okay. I will not.</p> <p>10 THE COURT: Not going to ask that.</p> <p>11 MR. ROTTENBORN: I've asked the</p> <p>12 question twice, and they've now identified two</p> <p>13 more things that they want to go beyond the</p> <p>14 Court's rulings. Can we get a complete --</p> <p>15 THE COURT: I understand that the only</p> <p>16 thing they can talk about is the pin -- they did</p> <p>17 the surgery, pin, and soft cast. That's all I</p> <p>18 should hear.</p> <p>19 MS. VASQUEZ: And the skin graft, Your</p> <p>20 Honor. Skin graft on the pin.</p> <p>21 MS. MEYERS: That was on the surgery.</p> <p>22 MR. ROTTENBORN: That's new.</p>	<p>6758</p> <p>1 essentially.</p> <p>2 THE COURT: And that's it?</p> <p>3 MS. MEYERS: Yes.</p> <p>4 THE COURT: All right. We'll see if</p> <p>5 it's in the --</p> <p>6 MR. ROTTENBORN: I'm going to be ready</p> <p>7 to jump up and --</p> <p>8 THE COURT: And I'll jump up there with</p> <p>9 you, okay? Because that's what we're going to</p> <p>10 work with.</p> <p>11 MR. ROTTENBORN: If we can have a</p> <p>12 chance to --</p> <p>13 THE COURT: Yeah. We'll go ahead and</p> <p>14 take our morning recess to give you a chance to</p> <p>15 look at that.</p> <p>16 MS. BREDEHOFT: And just as long as</p> <p>17 we're up here, Your Honor, to save some time</p> <p>18 later, they have listed Dr. Curry as a rebuttal</p> <p>19 witness. I don't think she has anything that she</p> <p>20 can rebut. So I just --</p> <p>21 THE COURT: Well, I mean, that --</p> <p>22 MS. VASQUEZ: Dr. Hughes's testimony,</p>
<p>6757</p> <p>1 MS. VASQUEZ: No, it's not new.</p> <p>2 MS. MEYERS: No, it's not new. It was</p> <p>3 reflected in Debbie Lloyd's notes as well.</p> <p>4 THE COURT: Please just address me.</p> <p>5 MS. MEYERS: I apologize.</p> <p>6 So this is just there was a surgery</p> <p>7 performed and then the state of his hand on the</p> <p>8 date of this alleged incident, so what the state</p> <p>9 of his hand was after that surgery. And so that</p> <p>10 involves essentially what he did in the surgery</p> <p>11 and what -- how the hand was after that.</p> <p>12 THE COURT: We're not going to go into</p> <p>13 the whole surgery.</p> <p>14 MS. MEYERS: I'm not. I'm just going</p> <p>15 to say there was a surgery performed and then what</p> <p>16 was the state -- you know, that -- what --</p> <p>17 THE COURT: What exactly is he going to</p> <p>18 testify to this?</p> <p>19 MS. MEYERS: Essentially, he's going to</p> <p>20 say, "I put a pin in. There was a skin graft or a</p> <p>21 cadaver over the top of the finger, and then it</p> <p>22 was wrapped in a soft cast and immobilized,"</p>	<p>6759</p> <p>1 Your Honor. She can rebut Dr. Hughes's --</p> <p>2 THE COURT: If they can rebut</p> <p>3 Dr. Hughes's testimony, that's their rebuttal.</p> <p>4 MS. BREDEHOFT: She will have to have</p> <p>5 designated in order to do that.</p> <p>6 THE COURT: No. She was an expert</p> <p>7 witness. How would she not have anything to</p> <p>8 rebut? So no. The answer's no.</p> <p>9 MS. VASQUEZ: Thank you, Your Honor.</p> <p>10 (Open court.)</p> <p>11 THE COURT: All right. Ladies and</p> <p>12 gentlemen, I apologize again. We have a few</p> <p>13 things to take care of. We're just going to go</p> <p>14 ahead and take our morning recess now for 15</p> <p>15 minutes. Do not discuss the case and do not talk</p> <p>16 to anybody. Okay? Do not do any outside</p> <p>17 research. Sorry. That was the same thing.</p> <p>18 (Whereupon, the jury exited the</p> <p>19 courtroom and the following proceedings took</p> <p>20 place.)</p> <p>21 THE COURT: And if the doctor</p> <p>22 testifies, then is that Webex?</p>

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Conducted on May 24, 2022

29 (6760 to
6763)

<p>1 MS. VASQUEZ: Yes.</p> <p>2 THE COURT: All right. So I'll get</p> <p>3 that set up too while we take the break as well.</p> <p>4 All right. We'll go ahead and take a break.</p> <p>5 Let's make it 10:50 to give them time to look at</p> <p>6 everything, okay?</p> <p>7 MR. CHEW: Thank you, Your Honor.</p> <p>8 THE COURT: Okay.</p> <p>9 MS. BREDEHOFT: Thank you.</p> <p>10 THE BAILIFF: All rise.</p> <p>11 (Recess taken from 10:34 a.m. to</p> <p>12 10:53 a.m.)</p> <p>13 THE BAILIFF: All rise. Please be</p> <p>14 seated and come to order.</p> <p>15 THE COURT: All right. Yes, sir.</p> <p>16 MR. ROTTENBORN: Can I approach?</p> <p>17 THE COURT: Okay. Approach.</p> <p>18 Ms. Meyers.</p> <p>19 (Sidebar.)</p> <p>20 MR. ROTTENBORN: I'm still skeptical</p> <p>21 that the medical records discuss what they're</p> <p>22 going to want. But I'll just take it question by</p>	<p>1 thing that he can testify to is something -- or as</p> <p>2 399 says, observations, diagnoses, et cetera,</p> <p>3 et cetera.</p> <p>4 THE COURT: He's not going to give any</p> <p>5 opinions.</p> <p>6 MR. ROTTENBORN: Correct. And anything</p> <p>7 he testifies to has to have been contemporaneously</p> <p>8 documented in the medical records under the</p> <p>9 statute.</p> <p>10 THE COURT: Well, you have to be</p> <p>11 provided.</p> <p>12 MR. ROTTENBORN: All right. But as</p> <p>13 contemporaneously documented. So if he didn't</p> <p>14 document something in the medical records, he</p> <p>15 can't get up here now and say, "Oh, and I also</p> <p>16 remember this and this and this that's not</p> <p>17 reflected in the medical records."</p> <p>18 THE COURT: But you're saying the cast</p> <p>19 is in the records.</p> <p>20 MR. ROTTENBORN: I'm saying there's a</p> <p>21 reference to a splint, but I'm going to -- and I</p> <p>22 can cross-examine him on it.</p>
<p>1 question, and I'll object if I think it goes</p> <p>2 beyond what --</p> <p>3 MS. MEYERS: And, Your Honor, may I</p> <p>4 just say I thought, as you said, that the medical</p> <p>5 records were a discovery issue. I mean, we can</p> <p>6 call him to rebut testimony that is based off his</p> <p>7 memory of treating Mr. Depp, but it wouldn't</p> <p>8 necessarily be reflected in the medical records.</p> <p>9 MR. ROTTENBORN: No, not under 399.</p> <p>10 THE COURT: You testified -- not</p> <p>11 testified --</p> <p>12 MS. MEYERS: I represented that -- the</p> <p>13 topics that he would be testifying to, yes.</p> <p>14 THE COURT: That's what it is.</p> <p>15 MS. MEYERS: Right. And I don't think</p> <p>16 it's a proper objection that the soft cast is not</p> <p>17 in the medical records or something like that. If</p> <p>18 he -- we've produced his medical records and he's</p> <p>19 testifying as a --</p> <p>20 THE COURT: It comes in. You can</p> <p>21 cross-examine.</p> <p>22 MR. ROTTENBORN: Right. But the only</p>	<p>1 THE COURT: You can cross-examine him</p> <p>2 on that.</p> <p>3 MR. ROTTENBORN: Understood. If they</p> <p>4 want him to say there's a soft cast, I'm not going</p> <p>5 to object to that probably, I mean, depending on</p> <p>6 what the question is. But if it's beyond -- if</p> <p>7 it's something that, based on a quick review of</p> <p>8 the medical records, is not in the medical</p> <p>9 records, he can't testify to any observations or</p> <p>10 diagnoses or treatments that aren't in there.</p> <p>11 MS. VASQUEZ: The soft cast.</p> <p>12 MS. MEYERS: Your Honor, I don't think</p> <p>13 that a medical professional is limited in their</p> <p>14 testimony or what they decided to document in the</p> <p>15 medical records. They have the medical records</p> <p>16 that were taken contemporaneously with the</p> <p>17 treatment, and we, you know, some of what he</p> <p>18 testifies to may be reflected in those medical</p> <p>19 records and some of them may be from his own</p> <p>20 recollection of treating Mr. Depp.</p> <p>21 THE COURT: It just talks about "shall</p> <p>22 be disclosed." Didn't talk about testifying.</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

30 (6764 to
6767)

<p>6764</p> <p>1 MR. ROTTENBORN: But it says if the -- 2 I'm trying to do my best here. If it's -- 3 THE COURT: Communications between 4 physicians and patients, and I understand that, 5 except at the request or the consent of the 6 patient -- 7 MR. ROTTENBORN: Right. But the 8 first -- 9 THE COURT: -- then the practitioner 10 will still need to come in and testify. That's 11 the testify part. The part you're talking about 12 just says that they shall be disclosed. 13 MR. ROTTENBORN: Right. But it says 14 "as contemporaneously documented"; that's the 15 operative. 16 THE COURT: Right. But that doesn't 17 affect his testimony though. 18 MR. ROTTENBORN: Understood. But if 19 he's testifying to diagnoses that aren't in the 20 medical records, he can't do that under that 21 statute. 22 THE COURT: He can do that. He can do</p>	<p>6766</p> <p>1 to get you on the big screen. We're waiting for 2 the jury. Just give us a minute, okay, sir? 3 THE WITNESS: Thank you. 4 THE COURT: Thank you. You can be 5 seated. 6 All right. Your next witness. 7 MS. MEYERS: We call Dr. Kulber. 8 THE COURT: All right. 9 Sir, if you could, raise your right 10 hand. 11 DAVID A. KULBER, MD, FACS, 12 A witness called on behalf of the 13 plaintiff and counterclaim defendant, having been 14 first duly sworn by the judge, testified as 15 follows: 16 MR. ROTTENBORN: Your Honor, I would 17 just object that Dr. Kulber appears to have a 18 stack of documents right in front of him. 19 THE COURT: All right. Sir, you can 20 put your hand down, and any documents you have, if 21 you could, put them away and just testify from 22 your memory, okay, sir? Thank you.</p>
<p>6765</p> <p>1 that because that's not testimony. Testimony is 2 up here on A. B is just talking about what needs 3 to be turned over; this is not talking about 4 testimony, actually, okay? 5 MR. ROTTENBORN: Okay. 6 THE COURT: But I mean you can 7 cross-examine on that, clearly, okay? 8 MR. ROTTENBORN: Okay. Thank you. 9 MS. MEYERS: Thanks. 10 MR. CHEW: Thank you, Your Honor. 11 (Open court.) 12 THE COURT: All right. Yes. Are we 13 ready for the jury? 14 MS. MEYERS: Yes. 15 THE COURT: Okay. 16 Sir, can you hear me? 17 THE WITNESS: Yes. Can you hear me? 18 THE COURT: Yes. Can you count to five 19 for me. 20 THE WITNESS: One, two, three, four, 21 five. 22 THE COURT: All right. I'm just trying</p>	<p>6767</p> <p>1 MR. ROTTENBORN: Thank you, Your Honor. 2 THE COURT: All right. Your questions. 3 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND 4 COUNTERCLAIM DEFENDANT 5 BY MS. MEYERS: 6 Q Good morning Dr. Kulber. 7 A Good morning. 8 Q Could you please state your full name 9 for the record. - 10 A David Allen Kulber. 11 Q And what is your profession? 12 A I'm a plastic and hand surgeon. 13 Q And how long have you been a plastic 14 and hand surgeon? 15 A Been in practice for 26 years. 16 Q Where do you currently work? 17 A At Cedars-Sinai Medical Center. 18 Q How long have you worked there? 19 A For the past 26 years. 20 Q Do you know the plaintiff in this 21 action, Johnny Depp? 22 A I do.</p>

<p>6768</p> <p>1 Q And how do you know Mr. Depp?</p> <p>2 A I've taken care of him when he had</p> <p>3 injured his hand.</p> <p>4 Q When did Mr. Depp become your patient?</p> <p>5 A Sometime in March of 2015.</p> <p>6 Q And what type of treatment did you</p> <p>7 provide to Mr. Depp?</p> <p>8 A He had a fracture of his finger with</p> <p>9 soft tissue loss, and so I reconstructed his</p> <p>10 finger.</p> <p>11 Q When did you perform the first surgery</p> <p>12 on Mr. Depp's finger?</p> <p>13 A I believe it was around March 20th of</p> <p>14 2015.</p> <p>15 Q And what was involved in that surgery,</p> <p>16 just briefly?</p> <p>17 A Debriding the vitalized tissue, putting</p> <p>18 a hypothenar skin graft, restore some of the soft</p> <p>19 tissue loss that he had, and then also putting a</p> <p>20 pin in because he had a displaced distal phalanx</p> <p>21 fracture.</p> <p>22 Q What was the state of Mr. Depp's hand</p>	<p>6770</p> <p>1 A Well, he couldn't move his third and</p> <p>2 fourth fingers because of the bulkiness of the</p> <p>3 splint. Typically, postoperatively, it's a more</p> <p>4 bulkier splint right after the surgery, so it's</p> <p>5 not very --</p> <p>6 It gets in the way.</p> <p>7 Q Could Mr. Depp grab someone with that</p> <p>8 cast on his hand?</p> <p>9 A He could attempt to grab someone. I</p> <p>10 don't know how successful he would be. He had his</p> <p>11 index finger free and his thumb free, but the</p> <p>12 other fingers were probably not being able to</p> <p>13 move.</p> <p>14 Q How long was the pin in Mr. Depp's</p> <p>15 finger?</p> <p>16 A About 11 or 12 days.</p> <p>17 Q And how was the pin removed?</p> <p>18 A It was removed under local anesthesia</p> <p>19 in my office.</p> <p>20 Q How long did you ultimately treat</p> <p>21 Mr. Depp for his hand injury?</p> <p>22 A For several months.</p>
<p>6769</p> <p>1 immediately after that surgery?</p> <p>2 I'm sorry. I think the audio cut out a</p> <p>3 little bit. Could you please repeat your answer.</p> <p>4 A The finger was injured and he had soft</p> <p>5 tissue loss and then fracture of his distal</p> <p>6 phalanx.</p> <p>7 Q And what type of cast was on Mr. Depp's</p> <p>8 hand after you performed that surgery?</p> <p>9 A It was a plaster splint.</p> <p>10 Q And can you please describe to the jury</p> <p>11 what a plaster splint would look like?</p> <p>12 A So it's like a cast, but you don't want</p> <p>13 to put everything circumferential on it because of</p> <p>14 swelling after surgery. So I believe in</p> <p>15 Mr. Depp's case, it was, like, the two fingers --</p> <p>16 I think the third finger was the one that was</p> <p>17 operated on, so these two fingers, the third and</p> <p>18 fourth finger together. And it's a splint the</p> <p>19 plaster on the top and on the bottom that goes</p> <p>20 around the hand to protect it.</p> <p>21 Q How mobile was Mr. Depp's hand when it</p> <p>22 was in that cast?</p>	<p>6771</p> <p>1 Q And why was that?</p> <p>2 A It was a bad injury and required a few</p> <p>3 more little office procedures to clean up the</p> <p>4 tissue. He had an infection as a result of the</p> <p>5 injury. So he had to be on antibiotics for some</p> <p>6 time until it finally completely healed.</p> <p>7 Q Do you recall when the infection</p> <p>8 developed?</p> <p>9 A It was a few weeks after the surgery,</p> <p>10 and that's when I took out the pin.</p> <p>11 Q When was the last time that you saw</p> <p>12 Mr. Depp?</p> <p>13 A Sometime in 2015. I don't recall when.</p> <p>14 Q And when was the last time that you</p> <p>15 spoke to Mr. Depp?</p> <p>16 A The same. Around 2015.</p> <p>17 MS. MEYERS: All right. Thank you,</p> <p>18 Dr. Kulber.</p> <p>19 THE COURT: All right.</p> <p>20 Cross-examination.</p> <p>21 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND</p> <p>22 COUNTERCLAIM PLAINTIFF</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

32 (6772 to
6775)

<p>1 BY MR. ROTTENBORN: 2 Q Good morning, Dr. Kulber. 3 So you said that this plaster splint 4 was put on on -- after surgery on March 20th, 5 2015? 6 A Yes. 7 Q And a plaster -- 8 A Yeah. 9 Q A plaster splint, is that sometimes 10 called half a cast? 11 A Sometimes it's called half a cast or a 12 soft cast, something like that, yeah. 13 Q And it's made of plaster of Paris, 14 right? 15 A Correct. 16 Q And plaster of Paris hardens like a 17 cast does, correct? 18 A Yes. 19 Q So other than the fact that it's a 20 little smaller than a cast that goes around your 21 whole hand, it's just as hard as a cast that would 22 be put on a broken arm or a broken hand, correct?</p>	<p>6772 1 pictures, and I'd ask you to take a look at them. 2 MS. MEYERS: Your Honor, I'm going to 3 object for lack of foundation for these 4 photographs. 5 THE COURT: They're already in 6 evidence. 7 MS. MEYERS: With respect to the 8 questions to the witness. 9 THE COURT: They're in evidence. Thank 10 you. 11 MR. ROTTENBORN: Michelle, if you could 12 go back up to that. Stop right there. 13 Q Is there anything about the cast that 14 was put on Mr. Depp's hand on March 20th, 2015, 15 that would have prevented him from doing this 16 damage to Ms. Heard's closet on March 23rd, 2015? 17 MS. MEYERS: Objection. Calls for 18 speculation. 19 THE COURT: Overruled. 20 A I mean, he had his other hand 21 available, so... 22 MR. ROTTENBORN: No further questions.</p>
<p>6773 1 A It's softer on the sides so the fingers 2 can expand for swelling. So it's not fully -- the 3 plaster of Paris circumferential around 4 everything. So there are areas that are softer to 5 allow for swelling. 6 Q But the parts that are covered with 7 plaster of Paris are just as hard as any other 8 cast, correct? 9 A Correct. 10 Q And regardless of whether Mr. Depp 11 could have grabbed someone with the hand with the 12 cast on, he could have grabbed someone with the 13 hand without the cast on, correct? 14 A Correct. 15 MR. ROTTENBORN: Michelle, can you pull 16 up Exhibit 400, please. 17 This has been admitted, Your Honor. 18 THE COURT: All right. 19 MR. ROTTENBORN: Permission to publish? 20 THE COURT: Yes, sir. 21 Q Dr. Kulber, I'm just going to ask 22 Michelle here to just scroll through these</p>	<p>6775 1 Thank you. 2 THE COURT: All right. Redirect. 3 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND 4 COUNTERCLAIM DEFENDANT 5 BY MS. MEYERS: 6 Q Dr. Kulber, how many fingers were in 7 the plaster portion of Mr. Depp's cast? 8 A I believe two or three. At least two 9 were, the third one and the fourth one. 10 Q And why did you call it a "soft cast"? 11 A Because it's not fully -- plaster 12 doesn't go around the entire hand because you 13 allow for swelling. So there's plaster to protect 14 the fracture, so there's a little plaster on it. 15 But it's on the top and the bottom, but it's not 16 completely circumferential. So there's soft spots 17 to it. 18 Q And where are those soft spots located 19 again? 20 A Usually we put a piece of plaster 21 underneath the fingers and on top. Then the sides 22 of the fingers, it's soft so that the fingers can</p>

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<p style="text-align: right;">6776</p> <p>1 swell after the surgery.</p> <p>2 Q Could Mr. Depp have hit someone with</p> <p>3 the hand that had the cast on it?</p> <p>4 A He could have hit someone with it. It</p> <p>5 probably would have injured – damaged the cast.</p> <p>6 Q Did you ever notice any damage to</p> <p>7 Mr. Depp's cast when you treated him after the</p> <p>8 surgery?</p> <p>9 A I don't recall. Nothing that comes to</p> <p>10 mind.</p> <p>11 Q Could Mr. Depp form a fist with the</p> <p>12 cast on?</p> <p>13 A No.</p> <p>14 MS. MEYERS: No further questions.</p> <p>15 Thank you, Dr. Kulber.</p> <p>16 THE COURT: All right. Thank you, sir.</p> <p>17 That concludes your testimony. Thank you.</p> <p>18 All right. Your next witness.</p> <p>19 MS. LECAROZ: Plaintiff calls Richard</p> <p>20 Marks, Your Honor.</p> <p>21 THE COURT: Okay. Mr. Marks.</p> <p>22 Sir, just a reminder that you're --</p>	<p style="text-align: right;">6778</p> <p>1 in the trenches making deals, is not in that</p> <p>2 day-to-day process.</p> <p>3 Q And are you familiar with the testimony</p> <p>4 of Kathryn Arnold in this matter?</p> <p>5 A Yes.</p> <p>6 Q Have you been asked to analyze that</p> <p>7 testimony and provide opinions in response?</p> <p>8 A Yes.</p> <p>9 Q And generally what are those opinions?</p> <p>10 A Well, my opinions are that she's very</p> <p>11 slick and smooth, but she's not an expert in</p> <p>12 dealmaking. Her assessment of damages is built on</p> <p>13 nothing, and it's wildly speculative.</p> <p>14 Q Are you familiar with Ms. Arnold's</p> <p>15 opinion that it's customary for an actor to</p> <p>16 renegotiate the fee for a subsequent picture</p> <p>17 option in a multi-picture contract when a film is</p> <p>18 successful?</p> <p>19 A Yes, I heard that opinion.</p> <p>20 Q And are you also familiar with her</p> <p>21 testimony that under those circumstances, an actor</p> <p>22 will renegotiate a 50 to 100 percent increase in</p>
<p style="text-align: right;">6777</p> <p>1 hold on. Just give us a second. Sir, just a</p> <p>2 reminder you're still under oath okay, sir?</p> <p>3 RICHARD MARKS,</p> <p>4 having been previously sworn, was</p> <p>5 examined and testified as follows:</p> <p>6 THE COURT: All right. Good morning,</p> <p>7 sir.</p> <p>8 All right. Yes, ma'am.</p> <p>9 MS. LECAROZ: Thank you, Your Honor.</p> <p>10 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND</p> <p>11 COUNTERCLAIM DEFENDANT</p> <p>12 BY MS. LECAROZ:</p> <p>13 Q Welcome back, Mr. Marks. You've</p> <p>14 testified in this case previously, but would you</p> <p>15 just briefly remind the jury who you are?</p> <p>16 A I'm Richard Marks, and I'm a full-time</p> <p>17 entertainment transactional attorney. I make</p> <p>18 deals every day for productions and for</p> <p>19 individuals. I'm in the trenches, negotiating and</p> <p>20 then making sure the contracts reflect the deals.</p> <p>21 And I'm very much distinguished from the other</p> <p>22 side's expert, who is not an attorney, who's not</p>	<p style="text-align: right;">6779</p> <p>1 their salary for the next option of film?</p> <p>2 A Yes, I heard her say that.</p> <p>3 Q Do you agree with those opinions?</p> <p>4 A Absolutely not.</p> <p>5 Q Why not, sir?</p> <p>6 A Well, what we're dealing with in this</p> <p>7 case is a test option agreement, and that's an</p> <p>8 agreement, it's a multi-picture agreement, and</p> <p>9 it's the nightmare for people like me. You -- the</p> <p>10 test is going to take place, let's say, for ten</p> <p>11 actors the next morning at nine, and you have to</p> <p>12 fully negotiate a contract that might cover four</p> <p>13 movies and have it signed before they're allowed</p> <p>14 to test so that if they're chosen for the part, we</p> <p>15 have the full contract. There's no renegotiation.</p> <p>16 So you've got a contract for a</p> <p>17 multi-picture deal -- it's usually a franchise --</p> <p>18 and you negotiate the first movie. And normally,</p> <p>19 if they get the part, they're the chosen one,</p> <p>20 their "the star is born" moment, if you will, they</p> <p>21 get the part, normally their salary is inflated</p> <p>22 from their normal salary because now they're going</p>

<p style="text-align: right;">6780</p> <p>1 to play a character that could go on for four 2 movies.</p> <p>3 In this case, Ms. Heard's first salary 4 when she got the part was \$450,000. If Warner 5 Brothers and DC Comics decided to make a next 6 movie, they could recast her. They had no 7 obligation; all they had was an option. But if 8 they did cast her, up front, that they had agreed 9 to more than double her salary, like, two and a 10 quarter times, to get to the million dollars. 11 These are large bumps, if you will.</p> <p>12 If an actor is on a series, say, they 13 go -- and they have five options. They go up in 14 increments of 5 percent, 10 percent, 20 percent, 15 not these multiples that you see in a test option 16 agreement, and that's one of the reasons that they 17 aren't renegotiated normally. They are in some 18 instances, but not normally.</p> <p>19 Q What's the significance of a "test" 20 part in a test option agreement?</p> <p>21 A The test significance is that an 22 established actor usually wouldn't test; they'd be</p>	<p style="text-align: right;">6782</p> <p>1 the third movie. Instead of doubling her salary, 2 Ms. Arnold said it would only be fair to quadruple 3 her salary. And that's just not the way these 4 idiosyncratic contracts work. They're a very 5 small portion of the contracts we deal with.</p> <p>6 Q Are you familiar with Ms. Arnold's 7 opinion that Ms. Heard's salary for Aquaman 2 8 could have been renegotiated to around \$4 million?</p> <p>9 A I am.</p> <p>10 Q Do you agree with that opinion?</p> <p>11 A No.</p> <p>12 Q Why not?</p> <p>13 A Well, as I've said, that would now be 14 after a healthy first payday. It's more than 15 doubled, and now it would be quadrupled. That's 16 not the way it happens. Walter Hamada, who is the 17 president of that part of the studio, said it 18 doesn't happen. They're not going to do it.</p> <p>19 Ms. Arnold, for some substance, says 20 "Well, Jason Momoa got to do it," but she doesn't 21 give us any of the details. We know that Jason 22 Momoa was in a movie before the Justice League.</p>
<p style="text-align: right;">6781</p> <p>1 offered the role. Ms. Heard was in a group of 2 actors that needed to be tested to see if the 3 studio wanted to hire them, and then if they hired 4 them, they would be locked up for -- potentially 5 for movies at very lucrative increases because 6 after Aquaman 1, she gets to a million dollars. 7 Aquaman 2, she gets to \$2 million, and 8 Aquaman 4 -- 3, excuse me, you get to \$4 million.</p> <p>9 These are unheard of bumps if you're 10 going on a normal career and trying to increase 11 your salary by increments.</p> <p>12 Q In your experience, what is customary 13 for negotiation of multi-picture deals?</p> <p>14 A Well, I think what happened in this 15 case was customary for negotiation of 16 multi-picture deals. And by that I mean that you 17 assume success. The reason you go from the first 18 Justice League movie, where Ms. Heard played Mera 19 the first time, the reason you more than double 20 her salary is you assume success. So you've 21 already built in the bonus that Ms. Arnold was 22 referring to, a renegotiation, if you will, for</p>	<p style="text-align: right;">6783</p> <p>1 He played Aquaman in a movie not opposite -- not 2 with Mera in that movie. So he had a history. 3 Before the first movie with Amber Heard, he played 4 Aquaman. We don't know what the contract, the 5 state of it, was when you got the Aquaman 2. And 6 she says, unsupported, that he renegotiated; we're 7 not sure what he renegotiated to.</p> <p>8 But I can say that at the end of the 9 option period, when you've only got one option 10 left and you want that star in more movies, you 11 may renegotiate, but it's not a gratuity. It's 12 "We'll give you more for the last option if you'll 13 give us three more options." It's a 14 give-and-take. And, unfortunately, Ms. Arnold 15 didn't give us any of that background or those 16 building blocks.</p> <p>17 And then I think yesterday she said, 18 "And the other actors renegotiated." And, again, 19 we don't know their salary history. We don't know 20 their contracts. We don't know anything except 21 she's asking you just to believe her as what I 22 refer to as a professional expert.</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

35 (6784 to
6787)

<p style="text-align: right;">6784</p> <p>1 Q Are you aware that Ms. Arnold's opined 2 that but for the alleged defamatory statements by 3 Mr. Waldman, Ms. Heard would have earned 4 45 million in the last 18 months and then the next 5 three to five years? 6 A Yes, I am. 7 Q I would like to address some of the 8 components of that one by one with you, Mr. Marks. 9 Are you familiar with her testimony that Ms. Heard 10 would continue to make films for approximately 11 \$4 million each following Aquaman 2? 12 A Yes. 13 Q Do you agree with that testimony? 14 A No. 15 Q Why not? 16 A Well, again, in Aquaman 2, Amber Heard 17 has already had this huge increase. She worked on 18 Aquaman 2 for 2 million. What Ms. Arnold is 19 saying is, "Oh, she should have worked on it for 20 4 million," which I disagree with, and I don't -- 21 I think there is reasons to renegotiate. They 22 weren't here in this case. So the 4 million I</p>	<p style="text-align: right;">6786</p> <p>1 take advantage of this hot star and to sign them 2 up, and we have, from Christmas 2018 to spring 3 '20, where there is none of this activity. The 4 "star is born" phenomenon didn't happen.them up. 5 Ms. Heard starred in one series of 6 eight episodes, and she earned a healthy fee, 7 \$200,000 an episode. But that's five times less 8 than the million Ms. Arnold is tossing out, 9 supposedly based on Jason Momoa's approach. She 10 doesn't prove it or give us facts. And Jason 11 Momoa is not a comparable actor. He's been in a 12 series where they shot 78 episodes, 44 episodes, 13 21 episodes. He played Conan the Barbarian. He 14 was in Game of Thrones. It's not a comparable -- 15 MR. NADELHAFT: Objection. 16 Nonresponsive. 17 THE COURT: All right. Sustain the 18 objection. 19 Next question. 20 Q Mr. Marks, we'll get to some of those 21 issues in a moment. But I want to take you back 22 for a second. I believe you testified a few</p>
<p style="text-align: right;">6785</p> <p>1 have a disagreement with. But even if it was at 2 4 million, or if it was at 2 million, the four or 3 five movies that Ms. Heard might get might be 4 independent movies. They might be stand-alone 5 studio movies. Might be passion projects. 6 Every actor has a quiver full of 7 quotes, and their highest quote is for the 8 superhero fantasy journey. Their lowest quote 9 might be for the independent passion project where 10 they'll defer their salary and almost take nothing 11 to work, just SAG minimum. And to assume that 12 she'd get four or five more movies at this, her 13 last fantasy quote, would be to assume that those 14 are also those type of movies playing another 15 character. And Ms. Arnold says that Ms. Heard's 16 breakout moment, her "star is born" moment, is 17 Christmas 2018. 18 If that's true, and I don't think it's 19 true; those moments don't normally happen to 20 supporting cast. But if it's true, as a 21 dealmaker, you would expect, if you represented 22 producers, production companies, to flock in, to</p>	<p style="text-align: right;">6787</p> <p>1 minutes ago that your understanding is that the 2 last option in a multi-picture deal might be 3 renegotiated under some circumstances. Do you 4 have an understanding of whether Aquaman 2 was the 5 last option in Ms. Heard's contract with Warner 6 Brothers? 7 A Oh, no, no. Aquaman 2 has not even 8 been released, and Warner Brothers has a fourth 9 option for Aquaman 3 or another movie where Mera 10 appears, that character, and have agreed to double 11 the salary again. So it's in success, and that 12 assumes that they recast and that they make the 13 movie. 14 Q Are you aware of Ms. Arnold's testimony 15 that Ms. Heard would have made several million 16 dollars on endorsement deals such as the one she 17 had with L'Oréal? 18 A I'm aware of that testimony. 19 Q Do you agree with that opinion? 20 A No. 21 Q Why not? 22 A Again, this is a business of</p>

<p style="text-align: right;">6788</p> <p>1 personalities. We didn't -- after the breakout 2 moment that Ms. Arnold talked about, Christmas 3 2018, we didn't see endorsement deals flocking to 4 Ms. Heard during that 16-month period before Adam 5 Waldman made a few statements in the London Daily 6 Mail, I believe it was. We didn't see those 7 endorsements coming to her. We didn't -- what 8 Ms. Arnold shows you is these noncomparable 9 actors, they have endorsement deals. 10 But she doesn't show you, when she 11 describes the breakout moment, and why she's 12 comparing Amber Heard to these what I call 13 uncomparable actors, but she's making the 14 comparison. She's saying, "Well, they had all 15 these deals. Why wouldn't she?" but for the 16 statements that happened 16 months later. And I 17 guess my primary question is what happened in the 18 16 months, even if you believe three statements in 19 the Daily Mail are the stake through the heart of 20 this "star is born" moment. 21 Q Do you have an opinion about 22 Ms. Arnold's testimony that Ms. Heard would have</p>	<p style="text-align: right;">6790</p> <p>1 trenches, rarely, rarely does an actor get a 2 million dollars for a series episode. And, again, 3 in those 16 months, there were no offers for 4 series at a million dollarS an episode. In fact, 5 her only series is the 200,000. 6 And if you look at her résumé, the 7 series that Ms. Heard were in, I think the longest 8 one ran eight episodes. Jason Momoa, if you were 9 to believe Ms. Arnold and somehow Jason Momoa's 10 agent broke their confidentiality and agreement 11 and he had a series at a million dollars an 12 episode, if you would believe that, Jason Momoa 13 has had a series with 78 episodes, with 44 14 episodes, with 21 episodes, with 18 episodes, with 15 21 episodes. He was in -- again, there's not a 16 comparableness there. 17 Q We spoke a few minutes ago about the 18 test option agreement. What's the significance of 19 the option part of that agreement? 20 A The option part of the agreement gives 21 the employer, the studio, the option. They don't 22 have to do anything. They have an option to</p>
<p style="text-align: right;">6789</p> <p>1 made \$1 million an episode in a couple of 2 streaming series following her "a star is born" 3 moment? 4 A Yes, I heard it. I have an opinion. 5 Q What's your opinion? 6 A Well, after Aquaman 1, this is a major 7 coup, Amber Heard got that role, she tested for 8 it. She could have been the other 19 actresses or 9 ten or whoever else tested and didn't get it. She 10 got the role. And she got her salary doubled for 11 Aquaman 1 to a million dollars. Now, Ms. Arnold 12 wants you to believe that that million dollars 13 would translate into she'd get that for each 14 episode of the series. 15 We know what she got for a series. She 16 got a series in that period after Christmas 2018, 17 before spring of 2020. She got a series. It was 18 eight episodes, and it was \$200,000 an episode. 19 And Ms. Arnold is, from somewhere, in a glib way, 20 saying she'd get a couple series at a million 21 each. 22 And I can tell you as someone in the</p>	<p style="text-align: right;">6791</p> <p>1 either employ you, at a very healthy salary, to 2 play this role or not. They can recast the 3 superhero role. You just have to think of how 4 many actors played Batman or Superman. They can 5 do what they want. 6 And, indeed, since there's no contract, 7 they only have a choice to exercise their option 8 or not. They might say, "We're not exercising 9 unless you reduce your compensation." Who knows 10 what the negotiation would be? But it's not a 11 contract until the studio exercises the option, 12 and they don't have to. 13 Q What's the alternative to an option 14 agreement? 15 A Well, the alternative, as most 16 agreements in Hollywood, you're hired to play the 17 role. Or once you exercise the option, then it 18 becomes, for that picture, an agreement like 19 others in Hollywood: You are now hired to play 20 that role. 21 So most contracts are guaranteed; 22 you're hired to play the role. In an option</p>

<p style="text-align: right;">6792</p> <p>1 agreement, once they exercise the option, for that 2 movie it becomes a guaranteed contract. 3 Q Are you aware that Ms. Arnold testified 4 that Ms. Heard was released from her Aquaman 2 5 contract and then subsequently rehired? 6 A I heard that testimony. 7 Q Is that consistent with your experience 8 of the film industry in connection with these 9 multi-option contracts? 10 A No. 11 Q Why not? 12 A Again, studios don't do things they 13 don't have to do. As we heard Mr. Hamada, the 14 president of the studio, say, you either exercise 15 your option or you don't. They exercised their 16 option. He denied releasing and then rehiring, 17 and in my experience in almost five decades in the 18 business doing this type of work, not talking 19 about it, not consulting, I mean, I have -- I 20 heard Ms. Arnold say she'd been an expert a 21 hundred times. I'm a transactional lawyer. I do 22 this occasionally. Basically, you know, it's not</p>	<p style="text-align: right;">6794</p> <p>1 THE COURT: That's fine. 2 MR. NADELHAFT: It's the same hearsay 3 that you were -- it's hearsay like yesterday. I 4 mean, it's hearsay. 5 THE COURT: I'll overrule the 6 objection. Go ahead. 7 THE WITNESS: I didn't hear. 8 THE COURT: Go ahead, sir. 9 Q Overruled. You can continue, 10 Mr. Marks. 11 A Oh. I'm surprised to hear Mr. Hamada 12 say that they talked about chemistry. That would 13 normally be behind closed doors because you can't 14 help your relationship with the actor. You're 15 either going to exercise or not, and that was 16 quite a bit of candor from someone at his level. 17 And so, therefore, I take it at face value. I 18 think he felt that he was under oath, and he was 19 telling the truth. But when you -- 20 MR. NADELHAFT: Objection, Your Honor. 21 THE COURT: I'll sustain the objection. 22 Q Were there circumstances where a studio</p>
<p style="text-align: right;">6793</p> <p>1 a contract until they option it and they pick up 2 their option. And at that point, it's a 3 guaranteed contract, and then different rules 4 apply to it. 5 Q In your experience in the industry, do 6 studios typically comment on those types of 7 actions that they're taking with respect to 8 options? 9 A No. Just like Mr. Hamada said, they 10 don't need to comment on it. They either exercise 11 the option or they don't. 12 In Hollywood, silence is the default. 13 You play no card before its time. And the cards 14 there were exercise the option or not. And I was 15 surprised by Mr. Hamada under oath basically 16 saying that there was this discussion of 17 chemistry. That -- 18 MR. NADELHAFT: Objection, Your Honor. 19 Hearsay. 20 MS. LECAROS: I think it was -- it was 21 an in-court statement this morning, I believe, 22 Your Honor.</p>	<p style="text-align: right;">6795</p> <p>1 would be more likely to say something about not 2 using an actor again in a franchise? 3 A Yes. 4 Q What are those circumstances? 5 A Once they have exercised the option, 6 once the contract is guaranteed, the studio still 7 has the right to pay the actor but not play them, 8 pay or play them. And that is a rare condition 9 because you've hired the actor. You've got to pay 10 them, but you say, "Go home. We're recasting." 11 In that situation, after you've exercised the 12 option and the contract is guaranteed, if you pay 13 off the actor, that's normally commented on. That 14 becomes a bit of information because it's not 15 normal. 16 Q Is that circumstance different from 17 Ms. Heard's contract with Warner Brothers for the 18 Aquaman movies? 19 A Oh, yeah. Yeah. Ms. Heard's contract, 20 again, it was just an option: Either we exercise 21 it or we don't. And if we exercise it, she's in 22 the film. If we don't, she's not. Until we</p>

<p style="text-align: right;">6796</p> <p>1 exercise it, we have our right to recast or not 2 make the movie, and even after we exercise it, 3 we'd still have a right to recast and not make the 4 movie. We'd just have to pay her her salary. 5 Q Do you understand that Ms. Arnold 6 compares Ms. Heard's career trajectory with that 7 of other actors including Jason Momoa, Gal Gadot, 8 Zendaya, Ana de Armas, and Chris Pine? 9 A I heard that. 10 Q And what's your opinion of those actors 11 as comparables for Ms. Heard? 12 A Even Ms. Heard's agent, Jessica Kay, 13 said that four of those actors weren't comparable. 14 MR. NADELHAFT: Objection, Your Honor. 15 Hearsay. 16 MS. LECAROS: I believe -- same 17 response, Your Honor, that it was in testimony 18 that was played in court earlier this week. 19 MR. NADELHAFT: That's not what she 20 testified to. I mean, he's characterizing 21 testimony that was from days ago, and I don't even 22 think she testified to that, Your Honor.</p>	<p style="text-align: right;">6798</p> <p>1 house of cards on nothing, you know. She showed 2 us the -- with her words the beautiful clothing 3 that the emperor was wearing, but we could see, if 4 you know the business -- 5 MR. NADELHAFT: Objection, Your Honor. 6 Beyond the scope of the question. 7 THE COURT: All right. I'll sustain 8 the objection. 9 Next question. 10 MS. LECAROS: Okay. 11 Q You were just speaking about Mr. Momoa 12 as a comparable. Are you aware that Ms. Arnold 13 compares Ms. Heard to Mr. Momoa as an actor with 14 equivalent franchise experience who was able to 15 renegotiate his salary for significant increases 16 in bonus? 17 A Yes. 18 Q What's your response to that opinion? 19 A Again, he didn't have comparable 20 franchise experience to Ms. Heard. He was Conan 21 the Barbarian. He played Aquaman in a movie that 22 Amber Heard was not in. He played Aquaman, not a</p>
<p style="text-align: right;">6797</p> <p>1 THE COURT: You can cross-examine. 2 Overruled. 3 You may continue, Mr. Marks. 4 A Again, they are not comparable. Jason 5 Momoa was Aquaman. Chris Pine was Captain Kirk. 6 Gal Gadot was Wonder Woman. Zendaya has been 7 working on Destiny's Child since she was 13; she's 8 in all the Spiderman movies. She goes by one 9 name. Ana de Armas, you know, when she was in a 10 movie that they call, you know, her breakout, it 11 was as a nude poster. She's been in an ensemble 12 piece, Knives Out. These are not comparables. 13 Now, Ms. Arnold stuck to Jason Momoa, 14 who is the most noncomparable, because of his 15 history and his career, but she didn't give us the 16 advantage of telling us what his contracts were, 17 what he renegotiated to, what he earned. She 18 didn't give us any of those building blocks. She 19 just created -- she set him up as a comparable and 20 then said what Ms. Heard should earn, but she 21 never gave us the salary of Jason Momoa or the 22 other comparables, and if she built, like, this</p>	<p style="text-align: right;">6799</p> <p>1 supporting character like Mera. It's just not 2 comparable, and you can say the words, but I saw 3 nothing from Ms. Arnold to back it up, something 4 to build on, which if she's a negotiator in the 5 trenches, the studio negotiator would say, "Okay. 6 So show us. You know, where's the comps? Let's 7 talk numbers because eventually that's where we 8 have to get to, not just because you say it's so. 9 We just don't believe you; you've got to show us." 10 Q In your experience in the industry, 11 what factors influence the negotiation of the 12 terms of a film agreement with an actor? 13 A Well, I mean, first it depends on the 14 film. If the film is a million-dollar movie and 15 everybody's deferring their salaries, that's one 16 thing. If it's a superhero movie, that's another. 17 But for dealmakers and negotiators, the best 18 predictor of what the deal should be is past 19 earnings, precedent, comps. 20 You also look at the budget of the 21 movie, what it can bear, because if Jason Momoa's 22 comp is \$10 million but the budget's 10 million,</p>

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39 (6800 to
6803)

<p>6800</p> <p>1 obviously he has another price for that movie. 2 But the best predictor of future earnings is past 3 earnings. And I didn't see any — Ms. Arnold 4 talked about past earnings at all, except the 5 earnings in this rarified superhero four-picture 6 deal where instead of incremental increases, which 7 you normally see; it was multiples, increases. 8 And they weren't even on a series. The 9 big renegotiation is — was when the network has 10 no more options. Until then the actors on a 11 series get 5, 10, 50 small percentage raises. 12 They don't get multiples. They get the multiples 13 if it's a success and the studio wants to continue 14 making the series and they want to keep these 15 characters, that's when the renegotiation happens. 16 Here, even if we believe Ms. Arnold, 17 after Aquaman 2, there were still an option 18 waiting at a big price, you know, double the 19 previous payday. 20 Q What's the significance of the timing 21 of the Waldman statements to the opportunities 22 Ms. Arnold claims Ms. Heard lost?</p>	<p>6802</p> <p>1 report. 2 MS. LECAROS: Okay. I think's just 3 talking about the timing, the period of time after 4 the Waldman statements and the impact on her 5 analysis. 6 MR. NADELHAFT: He can't go into that. 7 THE COURT: So I'll sustain the 8 objection. 9 MS. LECAROS: Okay. Thank you, Your 10 Honor. 11 (Open court.) 12 BY MS. LECAROS: 13 Q Mr. Marks, what's your overall 14 assessment of Ms. Arnold's opinions in this case? 15 A My overall assessment of her opinions 16 is that they're not worth the paper they're not 17 written on. She knows something about our 18 business, but not about negotiating deals. She 19 may have gotten someone at the Endeavor office to 20 breach confidentiality, but she — 21 MR. NADELHAFT: Objection. Beyond the 22 scope.</p>
<p>6801</p> <p>1 A The argument as I understand it is that 2 Ms. Arnold says that Ms. Heard lost all these 3 opportunities because of — those losses were 4 caused by Adam Waldman's statements 16 months 5 later. So I think the timing — 6 MR. NADELHAFT: Your Honor, may we 7 approach? 8 THE COURT: Sure. 9 (Sidebar.) 10 MR. NADELHAFT: I don't believe I've 11 seen anywhere in the designation that he would 12 comment on what the Waldman statements have to do 13 with the renegotiation. 14 THE COURT: Okay. 15 MS. LECAROS: I mean, I don't think he 16 is responding to Ms. Arnold, and I'm going to 17 discuss this with him. 18 MR. NADELHAFT: And it's in the 19 rebuttal report. 20 THE COURT: That's in the rebuttal 21 report, so you can't go into the Waldman 22 statements because it's not in the rebuttal</p>	<p>6803</p> <p>1 THE COURT: Excuse me. There's an 2 objection. You have to stop talking, Mr. Marks. 3 Thank you. 4 Beyond the scope. 5 Q Mr. Marks, can you just limit your 6 testimony to your opinion about Ms. Arnold's 7 opinions, please? 8 A Okay. My opinion, as someone who's 9 made deals, as a dealmaker for almost 50 years, is 10 that she calls herself an expert, but she's not. 11 She doesn't have the background. She doesn't have 12 the day-to-day knowledge, and her testimony that I 13 heard did not back up her bottom line. 14 If you want to get those figures, you 15 have to show why they're deserved. And, again, 16 she was constructing a Jenga without the bottom 17 pieces. It does not hold up under scrutiny by 18 someone who makes deals. 19 MS. LECAROS: No further questions. 20 THE COURT: All right. 21 Cross-examination. 22 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND</p>

<p>1 COUNTERCLAIM PLAINTIFF 2 BY MR. NADELHAFT: 3 Q Good morning, Mr. Marks. 4 A Good morning. 5 Q So you agree that studios use comps to 6 negotiate deals, correct, with actors? 7 A Sometimes they do. 8 Q And you have an issue with the comps 9 that Ms. Arnold used, correct, as you testified 10 to? 11 A I have an issue with the comps that she 12 says she used that she didn't disclose. 13 Q The comps being the actors that you 14 just talked about. She did disclose -- I mean, 15 she disclosed the actors. 16 A She disclosed the actors and budget 17 figures from their movies. She never disclosed 18 their salaries and salary history as comps. 19 Q You're not offering a different set of 20 comparators that should be used, correct? 21 A I'm saying if you were going to -- 22 Q That's not my question. Are you</p>	<p>6804 1 Douglas, not in a superhero movie, but a 2 historical movie. I've negotiated recently a deal 3 for Paul Rudd and Will Ferrell on an Apple series. 4 Billy Crudup on an Apple series. These are recent 5 talent deals. 6 Q What actors have you negotiated for in 7 a superhero movie? 8 A As I sit here now, I can't remember a 9 superhero movie that I've negotiated. I've 10 certainly negotiated, over my career, franchise 11 movies and fantasy movies. 12 MR. NADELHAFT: Your Honor, that -- 13 Q So it's no, you haven't negotiated with 14 any -- for any actors for superhero movies, 15 correct? 16 A Could you define, like, I don't know, 17 Jungle Book isn't a superhero movie; it's more of 18 a fantasy. 19 Q Okay. So no, correct? Your answer's 20 no? 21 A All right. So as I sit here, I can't 22 think of a Marvel-type superhero movie that I've</p>
<p>6805 1 offering a different set of comparators than what 2 Ms. Arnold used? 3 A I'm not here offering comparators. I'm 4 saying what she offered -- 5 Q That was my question. You're not 6 offering comparators, correct? 7 A No. I would say that Ms. Heard's -- 8 Q That was my question. 9 A -- comparisons are -- 10 Q That was my question. 11 MR. NADELHAFT: Motion to strike after 12 the "no." 13 THE COURT: All right. We'll strike 14 after that. Just answer the questions, Mr. Marks, 15 thank you. 16 Q You're a dealmaker, correct? 17 A Yes. 18 Q What actors have you negotiated for in 19 superhero movies? 20 A Well, recently, I've acted -- I've 21 negotiated for Chris Pratt in a superhero series 22 for Amazon. I've negotiated a deal for Michael</p>	<p>6807 1 negotiated, although I know there's one or two in 2 there. 3 Q Now, you testified, and you agree, that 4 Mr. Momoa negotiated his multi-picture contract 5 for Aquaman 2, correct? 6 A I heard Mr. Hamada say there was a 7 renegotiation, but no facts were proffered, such 8 as he didn't have an option. His options were 9 out. What he was earning and what he renegotiated 10 to, and he is Aquaman. So, yes, I did hear there 11 was a renegotiation. 12 Q And you understand that his salary went 13 from 3 to 4 million to \$15 million? 14 A If you tell me that. I haven't seen 15 his contract, and I haven't heard any testimony 16 under oath that that's where the league was. 17 Q Now, Ms. Heard's contract -- 18 A Did he get more options when he made 19 that deal? Did they get more options? 20 Q Ms. Heard's option was a talent option 21 contract, correct? 22 A Yes.</p>

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41 (6808 to
6811)

<p>6808</p> <p>1 Q And you agree that for the -- if</p> <p>2 there's an Aquaman 3, Ms. Heard would have an</p> <p>3 option to receive \$4 million, correct, for the</p> <p>4 movie?</p> <p>5 A Well, actually you would language it</p> <p>6 Warner Brothers would have the option to engage</p> <p>7 her.</p> <p>8 Q And if they engaged her, she would</p> <p>9 receive \$4 million, correct?</p> <p>10 A She doesn't have the option to refuse.</p> <p>11 They have the option to engage her.</p> <p>12 Q And she would receive \$4 million,</p> <p>13 correct?</p> <p>14 A Yes, \$4 million.</p> <p>15 Q Would you agree that the money Amber</p> <p>16 was making on Aquaman 2 or 3 would be her market</p> <p>17 rate for future studio movies?</p> <p>18 A I would think it would be her rate for</p> <p>19 future studio superhero movies, but not</p> <p>20 necessarily studio movies that aren't superheroes.</p> <p>21 That could be stand-alone. That could be other</p> <p>22 type of studio movies.</p>	<p>6810</p> <p>1 A She didn't give us the raw materials to</p> <p>2 look at, but I'll take your word that all those</p> <p>3 unrelated actors in unrelated films, except for</p> <p>4 Jason Momoa, their -- they went up.</p> <p>5 Q In your --</p> <p>6 A As did Ms. Arnold's when she went from</p> <p>7 1 to 2.</p> <p>8 Q In your experience, can you identify an</p> <p>9 actor or an actress who's not been able to get a</p> <p>10 new studio movie after a breakthrough performance</p> <p>11 in a superhero movie?</p> <p>12 A As I sit here, no, I haven't been asked</p> <p>13 to opine on that, but there are lots of supporting</p> <p>14 characters in movies that don't appear in the next</p> <p>15 movie.</p> <p>16 Q But a female star in a breakthrough</p> <p>17 movie, in a superhero movie, can you identify any</p> <p>18 actress who's not gotten another studio movie</p> <p>19 after that?</p> <p>20 A Well, after Ms. Heard's breakthrough in</p> <p>21 2018, she did get Aquaman 2.</p> <p>22 Q Aquaman 2 was already -- she already</p>
<p>6809</p> <p>1 Q But for studio superhero movies, it</p> <p>2 would be \$4 million, correct?</p> <p>3 A If I was Ms. Heard's agent, that's</p> <p>4 where I would start, assuming everything was</p> <p>5 equal, the budget of superhero movie, that she was</p> <p>6 in the ensemble. There's a lot of ifs to look at,</p> <p>7 but all things being equal.</p> <p>8 Q You agree that Aquaman was a</p> <p>9 breakthrough role for Ms. Heard, wasn't it?</p> <p>10 A It's the first movie of that ilk that</p> <p>11 she makes, but she is not Aquaman; she is Mera.</p> <p>12 Q But it was a breakthrough movie for</p> <p>13 Ms. Heard, correct?</p> <p>14 A For her, it's a breakthrough movie to</p> <p>15 be in that film and in the ensemble, absolutely.</p> <p>16 Q And she was the female star of that</p> <p>17 movie, correct?</p> <p>18 A I believe so.</p> <p>19 Q You agree that for all of the actors</p> <p>20 Ms. Arnold listed as comparables, their career</p> <p>21 trajectory went up after their breakthrough,</p> <p>22 correct?</p>	<p>6811</p> <p>1 had the option for Aquaman 2, correct?</p> <p>2 A All right. So Ms. Heard did not get</p> <p>3 any movies after 2018, long before the Adam</p> <p>4 Waldman statements.</p> <p>5 Q Other than Ms. Heard, can you identify</p> <p>6 any actor or actress who has not gotten another</p> <p>7 studio movie after their breakthrough in a</p> <p>8 superhero movie?</p> <p>9 A As I sit here now, I haven't been asked</p> <p>10 to research, and I can't. That would be a normal</p> <p>11 thing.</p> <p>12 Q You're not providing an alternative</p> <p>13 number for Ms. Heard's damages, correct, for the</p> <p>14 jury?</p> <p>15 A Correct. I'm not providing an</p> <p>16 alternate number. I think, you know, she's been</p> <p>17 more than adequately paid.</p> <p>18 MR. NADELHAFT: I move to strike after</p> <p>19 "No, I've not been provided another number."</p> <p>20 That's all. I mean, my question was "You're not</p> <p>21 providing another number?"</p> <p>22 THE COURT: Response?</p>

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Conducted on May 24, 2022

42 (6812 to
6815)

<p>6812</p> <p>1 MS. LECAROS: I think it's, in 2 fairness, the full answer of the question, Your 3 Honor. 4 MR. NADELHAFT: It was a yes-or-no 5 question. His answer was no. 6 THE COURT: I'm not going to strike it. 7 MR. NADELHAFT: Okay. All right. No 8 further questions. 9 THE COURT: All right. Redirect. 10 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND 11 COUNTERCLAIM DEFENDANT 12 BY MS. LECAROS: 13 Q Mr. Marks, in response to some 14 questions from Mr. Nadelhaft, you were discussing 15 some franchise and fantasy movie agreements that 16 you've negotiated with actors. Could you just 17 describe some of those for us? 18 A No. I've had such a long career that I 19 mainly forget what I've done. But I negotiated 20 all the contracts for Pinocchio, if you will, that 21 was produced. You know, is Coming to America, the 22 original, is that a fantasy movie? The Golden</p>	<p>6814</p> <p>1 THE WITNESS: Thank you. Thank you 2 very much. 3 THE COURT: Thank you. All right. 4 Your next witness. 5 MR. DENNISON: Plaintiff calls Michael 6 Spindler. 7 THE COURT: Michael Spindler. You've 8 testified previously, correct, Mr. Spindler? 9 THE WITNESS: Yes. 10 THE COURT: All right. Just a reminder 11 you're under oath, okay, sir? 12 MICHAEL SPINDLER, 13 being first duly sworn, was examined 14 and testified as follows: 15 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND 16 COUNTERCLAIM DEFENDANT 17 BY MR. DENNISON: 18 Q Good morning Mr. Spindler. 19 A Good morning. 20 Q Can you remind the jury who you are and 21 what you do? 22 A Yes. I'm Michael Spindler. I'm a</p>
<p>6813</p> <p>1 Child, is that a fantasy movie? Yeah, and by the 2 way, I may have negotiated contracts and 3 ultimately the film wasn't made, but as I sit here 4 now, those are the only ones that come to pass. 5 If I was looking at my résumé or going through my 6 files, I might think of others, but there isn't a 7 deal that I haven't made. 8 Q And I think you also testified in 9 response to Mr. Nadelhaft's questions that you had 10 negotiated some deals for Chris Pratt and Paul 11 Rudd. 12 Do you recall that testimony? 13 A Yes. These are for a streaming series. 14 Q Do you happen to know if both of those 15 actors have played in Marvel superheroes? 16 A I believe they have, but don't quote me 17 because, you know, that's not my genre. 18 MS. LECAROS: No further questions, 19 Your Honor. 20 THE COURT: All right. Thank you, 21 Mr. Marks. You're free to stay in the courtroom, 22 or you can leave, okay?</p>	<p>6815</p> <p>1 forensic accountant. I'm a CPA, certified fraud 2 examiner, amongst some other certifications. I'm 3 with B. Riley advisory services, a national firm 4 that does forensic accounting, bankruptcy and 5 restructuring work, and business evaluations and 6 appraisals. I've got over 40 years of experience. 7 Q Are you familiar with the testimony 8 rendered by Ms. Arnold in this matter? 9 A Yes, I am. 10 Q Do you understand that Ms. Arnold 11 testified that Ms. Heard has suffered economic 12 damages resulting from three statements being made 13 by Mr. Waldman? 14 A Yes, I do. 15 Q Do you have an opinion of that claim? 16 A I do. 17 MR. ROTTENBORN: Objection, Your Honor. 18 May we approach? 19 THE COURT: All right. 20 (Sidebar.) 21 THE COURT: Yes, sir. 22 MR. ROTTENBORN: This is --</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

43 (6816 to
6819)

<p>6816</p> <p>1 THE COURT: This transcript is in?</p> <p>2 MR. ROTTENBORN: This is Mr. Spindler's</p> <p>3 deposition transcript taken on -- this is</p> <p>4 volume 2, March 25th.</p> <p>5 THE COURT: All right.</p> <p>6 MR. ROTTENBORN: I asked him these</p> <p>7 questions, and he testified as follows.</p> <p>8 THE COURT: All right.</p> <p>9 "Are you offering anything -- you are</p> <p>10 not offering any opinion that would impact the</p> <p>11 alleged defamation by Mr. Depp of Ms. Heard's</p> <p>12 career."</p> <p>13 All right. So it's not in his</p> <p>14 designation either; is that correct?</p> <p>15 MR. DENNISON: I'm reading it. So</p> <p>16 thank you, Your Honor.</p> <p>17 THE COURT: Okay. Sorry. We'll share.</p> <p>18 MR. ROTTENBORN: And I have copies. He</p> <p>19 is essentially saying, "I'm just addressing what</p> <p>20 Ms. Arnold said, not rendering my own opinion on</p> <p>21 what the impact of alleged defamation is." And so</p> <p>22 Mr. Dennison's questions just now was essentially</p>	<p>6818</p> <p>1 A It is not adequately supported, and it</p> <p>2 is unreasonable.</p> <p>3 Q There were multiple elements to that</p> <p>4 analysis, both damages that related to her film</p> <p>5 career and to endorsements. Have you analyzed</p> <p>6 both those issues?</p> <p>7 A Yes, I have.</p> <p>8 Q What is your opinion of the claims that</p> <p>9 have been asserted relative to the film career and</p> <p>10 endorsements?</p> <p>11 A Okay. Well, first of all, with respect</p> <p>12 to her damages calculation, there was no</p> <p>13 calculation, per se. She initially looked at</p> <p>14 these comparable actors and assumed to use that as</p> <p>15 a basis for her numbers. She didn't provide the</p> <p>16 underlying calculation. She didn't provide</p> <p>17 underlying support, and then it appeared as</p> <p>18 though, in her testimony, she backed away a little</p> <p>19 from that, but she still suffers from the issues</p> <p>20 of not providing detail of calculations or support</p> <p>21 for where those numbers come from. And she still,</p> <p>22 to some extent, appears to be using some kind of</p>
<p>6817</p> <p>1 that. Said, "Have you developed an opinion on..."</p> <p>2 MR. DENNISON: I'm asking him about</p> <p>3 Ms. Arnold.</p> <p>4 THE COURT: Yeah, he was asking about</p> <p>5 Ms. Arnold's opinion.</p> <p>6 MR. DENNISON: He wasn't going to</p> <p>7 testify about his opinion.</p> <p>8 THE COURT: Okay. If you want to,</p> <p>9 rephrase the question as to Ms. Arnold.</p> <p>10 MR. DENNISON: Yeah.</p> <p>11 THE COURT: Okay. Thank you. You may</p> <p>12 continue.</p> <p>13 (Open court.)</p> <p>14 BY MR. DENNISON:</p> <p>15 Q Thanks, Mr. Spindler.</p> <p>16 Now, you'd indicated that you had</p> <p>17 listened to Ms. Arnold, and she testified on</p> <p>18 behalf of Ms. Heard relative to economic damages.</p> <p>19 Have you formed an opinion as to the</p> <p>20 testimony and opinion rendered by Ms. Arnold?</p> <p>21 A Yes, I have.</p> <p>22 Q And what's that opinion?</p>	<p>6819</p> <p>1 comparable analysis.</p> <p>2 Q All right. What is the type of</p> <p>3 analysis that you think is appropriate here?</p> <p>4 A Well, I think, and as you heard from</p> <p>5 the last witness, I think that something that is</p> <p>6 anchored in facts, taking a look at historical</p> <p>7 compensation as a basis for anticipating future</p> <p>8 compensation.</p> <p>9 Q Have you looked at Ms. Heard's prior</p> <p>10 compensation?</p> <p>11 A Yes, I have. I've looked at tax</p> <p>12 returns that were provided for the period of 2013</p> <p>13 through 2019.</p> <p>14 Q Why do you want to use historical</p> <p>15 earnings?</p> <p>16 A Well, once again, you want analyses</p> <p>17 anchored in fact. I don't believe Ms. Arnold has</p> <p>18 done that in her analysis. So here we've got some</p> <p>19 actual data. We've got some historical</p> <p>20 compensation, and as the last witness mentioned,</p> <p>21 that often provides somewhat of a basis for future</p> <p>22 anticipated earnings. In addition, I believe that</p>

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<p style="text-align: right;">6820</p> <p>1 Ms. Arnold herself said that she had hoped to be 2 able to look at a renegotiated salary for 3 Aquaman 2 and then use that as a basis for future 4 compensation; that being the new kind of base, if 5 you will. 6 Q All right. Were there any years in 7 particular that you focused on in your analysis as 8 to Ms. Arnold's testimony? 9 A In terms of the historical 10 compensation? 11 Q Yes. 12 A Well, for 2013 through 2019 in total, 13 her compensation was around \$10 million for all 14 those years combined. In 2019, the last of those 15 years, her compensation was somewhere between 16 about 2.6 million and \$3 million. Now, that's a 17 good year. That's known as a clean year. 18 Q What do you mean by a "clean year"? 19 A Well, you know, for example, 2019, you 20 had -- Aquaman was released in December of 2018, 21 and that was a successful film. So in 2019, 22 you've got the benefit of that kind of success,</p>	<p style="text-align: right;">6822</p> <p>1 the damages. Although it's still a little bit 2 unclear to me, a little bit vague. But there are 3 four basic components that she was looking at, and 4 we can go through those in any order you wish. 5 Q All right. With respect to the 6 television series portion of her analysis, what do 7 you understand that methodology to be? 8 A Okay. 9 MR. ROTTENBORN: Objection, Your Honor. 10 May we approach? 11 THE COURT: All right. 12 (Sidebar.) 13 MR. ROTTENBORN: There's nothing in his 14 report talking about how she's going to address 15 different methodologies other than he just says 16 they're unsupported, that Arnold's calculations 17 are unsupported. Going through television versus 18 movies he's not an expert in that, and he's not an 19 expert in causation. He's a forensic accountant, 20 and there's nothing in his report on that. 21 Mr. Dennison wants to point out something. 22 MR. DENNISON: He's going to talk about</p>
<p style="text-align: right;">6821</p> <p>1 and you also don't have the -- any potential 2 impact from the alleged defamatory Waldman 3 statements that occurred in April of 2020. So 4 2019 is clean of all that. 5 Q What did you understand Ms. Arnold's 6 methodology to be? 7 A Her methodology initially appeared to 8 be based on these comparable actors that she had 9 identified, and theoretically the compensation 10 that they earned, although she doesn't identify 11 what that compensation is or provide any support 12 for it or any calculations. 13 Q What is your opinion of that 14 methodology from an accounting perspective? 15 A That methodology was unsound. It's 16 just unsupported. There are no numbers. There's 17 no data that she provided in support for that. 18 Q What methodology did you understand 19 Ms. Arnold to adopt at trial? 20 A Okay. Looked like somewhat of a 21 mix-and-match approach. She used different 22 approaches, I believe, for different elements of</p>	<p style="text-align: right;">6823</p> <p>1 her historical earnings and the fact that -- the 2 notion that you can't just simply attribute a 3 million dollars to every movie theater -- movie 4 role she gets -- or, I'm sorry, television series 5 episode she gets when her history is \$200,000. 6 It's directly within the... 7 THE COURT: Well, it goes to 8 entertainment value, which Mr. Marks has already 9 testified to. 10 MR. DENNISON: Right. But this is 11 rebuttal testimony where she testified she was 12 going to get a million dollars. 13 THE COURT: Right. I know. But I'm 14 saying Mr. Marks went through that. This expert 15 is not qualified to talk about the entertainment. 16 MR. DENNISON: But he's going to talk 17 about the \$200,000. 18 THE COURT: In relating to movies. 19 MR. DENNISON: In related to television 20 series. 21 THE COURT: All right. I'm going to 22 sustain the objection.</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

45 (6824 to
6827)

<p>6824</p> <p>1 MR. ROTTENBORN: Thank you.</p> <p>2 MR. DENNISON: Just so I understand</p> <p>3 what the issue is because I want to be candid with</p> <p>4 you, I don't, I want -- I intend --</p> <p>5 THE COURT: It's not in his</p> <p>6 designation, and he's not an expert in the</p> <p>7 entertainment field.</p> <p>8 MR. DENNISON: I'm not going to ask him</p> <p>9 about entertainment issues. I'm simply going to</p> <p>10 ask him what she made.</p> <p>11 THE COURT: What's the relevance of</p> <p>12 that?</p> <p>13 MR. DENNISON: Because he uses</p> <p>14 historical earnings as his basis.</p> <p>15 THE COURT: He can't. He's not going</p> <p>16 to.</p> <p>17 MR. DENNISON: He's just charted his</p> <p>18 historical earnings which had multiple components.</p> <p>19 MR. ROTTENBORN: Which he just</p> <p>20 testified to the overall assorted earnings. He</p> <p>21 doesn't go anywhere into the components and what</p> <p>22 causes what. He doesn't explain those.</p>	<p>6826</p> <p>1 MR. ROTTENBORN: Well, I don't know</p> <p>2 what he's going to say.</p> <p>3 MR. DENNISON: You think he's going to</p> <p>4 say with respect to TV?</p> <p>5 THE COURT: This is what she made?</p> <p>6 MR. DENNISON: This is what she made.</p> <p>7 MR. ROTTENBORN: That's not in this</p> <p>8 report. He just got Ms. Heard's tax returns,</p> <p>9 that's all he got these numbers from. There's no</p> <p>10 evidence in this report that he's --</p> <p>11 MR. DENNISON: The witness can testify.</p> <p>12 THE COURT: If he's not analyzing it in</p> <p>13 part of movies or TV, or --</p> <p>14 MR. DENNISON: Right.</p> <p>15 THE COURT: -- he's not going to</p> <p>16 analyze what she would have made or future</p> <p>17 earnings.</p> <p>18 MR. DENNISON: No. Nothing like that.</p> <p>19 He's going to say historical earnings are best of</p> <p>20 future earnings; that's what he's said throughout.</p> <p>21 THE COURT: All right. I'll allow</p> <p>22 that.</p>
<p>6825</p> <p>1 MR. DENNISON: No. But she made a</p> <p>2 lengthy testimony as to what level of -- what</p> <p>3 elements of earnings were provided. And so each</p> <p>4 of those elements build into these historical</p> <p>5 earnings. And we indicated in this rebuttal</p> <p>6 testimony that he's going to rebut the testimony</p> <p>7 provided by the witness.</p> <p>8 MR. ROTTENBORN: I gave him an</p> <p>9 opportunity in his deposition to be read Kathryn</p> <p>10 Arnold's testimony. I said, "What do you have to</p> <p>11 say about it?"</p> <p>12 After reading the transcript, he</p> <p>13 essentially said, "Well, she doesn't identify</p> <p>14 specific things." He's already testified to that.</p> <p>15 We have no problem with that. I mean, he does say</p> <p>16 she doesn't identify specific opportunities, but</p> <p>17 to go through and talk about "This is what she</p> <p>18 would have made from TV," that's the entertainment</p> <p>19 part that does not come in.</p> <p>20 MR. DENNISON: Yeah. But he's not</p> <p>21 going to say, "This is what she would have made in</p> <p>22 TV."</p>	<p>6827</p> <p>1 MR. ROTTENBORN: That's fair. Yeah.</p> <p>2 Okay. Thank you.</p> <p>3 MR. DENNISON: Yeah.</p> <p>4 (Open court.)</p> <p>5 BY MR. DENNISON:</p> <p>6 Q Sir, there were multiple elements of</p> <p>7 the analysis that Ms. Arnold did, one of which was</p> <p>8 the earnings from television shows.</p> <p>9 What was -- did you analyze what</p> <p>10 historical earning Ms. Heard had during the period</p> <p>11 that you were concerned with relative to</p> <p>12 television shows?</p> <p>13 A Well, yes. During 2019 she entered</p> <p>14 into a contract in July of 2019 to appear in a</p> <p>15 television series at \$200,000 per episode.</p> <p>16 Q All right. What about endorsement</p> <p>17 deals? Did you look at what she had made on</p> <p>18 endorsement deals during that period?</p> <p>19 A She did have a contract with L'Oréal at</p> <p>20 \$1,625,000.</p> <p>21 Q All right. With respect to her movie</p> <p>22 roles, what were her historical earnings during</p>

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Conducted on May 24, 2022

46 (6828 to
6831)

<p>6828</p> <p>1 that period?</p> <p>2 A Well, certainly for the most recent</p> <p>3 years, you had the Warner Brothers deal, which was</p> <p>4 a four-picture deal. The first film was \$450,000;</p> <p>5 then the first Aquaman was \$1 million fee, base</p> <p>6 fee; then \$2 million for Aquaman 2; and presuming</p> <p>7 that there was an Aquaman 3, that would have been</p> <p>8 \$4 million.</p> <p>9 Q Okay. Why do you look at historical</p> <p>10 earnings as part of your analysis?</p> <p>11 A Because you want your analysis to be</p> <p>12 anchored in facts. You want it to have a sound</p> <p>13 methodology, and you want to come up with a</p> <p>14 reasonable result. So if you take a look at, for</p> <p>15 example, the analysis that Ms. Arnold did, it</p> <p>16 didn't appear to be --</p> <p>17 Q Let's just look at the analysis that</p> <p>18 you're doing.</p> <p>19 So what you said, I think, is you</p> <p>20 wanted them anchored in facts. Why?</p> <p>21 A Because that provides a sound basis for</p> <p>22 coming up with something with reasonable</p>	<p>6830</p> <p>1 terminology.</p> <p>2 THE COURT: I'm sorry. There's an</p> <p>3 objection, sir, if you could hold on.</p> <p>4 MR. DENNISON: Can we approach?</p> <p>5 THE COURT: Okay.</p> <p>6 (Sidebar.)</p> <p>7 MR. DENNISON: We did this yesterday as</p> <p>8 well with a witness with this Depp/Waldman</p> <p>9 statement label. There's no direct evidence, in</p> <p>10 this case, and you just heard the argument. These</p> <p>11 are Mr. Waldman's statements.</p> <p>12 THE COURT: I understand that's your</p> <p>13 theory of the case. But the jury instructions are</p> <p>14 not -- they to be Mr. Waldman's analysis, right?</p> <p>15 Not just --</p> <p>16 MR. ROTTENBORN: I'm just using it so I</p> <p>17 don't have to say, "Do you understand that these</p> <p>18 statements that are the basis for Ms. Heard's</p> <p>19 counterclaim" -- it's just the terminology.</p> <p>20 MR. DENNISON: He knows what</p> <p>21 Mr. Waldman's statements are. He's doing that to</p> <p>22 drive home for the jury that somehow Waldman's</p>
<p>6829</p> <p>1 certainty. There is AICPA, or American Institute</p> <p>2 of Certified Public Accountants, guidance with</p> <p>3 respect to reasonable certainty, and those are the</p> <p>4 basic elements of it.</p> <p>5 Q Thank you.</p> <p>6 MR. DENNISON: No further questions.</p> <p>7 THE COURT: All right.</p> <p>8 Cross-examination.</p> <p>9 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND</p> <p>10 COUNTERCLAIM PLAINTIFF</p> <p>11 BY MR. ROTTENBORN:</p> <p>12 Q Hello again, Mr. Spindler.</p> <p>13 A Good morning.</p> <p>14 Q I'm going to ask you a few questions</p> <p>15 that may refer to the statements in Amber's</p> <p>16 counterclaim against Mr. Depp. When I refer to</p> <p>17 those statements, I'm going to refer to them as</p> <p>18 the Depp/Waldman statements. Do you agree that we</p> <p>19 can both be on the same page what I'm referring to</p> <p>20 when I say that?</p> <p>21 MR. DENNISON: Objection, Your Honor.</p> <p>22 A That's fine. You can use your</p>	<p>6831</p> <p>1 statements are Depp's statements.</p> <p>2 THE COURT: It's his theory.</p> <p>3 MR. DENNISON: Yeah. I know.</p> <p>4 THE COURT: I know, Mr. Dennison. I</p> <p>5 understand.</p> <p>6 (Open court.)</p> <p>7 BY MR. ROTTENBORN:</p> <p>8 Q So, Mr. Spindler, when I refer to the</p> <p>9 Depp/Waldman statements, you understand me to be</p> <p>10 referring to the statements in Ms. Heard's</p> <p>11 counterclaim against Mr. Depp, correct?</p> <p>12 A I'll understand that, yes.</p> <p>13 Q Now, you're here to provide a rebuttal</p> <p>14 opinion to Ms. Arnold's -- part of Ms. Arnold's</p> <p>15 testimony, correct?</p> <p>16 A Correct.</p> <p>17 Q You're not providing an opinion on</p> <p>18 whether Ms. Heard suffered defamation by Mr. Depp,</p> <p>19 correct?</p> <p>20 A That is true.</p> <p>21 Q You're not offering an opinion as to</p> <p>22 any of the underlying facts relating to whether</p>

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Conducted on May 24, 2022

47 (6832 to
6835)

<p>6832</p> <p>1 Mr. Depp abused Amber, correct?</p> <p>2 A That's correct.</p> <p>3 Q You're not offering an opinion as to</p> <p>4 the magnitude of damages that you believe</p> <p>5 Ms. Heard may be entitled to if she proves</p> <p>6 defamation by Mr. Depp; you're just reviewing what</p> <p>7 Ms. Arnold has said, correct?</p> <p>8 A That's correct.</p> <p>9 Q And you said that you want your</p> <p>10 analysis to be accurate in the facts, right?</p> <p>11 A Anchored in facts.</p> <p>12 Q Anchored in facts. You agree what an</p> <p>13 actor earns in one period isn't necessarily</p> <p>14 reflective of what he or she may earn in future</p> <p>15 periods, correct?</p> <p>16 A Correct. And that's because what you</p> <p>17 see here is --</p> <p>18 Q -- role -- an increase in the number of</p> <p>19 roles may lead to greater income, correct?</p> <p>20 A I'm sorry. Could you repeat that? I</p> <p>21 was speaking. I didn't hear.</p> <p>22 Q One of the reasons that what you earn</p>	<p>6834</p> <p>1 Ms. Heard's career trajectory was on the upswing,</p> <p>2 correct?</p> <p>3 A There was a slight increase during that</p> <p>4 period of time in her earnings from 2013 through</p> <p>5 2019.</p> <p>6 Q And you'd agree that that was as a</p> <p>7 result of getting more lucrative roles, right?</p> <p>8 A Yes.</p> <p>9 Q Now, you're not a causation expert,</p> <p>10 right? You're just a damages expert?</p> <p>11 A That's correct.</p> <p>12 Q So you're not testifying as to whether</p> <p>13 the Depp/Waldman statements caused her to lose any</p> <p>14 roles, correct?</p> <p>15 A That's correct.</p> <p>16 Q And you're not offering any opinion as</p> <p>17 to whether the Depp/Waldman statements kept her</p> <p>18 from being considered for roles that she otherwise</p> <p>19 would have been considered for, correct?</p> <p>20 A That's correct. I'm not testifying on</p> <p>21 causations issues.</p> <p>22 Q And you can't speak to what</p>
<p>6833</p> <p>1 in one period may not be reflective of what an</p> <p>2 actress may earn in future periods is because an</p> <p>3 increase in the number of roles may lead to</p> <p>4 greater income, correct?</p> <p>5 A The number of roles or the particular</p> <p>6 project itself, yes.</p> <p>7 Q Sure. Getting better roles may lead to</p> <p>8 greater income, correct?</p> <p>9 A Correct.</p> <p>10 Q And the same is true for an</p> <p>11 endorsement, as an actress's profile grows, the</p> <p>12 amount of money that she may be able to earn from</p> <p>13 endorsements grows as well, correct?</p> <p>14 A It can. It depends.</p> <p>15 Q So what Ms. Heard earned from, say,</p> <p>16 2013 to 2019 that you testified to isn't</p> <p>17 necessarily reflective of what she might earn over</p> <p>18 the next five years, correct?</p> <p>19 A Not necessarily. It is a good</p> <p>20 indicator, though.</p> <p>21 Q And you'd agree that from 2013 to 2019,</p> <p>22 in terms of earnings and star power, that</p>	<p>6835</p> <p>1 opportunities may never have materialized for</p> <p>2 Amber as a result of the Depp/Waldman statements,</p> <p>3 correct?</p> <p>4 A Yeah. I've not done those</p> <p>5 calculations.</p> <p>6 Q And you don't have an opinion about</p> <p>7 whether or not Ms. Heard could have renegotiated a</p> <p>8 contract for Aquaman 2, correct?</p> <p>9 A That is not part of my work.</p> <p>10 Q And you don't have an opinion on the</p> <p>11 impact that additional exposure or press coverage</p> <p>12 or magazine covers or interviews would have had on</p> <p>13 Ms. Heard's career, correct?</p> <p>14 A Correct. I'm just looking at</p> <p>15 Ms. Arnold's calculations.</p> <p>16 Q You've never served as a expert witness</p> <p>17 before to calculate damages based on lost roles by</p> <p>18 an actress resulting from defamation against that</p> <p>19 person, correct?</p> <p>20 A I've been involved in defamation cases,</p> <p>21 but I've not done the calculations as an expert</p> <p>22 witness and testified thereto.</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

48 (6836 to
6839)

<p>6836</p> <p>1 Q And there's never been an instance in 2 which you have served as an expert witness in a 3 case to calculate damages based on alleged 4 defamation against an actress, correct? 5 A Correct. 6 Q And you're not offering any expert 7 opinion on what impact the alleged defamation by 8 Mr. Depp has had on Ms. Heard's career, correct? 9 A I'm sorry, one more time? 10 Q You're not offering any expert opinion 11 on what impact the Depp/Waldman statements by 12 Mr. Depp has had on Ms. Heard's career, correct? 13 A Other than taking a look at 14 Ms. Arnold's calculations. 15 Q And you're not offering any expert 16 opinion about what impact, if any, social media 17 coverage of this case or of Ms. Heard may have had 18 on Ms. Heard's career, correct? 19 A Correct. That's other experts. 20 MR. DENNISON: Can we approach, Your 21 Honor? 22 MR. ROTTENBORN: No further questions.</p>	<p>6838</p> <p>1 THE COURT: Thank you. 2 Sir, you can -- just a reminder that 3 you're still under oath, okay, sir? Thank you. 4 DOUGLAS BANIA, 5 Being first duly sworn, was examined 6 and testified as follows: 7 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND 8 COUNTERCLAIM DEFENDANT 9 BY MS. LECAROS: 10 Q Good afternoon, Mr. Bania. 11 A Good afternoon. 12 Q Could you briefly reintroduced yourself 13 to the jury, please. 14 A Yes. Hi, I'm Doug Bania from Nevium 15 Intellectual Property Consultants based in San 16 Diego. I value intellectual property. I provide 17 litigation support in infringement and defamation 18 cases as I'm doing today, and I use Internet and 19 social media analytics in both of those services. 20 Q Since you last testified in this case, 21 the jury has heard testimony from Ronald Schnell 22 and Kathryn Arnold. Are you familiar with their</p>
<p>6837</p> <p>1 Thank you. 2 THE COURT: All right. Approach. 3 (Sidebar.) 4 MR. DENNISON: We'll be doing -- 5 THE COURT: Okay. Changed your mind. 6 All right. Thank you, though, Jamie. 7 (Open court.) 8 THE COURT: Redirect. 9 MR. DENNISON: Thank you, Mr. Spindler. 10 I have no questions for you. 11 THE WITNESS: Okay. 12 THE COURT: All right. Thank you, 13 Mr. Spindler. You can have a seat in the 14 courtroom, or you are free to go. 15 THE WITNESS: Thank you, Your Honor. 16 THE COURT: Thank you. All right. 17 Your next witness. 18 MS. LECAROS: Plaintiff calls Doug 19 Bania, Your Honor. 20 THE COURT: Okay. Can you spell the 21 last name for me? 22 MS. LECAROS: B-A-N-I-A.</p>	<p>6839</p> <p>1 testimony? 2 A Yes. 3 Q Were you asked to analyze their 4 testimony and provide opinions in response? 5 A Yes, I was. 6 Q Have you formed opinions in response to 7 the testimony of Mr. Schnell and Ms. Arnold? 8 A I have. 9 Q Generally what are those opinions? 10 A Generally, Mr. Schnell provided no 11 evidence of a correlation between the Waldman 12 statements and the hashtags and the spikes of 13 those hashtags on Twitter. 14 Second, based on my Internet and social 15 media analytics investigation, I've concluded that 16 the alleged comparable actors that Ms. Arnold came 17 up with are not comparable with Ms. Heard. 18 And then, thirdly, Mr. Schnell and 19 Ms. Arnold both failed to provide any evidence of 20 a causation, as it relates to the Waldman 21 statements, causing any economic harm to 22 Ms. Heard.</p>

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Conducted on May 24, 2022

49 (6840 to
6843)

<p>1 Q All right. Let's dig into those 2 opinions a little bit. 3 You're familiar with the testimony of 4 Mr. Schnell that there are more than 2.7 million 5 alleged negative tweets related to Ms. Heard 6 between January 2018 and June 2021? 7 A Yes. 8 Q And what's your understanding of how 9 Mr. Schnell identified those particular 10 2.7 million tweets? 11 A Yes. Essentially Mr. Schnell chose 12 hashtags that he felt were negative toward 13 Ms. Heard. Those hashtags range from 14 #justiceforJohnnyDepp, #AmberHeardisanabuser, 15 #Amberturd, and the hashtag 16 #wejustdon'tlikeyouAmber. 17 So then he used those hashtags, and he 18 searched through, using the Twitter API, searched 19 through various tweets and then came up with any 20 tweets that were used in those hashtags. 21 Q Did you conduct an analysis of those 22 tweets?</p>	<p>6840</p> <p>1 those quotes, those quotes – sorry. I think I 2 said the wrong name, but those quotes are the only 3 remaining in this case. 4 Q Did you analyze the timing of the 5 tweets that we were talking about as compared to 6 the timing of the Waldman statements? 7 A And that's exactly what I did. So I 8 wanted to look at the Waldman statements, look at 9 the dates that they happened, and then analyze 10 those as it compared to the Twitter data that I 11 had. 12 Q Have you prepared a demonstrative that 13 reflects that aspect of your analysis? 14 A Yes. 15 MS. LECAROS: Your Honor, may I 16 approach? 17 THE COURT: Yes. Did you show counsel? 18 (Sidebar.) 19 THE COURT: Okay. Any objection to the 20 demonstrative? 21 MR. NADELHAFT: What's this? 22 MS. LECAROS: It's a summary. He</p>
<p>6841</p> <p>1 A Yes. I was given that exact – the 2 data that Mr. Schnell used on a hard drive. So, 3 yes, I dug into that data as well. 4 Q And what was the purpose of your 5 analysis? 6 A So what I'm trying to do, and what's at 7 issue of the case today at this point, is, you 8 know, were these tweets, did they contain the 9 Waldman statements? That's what we're -- where 10 we're at right now, or the Waldman statements. So 11 I wanted to analyze those tweets to determine 12 which ones, and if any, contained the Waldman 13 statements. 14 Q What's your understanding of what the 15 Waldman statements are? 16 A So my understanding is they're the 17 three – there's three Waldman statements that 18 were published in the Daily Mail. The Daily Mail 19 is a U.K. tabloid, and Mr. Arnold [sic] was quoted 20 in three of those articles. And those dates were 21 on April 8th, 2020; April 27th, 2020; and on 22 June 24th, 2020. And my understanding is that</p>	<p>6843</p> <p>1 provided a very long chart that does the breakdown 2 of all the tweets by month starting in 3 January 2018, and so this is just a summary of 4 that, rather than going through it all month by 5 month. It's derived from the same data. 6 MR. NADELHAFT: Then I guess I don't 7 object. I can't know that for sure, but it's just 8 going to be used as a demonstrative? 9 MS. LECAROS: Yeah. 10 THE COURT: Just demonstrative, 1293? 11 It's a demonstrative? 12 MR. NADELHAFT: That's fine. Yeah. 13 MS. LECAROS: Thank you, Your Honor. 14 THE COURT: Do you have it? 15 MS. LECAROS: I'm sorry? We have it. 16 We're going to put it on the screen. 17 (Open court.) 18 THE COURT: All right. So 1293 will 19 just be marked for identification as demonstrative 20 and can be published to the jury. 21 BY MS. LECAROS: 22 Q Mr. Bania, can you explain to the jury</p>

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<p style="text-align: right;">6844</p> <p>1 what this demonstrative shows.</p> <p>2 A Yes. So this shows the total hashtags</p> <p>3 and tweets that Mr. Schnell was analyzing. This</p> <p>4 is the summary data that -- they're tweets that</p> <p>5 are running from January 2018 to June of 2021,</p> <p>6 and, again, these are related to the four hashtags</p> <p>7 that I discussed.</p> <p>8 Whenever I get an assignment such as</p> <p>9 this, when I'm dealing with a defamatory statement</p> <p>10 that's allegedly gone viral online, where there's</p> <p>11 economic damages involved and there's a lot of</p> <p>12 data involved, I like to take the data, and I like</p> <p>13 to do a 30,000-foot view of the data to see what</p> <p>14 I'm looking at, to see if there's anything</p> <p>15 interesting, odd, different about the data.</p> <p>16 And the first thing that I noticed is</p> <p>17 35 percent of the tweets were prior to the Waldman</p> <p>18 statements. So, again, remember my assignment is</p> <p>19 to determine if the Waldman statements are a part</p> <p>20 of the tweets that Mr. Schnell analyzed. So,</p> <p>21 obviously, if these tweets were prior to the</p> <p>22 Waldman statements, in no way could they have had</p>	<p style="text-align: right;">6846</p> <p>1 just continued to dig into the 2.79 million tweets</p> <p>2 that Mr. Schnell provided.</p> <p>3 MS. LECAROS: And, Tom, can we take</p> <p>4 that one down.</p> <p>5 Q And, Mr. Bania, have you prepared</p> <p>6 another demonstrative that depicts that analysis</p> <p>7 that you were just describing?</p> <p>8 A Yes.</p> <p>9 MS. LECAROS: Your Honor, may I</p> <p>10 approach?</p> <p>11 THE COURT: Yes. All right.</p> <p>12 MS. LECAROS: It's just a</p> <p>13 demonstrative.</p> <p>14 THE COURT: Okay. We'll just see if he</p> <p>15 has an objection. I'll give you time to look at</p> <p>16 it, sir.</p> <p>17 All right. Plaintiff's -- can you turn</p> <p>18 your microphone on? Sorry.</p> <p>19 MR. NADELHAFT: No objection as a</p> <p>20 demonstrative.</p> <p>21 THE COURT: Okay. All right.</p> <p>22 Plaintiff's Exhibit 1294 will be marked for</p>
<p style="text-align: right;">6845</p> <p>1 anything to do with the Waldman statements.</p> <p>2 So that was the first issue that I</p> <p>3 noticed.</p> <p>4 Then, I noticed what I like to call</p> <p>5 kind of the "alleged defamatory time frame." And</p> <p>6 as I discussed, that's when the Waldman statements</p> <p>7 were published. That's the date down here</p> <p>8 (indicating). You know, the first one in the</p> <p>9 beginning of April, and the last one, which is the</p> <p>10 third one, was at the end of June.</p> <p>11 But what I found interesting is only</p> <p>12 2 percent of all of the tweets happened during</p> <p>13 this Waldman statement period. So really these</p> <p>14 are just observations. And for me they were red</p> <p>15 flags that I made note of, and then I just</p> <p>16 continued with my analysis.</p> <p>17 Q What other work can be performed in</p> <p>18 connection with forming your opinions about the</p> <p>19 purportedly negative tweets?</p> <p>20 A Yeah. So now we realize that</p> <p>21 35 percent are irrelevant and 2 percent, you know,</p> <p>22 only happened during this important period. I</p>	<p style="text-align: right;">6847</p> <p>1 identification as a demonstrative and will be</p> <p>2 published to the jury.</p> <p>3 MS. LECAROS: Thank you, Your Honor.</p> <p>4 BY MS. LECAROS:</p> <p>5 Q Mr. Bania, can you explain what this</p> <p>6 demonstrative shows.</p> <p>7 A Yes. This is showing the various</p> <p>8 spikes as it relates to the hashtags that</p> <p>9 Mr. Schnell testified about. This is actually an</p> <p>10 exhibit or a demonstrative that he used in his</p> <p>11 testimony. What this is showing are the largest</p> <p>12 spikes related to the hashtag</p> <p>13 #justiceforJohnnyDepp. I don't know if you</p> <p>14 remember his testimony or any of his</p> <p>15 demonstratives. The other three hashtags did</p> <p>16 spike at the same time, but a very small spike.</p> <p>17 So what I'm showing you here are the six top</p> <p>18 spikes in Mr. Schnell's analysis.</p> <p>19 And what's important here, again, is</p> <p>20 the very first spike and the largest spike, again,</p> <p>21 happened before the Waldman statements. So what</p> <p>22 I'm trying to figure out is what tweets were</p>

<p style="text-align: right;">6848</p> <p>1 related to the Waldman statements. So this 2 number 1 spike, which was the biggest spike, was 3 prior to the Waldman statements, so it's 4 irrelevant to the case. 5 And then the second thing I noticed 6 that was interesting here is here are the dates in 7 gray, right here. This is the time in which the 8 Waldman statements happened. And you're going to 9 notice, as we discussed before, only 2 percent of 10 the tweets happened during that time, but I found 11 it very interesting for such a viral event that 12 has potentially caused such economic harm, there's 13 no spikes in this area. 14 And, actually, you're going to see that 15 Mr. Waldman, you know, his statement came out 16 here, in the first April 2020 article, then the 17 second one came out here, and then the third one 18 came out in June. There's actually a downward use 19 of the spike -- downward use of the hashtags. So 20 I'm not seeing any correlation as it relates to 21 the Waldman statements and any spikes here as it 22 relates to the hashtags Mr. Schnell chose.</p>	<p style="text-align: right;">6850</p> <p>1 with the Waldman statements. 2 Q Are you aware of Mr. Schnell's 3 testimony that the tweets using the four hashtags 4 he looked at were mathematically correlated? 5 A Yes. 6 Q What does that mean? 7 A So what Mr. Schnell is saying, which is 8 irrelevant to this case, is the four hashtags that 9 he randomly chose, they tend to go up and down 10 together, and that's why he had these spikes here. 11 So the correlation there is how those four 12 hashtags work or dance together going up and down. 13 But, first of all, the hashtags have nothing to do 14 with the Waldman statements, and the fact that 15 there's a correlation with the hashtags is 16 irrelevant to this case because we're dealing with 17 the Waldman statements, which none of that 18 correlation analysis he did had to do with. 19 Q How do you know that the correlation 20 doesn't have anything to do with the Waldman 21 statements? 22 A Can I clear this at all? No. Oh,</p>
<p style="text-align: right;">6849</p> <p>1 Q Did you analyze each of the spikes that 2 are depicted here? 3 A Yes. So what I did is I looked at the 4 six different spikes, and you're going to notice 5 that each spike represents a month. So the second 6 spike, you know, was July of 2020, and so on to 7 the sixth spike going to April of 2021. And what 8 I did was, I don't know if you remember my last 9 testimony when I went into Google search, and I'm 10 able to go into Google search. I went in, and I 11 typed in "Amber Heard," and then after you hit 12 search, you can use the tool and you can go back 13 in time. 14 And I chose each six of these dates to 15 go back in time to see what was the media talking 16 about back then? You know, what was the general 17 public being fed as it relates to Amber Heard back 18 during those spikes? And what I found is none of 19 them -- well, actually, I analyzed the top three 20 search results because they represent 50 to 21 70 percent of what people click on. And what I 22 realized that none of them have anything to do</p>	<p style="text-align: right;">6851</p> <p>1 yeah. Well, first of all, I know because that 2 would happen right here. You know, if when 3 Mr. Waldman, one of his quotes was published, you 4 would see a big spike right here. And then you 5 would see maybe a little noise down here, and then 6 the third time you might see a big -- second time 7 a big spike, and the third time, a big spike. 8 That's not here so that's telling me no 9 correlation between the Waldman statements and 10 this hashtag use. 11 And then I've actually provided 12 evidence that there's no correlation because I 13 analyzed each of these spikes, and none of them 14 had to do with the Waldman statements. 15 Q Is mathematical correlation the same as 16 causation? 17 A No. 18 Q Why not? 19 A I mean, correlation is simply a 20 relationship between two or more variables or two 21 or more things. In this case, the correlation 22 question is did -- when the Waldman statements</p>

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52 (6852 to
6855)

<p>6852</p> <p>1 were published, at the same time, did you see a 2 correlation with spikes in these hashtags? And, 3 again, you -- can we clear this? You see none of 4 that right here. It's actually a downward trend. 5 There's no spikes. There's no correlation. So, 6 you know, again, Mr. Schnell provided no evidence 7 of any correlation. 8 Q What correlation opinion did he provide 9 during his testimony? 10 A Well, he provided the correlation that 11 the four hashtags, you know, spiked together. 12 But, again, A, the hashtags have nothing to with 13 the Waldman statements, and the facts that they're 14 correlating or moving together is irrelevant to 15 the case because the case is about the Waldman 16 statements. 17 Q So what is causation then? 18 A So causation is where one thing causes 19 a change in the other. So as it relates to this 20 case, did the Waldman statements cause Ms. Heard 21 to have economic harm? In other words, did the 22 Waldman statements cause Ms. Heard not to make as</p>	<p>6854</p> <p>1 A Well, he tried to do that. 2 Q Did he -- 3 A Well, again, his analysis was looking 4 at the word "Waldman" and looking at the word 5 Waldmignon, and then trying to say that 25 percent 6 of the tweets included those two terms. But first 7 of all, Waldman isn't the issue here. It's the 8 Waldman statements. And Waldmignon, I don't even 9 know what that is, but it's not relevant to this 10 case. 11 MS. LECAROS: We can, I think, take 12 that one down please, Tom. 13 Q Mr. Bania, what other work have you 14 done in connection with forming your opinions 15 about Mr. Schnell's testimony? 16 A Again, the assignment was to determine 17 if the Waldman statements were part of the tweet. 18 So I continued to dig in, you know, to the data. 19 I believe the next step is now that I've excluded, 20 you know, the 35 percent that was before the 21 Waldman statements, because they're irrelevant, I 22 wanted to really analyze from the April 2020</p>
<p>6853</p> <p>1 much money in her career? And, again, Mr. Schnell 2 provided no evidence of this. Ms. Arnold provided 3 no evidence of this. And as a matter of fact, 4 during Ms. Arnold's testimony yesterday, she 5 didn't even know what causation was. You know, 6 she was asked, "Do you know the difference between 7 causation and correlation?" and she said that 8 she's not a semantics expert. 9 We're not talking about the words. You 10 know, when it comes to damages, you have to prove 11 causation prior to calculating damages. You know, 12 so there's no causation that's proven here; 13 therefore, a damages analysis is not appropriate. 14 Q Did you hear Mr. Schnell testify that 15 he agreed with your opinion in this case? 16 A Yes. 17 Q And what's your understanding of the 18 opinion that he agreed with? 19 A Well, he agreed that he failed to link 20 the spikes in the hashtags on Twitter to the 21 Waldman statements. 22 Q Did he try to do that?</p>	<p>6855</p> <p>1 forward to see if any of those tweets, you know, 2 contained the Waldman statements. 3 Q Did you prepare a demonstrative that 4 reflects that analysis that you did? 5 A Yes, I did. 6 MS. LECAROS: Your Honor, may I 7 approach again? 8 THE COURT: All right. Yes, ma'am. 9 Thank you. Any objection, sir? 10 MR. NADELHAFT: No objection as a 11 demonstrative. 12 THE COURT: All right. We'll mark it 13 for identification as Plaintiff's 1295 as a 14 demonstrative and publish to the jury. 15 Q So, Mr. Bania, did you consider the 16 content of the statements made by Waldman as part 17 of the work that you did? 18 A Yes. Yeah, so here I reviewed the 19 Waldman statements again, and what I wanted to do 20 is I wanted to determine what, if any, tweets 21 included the Waldman statements. So what I 22 went -- and I went back to the Waldman statements</p>

<p style="text-align: right;">6856</p> <p>1 and I came up with, you know, key terms and key 2 themes for those Waldman statements, which are 3 listed here. 4 You know, the Waldman statements were 5 about abuse hoax, sexual violence hoax, and fake 6 sexual violence. So what I did is I – we're now 7 dealing with 1.2 million tweets because, you know, 8 we're starting in April 2020 because that's when 9 the Waldman statements started. 10 And what I did is I searched the 11 1.2 million tweets, you know, for these three 12 phrases, and I determined that there were 751 13 tweets that included those key terms, which is 14 .06 percent of the 1.2 million. 15 And then as I was sifting and sorting 16 and analyzing this data, I realized that a lot of 17 these tweets have the exact same language. You 18 know, it was interesting to see it was exact same 19 tweet. Because I'm analyzing the language to see 20 if it matches one of these three, I realized that 21 a lot of these tweets were retweets, likes, or 22 shares. So, therefore, I eliminated any of those,</p>	<p style="text-align: right;">6858</p> <p>1 A You know, Mr. Schnell provided no 2 evidence that any of the tweets were related to 3 the Waldman statements. 4 Mr. Schnell, there's no correlation 5 there. He also provided no evidence that there's 6 any causation, that, you know, the Waldman 7 statements caused any economic harm towards 8 Ms. Heard. 9 MS. LECAROS: Your Honor, I'm about to 10 switch to a different topic. If you want to break 11 now or push -- 12 THE COURT: All right. This is going 13 to be a little while, I assume? 14 MS. LECAROS: A little bit more, yeah. 15 THE COURT: Let's go ahead and break 16 for lunch, ladies and gentlemen, okay? Do not 17 discuss the case, and do not do any outside 18 research, okay? 19 (Whereupon, the jury exited the 20 courtroom and the following proceedings took 21 place.) 22 THE COURT: All right. We'll come back</p>
<p style="text-align: right;">6857</p> <p>1 and I came down with 95 unique tweets. 2 And then what I did from there is I 3 analyzed those to determine if any of these terms 4 were in there, and I identified five tweets that 5 were related to the Waldman statements. 6 Q Do any of the hashtags Mr. Schnell 7 analyzed include the words from the Waldman 8 statements? 9 A No. No, they don't. And, you know, 10 because I'm rebutting Ms. Arnold, you know, her 11 testimony yesterday, she was saying that the 12 Waldman statements caused these hashtags, then 13 throughout her testimony, and she walked that back 14 and admitted, no, none of these tweets have 15 anything to do with the Waldman statements. They 16 don't include the Waldman statements. You know, 17 these hashtags are only hashtags that Schnell, in 18 his opinion, felt that they were negative towards 19 Ms. Heard. 20 Q Based on your expertise, what are your 21 overall opinions about Mr. Schnell's testimony and 22 the Twitter hashtag data?</p>	<p style="text-align: right;">6859</p> <p>1 at 1:40 then; is that fine? 2 MR. CHEW: Thank you, Your Honor. 3 MS. LECAROS: Thank you, Your Honor. 4 THE BAILIFF: All rise. 5 (Recess taken from 12:37 p.m. to 6 1:40 p.m.) 7 THE BAILIFF: All rise. 8 Please be seated and come to order. 9 THE COURT: All right. Would you like 10 to have your witness take the stand? 11 Thank you, sir. 12 All right. Are we ready for the jury? 13 MS. BREDEHOFT: A couple of things. 14 THE COURT: Okay. Sure. 15 (Sidebar.) 16 THE COURT: Yes. 17 MS. BREDEHOFT: Your Honor, the 18 attorneys for TMZ have told us that they have 19 filed a motion with this court shortly ago. 20 THE COURT: Okay. 21 MS. BREDEHOFT: And want to have the 22 opportunity to argue the motion to quash the</p>

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Conducted on May 24, 2022

54 (6860 to
6863)

<p style="text-align: right;">6860</p> <p>1 testimony of -- I think his name is Tremaine 2 Morgan. 3 MS. VASQUEZ: Morgan Tremaine. 4 THE COURT: What's their basis to do 5 that? 6 MS. BREDEHOFT: To protect their 7 sources. So she just want -- they asked us to 8 tell the court that they had filed it and we would 9 like the opportunity to argue it. 10 THE COURT: Not going to happen, okay? 11 Wait. 12 MS. BREDEHOFT: Okay. We also, with 13 respect to the other one, Morgan Night. Is that 14 his name? 15 THE COURT: Yeah. 16 MS. BREDEHOFT: The one that's 17 testifying. I did want them to just represent 18 what he's testifying to. 19 THE COURT: They said the trailer, 20 Hicksville trailer. 21 MS. VASQUEZ: Correct. 22 MS. BREDEHOFT: Okay. Anything else?</p>	<p style="text-align: right;">6862</p> <p>1 I don't think, I don't know how long they are 2 planning on going with Mr. Bania, but I don't 3 think -- 4 THE COURT: Is Mr. Night the next one? 5 MS. VASQUEZ: Yes. 6 THE COURT: So after you finish here, 7 we'll have to excuse the jury so that we can have 8 voir dire of Mr. Night. 9 MS. VASQUEZ: Okay. That's fine. 10 Then we have two other depositions that 11 we'd like to play, albeit they're short, that's 12 CHLA and Jennifer Howell. I think -- is that it? 13 MR. CHEW: That's it. 14 MS. VASQUEZ: We may be finishing a bit 15 earlier today. 16 THE COURT: Do you have more witnesses 17 tomorrow? 18 MS. VASQUEZ: Yes, but they're 19 scheduled to testify tomorrow. 20 THE COURT: Just to let you know, if 21 you finish early, I give you the time all the way 22 to 5:30.</p>
<p style="text-align: right;">6861</p> <p>1 MS. VASQUEZ: Yes, he was there, 2 present, he observed. 3 THE COURT: But this is all Hicksville 4 related, correct? 5 MS. VASQUEZ: Yes, yes. 6 MS. BREDEHOFT: But he was there? 7 MS. VASQUEZ: He was there present. He 8 observed Mr. Depp and Ms. Heard interacting with 9 friends. 10 THE COURT: But it's all to do with 11 Hicksville? 12 MS. VASQUEZ: It's all rebuttal related 13 to Hicksville. 14 THE COURT: Okay. 15 MS. BREDEHOFT: All right. We're going 16 to do the voir dire. 17 MR. ROTTENBORN: The one other thing we 18 wanted -- we just wanted to get a sense -- sorry. 19 MR. CHEW: Sorry. 20 MS. BREDEHOFT: It's the gummy bears. 21 MR. ROTTENBORN: I just wanted to get a 22 sense of who else they plan to call today because</p>	<p style="text-align: right;">6863</p> <p>1 MR. CHEW: We understand. We'll take 2 the penalty. 3 THE COURT: You'll take the penalty. 4 MR. CHEW: Yes. 5 MS. BREDEHOFT: Thank you, Your Honor. 6 (Open court.) 7 THE COURT: All right. Are we ready 8 for the jury, then? 9 (Whereupon, the jury entered the 10 courtroom and the following proceedings took 11 place.) 12 THE COURT: All right. You may be 13 seated. 14 Do you need to approach for a moment? 15 Okay. 16 (Sidebar.) 17 MS. VASQUEZ: I forgot a witness. 18 Dr. Shaw is here and ready to testify today. 19 THE COURT: Is that live? 20 MS. VASQUEZ: Yes. 21 MS. BREDEHOFT: We didn't know about 22 that, Your Honor.</p>

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Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

55 (6864 to
6867)

<p>6864</p> <p>1 MS. VASQUEZ: You were notified that he 2 would be testifying today, potentially today, if 3 we were running out of time. 4 THE COURT: All right. 5 MS. VASQUEZ: Sorry, I just forgot off 6 the top of my head. 7 THE COURT: All right. Thank you. 8 (Open court.) 9 THE COURT: Your next question. 10 BY MS. LECAROS: 11 Q Mr. Bania, before lunch, we were 12 talking about your opinions in response to the 13 testimony of Mr. Schnell. 14 Did you also analyze the testimony of 15 Ms. Arnold in this case? 16 A Yes, I did. 17 Q And are you aware of her opinion that 18 Ms. Heard's career would have followed the same 19 trajectory as that of Jason Momoa, Gal Gadot, 20 Zendaya, Ana de Armas, and Chris Pine, if not for 21 the Waldman statements? 22 A Yes.</p>	<p>6866</p> <p>1 analytics of Ms. Heard compared to the actors to 2 whom Ms. Arnold compares her? 3 A I did. 4 Q What did you find? 5 A Well, since Ms. Arnold stated that the 6 proper approach is looking at the public 7 perspective, looking into social media, and she 8 did not do that, I felt that was the best approach 9 to do this, based on her words. So, yes, I did go 10 into, you know, best understanding, the public 11 perspective of Ms. Heard and the alleged 12 comparable actors using Q scores. But then I also 13 went and did some analysis online and on social 14 media as well. 15 Q Can you briefly remind the jury what Q 16 scores are? 17 A Yeah. In Q scores, measure how well a 18 celebrity, could be a cartoon character, could be 19 a sports person, how well they're known, how well 20 they're liked and how much they're disliked. And 21 it's an industry standard tool that's used. It's 22 not just focused on the movies that they're in,</p>
<p>6865</p> <p>1 Q What's your understanding of 2 Ms. Arnold's basis for her opinion that 3 Ms. Heard's career should have been similar to 4 that of those identified actors? 5 A Ms. Arnold stated that when producers, 6 or her industry's looking to hire talent and 7 actors, that it's important to best understand the 8 public's perception of the actors that they're 9 considering and that it's important to – you're 10 looking to social media to see what is happening 11 with the actors they are considering for either a 12 movie or even an endorsement opportunity with 13 companies. So that was her approach. 14 Q And is that the process she followed in 15 providing her analysis of those purportedly 16 comparable actors? 17 A No. Although, she stated that she went 18 in and brought in these comparable, alleged 19 comparable actors, and without really reasoning 20 behind that. 21 Q Did you conduct an analysis based on 22 your expertise in social media and Internet</p>	<p>6867</p> <p>1 but it's focused on them as actors, but, also, 2 what's happening in their personal lives that come 3 to play as well. So, that's how Q scores are 4 typically used. 5 Q Did you prepare a demonstrative that 6 reflects the Q score analysis you completed? 7 A Yes, I did. 8 Q Okay. 9 MS. LECAROS: Your Honor, may I 10 approach again? 11 THE COURT: All right. 12 MS. LECAROS: Thank you. 13 MR. NADELHAFT: No objection to the 14 demonstrative. 15 THE COURT: All right. We will 16 identify Plaintiff's 1296 for identification and 17 publish to the jury. 18 Q Mr. Bania, what point in time do these 19 Q scores represent that are reflected on your 20 demonstrative? 21 A So this, these are the winter 2019 Q 22 scores that are reflected here. And what was</p>

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56 (6868 to
6871)

<p style="text-align: right;">6868</p> <p>1 important for me is I wanted to find Q scores that</p> <p>2 represented Ms. Heard after Aquaman, and remember,</p> <p>3 Aquaman is December of 2018. These Q scores were</p> <p>4 gathered January and February of '19, but before</p> <p>5 the Waldman statements.</p> <p>6 Q And what did you find based on the Q</p> <p>7 scores that you looked at?</p> <p>8 A So, as you see here, on the left are</p> <p>9 positive Q scores, and the higher the number, the</p> <p>10 better. As you can see, you know, Ms. Gadot has</p> <p>11 the highest Q score out of the group of actors</p> <p>12 here, at a 28. But you're going to notice</p> <p>13 Ms. Heard has the lowest positive Q score. She</p> <p>14 has a 9. So I find that very interesting that if</p> <p>15 she doesn't appear to fit in as a comparable with</p> <p>16 these alleged comparable actors.</p> <p>17 I think what's also interesting is the</p> <p>18 average Q score for all actors being scored at</p> <p>19 that time, which include all of the alleged</p> <p>20 comparable actors here, score at an average of 17.</p> <p>21 And you can see, again, she is 9, well below that.</p> <p>22 And then on the right side, you're</p>	<p style="text-align: right;">6870</p> <p>1 relying on her experience, and I agree with that.</p> <p>2 Q Did Ms. Arnold offer a criticism of</p> <p>3 your use of the Q scores here?</p> <p>4 A She did, yes.</p> <p>5 Q And what's your understanding of what</p> <p>6 that criticism is?</p> <p>7 A Well, what I believe she was saying is</p> <p>8 that I should have ran Q scores for these</p> <p>9 allegedly comparable actors after each of their</p> <p>10 breakout films. Which I disagree. First of all,</p> <p>11 Q scores doesn't work like that. Q scores are</p> <p>12 available twice a year, so it's not that I could</p> <p>13 pick a month or a different month for each of Q</p> <p>14 score actors. So I feel that, you know, what was</p> <p>15 important for me, and this doesn't always happen</p> <p>16 when I'm using Q scores, you can get this perfect</p> <p>17 moment in time. As Ms. Heard said -- I'm sorry,</p> <p>18 but as Ms. Arnold said, that, you know, Aquaman</p> <p>19 was Ms. Heard's breakout moment. You know, so</p> <p>20 these scores reflect that, that breakout moment.</p> <p>21 And they're terrible Q scores.</p> <p>22 Q How would your analysis change if you</p>
<p style="text-align: right;">6869</p> <p>1 going to see the negative Q scores. So this is</p> <p>2 how much people dislike you. You know, so the</p> <p>3 lower the score is better. You can see</p> <p>4 Mr. Momoa's over here with a lowest at an 8. But</p> <p>5 if you see, Ms. Heard is over here at a 28, which</p> <p>6 was quite a difference. You know, a 20-point</p> <p>7 difference from Mr. Momoa. And also a 10-point</p> <p>8 difference, you know, from the average of all</p> <p>9 actors. So she is very much little -- her</p> <p>10 positive score is very low and her negative score</p> <p>11 is very high, which tells me that she does not fit</p> <p>12 in as a comparable as it relates to these alleged</p> <p>13 comparable actors.</p> <p>14 Q What opinions did you form based on</p> <p>15 that Q score analysis?</p> <p>16 A My opinions, as it relates to these Q</p> <p>17 scores, is, you know, Ms. Arnold used these actors</p> <p>18 as allegedly comparable actors. But, really,</p> <p>19 listening to her testimony yesterday, it appears</p> <p>20 that she has abandoned this approach. I don't</p> <p>21 think she's using these comparable actors or these</p> <p>22 alleged comparable actors anymore, she's more</p>	<p style="text-align: right;">6871</p> <p>1 had used Ms. Arnold's logic with respect to the</p> <p>2 timing of the Q scores that you looked at?</p> <p>3 A I mean, if you really think about what</p> <p>4 Ms. Arnold was saying is she's saying that she</p> <p>5 thinks Q scores are the highest for each actor</p> <p>6 right after their breakout moment.</p> <p>7 So I would think, if anything, these Q</p> <p>8 scores could have been a bit lower because it's</p> <p>9 not right after their breakout moment. But,</p> <p>10 again, what's important for me is the fact that</p> <p>11 these scores reflect, you know, who Amber Heard</p> <p>12 was at the time before the Waldman statements, but</p> <p>13 after the Aquaman release.</p> <p>14 MS. LECAROS: We can take that one</p> <p>15 down, Tom. Thank you.</p> <p>16 Q What other work have you done in</p> <p>17 connection with forming your opinions in this</p> <p>18 case?</p> <p>19 A Again, taking advice from Ms. Arnold,</p> <p>20 it's important, she says the industry looks into</p> <p>21 social media, what their followings are like, you</p> <p>22 know, what's their numbers as it relates to their</p>

<p>6872</p> <p>1 followers. You know, again, what is the public 2 perception of them. So I analyzed their social 3 media accounts, but prior to the Waldman 4 statements, so...</p> <p>5 Q And how did you do that?</p> <p>6 A So what I did – I don't know if you're 7 all familiar with the archive.org. They have a 8 tool call the Wayback Machine. What archive.org 9 does is it archives the Internet. So, you can go 10 back in time to see what websites and web pages 11 used to look like in the past. Not all the time 12 can you actually get a celebrity's social media 13 accounts to have been archived, but we were 14 fortunate that each of the alleged comparable 15 actors' social media accounts were in archive.org, 16 so I was able to go back in time, prior to the 17 Waldman statements, to see what the following 18 activity was for each of the alleged comparable 19 actors.</p> <p>20 Q Mr. Bania, did you prepare a 21 demonstrative that reflects your social media 22 analysis?</p>	<p>6874</p> <p>1 with 37 million Instagram followers compared to 2 her 3.8 million. And, you know, the 2 million, 3 2.3 million Twitter followers compared to 4 Ms. Heard's 142,000. And you can, then, even go 5 down to Zendaya, with 65. -- million, .9. And 6 17.2 million Twitter followers.</p> <p>7 What this is telling me is, really, you 8 know, more people are interested in Ms. Gadot and 9 Zendaya and even Mr. Momoa than Ms. Heard, on 10 social media. It just tells me a lot of people 11 are interested in these actors as opposed to 12 Ms. Heard, more of a following; Q scores, well 13 liked, less disliked. So kind of fits into the 14 analysis of determining whether or not these 15 alleged comparable actors are actually comparable.</p> <p>16 Q Based on your expertise, what are your 17 overall opinions about Ms. Arnold's analysis of 18 the so-called comparing this actors?</p> <p>19 A Again, it appears that she has 20 abandoned this approach, and I agree with that. I 21 feel that through the Q score analysis and the 22 social media analysis, that they're just not</p>
<p>6873</p> <p>1 A Yes.</p> <p>2 MS. LECAROS: Your Honor, may I 3 approach?</p> <p>4 THE COURT: Yes, ma'am. Thank you.</p> <p>5 MR. NADELHAFT: No objection of the 6 demonstrative.</p> <p>7 THE COURT: All right. Mark it for 8 identification purposes, Plaintiff's 1297, and 9 publish.</p> <p>10 Q Mr. Bania, can you tell the jury what 11 you found when you looked at the social media.</p> <p>12 A Yes, so what I found – again, this is 13 prior to the Waldman statements. You know, first 14 thing you're going to notice here is not all 15 actors use social media. You're going to see 16 Mr. Pine doesn't have Facebook, Twitter or 17 Instagram. And Momoa and de Armas don't use 18 Facebook or Twitter.</p> <p>19 But what's important to look at is you 20 have Ms. Heard prior to the Waldman statements 21 with 3.8 Instagram followers and 142,500 Twitter 22 followers. And then you move down to Gal Gadot,</p>	<p>6875</p> <p>1 comparable.</p> <p>2 MS. LECAROS: Tom, we can take that one 3 down.</p> <p>4 Q Mr. Bania, based on all the analysis 5 you did in this case, what are your overall 6 opinions?</p> <p>7 A Yes, my overall opinions are that 8 Mr. Schnell failed to prove any causal connection 9 with the Waldman statements and the search or the 10 hashtag activity, the spikes, as it relates to 11 Twitter. There's no causal connection there.</p> <p>12 My second opinion is, you know, based 13 on my social media and Q score analysis, 14 Ms. Arnold's comparable, alleged comparable actors 15 are not comparable.</p> <p>16 And then third, Ms. Arnold and 17 Mr. Schnell both failed to prove any causation as 18 it relates to the Waldman statements causing 19 economic harm to Ms. Heard.</p> <p>20 So, you know, as a damages expert, 21 which Ms. Arnold is, you need to take into 22 consideration causation before you can calculate</p>

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58 (6876 to
6879)

<p>6876</p> <p>1 damages. You look at damages and you look at the 2 alleged damaging event, and not only do you have 3 to prove that a hundred percent of the damage is 4 because of these Waldman statements. She didn't 5 even consider COVID. It happened at the same 6 time. You know, a lot of actors probably made a 7 lot less money because of COVID. Maybe films 8 didn't get made. And even when you do an analysis 9 of damages, you prove causation, but you also have 10 to look at everything else that might have caused 11 this alleged economic harm. And she didn't look 12 into any of that. She didn't even know what 13 causation was. So I don't think damages is an 14 appropriate approach in this case. 15 MS. LECAROS: No further questions, 16 Your Honor. 17 THE COURT: All right. 18 Cross-examination. 19 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND 20 COUNTERCLAIM PLAINTIFF 21 BY MR. NADELHAFT: 22 Q Good afternoon, Mr. Bania.</p>	<p>6878</p> <p>1 Q So only if a person used a tweet with 2 those words in that order and with that spacing 3 would they hit on your searches, correct? 4 MS. LECAROS: Objection. Compound. 5 THE COURT: Overruled. 6 A Yeah, so I used them in quotes because, 7 you know, hoax could be used in many other 8 contexts, so I wanted to make sure I was fitting 9 my search with the theme of the Waldman 10 statements. 11 Q So if someone tweeted Ms. Heard faked 12 sexual violence, that wouldn't appear in your 13 searches, correct, faked with an "ed"? 14 A It would not. 15 Q Okay. And if they used two spaces 16 between abuse and hoax, that wouldn't fit in your 17 search? 18 A That's correct. 19 Q Okay. Did you -- and a tweet can only 20 be 280 characters, correct? 21 A That's correct. 22 Q So certain of the Waldman/Depp</p>
<p>6877</p> <p>1 A Hi. 2 Q You're not a damages expert, correct? 3 A I am a damages expert, but not 4 providing any quantitative damages opinions in 5 this case. 6 Q In this case, okay. 7 And is it your testimony that only if a 8 person repeats the Waldman/Depp statements that 9 they can be related to the defamation? 10 A Say that one more time. 11 Q Are you saying that a person literally 12 has to repeat the Waldman/Depp statements in a 13 tweet for them to be related to the defamation? 14 A No. If you looked at my analysis, I 15 did pick the three themes as it relates to the 16 tweets, and I've analyzed those themes and I came 17 up with five examples of when those themes were 18 used. 19 Q You ran searches for "abuse hoax, 20 sexual violence hoax, and fake sexual violence," 21 and ran all those in quotes, correct? 22 A I did.</p>	<p>6879</p> <p>1 statements, a person could not tweet the whole 2 thing in one tweet, correct, the whole statement 3 in one tweet? 4 A The Waldman statements? 5 Q Correct. 6 A No. You could not tweet that -- those 7 entire quotes. 8 Q Did you make any determination if there 9 was an online bullying campaign against Mr. Depp 10 after Ms. Heard's op-ed? 11 A I didn't look into any online bullying 12 campaign for Ms. Heard nor Mr. Depp. 13 Q Did you determine if there were tweets 14 harassing Mr. Depp that quoted from Ms. Heard's 15 op-ed? 16 A No. My assignment was to determine if 17 the Waldman statements were part of the tweets 18 that Mr. Schnell provided. I was rebutting him. 19 Q In your analysis, when you testified 20 before, you never looked to see if the op-ed was 21 quoted anywhere, correct? 22 MS. LECAROS: Objection, Your Honor.</p>

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Conducted on May 24, 2022

59 (6880 to
6883)

<p>6880</p> <p>1 May we approach?</p> <p>2 THE COURT: Sure.</p> <p>3 MR. NADELHAFT: I can withdraw.</p> <p>4 THE COURT: Okay. Question's</p> <p>5 withdrawn.</p> <p>6 Next question.</p> <p>7 Q Now, you have no objection to</p> <p>8 Ms. Arnold's use of comparables, correct, just the</p> <p>9 use of comparables in general?</p> <p>10 A I listened to her testimony. My</p> <p>11 understanding is that she abandoned that approach.</p> <p>12 But as it relates to my testimony today, my</p> <p>13 opinion was related to those specific alleged</p> <p>14 comparable actors, that they were not comparable.</p> <p>15 Q You're not offering an opinion as to</p> <p>16 who the appropriate comparables should be to</p> <p>17 Ms. Heard, correct?</p> <p>18 A Correct.</p> <p>19 Q Okay. And you testified, just before,</p> <p>20 about the Q scores of Ms. Heard and the</p> <p>21 comparables, that was Plaintiff's Exhibit 1296,</p> <p>22 correct?</p>	<p>6882</p> <p>1 apples, correct?</p> <p>2 A I wouldn't say that. I'm saying that</p> <p>3 it's not the exact same years.</p> <p>4 Q Well, so, in the winter of 2019, that Q</p> <p>5 score comes out, the field date -- the field work</p> <p>6 dates for that is from January 22nd, 2019, to</p> <p>7 February 7th, 2019, correct?</p> <p>8 A That is correct.</p> <p>9 Q So that would be start -- so the field</p> <p>10 work would be starting almost immediately after</p> <p>11 Aquaman just came out, correct?</p> <p>12 A Yeah. And her star-is-born moment,</p> <p>13 yes.</p> <p>14 Q You'd agree that for the winter of</p> <p>15 2020, where you took Jason Momoa's Q score, would</p> <p>16 have more time to account for the rise in</p> <p>17 popularity of the film Aquaman, correct?</p> <p>18 A Actually, if I use Ms. Arnold's</p> <p>19 suggestion, the celebrities tend to have, you</p> <p>20 know, the celebrity moment right after they have</p> <p>21 their breakout film. So, I disagree with that. I</p> <p>22 think maybe his Q scores could be lower as it</p>
<p>6881</p> <p>1 A I don't know what 1296 means.</p> <p>2 Q Okay. The demonstrative in front of</p> <p>3 you.</p> <p>4 A Oh, mine? Yes, that's correct.</p> <p>5 Q And you said that those were all for</p> <p>6 the winter of 2019?</p> <p>7 A I said Ms. Heard's were from the winter</p> <p>8 of 2019.</p> <p>9 Q Because isn't it true that none of the</p> <p>10 rest of these people were from the winter of 2019,</p> <p>11 correct?</p> <p>12 A That's correct.</p> <p>13 Q Okay. In fact, Mr. Momoa's was from</p> <p>14 the summer of --</p> <p>15 A 2020.</p> <p>16 Q Of 2020?</p> <p>17 A That's correct. Not all alleged</p> <p>18 comparable actors had Q scores for that date.</p> <p>19 What was important for me is to get Ms. Heard's Q</p> <p>20 scores right after Aquaman but before the Waldman</p> <p>21 statements.</p> <p>22 Q So you weren't comparing apples to</p>	<p>6883</p> <p>1 relates to when I used them.</p> <p>2 Q You agree that for the winter of 2020,</p> <p>3 Mr. Momoa's Q score would have more time to</p> <p>4 account for the rise in popularity of the film</p> <p>5 Aquaman?</p> <p>6 A I don't know if it accounts for the</p> <p>7 rise of popularity. Again, using Ms. Arnold's</p> <p>8 words, usually a Q score will be the highest</p> <p>9 after, right after the film, like I did measure</p> <p>10 Ms. Heard.</p> <p>11 MR. NADELHAFT: May I approach, Your</p> <p>12 Honor.</p> <p>13 THE COURT: All right. Did you show --</p> <p>14 MR. NADELHAFT: Oh.</p> <p>15 THE COURT: All right. Thank you.</p> <p>16 Q If you look on page 177 of your</p> <p>17 deposition transcript.</p> <p>18 Do you see that?</p> <p>19 A I don't see a page with that, what you</p> <p>20 handed me.</p> <p>21 Q You don't see page 177? It's four</p> <p>22 pages, four pages per --</p>

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60 (6884 to
6887)

<p>6884</p> <p>1 A Oh, yes. Thank you.</p> <p>2 Q And I asked you, at line 6 through 10,</p> <p>3 "You'd agree that for the winter of 2020, Jason</p> <p>4 Momoa's Q score would have more time to account</p> <p>5 for the rise in popularity in the film Aquaman?"</p> <p>6 And you answered yes.</p> <p>7 A At that time. As I'm a rebuttal expert</p> <p>8 to Ms. Arnold, based on her testimony, I've</p> <p>9 learned something new from her.</p> <p>10 Q And you didn't look at Ms. Heard's Q</p> <p>11 score from summer of 2020, correct?</p> <p>12 A She didn't have any.</p> <p>13 Q And Ms. de Armas had a lower</p> <p>14 familiarity score than Ms. Heard, correct?</p> <p>15 A I don't have that in front of me, but</p> <p>16 if you're saying that, yes.</p> <p>17 Q Okay. And Ms. de Armas' career</p> <p>18 trajectory has gone up since the summer of 2020,</p> <p>19 correct?</p> <p>20 A I don't know. I didn't analyze her</p> <p>21 career trajectory.</p> <p>22 Q Okay.</p>	<p>6886</p> <p>1 A That's correct.</p> <p>2 MR. NADELHAFT: Thank you. You can</p> <p>3 take that down.</p> <p>4 Q Now, you understand that Mr. Waldman</p> <p>5 has been banned from Twitter for life, for</p> <p>6 harassing Amber Heard, correct?</p> <p>7 A I don't know that. But if that's the</p> <p>8 case.</p> <p>9 Q And you understand that Mr. Waldman</p> <p>10 appealed the decision to Twitter and they have</p> <p>11 confirmed his ban for life?</p> <p>12 MS. LECAROS: Objection, Your Honor.</p> <p>13 May we approach on this one?</p> <p>14 THE COURT: Okay. Sure.</p> <p>15 (Sidebar.)</p> <p>16 MS. LECAROS: Pretty far beyond the</p> <p>17 scope of what this expert has testified to and</p> <p>18 also --</p> <p>19 MR. NADELHAFT: He's talking about</p> <p>20 Waldman and Twitter.</p> <p>21 MS. LECAROS: He's not talking about</p> <p>22 Mr. Waldman's use of Twitter.</p>
<p>6885</p> <p>1 MR. NADELHAFT: Could you put up</p> <p>2 plaintiff's -- Trial Exhibit 1297. That was the</p> <p>3 demonstrative.</p> <p>4 Q Ms. de Armas has less Instagram</p> <p>5 followers than Ms. Heard, correct?</p> <p>6 A Correct.</p> <p>7 Q And by -- Ms. Heard has more than</p> <p>8 double the Instagram followers of Ms. de Armas,</p> <p>9 correct?</p> <p>10 A Yes.</p> <p>11 Q And isn't it true that you get more</p> <p>12 social media followers the longer you're on social</p> <p>13 media?</p> <p>14 A Not necessarily. It doesn't work that</p> <p>15 way. It depends on many other factors.</p> <p>16 Q And so, Ms. de Armas had a lower</p> <p>17 familiarity score and less Instagram followers,</p> <p>18 yet, your testimony is that she would not be a</p> <p>19 proper comparable to Ms. Heard?</p> <p>20 A That's correct.</p> <p>21 Q And you're not offering a different set</p> <p>22 of people who should be comparables, correct?</p>	<p>6887</p> <p>1 MR. NADELHAFT: I can move on.</p> <p>2 THE COURT: Okay. Move on.</p> <p>3 (Open court.)</p> <p>4 BY MR. NADELHAFT:</p> <p>5 Q You agree that in looking at</p> <p>6 Mr. Schnell's data, 65 percent of the uses of</p> <p>7 negative hashtags relating to Ms. Heard occurred</p> <p>8 between April 1st, 2020 and June 15th, 2021,</p> <p>9 correct?</p> <p>10 A Correct.</p> <p>11 Q And you would agree that five of the</p> <p>12 six highest spikes of the negative hashtags were</p> <p>13 after the Depp/Waldman statements, correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. And where you talked about the</p> <p>16 February 2020 spike -- and the 65 percent, by the</p> <p>17 way, even includes the February 2020 spike of</p> <p>18 tweets, correct?</p> <p>19 A That's correct. Well, there was no</p> <p>20 spike in 2020. During the Waldman statements?</p> <p>21 Q Well, the spike in February 2020 was</p> <p>22 before the Waldman statements, right?</p>

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<p style="text-align: right;">6888</p> <p>1 A I would have -- can we pull up the</p> <p>2 chart again, if you want to talk about the spikes?</p> <p>3 MR. NADELHAFT: Sure. Can you put up</p> <p>4 1294.</p> <p>5 Q Number 1.</p> <p>6 A Number 1. Yeah, that spike happened</p> <p>7 before the Waldman statements.</p> <p>8 Q Okay. And there was hardly any</p> <p>9 activity in negative hashtags until February 2020,</p> <p>10 correct?</p> <p>11 A That's correct.</p> <p>12 Q And you understand that the spike in</p> <p>13 February 2020 was related to the partial tape that</p> <p>14 Mr. Waldman and Mr. Depp leaked to the Daily Mail,</p> <p>15 right?</p> <p>16 A I'm aware that the articles related to</p> <p>17 Heard admitting to hitting Depp.</p> <p>18 Q And you understand that Mr. Waldman</p> <p>19 testified that Mr. Depp and Mr. Waldman met with</p> <p>20 the Daily Mail in person to provide the partial</p> <p>21 tape to the Daily Mail.</p> <p>22 MS. LECAROS: Objection, Your Honor.</p>	<p style="text-align: right;">6890</p> <p>1 A The July spike, which is number 2, is</p> <p>2 not related to the Waldman statements, and there</p> <p>3 are articles related to abuse between Heard and</p> <p>4 Depp and feces found in Depp's bed.</p> <p>5 Q And that's based on Google searches</p> <p>6 that you did?</p> <p>7 A That's correct.</p> <p>8 Q But the July spike in time came after</p> <p>9 the June 27th, 2020 defamatory statement by</p> <p>10 Mr. Depp and Mr. Waldman, correct?</p> <p>11 A That's correct.</p> <p>12 Q Okay. And five of the six spikes came</p> <p>13 after the defamatory statements, correct?</p> <p>14 A After the Waldman statements, yes.</p> <p>15 Q Okay. Now, you testified before that</p> <p>16 you eliminated shares and likes of the</p> <p>17 Depp/Waldman statements from your analysis, right?</p> <p>18 A Repeat that, please.</p> <p>19 Q Did you say that you eliminated shares</p> <p>20 and likes of tweets that included the Depp/Waldman</p> <p>21 statements?</p> <p>22 A That's correct. When I was doing my</p>
<p style="text-align: right;">6889</p> <p>1 MR. NADELHAFT: She's talking about --</p> <p>2 he talked about what the number 1 --</p> <p>3 THE COURT: What's the objection?</p> <p>4 MS. LECAROS: Sorry. Lack of</p> <p>5 foundation.</p> <p>6 MR. NADELHAFT: I'm asking if he knows,</p> <p>7 if he knows or doesn't.</p> <p>8 THE COURT: All right. Overruled.</p> <p>9 A So, what's important to me is the fact</p> <p>10 that this spike is prior to the Waldman</p> <p>11 statements.</p> <p>12 Q Sir. Do you know if -- do you know if</p> <p>13 Waldman testified that Mr. Depp and he met with</p> <p>14 the Daily Mail in person to provide the partial</p> <p>15 tape?</p> <p>16 A No.</p> <p>17 Q In February of 2020.</p> <p>18 You don't know one way or the other?</p> <p>19 A It's irrelevant to my opinion.</p> <p>20 Q All right. And the spike in July of</p> <p>21 2020 came right after the last defamatory</p> <p>22 statement by Mr. Depp and Mr. Waldman, correct?</p>	<p style="text-align: right;">6891</p> <p>1 analysis, I noticed the exact same text was part</p> <p>2 of many of these tweets.</p> <p>3 Q Don't shares and likes disseminate the</p> <p>4 negative information?</p> <p>5 A That's quite possible.</p> <p>6 Q Okay. And you agree, right, that use</p> <p>7 of the term "Waldman" or "Waldminion" occurred</p> <p>8 over 25 percent of the time in the negative tweets</p> <p>9 toward Ms. Heard from April 2020 through</p> <p>10 January 2021, correct?</p> <p>11 A Although it's irrelevant to this case,</p> <p>12 it has nothing to do with the Waldman statements,</p> <p>13 that's what Mr. Schnell says.</p> <p>14 Q You don't disagree with the search</p> <p>15 results, correct?</p> <p>16 A Although it has nothing to do with this</p> <p>17 case or the Waldman statements, I do not disagree.</p> <p>18 Q So if people are tweeting about Adam</p> <p>19 Waldman or Waldminion at the same time as tweeting</p> <p>20 negative hashtags about Amber Heard that has --</p> <p>21 it's your testimony that they have nothing to do</p> <p>22 with this case?</p>

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62 (6892 to
6895)

<p>6892</p> <p>1 A The hashtags have nothing to do with 2 this case. 3 Q That's what you're saying? 4 A That's what I'm -- yeah. 5 Q And even if they include the negative 6 hashtags with Mr. Waldman's name and Waldminion, 7 you're saying they have nothing to do with the 8 defamatory statements? 9 A All four hashtags that Schnell used had 10 nothing to do with the Waldman statements. 11 Waldman, himself, has nothing to do with the 12 Waldman statements. We're talking about the 13 Waldman statements here. Waldminion, I don't even 14 know what that is, but, again, it has nothing to 15 do with this case and it's not related to the 16 Waldman statements. That's what is important. 17 Q The reason you're saying it's not 18 related to the Waldman statements is because 19 someone didn't literally copy what Adam Waldman 20 said in the Daily Mail and tweet it out? 21 A Well, I looked at enough tweets that 22 included the name Waldman that have nothing to do</p>	<p>6894</p> <p>1 if there were any that were not negative toward 2 Ms. Heard? 3 A I did not look into anything as it 4 relates to anything other than what relates to the 5 Waldman statements. That's what's at issue here 6 today as we sit in court. 7 Q And you didn't form any statistical 8 analysis to rule out the Waldman statements' 9 impact on the hashtags, correct? 10 A Correct. 11 Q You did not analyze whether media and 12 press coverage other than the Waldman statements 13 affected Ms. Heard's career, correct? 14 A Correct. 15 Q Looking at the exhibit that's in front 16 of you, where you have the numbers here, those, 17 you said, are related to Google searches? 18 A The 1 through 6? 19 Q Correct. 20 A Yes. 21 Q Okay. 22 MR. NADELHAFT: Can we put up</p>
<p>6893</p> <p>1 with anything negative or the Waldman statements. 2 I mean, Mr. Waldman -- 3 Q They must have had the negative 4 hashtags toward Ms. Heard because the only way 5 those would have been in the data you looked at 6 would have had the negative hashtags towards 7 Ms. Heard. 8 It was looking at that universe, 9 correct? 10 A First of all, I don't agree that 11 "justice for Johnny Depp" is a negative hashtag 12 toward Amber Heard. So, listen, the assignment 13 was to determine if the tweets that Mr. Schnell 14 presented were related or included the Waldman 15 statements. 16 Q In your review of the tweets related to 17 Ms. Heard, you cannot point to any that were 18 positive toward Ms. Heard, correct? 19 A Again, I was not looking for that. 20 Q And you did not review the hashtag 21 "justice for Johnny Depp" during the time frame 22 from April 1st, 2020 to January 1st, 2020, to see</p>	<p>6895</p> <p>1 Plaintiff's 888. 2 Q And we can just start at 1. Do you 3 understand that your -- 4 MR. NADELHAFT: Oh, thanks. 5 Q And 888, it's page 76, these are the 6 documents you relied upon for your opinion today? 7 A Yes. 8 Q And are these the search -- where it 9 has the different letters, these are the searches 10 that you ran for the various time frames and the 11 articles that came up for numbers 1 through 6, 12 correct? 13 A No. I mean, obviously, document 1A is 14 the Heard supplemental expert witness disclosure. 15 These are -- these are documents that I used 16 throughout the time I've been working on this 17 project. So these aren't related to those 1 18 through 6 numbers. 19 Q Okay. These are documents you relied 20 upon for your opinion today? 21 A These are documents that I relied upon 22 when I presented my designation.</p>

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53 (6896 to
6899)

<p>6896</p> <p>1 Q For your opinion today, that you're 2 offering today? 3 A Yeah, these are the documents that, 4 yes, I've relied on throughout this entire -- this 5 case. 6 Q Okay. 7 MR. NADELHAFT: And, actually, 8 Michelle, can you turn, in this designation, to, 9 let's see -- hold on one second. 10 Can you just scroll down. Yeah, keep 11 scrolling. Keep going. Keep going. Okay. Stop. 12 Q This was the chart you provided with 13 your designation for your opinions in this case, 14 correct? 15 A Yes. 16 Q Okay. And it's similar to the chart 17 that we had before, we had before, with the 1 18 through 6, correct? 19 A That's correct. 20 Q And where it has the various boxes, 21 it's talking about documents 6E through 6H, for 22 instance, related to Depp wanting to have Heard</p>	<p>6898</p> <p>1 MS. LECARAZ: So this is responsive to 2 Ms. Arnold's testimony, which is different because 3 the damages period is different. So, there is a 4 Legacy reference. He did scrub it from the 5 demonstrative that he used today for that purpose. 6 MR. NADELHAFT: Your Honor, he 7 testified to six different times where he was 8 saying it was not -- 9 THE COURT: Why don't you just put his 10 chart in he used as a demonstrative? The only 11 reason would be the patient isn't on there. 12 MR. NADELHAFT: But, one, that chart 13 doesn't say anything about the U.K. judgment. The 14 second would be -- 15 THE COURT: The U.K. ruling. 16 MR. NADELHAFT: It just says U.K. 17 ruling. We've been talking about the U.K. ruling. 18 Your Honor, he has talked about -- in his opinion 19 today, he's been saying that none of these 20 searches, that none of the tweets are related to 21 the Waldman statements. 22 THE COURT: Okay.</p>
<p>6897</p> <p>1 replaced on Aquaman? 2 A Yes. 3 Q You prepared this chart, correct? 4 A Yeah, this was part of my designation. 5 MR. NADELHAFT: I would like to have 6 this page as a demonstrative. 7 MS. LECARAZ: Your Honor, I do have an 8 objection. If I might be heard. 9 THE COURT: All right. Do you want to 10 come forward, please. 11 (Sidebar.) 12 MS. LECARAZ: There's a specific 13 reference to the U.K. ruling on this 14 demonstrative. 15 MR. NADELHAFT: It's his report, and he 16 hasn't changed. It's the same information -- he 17 said, in his -- one, it doesn't say anything about 18 the U.K. ruling, but then he put up a chart and 19 has testified that the various searches -- 20 THE COURT: This is a chart that you 21 made me cut, right? 22 MR. NADELHAFT: No, no, no.</p>	<p>6899</p> <p>1 MR. NADELHAFT: And then he said the 2 reason -- the way he found that was by looking at 3 articles, by doing a Google search. That's what 4 he testified to. I don't care so much about this 5 chart, but the articles that he -- 6 THE COURT: I'm sorry. Are you moving 7 page 99 in or page -- this is 99. 8 MR. NADELHAFT: 99 references articles 9 that he used to determine that the searches were 10 not related. He claims the searches were not 11 related to the Waldman statements. 12 THE COURT: Okay. 13 MR. NADELHAFT: Then 76 are the 14 articles with the titles that include -- I mean, I 15 will say they include something about -- 16 THE COURT: I didn't know you were 17 trying to move in 76. I was just looking at the 18 graph. The graph, you're not caring about as much 19 as this. 20 MR. NADELHAFT: The graph, I don't, 21 correct. 22 THE COURT: We're off of 99. We're</p>

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64 (6900 to
6903)

<p>6900</p> <p>1 just on 76. 2 Any objection to 76? 3 MS. LECAROZ: I have -- I haven't 4 confirmed at the moment. I wasn't aware that was 5 part of it. 6 That has the U.K. ruling. 7 MR. NADELHAFT: Here's the thing, Your 8 Honor. He has said -- he testified, he testified 9 that the way he determined that -- the way that he 10 determined that the tweets weren't related to the 11 Waldman statements -- 12 THE COURT: I understand your argument, 13 sir, but you're trying to put things in with the 14 U.K. judgment on it. 15 MR. NADELHAFT: I know. But why -- but 16 why -- they could have amended their disclosures. 17 They never gave us -- 18 THE COURT: I'm going to sustain the 19 objection. 20 Let's move on. 21 (Open court.) 22</p>	<p>6902</p> <p>1 results. 2 MR. NADELHAFT: And just so the 3 record's clear, if we could go back to page 76 of 4 this document. 5 Q Number 6A through 6N, going to the next 6 page, those are the headlines of the searches that 7 you found? 8 A Correct. 9 Q And you don't disagree that negative 10 tweets toward Ms. Heard have continued throughout 11 your -- throughout the analysis of the tweets, 12 correct? 13 A I'm not looking at whether they're 14 negative tweets or those hashtags are negative. 15 I'm determining if those tweets are related to the 16 Waldman statements. 17 Q Okay. Do you have -- so you have no 18 opinion whether the tweets were positive or 19 negative towards Ms. Heard, that's what you're 20 saying? 21 A Yes. I'm just analyzing whether or not 22 they're related to the Waldman statements.</p>
<p>6901</p> <p>1 BY MR. NADELHAFT: 2 Q Mr. Bania, other than -- so, as I 3 understand it, your -- the way you determined that 4 the tweets were not related to the Waldman 5 statements was that you looked at time and then 6 you ran certain Google searches, correct? 7 A Correct. 8 Q And then the top three hits came up? 9 A Correct. 10 Q And you were -- and then you looked 11 through the article to see if the Waldman 12 statements were there? 13 A So as it relates to any trending event, 14 any defamation that's happened online, any 15 allegations of economic loss because something 16 went viral, going to Google, looking at the spikes 17 in time and going back in time to see what was 18 happening on these top three sites will give you 19 an indication of the best results that were being 20 served at that time. 21 So something viral that's happening 22 would appear, most likely, in those top three</p>	<p>6903</p> <p>1 MR. NADELHAFT: Okay. Thank you. 2 Nothing further. 3 THE COURT: Okay. Redirect. 4 MS. LECAROZ: I have no further 5 questions of this witness, Your Honor. 6 Thank you, Mr. Bania. 7 THE COURT: Sir, you can stay in the 8 courtroom or you can leave. 9 THE WITNESS: Thank you. 10 THE COURT: Your next witness. 11 MS. VASQUEZ: We call Morgan Night. 12 THE COURT: Ladies and gentlemen, we're 13 going to take a brief recess at this point. 14 Hopefully we get you back soon. Do not discuss 15 the case and don't do any outside research. 16 Sorry. We'll just take a short break. 17 (Whereupon, the jury exited the 18 courtroom and the following proceedings took 19 place.) 20 THE COURT: All right. Just so that 21 we're on the same page -- you can have a seat. 22 You don't have to keep standing the</p>

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65 (6904 to
6907)

<p>6904</p> <p>1 whole time.</p> <p>2 Just so we're on the same page with</p> <p>3 Mr. Night's testimony. Actually, can Mr. Night go</p> <p>4 back out, please.</p> <p>5 All right. So we're on the same page</p> <p>6 with Mr. Night's testimony, there was a rule on</p> <p>7 witnesses, however, Mr. Night's a rebuttal</p> <p>8 witness. The purpose of excluding witnesses from</p> <p>9 the courtroom -- usually it's the courtroom, is to</p> <p>10 deprive a later witness of the opportunity to</p> <p>11 shape testimony to correspond with that of an</p> <p>12 earlier witness. The issue we have here,</p> <p>13 obviously, if there was a direct witness in the</p> <p>14 direct testimony, you had time to do a rule on</p> <p>15 witnesses, let them know about the rule on</p> <p>16 witnesses, but a rebuttal witness it's a little</p> <p>17 different because they didn't know they were going</p> <p>18 to be a witness, you didn't know they were going</p> <p>19 to be a witness. I understand that part. The</p> <p>20 problem is, the courtroom, in this particular</p> <p>21 case, appears to be the world. So what we have to</p> <p>22 do here is I'm going to do a voir dire, and I'll</p>	<p>6906</p> <p>1 MORGAN HIGBY NIGHT</p> <p>2 A witness called on behalf of the</p> <p>3 plaintiff and counterclaim defendant, having been</p> <p>4 first duly sworn by the Clerk, testified as</p> <p>5 follows:</p> <p>6 THE COURT: Sir, if you could just have</p> <p>7 a seat, please.</p> <p>8 Sir, what we're doing is I'm just going</p> <p>9 to ask you a few questions outside the presence of</p> <p>10 the jury, then the attorneys are going to ask you</p> <p>11 a few questions, okay?</p> <p>12 THE WITNESS: Sure.</p> <p>13 THE COURT: Then I'm going to have you</p> <p>14 step outside after that.</p> <p>15 THE WITNESS: No problem.</p> <p>16 THE COURT: What's your full name, sir?</p> <p>17 THE WITNESS: Morgan Higby Night.</p> <p>18 THE COURT: All right. You don't have</p> <p>19 to be that close.</p> <p>20 How do you spell your last name?</p> <p>21 THE WITNESS: N-I-G-H-T.</p> <p>22 EXAMINATION BY THE COURT</p>
<p>6905</p> <p>1 allow both sides to ask questions, as well, of</p> <p>2 Mr. Night to see what he has seen of the case.</p> <p>3 And I'm just going to use the factors that the</p> <p>4 case law in Virginia uses, which are the factors</p> <p>5 to consider, because the Court does have broad</p> <p>6 discretion to permit or prohibit a witness to</p> <p>7 testify in this particular circumstance. So the</p> <p>8 factors I'm going to consider is if the</p> <p>9 impropriety was intentional, which we'll find out.</p> <p>10 The prejudice attached to it, also if the excluded</p> <p>11 witness learned about substantive aspects of the</p> <p>12 case from an earlier testifying witness and</p> <p>13 whether that knowledge had any affect on his or</p> <p>14 her testimony. So those are the three factors I'm</p> <p>15 going to look at in weighing this decision. So,</p> <p>16 keep that in mind when you do your voir dire.</p> <p>17 And it's my understanding that the</p> <p>18 evidence that Mr. Night will testify only relates</p> <p>19 to Hicksville; is that correct?</p> <p>20 Now we can have Mr. Night.</p> <p>21 Mr. Night, if you could come forward to</p> <p>22 be sworn.</p>	<p>6907</p> <p>1 BY THE COURT:</p> <p>2 Q Okay. Sir, before I can allow you to</p> <p>3 testify, I just want to ask you a few questions.</p> <p>4 Have you seen any of the trial that's been going</p> <p>5 on for the past six weeks.</p> <p>6 A Approximately five weeks ago, a friend</p> <p>7 of mine texted me that Hicksville was mentioned,</p> <p>8 and I watched a little clip where it was</p> <p>9 mentioned.</p> <p>10 Q Which clip did you watch?</p> <p>11 A I believe it was somebody testifying</p> <p>12 about -- I think it was the security guard</p> <p>13 testifying, maybe, about Hicksville, or I forget</p> <p>14 exactly who was testifying. But it was something</p> <p>15 where Hicksville was mentioned, and it was</p> <p>16 about -- something about a wrist or something</p> <p>17 about that.</p> <p>18 Q What did you do after that, at some</p> <p>19 point, did you get in contact with the attorneys?</p> <p>20 A So I didn't reach out to them. I</p> <p>21 didn't really care.</p> <p>22 Q Okay.</p>

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Conducted on May 24, 2022

66 (6908 to
6911)

<p>6908</p> <p>1 A The innkeepers that worked at 2 Hicksville before, reached out to them and said we 3 saw some stuff that wasn't true and then they 4 asked, is it okay if I give the attorneys your 5 phone number, so the attorneys reached out to me. 6 THE COURT: Okay. And when did the 7 attorneys reach out to you? 8 A May 3rd. 9 Q May 3rd. And you talked to the 10 attorneys at that time? 11 A Yeah. 12 Q Okay. 13 A Not Camille, but Jarelyn. 14 Q Okay. And then have you seen any other 15 parts of the trial? 16 A No. She instructed me not to watch 17 anything about it, regardless of if it was about 18 Hicksville or not, so I've been keeping off the 19 Internet and turning off anything that seems to be 20 like it's on social media. So I just don't watch 21 any of that. 22 Q Okay. All right.</p>	<p>6910</p> <p>1 Q Now, how is it that, to your best 2 knowledge, how is it that Yarelyn was able to get 3 ahold of you? How did she know that you knew 4 something? 5 A So, like I said, two of my innkeepers, 6 my innkeeper, my manager had reached out to her 7 team, I think through email, and one of them 8 texted me and said, hey, do you mind if we give 9 Yarelyn your phone number. 10 Q Now, you also communicated on Twitter; 11 did you not, about this case? 12 A Yeah. Two weeks prior to Yarelyn 13 reaching out to me, someone had made a comment 14 about something that happened by the fire pit, and 15 I said that's not my recollection. I didn't 16 see — that's not — that's not what I saw. 17 Q So, who was it that made a comment 18 about something that happened at the fire pit? 19 A So, once I was told about the fact that 20 Hicksville was mentioned, I went and did a Twitter 21 search of Hicksville trailer, so it was, I don't 22 know who it was, but I was just, like, what are</p>
<p>6909</p> <p>1 THE COURT: Any questions, 2 Ms. Bredehoft? 3 MS. BREDEHOFT: Yes, Your Honor. 4 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND 5 COUNTERCLAIM PLAINTIFF 6 BY MS. BREDEHOFT: 7 Q So, Mr. Night, you were contacted by an 8 attorney for Mr. Depp on May 3rd? 9 A Yes. 10 Q Okay. And you said it was Carolyn? 11 A Jarelyn. 12 Q Oh, Yarelyn. I've got it. 13 A I think it's pronounced "Jare-a-lyn." 14 Q Can you tell us the conversation you 15 had with her at that time? 16 A Yeah, she just asked me my recollection 17 of the evening, and I told her and she said, okay, 18 would you mind testifying? And I said sure. And 19 she said, okay, well, then, we're not sure if 20 we're going to call you or not, but just in case, 21 please, don't watch anything having to do with the 22 case. And I said I will do.</p>	<p>6911</p> <p>1 they saying about Hicksville? And so, that was 2 why I did a search, just to see, because it was 3 weird and fascinating because the night, to me, 4 wasn't that remarkable in the context of all the 5 different experiences I've had at that Trailer 6 Palace. 7 Q So, explain to me, please, what you 8 mean by you did a "trailer search [sic]." 9 A So, if you go to Twitter and you put in 10 keywords into a search, all the tweets regarding 11 that subject come up, or anything with those 12 keywords in it. So that is how I found the tweet 13 that I replied to. 14 Q Okay. And how many tweets did you find 15 that mentioned Hicksville when you did that 16 trailer search? 17 A Probably, like, five or six. I only 18 replied to one of them. 19 Q Okay. And what do you recall those 20 tweets saying about Hicksville? 21 A The one that I replied to said that 22 there was some incident by the fire pit and Johnny</p>

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67 (6912 to
6915)

<p style="text-align: right;">6912</p> <p>1 was yelling at Amber. And I replied that my – 2 that I didn't see that. I was there all night and 3 I was, you know, I was working that night, so I 4 didn't see anything like that. 5 Q So, your best recollection on that one 6 was that somebody said somebody was testifying 7 that Johnny was yelling at Amber? 8 A Yeah. And I believe grabbed her or 9 something along those lines. 10 Q Do you recall who said Johnny was 11 yelling at Amber and grabbed her? 12 A I have no idea. It was a stranger. So 13 I didn't really pay attention to who was writing 14 it. 15 Q All right. And you said that you 16 responded to it. How did you respond to it? 17 A I said that's not what happened. I was 18 there all night. Yeah, basically. 19 Q Okay. 20 A I'm paraphrasing. 21 Q Did you say anything about what you 22 thought happened?</p>	<p style="text-align: right;">6914</p> <p>1 understanding of what the security guard said? 2 A I just got a text that somebody in the 3 trial had said that they were talking about 4 Trailer Palace during the trial. And so, that's 5 what led me to go on Twitter and do a search. 6 Q And did you have any communications 7 with the two innkeepers about what you knew or 8 what you thought? 9 A No. I haven't talked to them in years 10 and still haven't, regarding the case. 11 Q So, how is it that the innkeepers, 12 then, contacted you and said do you mind if we 13 give you the telephone number to the attorneys? 14 A They still had me in their phone and 15 Kristi, who was the manager at the time, is the 16 one that texted me and said, hey, do you mind if 17 we pass this along? Mr. Depp's attorneys want to 18 talk to you. 19 Q Do you mind if we pass what along? 20 A Your phone number. 21 Q Right. But how is it that -- what is 22 the communication you had with the innkeepers that</p>
<p style="text-align: right;">6913</p> <p>1 A I just said that didn't happen. I 2 didn't say what. I believe I said maybe something 3 along the lines of from what I saw, Amber was the 4 one acting jealous, not Johnny. 5 Q And you said this to one of the tweets? 6 A Yes. 7 Q Do you recall whether that was the 8 umbrella man? 9 A I don't recall. That's a ridiculous 10 name, though. 11 Q So tell me about the other five tweets 12 that you recall seeing when you ran your trailer 13 search. 14 A I think they were similar in nature, 15 but I don't specifically remember the details of 16 them. That was pretty much the only one I 17 remember, and that's the only one I replied to. 18 Q Do you remember anything about the 19 other five and what was said? 20 A No. 21 Q When you said that somebody told you 22 about a security guard, what was your</p>	<p style="text-align: right;">6915</p> <p>1 even led them to understand that you believed you 2 had knowledge about Hicksville, the Hicksville 3 incident? 4 A There was no conversation. They knew 5 because they were both working that same night, 6 Jenna was the innkeeper, and she was there along 7 with me that night. Kristi was the one who texted 8 me and she had come in the following morning for 9 her shift, and I slept over. I was live-in 10 innkeeper that night. 11 Q So I'm trying to understand. So just 12 based on the fact that seven years ago, they 13 happened to know that you were working that night? 14 A Nine years ago, and it's because I was 15 there with them. 16 Q My math -- well, it's 2022 right now, 17 and that was what year? 18 A 2013. 19 Q 2013, you're right. 20 How is it that out of the blue, they 21 remembered, nine years ago, that you worked there 22 that night and that you might have some knowledge?</p>

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<p style="text-align: right;">6916</p> <p>1 A I mean, to be honest, like, we do get 2 celebrities sometimes, but it was, you know, it's 3 not that unmemorable. It's not like it's any 4 other night of the week. So I'm sure they 5 remembered the specifics of that night. 6 Q Had Mr. Depp's attorneys ever attempted 7 to contact you before? 8 A No. 9 Q Had you ever attempted to contact 10 Mr. Depp's attorneys before? 11 A No. I had no interest. 12 Q All right. Have you had any 13 conversations with Mr. Depp's attorneys other than 14 the one you described with Yarelyn? 15 A Since? 16 Q Yes. 17 A Well, I met with Camille last night. 18 Q What was that conversation, please 19 describe. 20 A I just went through, you know, the 21 story again that I had told Yarelyn. 22 Q And let's hear what that story was.</p>	<p style="text-align: right;">6918</p> <p>1 course of the night, so it was my recollection of 2 those events during that time. 3 Q And what did Ms. Vasquez say to you? 4 MR. CHEW: Your Honor, this is 5 beyond -- we object on the grounds that it's 6 beyond the scope of the voir dire. 7 MS. BREDEHOFT: No, whatever she said 8 to him -- 9 MR. CHEW: May I, please, finish 10 stating my objection, Your Honor. 11 THE COURT: Go ahead, yes, sir. 12 MR. CHEW: The objection is that it's 13 beyond the scope of the voir dire. Your Honor 14 enumerated the three criteria which are relevant 15 here, and this is a rebuttal witness, so... 16 MS. BREDEHOFT: Your Honor, whatever 17 Ms. Vasquez shared with him is going to be very 18 important here because they knew, by this time, he 19 was going to be a witness. 20 THE COURT: But that was last night. 21 MS. BREDEHOFT: Right. 22 THE COURT: Now, does that fit into the</p>
<p style="text-align: right;">6917</p> <p>1 A You want me to go through -- 2 Q Yes. 3 A -- the whole story? 4 MR. CHEW: Your Honor, we would object 5 to attorney work product. 6 MS. BREDEHOFT: There's no attorney 7 work product. 8 THE COURT: No, I'll overrule that. 9 That's okay. 10 Go ahead. Go ahead, sir. 11 THE WITNESS: Sure. 12 A I described, like, them getting to the 13 Trailer Palace, the -- me showing them around, the 14 interactions I had when I was on duty with 15 Mr. Depp and Mr. Heard -- or Ms. Heard, how the 16 evening progressed throughout the night, the 17 levels of drinking and drug use that I witnessed, 18 the -- what the state of the damaged trailer the 19 next morning, and, basically, just, yeah, the 20 details that I had only, you know, spent, total, 21 45 minutes to an hour with Mr. Depp and Ms. Heard 22 throughout the evening -- throughout the entire</p>	<p style="text-align: right;">6919</p> <p>1 one of the three factors of deciding whether or 2 not he's going to testify? 3 MS. BREDEHOFT: Well, one of the three 4 factors -- Your Honor, may I approach so that the 5 witness doesn't hear? 6 THE COURT: Okay. That's fine. 7 (Sidebar.) 8 THE COURT: I'm just determining these 9 three factors. 10 MS. BREDEHOFT: And I understand that. 11 But if they -- if Ms. Vasquez shared any of the 12 information that any of the witnesses said -- 13 THE COURT: You can ask if she shared 14 any information about what other witnesses said, 15 if you want to ask that question. I think that's 16 fair. 17 MS. VASQUEZ: We don't have an 18 objection to that, Your Honor. 19 MR. CHEW: Thank you, Your Honor. 20 THE COURT: Uh-huh. 21 (Open court.) 22</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

69 (6920 to
6923)

<p>6920</p> <p>1 BY MS. BREDEHOFT: 2 Q Mr. Night. 3 A Yes. 4 Q Did Ms. Vasquez provide you with any 5 information that anyone had testified to or said 6 at any point? 7 A No. She didn't talk about anything 8 except for asking me my experience and just 9 getting a clear understanding of what my 10 experience was. She didn't mention anything 11 outside of the scope of what I saw and just asked 12 me for the facts and told me, just tell the truth 13 and let me know, you know. 14 Q Do you know what any of the witnesses 15 said in this trial? 16 A About? I mean, outside of what I 17 described earlier with the -- a friend of mine 18 texting that someone was talking about Trailer 19 Palace, I do not. 20 Q Do you know whether any of the 21 witnesses testified about any jealousy? 22 A Other than the tweet that I replied to?</p>	<p>6922</p> <p>1 no communications with Ms. Vasquez until last 2 night. They supplemented with him on Sunday. So 3 they obviously knew he was going to be a witness. 4 THE COURT: On Sunday, they knew he was 5 going to be a rebuttal witness. 6 MS. BREDEHOFT: Right. But if they 7 didn't talk to him until last night -- if they 8 didn't know he was going to be a rebuttal witness 9 back when they talked to him on May 3rd, then the 10 fact that they talked to him last night would have 11 been after they already identified him. 12 THE COURT: Right. They can identify 13 him as a rebuttal witness and then speak with him 14 before he testifies. I don't see what the issue 15 is. 16 MS. BREDEHOFT: Then the second issue, 17 Your Honor, is once he learns that Hicksville has 18 been raised here, he runs a trailer search, and he 19 can't remember any of the others, but this one, 20 Your Honor -- 21 THE COURT: It's a (indiscernible). I 22 can see it.</p>
<p>6921</p> <p>1 No. 2 Q All right. Thank you. 3 MS. BREDEHOFT: Your Honor, may we 4 approach? 5 THE COURT: Do you have any questions? 6 MS. VASQUEZ: No. 7 THE COURT: Sir, if you can have a seat 8 outside the courtroom. 9 THE WITNESS: Sure. Can I leave my 10 water? 11 THE COURT: Yes, you can leave your 12 water. 13 (Sidebar.) 14 MS. BREDEHOFT: So, first, Your Honor, 15 it was 19 days between when they learned he may be 16 a witness -- 17 THE COURT: But they said they might 18 not use him as a rebuttal witness. They don't 19 have to provide you with witnesses they think they 20 might provide as rebuttal. That's not a rule. 21 MS. BREDEHOFT: Your Honor, if I may, 22 there was no -- according to Mr. Night, there was</p>	<p>6923</p> <p>1 MS. BREDEHOFT: I think it's very 2 important because here we have the Umbrella Guy 3 saying Johnny Depp will be accused of being 4 jealous because a woman was sitting close to Amber 5 Heard, Depp said that she had taken happy 6 something, and then Depp was accused of removing 7 her hand and yelling at Amber, then she responds 8 back, that never happened. I was with them all 9 night. Amber was the one acting all jealous and 10 crazy. 11 So he's commenting on this and he knows 12 what his testimony is. 13 THE COURT: Again, on that day, it 14 hadn't happened yet. It had not happened yet. It 15 was April something. 16 MS. VASQUEZ: 21st. 17 THE COURT: It hadn't happened yet, so 18 he's not commenting on testimony that happened in 19 this trial, he's commenting on whatever that 20 person posted. 21 MS. BREDEHOFT: Your Honor, I think 22 that is manifestly unfair and prejudicial to us.</p>

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70 (6924 to
6927)

<p style="text-align: right;">6924</p> <p>1 Hicksville has been around for years here, and the 2 fact that they suddenly, out of the blue, want to 3 call and talk to him, you know, in the middle of 4 this trial makes no sense at all. We even had a 5 court order that said that they had to provide 6 whatever receipts they have for the damage to 7 Hicksville. They gave us nothing. Obviously, 8 they would have had to investigate that. 9 MS. VASQUEZ: We will hear why. Trust 10 me. Everyone will hear why. 11 THE COURT: If we can bring the focus 12 back to these factors, where we're at now. 13 MS. BREDEHOFT: All right, Your Honor. 14 THE COURT: So, these are the factors. 15 So do you have anything else to say about the 16 factors? 17 MS. BREDEHOFT: So, Your Honor, 18 impropriety, the fact that they knew on May 3rd 19 and didn't identify until May 22nd, I thought -- 20 THE COURT: It's the impropriety of the 21 witness. Let's just focus on the witness. 22 MS. BREDEHOFT: Then I think searching</p>	<p style="text-align: right;">6926</p> <p>1 impropriety whatsoever. He is not subject to the 2 rule on witnesses. There's clearly no prejudice 3 to the defendant, and there's no effect on his 4 testimony. He's going to say exactly what his 5 recollection was. What they're objecting to is 6 he's going to tell the truth and the truth is 7 inconsistent with what Ms. Heard has said. 8 THE COURT: Anything further? 9 MS. BREDEHOFT: I -- 10 THE COURT: Well, weighing the factors 11 in this matter -- Judy, can you hear me okay? 12 Weighing the factors in this matter, I 13 don't think the party intentionally wasn't subject 14 to the rules, and as soon as he was contacted 15 about possibly being a rebuttal witness, he did 16 not watch anything. He hasn't learned anything 17 substantive, aspects of the case, from any earlier 18 testifying witnesses, other than the security 19 guard. He's testified he heard something about 20 security guard. But other than that, nothing 21 would shape his testimony to correspond with any 22 earlier witness. And if there is any prejudicial</p>
<p style="text-align: right;">6925</p> <p>1 trailers to find out what's been said about 2 Hicksville, I think that suggests that he's trying 3 to find out more information. 4 THE COURT: I'm sorry, Ms. Bredehoft. 5 MS. BREDEHOFT: No, it's okay. The 6 second thing, Your Honor, is the prejudice to us. 7 If we had known on May 3rd, we could have said, 8 Your Honor, you know, let us just do a 30-minute 9 deposition of him or something, so we can at least 10 prepare for this so we know something here. You 11 know, what Ms. Vasquez has learned of 12 substantial -- 13 MR. CHEW: No effect, I think, is the 14 fair criteria. 15 MS. BREDEHOFT: So, now, we're going to 16 have this person who's going to testify, you know, 17 that he has this knowledge, and we have had no 18 opportunity for discovery or prepare or find 19 another rebuttal witness beyond that. 20 THE COURT: That's what rebuttal 21 witnesses are. 22 MR. CHEW: Your Honor, there's no</p>	<p style="text-align: right;">6927</p> <p>1 value, the probative value outweighs the 2 prejudice. 3 MR. CHEW: Thank you, Your Honor. 4 THE COURT: At this point, I will allow 5 him to testify. The witness will be very limited. 6 Do you understand? 7 MR. CHEW: Yes, Your Honor. 8 THE COURT: All right. 9 (Open court.) 10 THE COURT: So based on weighing the 11 factors, I'm going to allow Mr. Night to testify. 12 If we can get Mr. Night back in. If I knew you 13 were going to do a sidebar, I wouldn't have made 14 him leave. I never know. 15 All right, sir, if you could just stay 16 there while we get the jury, okay? 17 All right. Are we ready for the jury? 18 MR. CHEW: Yes, Your Honor. 19 MS. BREDEHOFT: Yes, Your Honor. 20 THE COURT: Thank you. 21 We're going to swear him in again, in 22 front of the jury, okay?</p>

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71 (6928 to
6931)

<p style="text-align: right;">6928</p> <p>1 (Whereupon, the jury entered the 2 courtroom and the following proceedings took 3 place.) 4 THE COURT: All right. You may be 5 seated. 6 All right. Thank you, ladies and 7 gentlemen. I apologize for the interruption. 8 You're going to notice, as we get closer to the 9 end of the testimony, you're probably going to 10 have more interruptions, and I apologize for that, 11 but there's just some matters we have to take up 12 outside your presence, okay? Thank you. 13 All right. Your next witness. 14 MS. VASQUEZ: We're going to call 15 Morgan Night. 16 THE COURT: All right. Mr. Night, if 17 you stand to be sworn. 18 MORGAN HIGBY NIGHT 19 A witness called on behalf of the 20 plaintiff and counterclaim defendant, having been 21 first duly sworn by the Clerk, testified as 22 follows:</p>	<p style="text-align: right;">6930</p> <p>1 beautiful, like, snow town above Palm Springs. 2 And all the units are A-frames instead of 3 trailers, which we have — it's obviously a very 4 different climate than Joshua Tree, which is a 5 desert area. The rooms, which are themed at both 6 places, are trailers, finished trailers from the 7 '50s through the '70s at Hicksville Trailer 8 Palace. There's also different kind of amenities; 9 there's a pool at Joshua Tree, there's a rec room 10 up at Hicksville Pines. 11 Q When did you first become the owner of 12 the Trailer Palace? 13 A Trailer Palace, I started building it 14 in 2009, it took about a year with my 15 collaborator, Stephen Butcher, on the trailers, 16 and we got done and opened in 2010. 17 Q Did there come a time that you sold the 18 Hicksville Trailer Palace. 19 A Yeah, I did, the beginning of 2020. I 20 had some health issues and it was too much to run 21 both at the same time, so I chose Idyllwild 22 because it was newer and shinier.</p>
<p style="text-align: right;">6929</p> <p>1 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND 2 COUNTERCLAIM DEFENDANT 3 THE COURT: Sir, if you could have a 4 seat. 5 BY MS. VASQUEZ: 6 Q Good afternoon, Mr. Night. 7 A Good afternoon, Camille. 8 Q Would you, please, state your full name 9 for the record. 10 A Morgan Higby Night. 11 Q Mr. Night, where are you from? 12 A I live in Los Angeles, California. 13 Q And what do you do for a living? 14 A So, I currently own and run Hicksville 15 Pines Bud and Breakfast in Idyllwild, California, 16 and I created and ran Hicksville Trailer Palace in 17 Joshua Tree, California starting in 2009. 18 Q And how is Hicksville Pines Bud and 19 Breakfast different from Hicksville Trailer 20 Palace? 21 A So, Hicksville Pines Bud and Breakfast 22 is up in the mountains of Idyllwild, which is a</p>	<p style="text-align: right;">6931</p> <p>1 Q And just for my sake, how long did you 2 own the Trailer Palace? 3 A So, ten years of us being open, 4 11 years total. 5 Q And what was the Hicksville Trailer 6 Palace? 7 A So, it started out as an artist 8 retreat. I was a filmmaker at the time and wanted 9 a place to get away and work on film projects 10 outside of Los Angeles. I also put in a recording 11 studio, so musicians could record records there. 12 I had lived in New Orleans for five years and 13 there's an amazing recording studio there called 14 Kings Way, where all the musicians would come and 15 they'd live in this big mansion and record their 16 records, and I just thought that was a really neat 17 thing for artists to get away and create their -- 18 create whatever they're working on. 19 Over the course of the build-out of all 20 the trailers, theme trailers, which I'm a huge fan 21 of this hotel called Madonna Inn, so I wanted to 22 do really detailed, themed trailers. It became</p>

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72 (6932 to
6935)

<p style="text-align: right;">6932</p> <p>1 too expensive to just make a living off of a 2 artist retreat so I decided, before I was done, to 3 make it a hotel as well. 4 Q And what were your job 5 responsibilities, generally speaking, when you 6 owned the Hicksville Trailer Palace? 7 A So, I would be live-in manager some 8 nights, a couple nights a week, I would also drive 9 out from Los Angeles twice a week and bring 10 supplies that you can't get out in the Yucca 11 Valley area and Joshua Tree. There's just a lot 12 of things like, you know, Smart & Finals, Costcos, 13 and stuff, so I would drive that stuff out. 14 There's also no USPS, so sometimes I'd have to get 15 things shipped to my house and drive them out as 16 well. I would also just do – constantly building 17 and creating new stuff for the Trailer Palace, 18 whether it's new trailers or amenities. So I 19 would be working on that stuff as well. I'm a big 20 fan of the fact that Disneyland is always making 21 it better and better. 22 Q And when you were the live-in manager,</p>	<p style="text-align: right;">6934</p> <p>1 out the entire place so they could have a night 2 there in privacy. 3 Q What do you recall, if anything, about 4 Mr. Depp and Ms. Heard's arrival to the Hicksville 5 Trailer Palace? 6 A Mr. Depp got lost, so his security 7 guard, who arrived early, asked me if I could go 8 fetch them because he had an old car that didn't 9 really fare on the dirt roads out there, which are 10 pretty horrible, so I went out and made sure that 11 they got themselves and the car back to Hicksville 12 safely. 13 Q Do you remember, approximately, at what 14 time that was? 15 A It was 3 to 4 in the afternoon. 16 Q What was Mr. Depp's demeanor when they 17 first arrived? 18 A At Trailer Palace, he was super excited 19 about the place. Really complimentary. Just had 20 a lot of questions and just seemed like he was in 21 a really great mood. 22 Q And how about Ms. Heard's demeanor?</p>
<p style="text-align: right;">6933</p> <p>1 does that mean that you spent the night at the 2 Hicksville Trailer Palace? 3 A Yeah, we have a house on site where the 4 recording studio was, and there's a bedroom in 5 there. So whoever is live-in manager those nights 6 stays in the house and basically lives there. 7 There's a kitchen and everything. 8 Q Have you ever met the plaintiff in this 9 case, Mr. Depp? 10 A I had met him, really briefly, at the 11 Viper Room in the late '90s. I worked with some 12 of the people that performed there and was good 13 friends with this girl, Robin, from the Pussycat 14 Dolls, and some other friends and this band, The 15 Imposters, so I was there and I met him once. 16 Q How about Ms. Heard? Ever met her? 17 A I had never met her before they were 18 guests at the hotel. 19 Q When was the first time you met 20 Mr. Depp and Ms. Heard together? 21 A In late May 2013, when they were 22 guests. Mr. Depp's assistant, Nathan, had rented</p>	<p style="text-align: right;">6935</p> <p>1 Anything stick out? 2 A She was pretty quiet. She just kind of 3 didn't say that much when I was giving them the 4 tour of the grounds and the trailer. 5 Q And was anyone else with Mr. Depp and 6 Ms. Heard when they first arrived? 7 A There was people that were arriving 8 throughout the afternoon, so there was – I think, 9 10 to 12 people total ended up staying. The 10 security guard had gotten there earlier, just to 11 check out the place. But, yeah. 12 Q And did I misunderstand your testimony 13 previously that the entire trailer park was rented 14 out by Mr. Depp and Ms. Heard? 15 A Yeah. The whole place slept, I 16 believe, at the time, about 25 people, but there 17 were only 10 to 12 in this party. 18 Q And who was part of that party, besides 19 Mr. Depp and Ms. Heard? 20 A I'm really horrible with names. But I 21 remember one of them was Ms. Heard's sister and 22 the security guard I mentioned before. But I</p>

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73 (6936 to
6939)

<p style="text-align: right;">6936</p> <p>1 honestly forgot his name too.</p> <p>2 Q What happened when Mr. Depp and</p> <p>3 Ms. Heard first came onto the property?</p> <p>4 A So, I gave them a tour, we give all</p> <p>5 guests a tour of their specific trailer and the</p> <p>6 grounds and show them around the -- when someone</p> <p>7 rents the whole place, they get another trailer</p> <p>8 called the bar trailer, which is basically a place</p> <p>9 to set up their alcohol and stuff, and some people</p> <p>10 in the group were just putting their beverages in</p> <p>11 that area.</p> <p>12 Q And where were you when Mr. Depp and</p> <p>13 Ms. Heard -- did there come a time when Mr. Depp</p> <p>14 and Ms. Heard went to the bar trailer?</p> <p>15 A I didn't notice. Most of the time, my</p> <p>16 interactions with them -- everything is kind of</p> <p>17 centrally located, so there's a fire pit, bar</p> <p>18 trailer and picnic tables all right in the same</p> <p>19 area. So they were generally around that area the</p> <p>20 entire evening that I saw them.</p> <p>21 Q What did you observe of Mr. Depp and</p> <p>22 Ms. Heard as the evening progressed?</p>	<p style="text-align: right;">6938</p> <p>1 A So, throughout the course of the</p> <p>2 evening, I was probably 40 -- mostly with</p> <p>3 Mr. Depp, but 45 minutes to an hour, total. So it</p> <p>4 was -- yeah, that's over the whole course until</p> <p>5 the end of the night, after the check-in.</p> <p>6 Q Okay. And did you have an opportunity</p> <p>7 to observe Mr. Depp interact with other people,</p> <p>8 guests of the property that evening?</p> <p>9 A Yes. I saw him hanging out with the</p> <p>10 security guard at one point. And outside of the</p> <p>11 time that him and Jenna were singing around the</p> <p>12 campfire, he was off by himself a lot of the time,</p> <p>13 and Ms. Heard was over at the campfire with her</p> <p>14 friends and seemed to have a good time.</p> <p>15 Q And if you haven't already, can you</p> <p>16 generally describe for the jury your observations</p> <p>17 of Ms. Heard that evening?</p> <p>18 A Yeah. She was -- she seemed to be</p> <p>19 having a really nice time with her friends around</p> <p>20 the campfire, and, yeah, everyone was in a pretty</p> <p>21 good mood.</p> <p>22 Q Did there come a time in the evening</p>
<p style="text-align: right;">6937</p> <p>1 A So, Mr. Depp was super -- just super</p> <p>2 curious and really nice. He was also really</p> <p>3 interested in my innkeeper because she was a</p> <p>4 musician, so they would talk about music a lot.</p> <p>5 At one point, the innkeeper, who lived at the</p> <p>6 next-door property, went home and grabbed her</p> <p>7 guitar, and they sung a song or two around the</p> <p>8 campfire in the early evening.</p> <p>9 There's another instance where</p> <p>10 Mr. Depp, the innkeeper, her name is Jenna, and</p> <p>11 myself were talking about books and music and</p> <p>12 Ms. Heard came over and kind of interjected. She</p> <p>13 seemed a little annoyed that Mr. Depp wasn't</p> <p>14 spending time with her.</p> <p>15 Q What about Ms. Heard's demeanor made</p> <p>16 you think that she was annoyed?</p> <p>17 A I think, just generally, she -- it's</p> <p>18 hard. Like she, I think -- you know. It was</p> <p>19 just, like, a gut reaction. Like, I can't</p> <p>20 describe it. But, you know...</p> <p>21 Q How long were you with Mr. Depp and</p> <p>22 Ms. Heard that evening, generally?</p>	<p style="text-align: right;">6939</p> <p>1 that you observed Mr. Depp and Ms. Heard have a</p> <p>2 disagreement or an argument?</p> <p>3 A Yes. I was speaking with Mr. Depp,</p> <p>4 just one-on-one, talking about Hicksville, and</p> <p>5 Ms. Heard came over and she said that I want to</p> <p>6 talk to you and seemed really upset about</p> <p>7 something. So I went and -- back in the house</p> <p>8 because it was really -- they went off on their</p> <p>9 own and she -- she started yelling at him, and I</p> <p>10 didn't want to hear it. It, honestly, was really</p> <p>11 triggering because I've been in a emotionally</p> <p>12 abusive relationship before --</p> <p>13 MS. BREDEHOFT: Objection. Move to</p> <p>14 strike.</p> <p>15 THE COURT: What's the objection?</p> <p>16 MS. BREDEHOFT: Your Honor, may we</p> <p>17 approach?</p> <p>18 THE COURT: Okay. Sure.</p> <p>19 (Sidebar.)</p> <p>20 MS. BREDEHOFT: So, he's testified that</p> <p>21 she was yelling and he said he wanted to go away</p> <p>22 because he's been in an abusive relationship</p>

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74 (6940 to
6943)

<p>6940</p> <p>1 before. Your Honor, that's not appropriate for 2 the jury. It's nonresponsive to the question. 3 It's prejudicial, and it's hearsay. 4 MS. VASQUEZ: Why is it hearsay? 5 THE COURT: It's not hearsay. 6 MS. BREDEHOFT: But it's nonresponsive 7 to the statement. 8 THE COURT: Nonresponsive. I'll 9 sustain as to the nonresponsive. 10 MS. VASQUEZ: Okay. 11 (Open court.) 12 BY MS. VASQUEZ: 13 Q Mr. Night, will you, please, just 14 explain for us what you observed when you saw 15 Mr. Depp and Ms. Heard having an argument? 16 A Yes. So, Ms. Heard asked him to go 17 talk off to the side, and she was upset with him, 18 and she was yelling at him, and I personally had 19 been -- 20 MS. BREDEHOFT: Objection. 21 THE COURT: All right. I'll sustain 22 the objection.</p>	<p>6942</p> <p>1 really sorry about that. She was upset. 2 MS. BREDEHOFT: Objection, Your Honor. 3 Hearsay. 4 THE COURT: Sustained. 5 Next question. 6 Q What, if any, type of reaction did 7 Mr. Depp have? 8 A He was just really -- 9 MS. BREDEHOFT: Objection, Your Honor. 10 Hearsay. He's going to say it again. 11 MS. VASQUEZ: It's the reaction, it's 12 not the statement. 13 THE COURT: All right. If you can make 14 that clear, that's fine. 15 Q Yeah, just what type of physical 16 reaction did Mr. Depp have after the argument 17 between Mr. Depp and Ms. Heard? 18 A He honestly, throughout the rest of the 19 night, became a lot more quiet and was just 20 very -- more petulant. At the beginning of the 21 night, he was a lot more outgoing and extroverted, 22 and as the course of the night went on, he was</p>
<p>6941</p> <p>1 THE WITNESS: Okay. 2 Q If you could, just explain to the jury 3 what you observed when you saw Mr. Depp and 4 Ms. Heard having an argument. 5 A Okay. 6 Q He was kind of cowering and seemed 7 almost afraid, and it was really, like, odd to see 8 because he was older than her, obviously, so, but, 9 I just went back in the house because I didn't 10 want to -- 11 MS. BREDEHOFT: Objection. To what he 12 did. 13 THE COURT: All right. I'll sustain as 14 to -- 15 MS. VASQUEZ: Understood. 16 Q So after you observed the argument, 17 fair to say you went back to your house on the 18 site? 19 A Yes, I did. Yeah. 20 Q What happened after that? 21 A So when I saw Mr. Depp on my next 22 rounds, he apologized profusely and said I'm</p>	<p>6943</p> <p>1 less and less so and more quiet. 2 Q Did you observe any of the guests 3 consuming alcohol while on the property? 4 A I assume they were. I mean, people had 5 cups and there was alcohol set up in the bar 6 trailer. But I didn't physically see them pour 7 alcohol into their cup and cup go into their 8 mouth, per se. 9 Q Did you witness Mr. Depp drink any 10 alcohol that evening? 11 A I couldn't say. 12 Q Anything about Mr. Depp's demeanor that 13 made you think he was, perhaps, intoxicated? 14 A Yes, as the night went on, he -- I am a 15 former bar owner, so even though I wasn't drinking 16 that night, I'm very familiar with the signs. So 17 just as the night went on, like I said, he became 18 more and more quiet, but he also, as we would have 19 conversations, his head would kind of sway a 20 little bit back and forth, which was a little, you 21 know, he was much less sharp than he was earlier 22 in the night.</p>

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75 (6944 to
6947)

<p style="text-align: right;">6944</p> <p>1 Q Did Ms. Heard appear intoxicated to 2 you? 3 A She did. She seemed -- I think when 4 she was angry at him, it seemed like she was 5 intoxicated, but that's just based on my 6 experience and my own personal trauma dealing with 7 abuse. 8 MS. BREDEHOFT: Objection. Your Honor. 9 Move to strike. 10 THE COURT: All right. I'll sustain 11 the objection. We'll strike it from the record. 12 Please disregard that testimony. 13 Q Did you observe anyone do or take 14 drugs? 15 A I did not. 16 Q Did you witness Mr. Depp and Ms. Heard 17 interact, other than the argument that you 18 previously described for the jury? 19 A At the end of the night, I heard a 20 commotion. I was inside the house and came out. 21 I couldn't tell what was going on. And Mr. Depp 22 and Ms. Heard were having a discussion about --</p>	<p style="text-align: right;">6946</p> <p>1 A The next morning, we have check-out at 2 noon, at the time, before COVID, and so around 3 11:00, one of my innkeepers let me know that there 4 was some damage -- 5 MS. BREDEHOFT: Objection. Hearsay. 6 Q Did something happen that caused you to 7 go to Mr. Depp and Ms. Heard's trailer? 8 A Yes. I was informed that -- 9 MS. BREDEHOFT: Objection. Hearsay. 10 MS. VASQUEZ: It's not being offered 11 for the truth, Your Honor. I mean, may we 12 approach on this one topic? 13 THE COURT: Sure. 14 MS. VASQUEZ: Thank you. 15 (Sidebar.) 16 MS. VASQUEZ: He needs to be able to 17 testify that he was called or summoned to the 18 trailer to observe the damage. 19 THE COURT: Okay. 20 MS. VASQUEZ: So he's just going to say 21 that his innkeeper informed him that there was 22 damage, he needed to go assess it. That's it.</p>
<p style="text-align: right;">6945</p> <p>1 about -- I'm not sure what, but then they went to 2 their trailer. At that point, a lot of people had 3 already gone to bed. So it just kind of petered 4 out, everyone went to bed, including myself, and I 5 didn't hear anything else the rest of the night. 6 Q What time did the evening come to an 7 end? 8 A I would say it was almost around 3 a.m. 9 Q Did you ever see Mr. Depp grab anyone? 10 MS. BREDEHOFT: Objection. Leading. 11 THE COURT: Sustained. 12 Q Did you ever see Mr. Depp become 13 physical with anyone? 14 MS. BREDEHOFT: Objection. Leading. 15 THE COURT: Sustained. 16 Next question. 17 Q Did you ever witness Mr. Depp get angry 18 that evening? 19 MS. BREDEHOFT: Objection. Leading. 20 THE COURT: Sustained. 21 Q What, if anything, happened the next 22 morning?</p>	<p style="text-align: right;">6947</p> <p>1 Not being offered for the truth. 2 MS. BREDEHOFT: It is offered for the 3 truth. 4 THE COURT: Don't you want to hear 5 about damage? 6 MS. VASQUEZ: Don't you want that? 7 MS. BREDEHOFT: Yes. 8 THE COURT: Then let him tell them 9 about the damage. 10 MS. BREDEHOFT: I'll withdraw. 11 MS. VASQUEZ: Thank you. 12 (Open court.) 13 BY MS. VASQUEZ: 14 Q What, if anything, happened the next 15 morning, Mr. Night? 16 A The innkeepers let me know that there 17 was some damage in one of the trailers, and it 18 happened to be Mr. Depp and Ms. Heard's trailer. 19 So I wanted to inspect the trailer because I was 20 extremely worried. All those trailers that Steve 21 and I worked on were like my babies, and the one 22 they were staying in was the only one that was</p>

<p style="text-align: right;">6948</p> <p>1 mostly original and restored, 1950s style, and so 2 I was very concerned. 3 Q So what did you observe when you went 4 to the trailer? 5 A I observed that there was a light 6 sconce by the bathroom in the bedroom that had 7 been broken off the wall and a couple pieces were 8 on the floor, and they were -- and, yeah, it was 9 basically just broken. The light fixture was 10 hanging on the wall still, except for the pieces 11 that were on the floor. 12 Q Did you come to understand how that 13 happened? 14 MS. BREDEHOFT: Objection. Foundation 15 and -- 16 THE COURT: Lay a foundation. I'll 17 sustain as to foundation, how he knew. 18 Q Did you ask how the sconce was broken? 19 MS. BREDEHOFT: Objection. Hearsay. 20 THE COURT: Sustained. 21 Q How often do light fixtures in the 22 trailers break?</p>	<p style="text-align: right;">6950</p> <p>1 A To be honest, I was relieved because it 2 was not a big deal. There was already another 3 light in the room, so I just tucked the wires in 4 the wall until I had, a few months later, time to 5 buy -- it was matching sconce with another one in 6 the room, so I had to, on eBay, find a matching 7 pair that would fit there. And when I finally got 8 around to it, I was able to get that and charge it 9 to Nathan, whose credit card I had. 10 Q And what was your understanding of who 11 Nathan was? 12 A Mr. Depp's assistant. 13 Q And what did you charge Nathan or 14 Mr. Depp for replacing that pair of light 15 fixtures? 16 A The pair came out to \$62. 17 Q While you were on site, Mr. Night, did 18 you ever wear a mesh shirt? 19 A No. I would absolutely never wear 20 that. 21 Q At any time during Mr. Depp and 22 Ms. Heard's stay on the property, did you see</p>
<p style="text-align: right;">6949</p> <p>1 A They break pretty often. I mean, it's 2 not like a usual thing, but things in the trailer 3 generally get broken because it's all vintage 4 trailers, and I would say as much as every couple 5 weeks there's some incident of damage in one of 6 the trailers. In this case, Mr. Depp had told me 7 that -- 8 MS. BREDEHOFT: Objection. Hearsay. 9 THE COURT: Sustain the objection. 10 A So, anyway, yes. 11 Q Beyond the light fixture, was anything 12 else in the trailer damaged? 13 A No. Everything was fine. In fact, we 14 have a -- something we call a piggy fee that we 15 address to guests that if there's anything, what 16 we call, inconsiderate or unusually large messes, 17 we charge them extra for it, for \$25 an hour 18 cleaning fee. But they did not receive one of 19 those because everything, outside of the light 20 fixture, looked fine. 21 Q What was your reaction to seeing the 22 damaged light fixture?</p>	<p style="text-align: right;">6951</p> <p>1 Mr. Depp become physical with anyone? 2 MS. BREDEHOFT: Objection. Leading. 3 THE COURT: Overruled. That's fine. 4 Q I'm sorry, that answer was? 5 A I never saw Mr. Depp get physical with 6 anyone when I saw him. 7 MS. VASQUEZ: Thank you, Your Honor. 8 No further questions. 9 THE COURT: All right. 10 Cross-examination. 11 MS. BREDEHOFT: Thank you, Your Honor. 12 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND 13 COUNTERCLAIM PLAINTIFF 14 BY MS. BREDEHOFT: 15 Q Mr. Night, you are a pretty big fan of 16 Johnny Depp, aren't you? 17 A I am not. To be honest, throughout the 18 evening, I -- 19 Q Sorry, I just asked you one question. 20 A Oh, I apologize. 21 Q We don't need the rest of that. 22 A Sorry.</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

77 (6952 to
6955)

<p>6952</p> <p>1 Q You wanted to participate in this 2 trial, didn't you? 3 A I did not. 4 Q You knew -- 5 A I was asked by the attorney, and I 6 wanted to -- they asked me and I said I'll be 7 happy to come and tell the truth. 8 Q You knew this was on camera, that it 9 was being broadcast to a lot of people, and you 10 saw testimony, did you not, in this case, and you 11 seized the moment and responded to the Umbrella 12 Guy, the lead person for Mr. Depp's Twitters; did 13 you not? 14 MS. VASQUEZ: Objection. Your Honor. 15 Argumentative. Compound. 16 THE COURT: Overruled. 17 A The Umbrella Guy is the lead -- the 18 lead what? 19 Q You know that he is one of the most 20 predominant pro-Depp Twitters out there? 21 A I have no idea. I don't care or follow 22 the Umbrella Guy.</p>	<p>6954</p> <p>1 MS. BREDEHOFT: And I'm going to go 2 ahead and ask you to redact, leave in 3 TheUmbrellaGuy [sic] and the date, and the 4 bringing in the Hicksville. 5 Your Honor, I'm sorry. 6 Q While she's working on that, did you 7 write and direct a piece called Matters of 8 Consequence, back in 1999? 9 A I did. 10 Q And didn't Mr. Depp's first wife, Lori 11 Anne Allison work as a makeup artist on that? 12 A She absolutely did. 13 Q While we're looking at that, four days 14 after you tweeted to umbrella man -- 15 A I thought it was Umbrella Guy? 16 Q Umbrella guy, okay. Well, all right, 17 now, we have this up. 18 I'm going to ask you to take a look at 19 what is Defendant's Exhibit 1903. 20 Do you see that? 21 A I do. 22 Q Okay. And that's from ThatUmbrellaGuy</p>
<p>6953</p> <p>1 Q In fact, you do follow a Twitter called 2 "Johnny Depp Fan," don't you? 3 A Absolutely not. 4 Q You don't? That's your testimony under 5 oath? 6 A No. 7 Q That's your testimony under oath? 8 A It is my testimony under oath. 9 Q On April 21st, Mr. Depp testified in 10 this case about Hicksville, didn't he? 11 A I wasn't here. 12 Q And, in fact, you tweeted, in response 13 to the Umbrella Guy, on April 21, '22, "that never 14 happened. I was with him all night. Amber was 15 the one acting all jealous and crazy"? 16 A Yes, I -- 17 Q Do you recall that in there? 18 A I do recall that. 19 MS. BREDEHOFT: Michelle, can you bring 20 that up, please. We're going to call it 21 Defendant's 1903. 22 THE COURT: 1903.</p>	<p>6955</p> <p>1 on 4/21/22, correct? 2 A Correct. 3 Q And it says "bringing in the Hicksville 4 incident accusations." 5 Do you see that? 6 A I do. 7 Q There's clearly Mr. Depp testifying 8 there, likely a video, right? 9 A Okay. 10 Q And you respond "That never happened. 11 I was with them all night. Amber was the one 12 acting all jealous and crazy." 13 Do you see that? 14 A I do. 15 MS. BREDEHOFT: Your Honor, I'm going 16 to move the admission of Defendant's 1903. 17 THE COURT: Any objection? 18 MS. VASQUEZ: Yeah, Your Honor, we 19 believe the first part of ThatUmbrellaGuy's tweet 20 should be unredacted for context. 21 A I have no idea what I was replying to. 22 MS. BREDEHOFT: It's hearsay. It's</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

78 (6956 to
6959)

<p>6956</p> <p>1 rank hearsay, and the context is --</p> <p>2 MS. VASQUEZ: Your Honor --</p> <p>3 THE COURT: Approach.</p> <p>4 (Sidebar.)</p> <p>5 MS. VASQUEZ: There's more to -- I</p> <p>6 mean, she can't argue hearsay for part of the</p> <p>7 tweet and not the other part of the tweet.</p> <p>8 THE COURT: You should give all of it.</p> <p>9 MS. VASQUEZ: Or none of it.</p> <p>10 THE COURT: The objection to hearsay in</p> <p>11 bringing the Hicksville incident, or if you want</p> <p>12 to bring all of it in, that's fine.</p> <p>13 MS. BREDEHOFT: Then let's take out</p> <p>14 bringing in the Hicksville.</p> <p>15 THE COURT: That's part of the</p> <p>16 response.</p> <p>17 MS. BREDEHOFT: I need TheUmbrellaGuy</p> <p>18 in and Mr. Depp's picture. All of that can come</p> <p>19 in, right?</p> <p>20 THE COURT: Well, the picture can come</p> <p>21 in.</p> <p>22 MS. BREDEHOFT: And ThatUmbrellaGuy?</p>	<p>6958</p> <p>1 Q Well, he's testified earlier that he</p> <p>2 talks to the Umbrella Guy.</p> <p>3 A That he what? That he talks to the</p> <p>4 Umbrella Guy?</p> <p>5 Q Right. Are you aware of that?</p> <p>6 A Honestly, this sounds like</p> <p>7 schizophrenia?</p> <p>8 Q Now, four days after this event, where</p> <p>9 you texted --</p> <p>10 MS. BREDEHOFT: Your Honor, it's in.</p> <p>11 Okay. Good.</p> <p>12 Q Four days after that, you tweeted</p> <p>13 something pretty nasty about Elon Musk, didn't</p> <p>14 you?</p> <p>15 A I did.</p> <p>16 Q Okay. Thank you.</p> <p>17 So you don't like Elon Musk, right?</p> <p>18 MS. VASQUEZ: Objection. Relevance.</p> <p>19 A I don't know Elon Musk.</p> <p>20 THE COURT: Overruled.</p> <p>21 MS. BREDEHOFT: Thank you.</p> <p>22 A So that was -- the context of that was</p>
<p>6957</p> <p>1 MS. VASQUEZ: I have no objection to</p> <p>2 ThatUmbrellaGuy.</p> <p>3 MS. BREDEHOFT: So just taking out</p> <p>4 bringing in the Hicksville?</p> <p>5 MS. VASQUEZ: Yeah, thank you.</p> <p>6 THE COURT: Right.</p> <p>7 (Open court.)</p> <p>8 THE COURT: All right. Make that</p> <p>9 redaction.</p> <p>10 With that redaction, any objection?</p> <p>11 MS. VASQUEZ: No, Your Honor. Thank</p> <p>12 you.</p> <p>13 THE COURT: So that will be in evidence</p> <p>14 as redacted.</p> <p>15 BY MS. BREDEHOFT:</p> <p>16 Q Now, so you reached out to the Umbrella</p> <p>17 Guy in this text, this Twitter, right?</p> <p>18 A I wouldn't call it reaching out.</p> <p>19 Q And, in fact, TheUmbrellaGuy is in</p> <p>20 Mr. Adam Waldman -- do you know who Adam Waldman</p> <p>21 is?</p> <p>22 A I have no idea.</p>	<p>6959</p> <p>1 that he --</p> <p>2 Q I didn't ask you for the context.</p> <p>3 A I apologize.</p> <p>4 Q Okay. But you texted something that</p> <p>5 had swear words in it; would you agree, about Elon</p> <p>6 Musk?</p> <p>7 A Yes.</p> <p>8 Q Okay. Now, let's talk about your</p> <p>9 recollections here.</p> <p>10 45 minutes to an hour. Your</p> <p>11 recollection is that Mr. Depp actually drove</p> <p>12 there?</p> <p>13 A Yes.</p> <p>14 Q What type of car was he driving?</p> <p>15 A An old one, it was a convertible.</p> <p>16 Q An old convertible?</p> <p>17 A I'm not a car guy, so I couldn't</p> <p>18 express the model.</p> <p>19 Q All right. And your recollection was</p> <p>20 this was May of 2013?</p> <p>21 A Yes.</p> <p>22 Q Okay. Do you recall when in May?</p>

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Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

79 (6960 to
6963)

<p>6960</p> <p>1 A Late May.</p> <p>2 Q Okay. Now, you said that you spent a</p> <p>3 total of 45 minutes to an hour with Mr. Depp and</p> <p>4 Ms. Heard; is that correct?</p> <p>5 A After that – mostly Mr. Depp, but</p> <p>6 that's after the tour and after they were checked</p> <p>7 in, throughout the course of the night.</p> <p>8 Q Okay. And you don't recall any of the</p> <p>9 people that were there, other than Ms. Heard's</p> <p>10 sister and the security guard, correct?</p> <p>11 A I don't recall any of their names.</p> <p>12 Q Do you remember how many of them were</p> <p>13 female?</p> <p>14 A I believe it was predominantly female.</p> <p>15 Q Do you remember how many males were</p> <p>16 there?</p> <p>17 A I don't, outside of the security guard.</p> <p>18 Q Do you remember what any of the other</p> <p>19 people looked like?</p> <p>20 A They honestly just seemed like youngish</p> <p>21 hipsters, for lack of a better term. I know that</p> <p>22 previously, a couple of them had stayed at</p>	<p>6962</p> <p>1 Ms. Heard pull Mr. Depp and yell at him and he</p> <p>2 cowered?</p> <p>3 A 20.</p> <p>4 Q 20?</p> <p>5 A From the campfire.</p> <p>6 Q From the campfire?</p> <p>7 A Yes.</p> <p>8 Q So your testimony is that Ms. Heard</p> <p>9 grabbed Mr. Heard [sic], pulled him 20 feet over,</p> <p>10 yelled at him and he cowered?</p> <p>11 A Yes. That's what I witnessed.</p> <p>12 Q And then did they go back?</p> <p>13 A I went inside the house.</p> <p>14 Q So, you don't know whether they</p> <p>15 returned to the campfire or they returned to their</p> <p>16 trailer?</p> <p>17 A I do not.</p> <p>18 Q Okay. And do you know whether there</p> <p>19 were any disagreements or physical communications</p> <p>20 [sic], anything of that nature at the campfire?</p> <p>21 A I do not.</p> <p>22 Q Do you know whether Mr. Depp did</p>
<p>6961</p> <p>1 Hicksville Trailer Palace; that's how they knew</p> <p>2 about the place.</p> <p>3 Q So you don't recall seeing how much</p> <p>4 anybody had to drink that night, correct?</p> <p>5 A I did not witness that.</p> <p>6 Q Do you recall the use of drugs at all?</p> <p>7 A I did not witness that.</p> <p>8 Q Okay. Were you sitting, at any point,</p> <p>9 with these people at the campfire?</p> <p>10 A I was not.</p> <p>11 Q And when you said that you saw</p> <p>12 Ms. Heard and Mr. Depp and Ms. Heard was yelling</p> <p>13 at Mr. Depp, where were they?</p> <p>14 A She pulled him for a chat, and it was</p> <p>15 off, towards their trailer, like, a little bit off</p> <p>16 toward the dirt.</p> <p>17 Q How many feet were there between the</p> <p>18 campfire and their trailer?</p> <p>19 A The campfire and their trailer?</p> <p>20 Q Yes.</p> <p>21 A Approximately, 75.</p> <p>22 Q Okay. So where in that 75 feet did</p>	<p>6963</p> <p>1 anything to anybody else at the campfire?</p> <p>2 A I didn't see anything.</p> <p>3 Q Do you know whether Mr. Depp grabbed</p> <p>4 anybody's wrist and told them -- asked them if</p> <p>5 they knew how many pounds of pressure it took to</p> <p>6 break their wrist?</p> <p>7 A I wasn't there the whole time.</p> <p>8 Q Okay. Do you -- is it your testimony</p> <p>9 that Mr. Depp and Ms. Heard went last to their</p> <p>10 trailer, everybody else went before them?</p> <p>11 A They all, the rest of the people, I</p> <p>12 think about half of them had already gone to bed</p> <p>13 and they went -- they went, I can't -- it was all</p> <p>14 around the same time at the end of the night that</p> <p>15 the rest kind of scattered. There might have been</p> <p>16 a couple of people that went right after them or</p> <p>17 right before, but it was all around the same time.</p> <p>18 Q Okay. So your recollection is that</p> <p>19 when Amber and Johnny Depp went back to their</p> <p>20 trailer, that dissipated -- everybody then left at</p> <p>21 that point?</p> <p>22 A Yes.</p>

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Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

80 (6964 to
6967)

<p>6964</p> <p>1 Q Okay. Now, how far away was your house 2 that you were staying in from the trailer that 3 Amber and Johnny Depp were staying in? 4 A I'd say it was about 75 feet away. 5 Q Okay. And the next time that you saw 6 or heard anything was when you went there in the 7 morning and saw the broken scone; is that 8 correct? 9 A Yes. I didn't hear anything after I 10 went to bed. 11 Q Okay. And that's the extent of your 12 knowledge? 13 A Yes. 14 Q Okay. 15 MS. BREDEHOFT: I have no further 16 questions. 17 THE COURT: All right. Redirect. 18 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND 19 COUNTERCLAIM DEFENDANT 20 BY MS. VASQUEZ: 21 Q Mr. Night, how did you get involved in 22 this trial?</p>	<p>6966</p> <p>1 MS. BREDEHOFT: Objection. Leading. 2 THE COURT: Overruled. 3 A I did not. 4 Q How did you get in touch with 5 Mr. Depp's attorneys? 6 A They got in touch with me. 7 MS. BREDEHOFT: Objection. Hearsay. 8 THE COURT: Overruled. 9 A They reached out to me. 10 MS. BREDEHOFT: Oh, sorry. I don't 11 have an objection right now. Only if he talks 12 more. 13 THE COURT: Next question. 14 Q How did you feel about participating in 15 this trial? 16 MS. BREDEHOFT: Objection. Relevance. 17 MS. VASQUEZ: It's extremely relevant 18 considering that they have accused him of being -- 19 THE COURT: Overruled. 20 A How do I feel about it? 21 Q Yeah. 22 A I'm happy to tell what I saw and that's</p>
<p>6965</p> <p>1 A I got a text from one of our old 2 employees who I hadn't talked to in a -- 3 MS. BREDEHOFT: Objection. Hearsay. 4 Q Don't tell us what the text said, just 5 how did you get involved. 6 A I got a text from -- 7 MS. BREDEHOFT: That's still hearsay, 8 Your Honor. Objection. 9 THE COURT: Overruled. 10 Q Go on, Mr. Night. 11 A I was asked -- 12 MS. BREDEHOFT: Objection. Hearsay. 13 THE WITNESS: I apologize. 14 Q What did you -- you received a text. 15 A Yes. 16 Q From whom? 17 A From a former employee. 18 Q And how long had it been since you had 19 heard from this former employee? 20 A Approximately five years. 21 Q And did you contact Mr. Depp or any of 22 his attorneys?</p>	<p>6967</p> <p>1 the extent of it. I really don't care outside of 2 that. 3 MS. VASQUEZ: Thank you very much, 4 Mr. Night. 5 THE COURT: All right. I assume this 6 witness is not subject to recall; is that correct? 7 All right. So you're free to go. 8 Thank you. 9 THE WITNESS: Thank you. 10 THE COURT: All right. Your next 11 witness. Or is it going to be a deposition? 12 MS. VASQUEZ: Apologies, Your Honor. 13 Dr. Shaw. Plaintiff calls Dr. Shaw. 14 THE COURT: Okay. Dr. Shaw. 15 RICHARD J. SHAW, M.D. 16 A witness called on behalf of the 17 plaintiff and counterclaim defendant, having been 18 first duly sworn by the Clerk, testified as 19 follows: 20 THE COURT: Thank you, sir. 21 All right. Yes, ma'am 22 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

81 (6968 to
6971)

<p>6968</p> <p>1 COUNTERCLAIM DEFENDANT</p> <p>2 BY MS. CALNAN:</p> <p>3 Q Good afternoon, Dr. Shaw. Can you,</p> <p>4 please, state your name for the record.</p> <p>5 A My name is Richard John Shaw.</p> <p>6 Q Dr. Shaw, can you please describe your</p> <p>7 educational background.</p> <p>8 A I'm a psychiatrist. I went to medical</p> <p>9 school at the University of London in England. I</p> <p>10 went straight after high school. That's actually</p> <p>11 the system in the British medical system. I did</p> <p>12 two years of pre-clinical training and then</p> <p>13 three years of clinical care with patients.</p> <p>14 Following that, I moved to New Zealand to do an</p> <p>15 internship. It was an internship in neurology,</p> <p>16 medicine, surgery, and psychiatry. I spent</p> <p>17 three years in New Zealand and I did a year of</p> <p>18 psychiatry residency training. Excuse me.</p> <p>19 And following that, I – excuse me.</p> <p>20 Following that, I moved back – I moved here to</p> <p>21 the United States for the first time and did a</p> <p>22 residency in adult psychiatry at the Albert</p>	<p>6970</p> <p>1 and adolescent psychiatry in 1993.</p> <p>2 Q Are you a member of any professional</p> <p>3 organizations in the field of psychiatry?</p> <p>4 A Yes, I am. I'm a member of the</p> <p>5 American Academy of Child and Adolescent</p> <p>6 Psychiatry. I'm also a member of the Academy of</p> <p>7 Consultation-Liaison Psychiatry.</p> <p>8 Q How long have you been practicing</p> <p>9 psychiatry?</p> <p>10 A If you include my training in</p> <p>11 psychiatry residency in the U.S., that will be</p> <p>12 since 1985.</p> <p>13 Q Is that approximately 35 years?</p> <p>14 A Yeah, I think so.</p> <p>15 Q What percentage of your practice</p> <p>16 involves treating patients?</p> <p>17 A Approximately three-quarters of my time</p> <p>18 is working with patients. I work in the pediatric</p> <p>19 hospital treating a combination of mainly children</p> <p>20 and adolescent with severe medical conditions, but</p> <p>21 also working with parents of children who have</p> <p>22 severe medical conditions.</p>
<p>6969</p> <p>1 Einstein College of Medicine, which is in New</p> <p>2 York. That was four years of training in the</p> <p>3 Bronx, and I also did some subspecialty training</p> <p>4 in family therapy and couples – and family</p> <p>5 therapy in my fourth year. And after that, I</p> <p>6 moved to California and I have worked at Stanford.</p> <p>7 I studied at Stanford, I did a fellowship in child</p> <p>8 and adolescent psychiatry, and I've been at</p> <p>9 Stanford pretty much since then.</p> <p>10 Q Dr. Shaw, what is your current</p> <p>11 position?</p> <p>12 A I'm a professor of psychiatry in the</p> <p>13 department of psychiatry at Stanford. I also run</p> <p>14 what's called the psychiatry consult service at</p> <p>15 the children's hospital at Stanford.</p> <p>16 Q What, if any, professional</p> <p>17 certifications have you received?</p> <p>18 A I have what's called board</p> <p>19 certification in adults and general psychiatry. I</p> <p>20 attained that from the American Board of</p> <p>21 Psychiatry and Neurology in 1991. And then I</p> <p>22 obtained subspecialty board certification in child</p>	<p>6971</p> <p>1 I also consult to the pediatric</p> <p>2 emergency room and we evaluate patients who show</p> <p>3 up with suicide attempts and other serious</p> <p>4 situations.</p> <p>5 Q What does the remaining quarter of your</p> <p>6 practice entail?</p> <p>7 A Well, as a professor, I have to do a</p> <p>8 number of academic activities, so I do research, I</p> <p>9 do a lot of teaching, I give lectures, I supervise</p> <p>10 residents, medical students and fellows in</p> <p>11 psychiatry. I do some administrative work. Yeah,</p> <p>12 so it's a pretty diverse, you know, varying day</p> <p>13 and week.</p> <p>14 Q Can you tell the jury a little bit</p> <p>15 about your research and academic work?</p> <p>16 A A lot of my research has involved</p> <p>17 looking at the issue of trauma and PTSD in parents</p> <p>18 who have medically fragile children. A lot of</p> <p>19 these parents are naturally really affected by</p> <p>20 their child's illness and develop trauma symptoms.</p> <p>21 So, I've developed some interventions to try to</p> <p>22 help parents, you know, provide support and</p>

<p style="text-align: right;">6972</p> <p>1 treatment to reduce their symptoms of trauma.</p> <p>2 Q Have you published articles or books in</p> <p>3 your area of expertise?</p> <p>4 A Yes, I have. I have published,</p> <p>5 approximately, 70, probably closer to 80</p> <p>6 peer-reviewed manuscripts in different scientific</p> <p>7 journals. I've also published a number of book</p> <p>8 chapters on various topics, approximately 30, and</p> <p>9 I have published three textbooks, one of which has</p> <p>10 gone into a second edition on topics that are</p> <p>11 related to my area of expertise, and one of them,</p> <p>12 actually, is about the treatment of PTSD in</p> <p>13 parents of premature infants.</p> <p>14 Q Have you published a book through the</p> <p>15 APA?</p> <p>16 A Actually, all of those books were</p> <p>17 published through the APA, the American</p> <p>18 Psychiatric Association. They have a publishing</p> <p>19 house, and that's been my publishing company.</p> <p>20 Q What is the APA?</p> <p>21 A The APA, the American Psychiatric</p> <p>22 Association, not to be confused with the American</p>	<p style="text-align: right;">6974</p> <p>1 really influential and important institution.</p> <p>2 Q Going back to your credentials. What,</p> <p>3 if any, professional awards have you received?</p> <p>4 A I've been given a number, several</p> <p>5 teaching awards at Stanford University, and the</p> <p>6 American Academy of Child and Adolescent</p> <p>7 Psychiatry, that I mentioned, honored me with an</p> <p>8 award for service to my specialty several years</p> <p>9 ago. I don't remember exactly when.</p> <p>10 Q Have you given any public presentations</p> <p>11 in the field of psychiatry?</p> <p>12 A Yes, that's part of our work as an</p> <p>13 academic psychiatrist, is to lecture, to give</p> <p>14 presentations. So I present fairly frequently at</p> <p>15 annual scientific meetings, as I mentioned. I've</p> <p>16 been invited to give grand round presentations at</p> <p>17 different medical centers, including University of</p> <p>18 Pennsylvania and Harvard. So that's just part of</p> <p>19 our goal, is to try to educate our colleagues</p> <p>20 about our work.</p> <p>21 Q Have you testified as an expert in the</p> <p>22 field of psychiatry before?</p>
<p style="text-align: right;">6973</p> <p>1 Psychological Association, is a professional</p> <p>2 organization that represents psychiatrists in the</p> <p>3 U.S. The last time I looked at it, I think there</p> <p>4 was about 37 or 38,000 members, and the APA has</p> <p>5 many different roles. One of it is advocacy in</p> <p>6 psychiatry in the U.S. But it also has an</p> <p>7 important role in terms of education, so they host</p> <p>8 an annual scientific meeting every year in which</p> <p>9 psychiatrists will present their research. It</p> <p>10 publishes a number of journals in the field and,</p> <p>11 well, fairly frequently, it publishes guidelines</p> <p>12 for professional practice or about ethical</p> <p>13 guidelines that they hope the members will follow</p> <p>14 as part of their practice.</p> <p>15 Q What ways are you involved with the</p> <p>16 APA?</p> <p>17 A I mentioned the publishing. I also</p> <p>18 present at the scientific meetings. I last</p> <p>19 presented in 2021, during COVID, it was virtually,</p> <p>20 but on the topic of group therapy for parents with</p> <p>21 trauma symptoms. You know, I follow the APA and</p> <p>22 their various guidelines, and I think it's a</p>	<p style="text-align: right;">6975</p> <p>1 A Yes, I have.</p> <p>2 Q On how many occasions?</p> <p>3 A I would estimate, in terms of</p> <p>4 deposition and trial testimony, approximately 50</p> <p>5 times in the past 15, 20 years.</p> <p>6 Q What type of cases did you testify as</p> <p>7 an expert in?</p> <p>8 A They're pretty varied. So some of them</p> <p>9 would be medical malpractice. I've also done a</p> <p>10 number of cases evaluating victims who've been</p> <p>11 subject to physical/sexual assault or trauma.</p> <p>12 Q What work were you asked to do in this</p> <p>13 case?</p> <p>14 A My role in this case was to give my</p> <p>15 opinions about the testimony and opinions from --</p> <p>16 of Dr. Spiegel, who you heard from yesterday</p> <p>17 morning.</p> <p>18 Q And what work have you done to form</p> <p>19 your opinion?</p> <p>20 A I was present yesterday in court</p> <p>21 listening to his testimony. I have viewed his</p> <p>22 depositions. He had two depositions earlier this</p>

<p style="text-align: right;">6976</p> <p>1 year, and I watched those depositions. I've also 2 read a lot of deposition testimony, for example, 3 testimony by Mr. Depp's psychiatrist, 4 Dr. Blaustein, by his physician, Dr. Kipper, and 5 nurse, Debbie Lloyd. I've reviewed depositions by 6 many of the therapists involved in this case, 7 including Dr. Banks, the relationship consultant, 8 Dr. Cowan, who is Ms. Heard's therapist, and I 9 think Dr. Anderson, who, I think, provided some 10 couples' therapy. 11 I've also reviewed the medical records 12 of Dr. Kipper and Dr. Blaustein and some various 13 email communications. I think a lot of the 14 information that has been talked about here. 15 Q Thank you. 16 MS. CALNAN: Your Honor, at this time, 17 we would like to offer Dr. Shaw as an expert in 18 the field of psychiatry. 19 THE COURT: Any objection? 20 MR. NADELHAFT: Can we approach? 21 THE COURT: Okay. 22 (Sidebar.)</p>	<p style="text-align: right;">6978</p> <p>1 ethical?</p> <p>2 MS. CALNAN: Yes. Well, and some of it 3 going to be about -- based on what Dr. Spiegel did 4 is in violence of that. 5 THE COURT: But he's still just talking 6 about ethical rules? 7 MS. CALNAN: Correct. 8 MR. NADELHAFT: So if it is limited, 9 yeah, with that limitation, no objection. 10 THE COURT: Yeah, Goldwater and other 11 ethical rules. 12 MR. NADELHAFT: And ethical rules, 13 yeah. 14 THE COURT: As long as it's not 15 substantive to other medical records. 16 MR. NADELHAFT: Yeah. 17 (Open court.) 18 THE COURT: So any objection? 19 MS. CALNAN: No objection, Your Honor. 20 THE COURT: Okay. He will be moved as 21 an expert. Thank you. 22</p>
<p style="text-align: right;">6977</p> <p>1 MR. NADELHAFT: As I understand it, 2 from the disclosures, he will testify to the 3 Goldwater Rule. 4 THE COURT: Okay. 5 MR. NADELHAFT: So to the extent it's 6 limited to that, it sounded like he's going to 7 go -- I know we're talking about voir dire, but I 8 just want to make sure you would rule in the 9 Motion in Limine, one, that he couldn't talk about 10 Dr. Blaustein's records. So as long as it's 11 limited to the Goldwater Rule, I have to 12 objections. 13 MS. CALNAN: The disclosure is not just 14 about the Goldwater Rule. He also talks about 15 different -- other professional organizations that 16 have guidelines. 17 THE COURT: As long as we're staying on 18 the ethical issues, that's what he's going to 19 testify to, not the contents of -- 20 MS. CALNAN: Dr. Blaustein's records, 21 correct, yes. He's not talking about that. 22 THE COURT: He's just talking about</p>	<p style="text-align: right;">6979</p> <p>1 BY MS. CALNAN: 2 Q Dr. Shaw, you testified that you 3 observed Dr. Spiegel's testimony yesterday? 4 A That's correct. 5 Q To reorient the jury, can you please 6 generally describe the main areas in which 7 Dr. Spiegel testified? 8 MR. NADELHAFT: Objection, Your Honor. 9 They heard what he testified to. 10 MS. CALNAN: Foundation to reorient 11 them. 12 THE COURT: That's okay. We can move 13 forward. 14 Q Do you have an opinion of Dr. Spiegel's 15 testimony? 16 A Yes, I do. 17 Q What's your opinion? 18 A I had a couple of primary opinions. 19 The first is that I -- my opinion is that he 20 violated the ethical principles that are outlined 21 in the Goldwater Rule when he gave his opinions 22 about Mr. Depp, specifically with relationship to</p>

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6983)

<p style="text-align: right;">6980</p> <p>1 personality traits and his cognitive abilities. 2 My second primary opinion would be that 3 Dr. Spiegel's opinions were unreliable and that he 4 had insufficient -- 5 MR. NADELHAFT: Objection, Your Honor. 6 THE COURT: All right. Are you going 7 to approach? 8 MS. CALNAN: Yeah. 9 (Sidebar.) 10 MR. NADELHAFT: She just said -- just 11 said it was going to be about the ethics rules and 12 now he's going on about reliability of opinion. 13 MS. CALNAN: So the Motion in Limine 14 was specific to excluding his testimony about the 15 quality of Dr. Blaustein's records. His 16 disclosure includes all the other things that 17 Dr. Spiegel relied on to form his opinion, 18 including the videotape deposition of Mr. Depp, to 19 form his opinions about his cognitive functions. 20 He reviewed that and in order for him to be able 21 to testify how he violated the Goldwater Rule, he 22 has to get into what records he looked at. He's</p>	<p style="text-align: right;">6982</p> <p>1 MR. NADELHAFT: No, he just says -- 2 MS. CALNAN: Yes. 3 MR. NADELHAFT: -- his opinions are 4 just that it doesn't meet the Goldwater Rule. 5 MS. CALNAN: Dr. Shaw will testify 6 concerning Dr. Spiegel's opinions. 7 MR. NADELHAFT: But that's a summary. 8 MS. CALNAN: And then we get into 9 specifics. And he was designated as a rebuttal to 10 Dr. Spiegel and -- sorry, Your Honor. Okay. We 11 have here Dr. Spiegel failed to abide by the 12 Goldwater Rule. 13 THE COURT: Right. 14 MS. CALNAN: And then -- 15 THE COURT: I got that. 16 MS. CALNAN: I'm sorry. The opinions 17 that Dr. Spiegel intends to offer based on the 18 incomplete data set lacking in the mental status 19 examination and lacking review of prior 20 psychiatric history. 21 MR. NADELHAFT: And then he continues 22 to talk about Goldwater. It's all about the</p>
<p style="text-align: right;">6981</p> <p>1 not going to get into it substantively about -- 2 the Motion in Limine, and I have it in front of -- 3 right here, Your Honor. 4 MR. NADELHAFT: He's talking about how 5 his opinions are not reliable. He wants to say 6 that he violated the Goldwater Rule or other 7 ethical rules by doing this or that, that's 8 allowable. But to say whether his opinion is 9 reliable or not, that's a differ -- I think that's 10 a different thing. 11 MS. CALNAN: So, the Motion in Limine 12 was specific to -- and I have it here, Your 13 Honor -- 14 MR. NADELHAFT: But disclosure is all 15 you're going to talk about. 16 MS. CALNAN: No, that's not true. 17 THE COURT: Let's just wait. Are you 18 saying he's going to rebut Dr. Spiegel's opinions? 19 MS. CALNAN: Say that again. 20 THE COURT: Does he say he's going to 21 rebut Dr. Spiegel's opinions? 22 MS. CALNAN: Yes, it does.</p>	<p style="text-align: right;">6983</p> <p>1 Goldwater Rule, so it's not about his reliability. 2 No. Whether he's following the Goldwater Rule or 3 not. 4 MS. CALNAN: That is part of it. 5 THE COURT: Still under the Goldwater. 6 MS. CALNAN: Say that again. 7 THE COURT: Still under the Goldwater, 8 so you have to stay with that. 9 MS. CALNAN: He also talks about 10 neuropsychological testing, this was part of his 11 disclosure, and he was going to testify about 12 that. 13 THE COURT: That would still -- that's 14 when he violated the Goldwater Rule. 15 MR. NADELHAFT: Right, correct. 16 THE COURT: So he can testify to that. 17 MR. NADELHAFT: Right. All about how 18 he violated the rule, whether or not he violated 19 the Goldwater Rule. But not about the relia -- I 20 think there's a difference. He's all about the 21 ethics and not about reliability. 22 THE COURT: He can give his first</p>

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85 (6984 to
6987)

<p style="text-align: right;">6984</p> <p>1 opinion he talked about and any supporting 2 documents in supporting testimony to that. But 3 when it goes into -- doesn't seem like there's 4 anything here about his opinions as far as 5 reliability or -- 6 MS. CALNAN: So the Goldwater Rule 7 talks about how you have to rely on certain 8 information. 9 THE COURT: Right. 10 MS. CALNAN: So in a way, he's going to 11 be talking about that. So is it just the issue? 12 THE COURT: Yes, exactly. His opinion 13 all has to be all within the Goldwater Rule. 14 MS. CALNAN: So I think the issue is 15 that he said reliable? 16 MR. NADELHAFT: He was talking about 17 the reliability of Dr. Spiegel's opinion. He can 18 talk about whatever he wants to say how he 19 violated the rule. 20 THE COURT: This is how he violated it. 21 And then some of the information is going to come. 22 MS. CALNAN: Okay.</p>	<p style="text-align: right;">6986</p> <p>1 comments such as, for example, he was a 2 megalomaniac, he was a paranoid schizophrenic, 3 that he had narcissistic personality disorder. As 4 a result of that, he was replaced as a candidate 5 and went on to sue Fact magazine for defamation of 6 character. And he was successful in that lawsuit. 7 And in response to this incident, the 8 American Psychiatric Association, that I think was 9 really concerned about how psychiatry was being 10 represented and statements psychiatrists were 11 making about someone they had never met or 12 evaluated, issued the Goldwater Rule. And the 13 main premise of the Goldwater Rule is that it was 14 improper for a psychiatrist to render professional 15 opinion about a public figure unless they had 16 personally and closely evaluated them. 17 Q What justifications did the APA, other 18 than the ones you mentioned, for enacting the 19 Goldwater Rule? 20 A They wanted to make sure that 21 psychiatric illness wasn't being stigmatized. 22 They wanted to ensure that individuals weren't</p>
<p style="text-align: right;">6985</p> <p>1 THE COURT: Make sense? 2 MS. CALNAN: It does. 3 THE COURT: Okay. 4 MR. NADELHAFT: Okay. 5 (Open court.) 6 BY MS. CALNAN: 7 Q Dr. Shaw, you mentioned the Goldwater 8 Rule. What led up to the publication of the 9 Goldwater Rule? 10 A The Goldwater Rule came about in 11 response to an incident that occurred during the 12 1964 presidential election, when Senator Barry 13 Goldwater was running as a Republican candidate 14 and there was a magazine called Fact magazine that 15 started a campaign to discredit Senator Goldwater. 16 And then obtained a mailing list from the AMA and 17 sent out a single-survey questionnaire to about 18 12,000 psychiatrists in the U.S., asking if they 19 felt that Senator Goldwater was fit to run for 20 office. And about 2,000 psychiatrists responded, 21 a thousand of whom expressed very negative 22 opinions about Senator Goldwater, and made</p>	<p style="text-align: right;">6987</p> <p>1 defamed by statements made by a psychiatrist that 2 weren't backed up by medical evidence, and they 3 also wanted to preserve the integrity of the 4 psychiatric profession, since I think the public, 5 in general, and the psychiatrists speaks out 6 publicly and expresses an opinion, a psychiatric 7 opinion, people generally like to take that 8 seriously. And the APA wanted to make sure that 9 those opinions were credible and could be relied 10 upon. 11 Q Have there been any updates to the 12 Goldwater Rule? 13 A Yes. Since 1973, which was when the 14 Goldwater Rule first came out, they had the -- a 15 number of revisions and publications by the APA, 16 they're called annotations in psychiatry, in which 17 the Goldwater Rule has been edited, defined, and 18 expanded in some -- to some degree. 19 So, for example, in 2017, in this 20 publication, they -- the APA reasserted that it 21 was not ethical to provide a psychiatric or 22 professional opinion about someone who had not</p>

<p style="text-align: right;">6988</p> <p>1 been evaluated personally by that psychiatrist; 2 that it was unethical to provide an evaluation 3 without obtaining consent from that individual. 4 They also sort of really kind of defined what a 5 professional opinion is, and that -- and how they 6 defined it is that an opinion that a psychiatrist 7 expresses about someone's speech, behavior, or any 8 characteristic about that person, if it's -- that 9 opinion is made using the expertise, experience, 10 and knowledge adhered in the practice of 11 psychiatry, that is considered a professional 12 opinion. 13 So it might include making a diagnosis 14 or not making a diagnosis. And the other -- I 15 think a couple of important things about that 2017 16 document were that the APA specified that if a 17 psychiatrist is to give an opinion about someone, 18 about the diagnosis or personality 19 characteristics, whatever, that they have to 20 follow an appropriate methodology. They have to 21 do an evaluation that follows the standard 22 practice of a psychiatrist here in the U.S. And</p>	<p style="text-align: right;">6990</p> <p>1 should refrain from giving a psychiatric diagnosis 2 about any public figure, including celebrities and 3 people in the media. 4 Q Are there exceptions to the Goldwater 5 Rule? 6 A There are exceptions, yeah. And I 7 think Dr. Spiegel had a lot to say about this 8 yesterday when he was saying that if you couldn't 9 express an opinion without evaluating someone, it 10 sort of made the whole specialty or role of 11 experts in the court sort of null and void. But 12 there are exceptions and situations in which an 13 expert can give testimony in court. 14 So one good example would be if there 15 was a medical malpractice case or if there was a 16 case about -- that involved a patient who had 17 committed suicide and the courts wanted to find 18 out whether the psychiatrist had followed 19 appropriate practice, the expert can review 20 medical records and can give an opinion based on 21 those records, provided those records have 22 sufficient information, for example, about the</p>
<p style="text-align: right;">6989</p> <p>1 if they don't do that, they are considered to be, 2 you know, affecting the integrity of both the 3 psychiatrist and the psychiatric profession. 4 And this revision of the Goldwater Rule 5 definitely received a lot of support. The 6 president of the APA, at the time, stated that 7 breaking the Goldwater Rule was irresponsible, 8 stigmatizing, and definitely unethical. So that 9 was a statement, very strong statement from the 10 president of the APA. 11 Q What other medical organizations have 12 weighed in on this issue? 13 A A number of organizations have their 14 own sort of version of the Goldwater Rule. The 15 American Medical Association, that represents 16 physicians in the U.S., has an annual meeting and 17 they have what's called a council of ethical and 18 judicial affairs. And they had a meeting in 2017, 19 in Honolulu, and they came up with their own 20 statements about the issue of whether physicians 21 can provide opinions without directly evaluating 22 somebody. And their opinion was that physicians</p>	<p style="text-align: right;">6991</p> <p>1 diagnoses, about the treatment, about how the 2 patient was responding or not responding to 3 treatment. 4 Q Did you form an opinion about whether 5 Dr. Spiegel complied with the Goldwater Rule? 6 A Well, my opinion is that he did not. 7 He expressed a number of professional opinions 8 about Mr. Depp that we heard about yesterday. 9 And, again, he did so without an evaluation, 10 without consent. He did not follow the guidelines 11 of the APA, the 2017 revision, where it was 12 considered important that there be sufficient 13 information obtained by that expert to give an 14 opinion. So I definitely felt that his conduct, 15 unfortunately, did violate the Goldwater Rule. 16 Q And specifically, what opinions of -- 17 that Dr. Spiegel gave yesterday do you feel 18 violated the Goldwater Rule? 19 A Well, I think there were two primary 20 ones. The first that we heard about was that 21 Dr. Spiegel had professional opinions about 22 Mr. Depp's personality, and he talked a lot about</p>

<p style="text-align: right;">6992</p> <p>1 how he believed that Mr. Depp had narcissistic 2 personality traits. And he talked about 3 narcissistic personality disorder. 4 So narcissistic personality disorder is 5 a diagnosis in the diagnostic and statistical 6 manual, it's called the DSM-5 for short. It's a 7 diagnostic manual published by the APA. 8 MR. NADELHAFT: Objection, Your Honor. 9 May we approach for a moment? 10 THE COURT: Okay. 11 (Sidebar.) 12 MR. NADELHAFT: I think now he's past 13 the Goldwater Rule. I think he's now talking 14 about -- he's criticizing Dr. Spiegel's opinions 15 beyond the Goldwater Rule. 16 THE COURT: I think -- do you want to 17 respond? 18 MS. CALNAN: I'm sorry. Again, this is 19 going to how Dr. Spiegel violated the Goldwater 20 Rule, and he includes it in his disclosure. 21 THE COURT: This one? 22 MS. CALNAN: Sorry.</p>	<p style="text-align: right;">6994</p> <p>1 demonstrated by that person since young adulthood. 2 And the DSM-5 has nine specific criteria, and for 3 someone to meet the diagnosis, you have to meet 4 five of those criteria. And so, when, as a 5 psychiatrist, we're trying to make a diagnosis of 6 any personality disorder or any diagnosis in 7 general, and the professional guidelines would 8 dictate that we would do a very careful diagnostic 9 interview. And there are, actually, interviews 10 specifically written to assess personality 11 disorders. 12 It's also possible to have the 13 individual fill out questionnaires. There's 14 something called the Narcissistic Personality 15 Inventory. This is a 40-item checklist that taps 16 into various components of narcissistic 17 personality disorder. 18 It's also possible to get psychological 19 testing, like the MMPI, that I think you heard 20 about in reference to one of the other experts 21 here. So with all of this information, including 22 collateral information from family members, work</p>
<p style="text-align: right;">6993</p> <p>1 THE COURT: I did see how that he 2 violated -- 3 MS. CALNAN: Giving an opinion about. 4 THE COURT: I did read that in one of 5 the subparagraphs. 6 MR. NADELHAFT: Okay. 7 THE COURT: I'm going to try to take a 8 break now, at 4. They got a break, we didn't. 9 I'm going to try to give them a break at 4, just 10 to let you know. 11 MS. CALNAN: I'm on 45 of 46. 12 THE COURT: Okay. 13 MS. CALNAN: Thank you. 14 (Open court.) 15 BY MS. CALNAN: 16 Q Go ahead, Dr. Shaw, please continue. 17 A Sure. So I was just talking about 18 narcissistic personality disorder, that in the 19 DSM-5. So the diagnostic criteria for that -- I'm 20 not going to really be wordy about this, but, 21 essentially, it's a pattern of grandiosity, a need 22 for admiration, a lack of empathy that's</p>	<p style="text-align: right;">6995</p> <p>1 colleagues, information of that sort, it is 2 possible to come up with a diagnosis of 3 narcissistic personality disorder. 4 So in the case of Dr. Spiegel, he had 5 none of this information, even though he came out 6 and stated with what he described as a degree of 7 medical certainty that Mr. Depp had narcissistic 8 personality traits. If you remember, somewhat 9 towards the end of his testimony yesterday, he was 10 asked to -- since he couldn't provide any 11 documentation from the medical record about 12 narcissistic personality disorder or narcissistic 13 personality traits, he was asked about what is 14 referred to a lot in this -- in his testimony as 15 record evidence. So information that he obtained 16 from depositions, from text messages, from emails, 17 whatever, and so he was asked to give, I think, 18 five examples of record evidence that would make 19 it seem like Mr. Depp met criteria for 20 narcissistic personality traits. I'll just 21 mention a couple of them, just to illustrate, my 22 opinion is that that testimony did not really hold</p>

<p style="text-align: right;">6996</p> <p>1 together.</p> <p>2 So he stated, for example, one of the</p> <p>3 criteria for narcissism is -- narcissistic</p> <p>4 personality disorder is a sense of entitlement.</p> <p>5 And the example Dr. Spiegel gave is that he</p> <p>6 believes Ms. Heard married him for his money. So,</p> <p>7 clearly, sense of entitlement, from a psychiatry</p> <p>8 perspective, that's very different from a belief</p> <p>9 that someone wanted you for your money.</p> <p>10 A second example that was given was</p> <p>11 that he was asked to give an example of how</p> <p>12 Mr. Depp had shown that he was envious of others,</p> <p>13 which is another criteria for narcissistic</p> <p>14 personality disorder. And the example is that</p> <p>15 Dr. Depp was jealous of Ms. Heard because he</p> <p>16 believed she was having an affair with Mr. Franco.</p> <p>17 Now, if we look at these two terms, as</p> <p>18 a psychiatrist, there's a big difference between</p> <p>19 being envious and being jealous. As a</p> <p>20 psychiatrist, when I think about envy, I think</p> <p>21 about somebody wants something that someone else</p> <p>22 has --</p>	<p style="text-align: right;">6998</p> <p>1 he had word-finding difficulties.</p> <p>2 Again, Dr. Spiegel did not evaluate</p> <p>3 Mr. Depp, and the information that he relied upon,</p> <p>4 there were two pieces of information, the first</p> <p>5 was that he watched a very long deposition that</p> <p>6 Mr. Depp gave the day after, I think, he had flown</p> <p>7 back from London to the East Coast. And he made</p> <p>8 observations about Mr. Depp's behavior in that</p> <p>9 deposition, and felt that he could opine or give</p> <p>10 an opinion about processing speed and other</p> <p>11 cognitive aspects.</p> <p>12 He also made reference to something you</p> <p>13 heard about yesterday, this thing called a</p> <p>14 mini-mental status examination, this is a brief</p> <p>15 screen for mental and cognitive functioning that's</p> <p>16 often done. He testified that Dr. Blaustein had</p> <p>17 administered the mini-mental status examination,</p> <p>18 although, you know, from the records, all we know</p> <p>19 is that --</p> <p>20 MR. NADELHAFT: Objection, Your Honor.</p> <p>21 THE COURT: Sustain the objection.</p> <p>22 Q Dr. Shaw, without going into</p>
<p style="text-align: right;">6997</p> <p>1 MR. NADELHAFT: Objection, Your Honor.</p> <p>2 This is going beyond his designation.</p> <p>3 MS. CALNAN: He's giving his opinion as</p> <p>4 to how Dr. Spiegel violated the Goldwater Rule</p> <p>5 with respect to his testimony about narcissistic</p> <p>6 personality disorder.</p> <p>7 THE COURT: He did, but now I'll</p> <p>8 sustain the objection.</p> <p>9 Next question.</p> <p>10 Q You mentioned two major examples. What</p> <p>11 was the second one?</p> <p>12 A The second one was confusing being</p> <p>13 envious with being jealous.</p> <p>14 Q Sorry, Dr. Shaw, I mean you mentioned</p> <p>15 two major examples of ways Dr. Spiegel violated</p> <p>16 the Goldwater Rule.</p> <p>17 What is the second?</p> <p>18 A Sure. So the other big category had to</p> <p>19 do with Dr. Spiegel's evaluation of Mr. Depp's</p> <p>20 cognitive abilities. And his general opinion was</p> <p>21 that Mr. Depp had deficits in his memory, in his</p> <p>22 attention, in his processing speed, in his -- that</p>	<p style="text-align: right;">6999</p> <p>1 Dr. Blaustein's record, what information does a</p> <p>2 mini-mental exam provide?</p> <p>3 MR. NADELHAFT: Object, Your Honor.</p> <p>4 It's beyond the scope of his designation.</p> <p>5 THE COURT: Overruled as to that</p> <p>6 limited question.</p> <p>7 A So the mini-mental status, it's a</p> <p>8 series of about 10 or 11 questions and tasks that</p> <p>9 someone completes, and you get a score out of 30.</p> <p>10 What Dr. Spiegel testified was that Mr. Depp could</p> <p>11 not recall three words after five minutes, and he</p> <p>12 used that as an example of Mr. Depp having</p> <p>13 cognitive deficits that he specifically attributed</p> <p>14 to Mr. Depp's alcohol and substance abuse.</p> <p>15 And he really did not have sufficient</p> <p>16 information. I liken a mini-mental status exam,</p> <p>17 it's like taking someone's temperature.</p> <p>18 MR. NADELHAFT: Objection, Your Honor.</p> <p>19 That's going beyond.</p> <p>20 THE COURT: I'll sustain the objection.</p> <p>21 Q Okay.</p> <p>22 MS. CALNAN: Now is probably a good</p>

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89 (7000 to
7003)

<p>7000</p> <p>1 time for a break.</p> <p>2 THE COURT: Okay. Ladies and</p> <p>3 gentlemen, I know you had a break, but we didn't,</p> <p>4 so we're going to go ahead and take our afternoon</p> <p>5 break for 15 minutes. Do not discuss the case</p> <p>6 with anyone, and do not do any outside research,</p> <p>7 okay?</p> <p>8 You can stay right there, Doctor.</p> <p>9 (Whereupon, the jury exited the</p> <p>10 courtroom and the following proceedings took</p> <p>11 place.)</p> <p>12 THE COURT: All right. You're excused</p> <p>13 for 15 minutes, too, Doctor.</p> <p>14 Okay. We'll come back at 4:17, then.</p> <p>15 MR. CHEW: Thank you, Your Honor.</p> <p>16 THE COURT: Finish the day.</p> <p>17 THE BAILIFF: All rise.</p> <p>18 (Recess taken from 4:01 p.m. to</p> <p>19 4:17 p.m.)</p> <p>20 THE BAILIFF: All rise.</p> <p>21 Please be seated and come to order.</p> <p>22 THE COURT: All right. Are we ready</p>	<p>7002</p> <p>1 possible for someone to give testimony about a</p> <p>2 matter without interviewing someone, and there's</p> <p>3 certain sort of ways that it should be framed.</p> <p>4 So, for example, when Dr. Spiegel was testifying</p> <p>5 about the report that Mr. Depp was unable to</p> <p>6 recall these three objects, what he could have</p> <p>7 done is said that I have not personally examined</p> <p>8 Mr. Depp, so I can't speculate about his cognitive</p> <p>9 state or ability to function cognitively.</p> <p>10 However, it is possible that somebody who is not</p> <p>11 able to recall three objects could have issues</p> <p>12 related to substance use, which was what his</p> <p>13 opinion was.</p> <p>14 However, what he could -- what he</p> <p>15 should have done in expressing his opinion is then</p> <p>16 followed up to say that, you know, no one really</p> <p>17 established whether these were relevant or</p> <p>18 significant cognitive deficits. Mr. Depp should</p> <p>19 have had psychological testing to establish the</p> <p>20 nature of these deficits.</p> <p>21 And he should also have added that</p> <p>22 there are other potential explanations for these</p>
<p>7001</p> <p>1 for the jury?</p> <p>2 MS. BREDEHOFT: Yes.</p> <p>3 THE COURT: Okay.</p> <p>4 (Whereupon, the jury entered the</p> <p>5 courtroom and the following proceedings took</p> <p>6 place.)</p> <p>7 THE COURT: Thank you. You may be</p> <p>8 seated.</p> <p>9 All right. Your next question.</p> <p>10 MS. CALNAN: Thank you.</p> <p>11 BY MS. CALNAN:</p> <p>12 Q Dr. Shaw, is the Goldwater Rule limited</p> <p>13 to diagnoses?</p> <p>14 A It's not. It's all professional</p> <p>15 opinions.</p> <p>16 Q Do you agree with Dr. Spiegel that the</p> <p>17 Goldwater Rule doesn't apply to expert witnesses?</p> <p>18 A I don't agree, no.</p> <p>19 Q How could Dr. Spiegel express an</p> <p>20 opinion without violating the Goldwater Rule?</p> <p>21 A This has actually been a topic that's</p> <p>22 been written and published about. So it is</p>	<p>7003</p> <p>1 findings. So, for example, it's possible that</p> <p>2 Mr. Depp --</p> <p>3 MR. NADELHAFT: Objection, Your Honor.</p> <p>4 He's now going past the designation.</p> <p>5 MS. CALNAN: I think he is opining --</p> <p>6 or responding to Dr. Spiegel's testimony</p> <p>7 yesterday.</p> <p>8 MR. NADELHAFT: No, he's opining what</p> <p>9 Dr. Spiegel could have said, but it's past about</p> <p>10 the Goldwater Rule.</p> <p>11 THE COURT: If we can move on.</p> <p>12 MS. CALNAN: Okay.</p> <p>13 Q Who is qualified to give opinions about</p> <p>14 cognitive deficits and processing speed?</p> <p>15 A It would have to be someone who could</p> <p>16 conduct the type of neuropsychological testing</p> <p>17 that I was mentioning. You can't establish the</p> <p>18 presence of cognitive deficits without --</p> <p>19 MR. NADELHAFT: Object. Again, beyond</p> <p>20 the Goldwater Rule.</p> <p>21 THE COURT: Overruled.</p> <p>22 A You can't establish cognitive deficits</p>

<p style="text-align: right;">7004</p> <p>1 without appropriate neuropsychological testing, 2 and that can only be done by a psychologist or 3 neuropsychologist. So, a psychiatrist, like 4 Dr. Spiegel, would be giving an opinion outside of 5 his area of expertise if he gave an opinion about 6 cognitive deficits which required psychological 7 testing to be further evaluated. 8 Q Dr. Spiegel, yesterday, testified about 9 the practice of forensic psychiatry. 10 Do you recall that testimony? 11 A Yes, I do. 12 Q What is forensic psychiatry? 13 A Forensic psychiatry is a specialty of 14 psychiatry that relates to matters on the 15 intersection between psychiatry and the law. So, 16 for example, what we're doing today is forensic 17 psychiatry, where a psychiatrist comes into court 18 and gives an opinion about a matter to help the 19 court make — come to an opinion. 20 Q Are there professional standards that 21 govern the practice of forensic psychiatry? 22 A Yes, there are.</p>	<p style="text-align: right;">7006</p> <p>1 And the guidelines do state that it is reasonable, 2 or permitted, to provide an opinion without an 3 evaluation. But if you're going to do that, 4 there's some things that you have to really make 5 clear in your opinion when you express that 6 opinion. And the first is that you have to 7 acknowledge the limitations of your opinion and 8 not, like Dr. Spiegel, say that his opinion was 9 held with a degree of medical certainty. 10 You have to explain what's missing, 11 what data you did not have that you were not able 12 to rely upon in coming to that opinion. You also 13 have to talk about what additional information you 14 would need to come to that opinion. And even 15 though these guidelines say that it's permissible 16 to do this, the text is still, I think, not fully 17 in support of psychiatrists doing this. So their 18 statements are that opinions rendered without a 19 proper database, which is what we psychiatrists 20 rely upon to make diagnoses and give opinions, 21 professional opinions, is questionable and not 22 generally recommended.</p>
<p style="text-align: right;">7005</p> <p>1 Q And what organizations have issued 2 those standards? 3 A One of the primary organizations that 4 has issued guidelines about the practice of 5 forensic psychiatry is called the American Academy 6 of Psychiatry and the Law. This is an 7 organization that represents forensic 8 psychiatrists. And it has published guidelines 9 about what constitutes an ethical and sound 10 practice of doing a forensic assessment and 11 providing a psychiatric opinion. So this 12 guideline, I think, was published in 2015. 13 Actually, contains many elements that are 14 consistent with the Goldwater Rule. So, for 15 example, it states that for a forensic assessment 16 to be done, it has to be informed consent. And 17 there should be a very thorough comprehensive 18 evaluation that would include reviewing past 19 records, past psychiatric history; it would 20 include doing what's called a mental status 21 examination, which is a careful examination of 22 someone's mood, cognition, things of that nature.</p>	<p style="text-align: right;">7007</p> <p>1 Q Did you form an opinion about 2 Dr. Spiegel's testimony with respect to these 3 practice guidelines? 4 A Yes, I did. 5 Q And what is your opinion? 6 A Well, my opinion is that he did not 7 follow those guidelines. So, for example, he did 8 not have consent. He did not do even a basic 9 evaluation of Mr. Depp. When he gave his 10 opinions, as I just mentioned, he said they were 11 opinions that he had to a degree of medical 12 certainty, and he did not make any statements 13 about what other additional information he would 14 have wanted to make that opinion. 15 So, for example, when asked about 16 shouldn't psychological testing be performed, he 17 said most patients don't have access to that, 18 which is actually not at all true. Every medical 19 school has neuropsychologists that can do testing. 20 So I think that was an unfortunate statement. 21 So, I think those are the primary 22 reasons which the Goldwater Rule was violated and</p>

<p style="text-align: right;">7008</p> <p>1 the practice guidelines were not adhered to.</p> <p>2 Q Dr. Shaw, yesterday, Dr. Spiegel was</p> <p>3 talking about correlation and causation. What is</p> <p>4 the difference between correlation and causation?</p> <p>5 MR. NADELHAFT: Objection. Not in his</p> <p>6 designation.</p> <p>7 MS. CALNAN: It is. We can approach,</p> <p>8 and I can show you.</p> <p>9 A All right.</p> <p>10 (Sidebar.)</p> <p>11 MS. CALNAN: It's on page 49, where he</p> <p>12 talks about the risk factors and --</p> <p>13 MR. NADELHAFT: What is it; I'm sorry?</p> <p>14 THE COURT: Page 49.</p> <p>15 MS. CALNAN: Talks about the risk</p> <p>16 factors. Right here.</p> <p>17 MR. NADELHAFT: I don't see</p> <p>18 correlation --</p> <p>19 THE COURT: I'll overrule the</p> <p>20 objection.</p> <p>21 MS. CALNAN: Okay. Thank you.</p> <p>22 (Open court.)</p>	<p style="text-align: right;">7010</p> <p>1 the difference statistically -- or the difference</p> <p>2 between causation and correlation is illustrated</p> <p>3 by that example.</p> <p>4 So on the other end, put this as if,</p> <p>5 you know, if we had a hundred people in the room,</p> <p>6 just bringing it back to the issue of IPV that</p> <p>7 Dr. Spiegel was testifying about. Let's say we</p> <p>8 had 70 people who had all the risk factors for IPV</p> <p>9 and 30 people who had no risk factors for IPV. So</p> <p>10 what can we say about those 70 people? We can't</p> <p>11 say that any single one of those people has</p> <p>12 perpetrated IPV, even though they may have all the</p> <p>13 risk factors. And if you look at the 30 people</p> <p>14 who have no risk factor, you also can't say</p> <p>15 whether or not they have perpetrated IPV. So the</p> <p>16 actual presence of risks factors for IPV that</p> <p>17 Dr. Spiegel was talking about, they say absolutely</p> <p>18 nothing about what happened in this case.</p> <p>19 MS. CALNAN: Thank you, Dr. Shaw.</p> <p>20 Nothing further.</p> <p>21 THE COURT: Okay. Cross-examination.</p> <p>22 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND</p>
<p style="text-align: right;">7009</p> <p>1 BY MS. CALNAN:</p> <p>2 Q Go ahead, Dr. Shaw.</p> <p>3 A Yes. So the difference between a</p> <p>4 correlation and causation, correlation is a</p> <p>5 statistical analysis of a relationship between two</p> <p>6 different factors. So in Dr. Spiegel's testimony,</p> <p>7 he talked about, you know, there being a</p> <p>8 correlation between opinions he had about</p> <p>9 Mr. Depp, his narcissistic personality traits, his</p> <p>10 substance abuse, things of that nature.</p> <p>11 So a correlation doesn't say anything</p> <p>12 about whether or not these factors caused that,</p> <p>13 you know, the behavior he was discussing. Perhaps</p> <p>14 one of the easiest ways I could describe the</p> <p>15 difference between correlation and causations is</p> <p>16 if we look at the issue of measles, if you'll bear</p> <p>17 with me. There's a correlation between being</p> <p>18 young and catching measles. Now, we know that</p> <p>19 measles is not caused by being young, measles is</p> <p>20 caused by a virus. But young children have not</p> <p>21 been exposed to the virus, they don't have the</p> <p>22 immunity, so they have a high rate of measles. So</p>	<p style="text-align: right;">7011</p> <p>1 COUNTERCLAIM PLAINTIFF</p> <p>2 BY MR. NADELHAFT:</p> <p>3 Q Good afternoon, Dr. Shaw.</p> <p>4 A Good afternoon.</p> <p>5 Q You're not offering any opinion as to</p> <p>6 Mr. Depp's psychology, correct?</p> <p>7 A That's correct.</p> <p>8 Q Okay. And you testified a lot about</p> <p>9 the Goldwater Rule. You know of no case where an</p> <p>10 expert has been excluded from testifying based on</p> <p>11 the Goldwater Rule, correct?</p> <p>12 A I don't know about the whole universe</p> <p>13 of cases. It's possible, but I don't know,</p> <p>14 personally, about one.</p> <p>15 Q And before this case, you've never</p> <p>16 offered an opinion on the Goldwater Rule before,</p> <p>17 correct?</p> <p>18 A That's correct.</p> <p>19 Q And you've never written an article on</p> <p>20 the Goldwater Rule, correct?</p> <p>21 A I have not.</p> <p>22 Q And you've never given a presentation</p>

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92 (7012 to
7015)

<p>7012</p> <p>1 on the Goldwater Rule, correct?</p> <p>2 A I have not.</p> <p>3 Q And you've never been on any committees</p> <p>4 regarding the Goldwater Rule, correct?</p> <p>5 A I have not.</p> <p>6 Q Okay. And you agree -- you've</p> <p>7 testified that there are exceptions to the</p> <p>8 Goldwater Rule about having to interview the</p> <p>9 subject, right?</p> <p>10 A Yes.</p> <p>11 Q And you understand that Dr. Spiegel</p> <p>12 requested to meet with Mr. Depp twice but Mr. Depp</p> <p>13 declined, correct?</p> <p>14 A I'm aware of that.</p> <p>15 Q And Mr. -- Dr. Spiegel stated, in his</p> <p>16 designation and at trial yesterday, that he did</p> <p>17 not meet with Mr. Depp, right?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 MR. NADELHAFT: Can we put up</p> <p>21 Defendant's Exhibit 1904.</p> <p>22 Q Dr. Shaw, have you seen the opinions of</p>	<p>7014</p> <p>1 or an opinion without examination, and this work</p> <p>2 is conducted within an evaluated framework,</p> <p>3 including parameters for how and where the</p> <p>4 information may be used or disseminated.</p> <p>5 Do you see that?</p> <p>6 A I do, yes.</p> <p>7 Q And this court authorized Dr. Spiegel</p> <p>8 to testify in this case, correct?</p> <p>9 A Yes.</p> <p>10 Q Okay.</p> <p>11 MR. NADELHAFT: Thank you. I have</p> <p>12 nothing further.</p> <p>13 THE COURT: All right. Redirect.</p> <p>14 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND</p> <p>15 COUNTERCLAIM DEFENDANT</p> <p>16 BY MS. CALNAN:</p> <p>17 Q Dr. Shaw, Mr. Nadelhaft just asked you</p> <p>18 about the court authorization of Mr. Depp's</p> <p>19 evaluation.</p> <p>20 Are you aware that the court has twice</p> <p>21 denied Ms. Heard's request for evaluation of</p> <p>22 Mr. Depp?</p>
<p>7013</p> <p>1 the ethics committee on the principles of medical</p> <p>2 ethics?</p> <p>3 A Yes.</p> <p>4 MR. NADELHAFT: And if you could turn</p> <p>5 to 79 of the PDF. And it's actually -- thank you.</p> <p>6 Q Do you see where it's highlighted here?</p> <p>7 A Yes.</p> <p>8 Q And it says psychiatrists have also</p> <p>9 argued that the Goldwater Rule is not sound</p> <p>10 because psychiatrists sometimes are asked to</p> <p>11 render --</p> <p>12 MS. CALNAN: Objection. Hearsay.</p> <p>13 MR. NADELHAFT: He is an expert.</p> <p>14 THE COURT: Overruled.</p> <p>15 Q Without conducting an examination of an</p> <p>16 individual. Examples occur, in particular, in</p> <p>17 certain forensic cases and consultant roles. This</p> <p>18 objection attempts to subsume the rule with its</p> <p>19 exceptions. What this objection misses, however,</p> <p>20 is that the rendering of expertise and/or an</p> <p>21 opinion in this context is permissible because</p> <p>22 there is a court authorization for the examination</p>	<p>7015</p> <p>1 A I heard that yesterday in testimony,</p> <p>2 yes.</p> <p>3 Q Okay.</p> <p>4 MS. CALNAN: Thank you. Nothing</p> <p>5 further.</p> <p>6 THE COURT: All right. Thank you, sir.</p> <p>7 You can either have a seat or you can leave.</p> <p>8 Thank you.</p> <p>9 Your next witness.</p> <p>10 MS. VASQUEZ: Your Honor, we call</p> <p>11 Jennifer Howell by video deposition.</p> <p>12 THE COURT: All right.</p> <p>13 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND</p> <p>14 COUNTERCLAIM PLAINTIFF</p> <p>15 BY MS. BREDEHOFT:</p> <p>16 Q Please state your name and address for</p> <p>17 the record.</p> <p>18 A Jennifer Howell, Los Angeles,</p> <p>19 California.</p> <p>20 Q What is your current occupation?</p> <p>21 A I run the Art of Elysium. I'm CEO of</p> <p>22 Art of Elysium.</p>

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93 (7016 to
7019)

<p>7016</p> <p>1 Q Let me just go back. You indicated 2 that Whitney lived with you from January 2015 -- 3 A No. 4 Q I'm sorry, May 2015 to April 2016. 5 Are you absolutely certain about those 6 dates? 7 A I'm certain, yes. She came and went at 8 different periods, but all of her stuff moved out 9 of my house April 2016. 10 Q And I'm sorry, did you say you were a 11 hundred percent certain of that? Ms. Howell, 12 could you answer my question? 13 A Yes. She did go back to Amber and 14 Johnny's at different points, but she was still 15 living with me during that time. 16 Q The question I asked, because you were 17 talking at the same time Ms. Vasquez was giving an 18 objection, was I believe you said you were a 19 hundred percent certain of those dates; is that 20 correct? 21 THE COURT: All right. 22 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND</p>	<p>7018</p> <p>1 that can be pulled. It was the LA premiere. I 2 think there were probably multiple premieres, but 3 it was a Los Angeles premiere of Pineapple 4 Express. 5 Q Was Ms. Heard there with Mr. Depp? 6 A No. This was long before. 7 I was a guest of James Franco, and 8 Amber was in the movie, and so I met she and her 9 sister at the -- let me be specific, at the 10 after-party of the premiere. 11 Q Did Ms. Henriquez end up working for 12 Art of Elysium at some point? 13 A Yes, she did. 14 Q What year did Ms. Henriquez begin 15 working with Art of Elysium? 16 A I believe it was in 2014. I don't have 17 those documents right in front of me. I believe 18 it was leading into the year Amber was receiving 19 the award. 20 Q And what was Ms. Henriquez's position 21 at Art of Elysium? 22 A Art salon manager, director.</p>
<p>7017</p> <p>1 COUNTERCLAIM DEFENDANT 2 BY MS. VASQUEZ: 3 Q You previously testified that you were 4 the CEO for Art of Elysium; is that correct? 5 A That's correct. 6 Q Are you still currently in that 7 position? 8 A Yes, I am. 9 Q And how long have you been the CEO for 10 Art of Elysium? 11 A I'm the founder of the organization, so 12 we did our first workshop in August of 1997, filed 13 the legal paperwork in February of '98, to set up 14 a 501(c)(3), so I guess since the beginning of the 15 charity? 16 Q Ms. Howell, when did you first meet 17 Amber Heard? 18 A The Pineapple Express premiere is where 19 I met she and her sister Whitney. 20 Q Do you remember, approximately, what 21 year that was? 22 A I believe it was around 2008. I'm sure</p>	<p>7019</p> <p>1 Q Does Ms. Henriquez still work for Art 2 of Elysium? 3 A No. 4 Q When did that end? 5 A Oh, 2015, I believe. 6 Q Each time you saw Mr. Depp, did you 7 ever see him doing any illicit illegal drugs? 8 A Never. 9 Q Did you ever see him consuming 10 excessive amounts of alcohol? 11 A Never. 12 Q Did you ever see Mr. Depp appear 13 intoxicated? 14 A No. 15 Q Did Ms. Heard ever show you photographs 16 of -- depicting injuries on her face or body? 17 A No. 18 Q Did Ms. Heard ever tell you that 19 Mr. Depp was abusive towards her? 20 A No. 21 Q Is Mr. Depp paying your legal fees, 22 Ms. Howell, for this deposition and the testimony</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

94 (7020 to
7023)

<p>7020</p> <p>1 you provided in the U.K. action?</p> <p>2 A He is not.</p> <p>3 Q Who is?</p> <p>4 A Myself.</p> <p>5 Q Do you feel any particular sense of</p> <p>6 loyalty toward Mr. Depp?</p> <p>7 A None at all.</p> <p>8 Q Do you feel any sense of loyalty</p> <p>9 towards Ms. Heard?</p> <p>10 A None at all.</p> <p>11 Q Ms. Howell, do you recognize this check</p> <p>12 as the check that the Art of Elysium received on</p> <p>13 behalf of Ms. Heard for a donation, an anonymous</p> <p>14 donation of \$250,000?</p> <p>15 A Yes. Yes.</p> <p>16 Q I believe you testified previously that</p> <p>17 you understood the anonymous donor was Elon Musk;</p> <p>18 is that true?</p> <p>19 A Yes.</p> <p>20 MS. VASQUEZ: If I could, please, have</p> <p>21 Exhibit 4 brought up. And for the record, it's</p> <p>22 Bates-stamped JH22 through 29.</p>	<p>7022</p> <p>1 July 28, 2020, at 11:20 -- excuse me, at 11:02</p> <p>2 a.m.?</p> <p>3 A It is.</p> <p>4 Q Is this a true and accurate copy of an</p> <p>5 email exchange that you sent to Ms. Henriquez?</p> <p>6 A Yes. I believe I'm the one who gave</p> <p>7 that. Yes, it is.</p> <p>8 Q And then did you forward this email</p> <p>9 exchange and the attachments to Marcel Pariseau.</p> <p>10 A Yes. I asked him to keep it for me.</p> <p>11 Q Why did you send this email and letter</p> <p>12 to Ms. Henriquez?</p> <p>13 A Because I struggled very much with what</p> <p>14 to do in a situation that I love someone who I</p> <p>15 know is doing something very wrong, and I know</p> <p>16 that they're doing it because they're trying to</p> <p>17 protect their sister, and I'm trying to protect</p> <p>18 her. And I'm just trying to get her to wake up</p> <p>19 and do the right thing, which is tell the truth.</p> <p>20 That's the only thing that can help everybody</p> <p>21 involved in this case.</p> <p>22 Q Ms. Howell, do you recall submitting a</p>
<p>7021</p> <p>1 AV TECHNICIAN: Exhibit 4.</p> <p>2 Q Do you recognize this document,</p> <p>3 Ms. Howell? And if you need to scroll through the</p> <p>4 eight pages, feel free.</p> <p>5 THE WITNESS: Can you scroll down?</p> <p>6 A Yeah, I recognize that.</p> <p>7 Q And what is this?</p> <p>8 A That is an email, I believe, I sent to</p> <p>9 Whitney.</p> <p>10 Q Scrolling up to the first page of this</p> <p>11 attachment, who is Marcel --</p> <p>12 A Pariseau?</p> <p>13 Q Sure, Pariseau.</p> <p>14 A He is one of my oldest friends in</p> <p>15 Los Angeles, who has served as a board member of</p> <p>16 the Art of Elysium and is one of my biggest</p> <p>17 confidants here in LA, kind of through the course</p> <p>18 of my career.</p> <p>19 MS. VASQUEZ: And going down to the</p> <p>20 third page of this exhibit. Thank you.</p> <p>21 Q Is this an email, Ms. Howell, that you</p> <p>22 sent to Whitney Henriquez on or about Tuesday,</p>	<p>7023</p> <p>1 witness statement in the United Kingdom?</p> <p>2 A Yeah, they basically just called to</p> <p>3 verify the witness statement that was submitted</p> <p>4 previously.</p> <p>5 Q And do you recognize this document to</p> <p>6 be the witness statement and the declaration that</p> <p>7 you submitted in the U.K.? And if you want to</p> <p>8 scroll down to look at it.</p> <p>9 A Yes. I recognize it.</p> <p>10 Q And at the first page, do you see a</p> <p>11 date on this document?</p> <p>12 A January 13th, 2021.</p> <p>13 Q And is this document a true and</p> <p>14 accurate copy of the declaration that you</p> <p>15 submitted in the U.K. proceeding on or about</p> <p>16 January 13th, 2021?</p> <p>17 A Yes.</p> <p>18 Q And are all the statements in your U.K.</p> <p>19 declaration accurate and true?</p> <p>20 A I mean, yes. I signed it, yes.</p> <p>21 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND</p> <p>22 COUNTERCLAIM PLAINTIFF</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

95 (7024 to
7027)

<p>7024</p> <p>1 BY MS. PINTADO:</p> <p>2 Q All right.</p> <p>3 MS. PINTADO: Let's pull up what I</p> <p>4 believe was Depp Exhibit 9. It's been marked as</p> <p>5 Depp Exhibit 9.</p> <p>6 AV TECHNICIAN: Exhibit 9.</p> <p>7 Q So, Ms. Howell, earlier you were shown</p> <p>8 this document. Scrolling to the end of it.</p> <p>9 A Can you go -- there. Uh-huh.</p> <p>10 Q Did Mr. Waldman assist you in drafting</p> <p>11 this email?</p> <p>12 A Absolutely not.</p> <p>13 Q Did you speak with Mr. Waldman at all</p> <p>14 about drafting the email?</p> <p>15 A About writing an email? No. I did</p> <p>16 that on my own accord.</p> <p>17 Q Did you speak with Mr. Waldman at all</p> <p>18 about contacting the ACLU?</p> <p>19 A I do not recall having a conversation</p> <p>20 with him about that.</p> <p>21 Q And, Ms. Howell, you testified earlier</p> <p>22 that you received a check from Fidelity Charitable</p>	<p>7026</p> <p>1 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND</p> <p>2 COUNTERCLAIM DEFENDANT</p> <p>3 BY MR. MONIZ:</p> <p>4 Q Ms. Goldbronn, is it your understanding</p> <p>5 you're here today to testify on behalf of the</p> <p>6 Children's Hospital?</p> <p>7 A Correct. Yes.</p> <p>8 Q So as of June 2018, had any payments</p> <p>9 been made by Ms. Heard to the Children's Hospital</p> <p>10 in connection with the -- the \$3.5 million pledge,</p> <p>11 aside from the original hundred-thousand-dollar</p> <p>12 check from Mr. White, August 2017?</p> <p>13 A Yes, there was a payment, a gift on</p> <p>14 January 9th of 2018.</p> <p>15 Q And what amount is that gift that</p> <p>16 you're referring to?</p> <p>17 A \$250,000.</p> <p>18 Q Okay. And was that gift made by</p> <p>19 Ms. Heard or on Ms. Heard's behalf?</p> <p>20 A By Ms. Heard.</p> <p>21 Q Okay. And what are you basing that</p> <p>22 statement on?</p>
<p>7025</p> <p>1 in January of 2018; is that right?</p> <p>2 A I don't know if I said the date, but,</p> <p>3 yes, I received an anonymous donation from that</p> <p>4 check that was submitted, whatever is on there. I</p> <p>5 don't know the date off the top of my head.</p> <p>6 Q And you testified that there was a</p> <p>7 letter sent along with that that said that it was</p> <p>8 in honor of Amber Heard?</p> <p>9 A Yes. I was guaranteed 20 minutes with</p> <p>10 him after being attacked for three and a half</p> <p>11 hours by your side last time, so I'm going to</p> <p>12 stick by what I was told before entering this, and</p> <p>13 what your side agreed to.</p> <p>14 THE COURT: All right. Your next</p> <p>15 witness.</p> <p>16 MR. CHEW: Your Honor, Mr. Depp calls</p> <p>17 Candie Davidson-Goldbronn, who is the corporate</p> <p>18 designee at the Children's Hospital of</p> <p>19 Los Angeles.</p> <p>20 THE COURT: All right. That's by</p> <p>21 deposition; is that correct?</p> <p>22 MR. CHEW: Yes, Your Honor.</p>	<p>7027</p> <p>1 A By the check that we received from</p> <p>2 Fidelity Charity that came to Children's Hospital.</p> <p>3 Q What is this document?</p> <p>4 A It's a letter to Mr. White from myself,</p> <p>5 inquiring about further installments on the pledge</p> <p>6 that had not been fulfilled.</p> <p>7 Q And why did you write this to Mr. White</p> <p>8 on June 14th, 2019?</p> <p>9 A I was trying to figure out if there</p> <p>10 were any other payments coming from Mr. White to</p> <p>11 fulfill the pledge because we had -- because</p> <p>12 Children's Hospital Los Angeles had not received</p> <p>13 any other correspondence from him.</p> <p>14 Q And what is this document?</p> <p>15 A It is the letter to Ms. Gottlieb from</p> <p>16 myself on behalf of Children's Hospital</p> <p>17 Los Angeles, inquiring about additional gifts,</p> <p>18 pledge payment installments.</p> <p>19 Q This letter appears to be directed to</p> <p>20 Ms. Amber Heard, care of Jody Gottlieb; is that</p> <p>21 correct?</p> <p>22 A Correct.</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

96 (7028 to 7031)

<p>7028</p> <p>1 Q Who's Jody Gottlieb?</p> <p>2 A In the Children's Hospital Los Angeles</p> <p>3 records, Jody Gottlieb was our contact for</p> <p>4 Ms. Amber Heard.</p> <p>5 Q Ms. Goldbronn, why did you send this</p> <p>6 letter to Ms. Heard and to Ms. Gottlieb?</p> <p>7 A I was trying to see if the pledge was</p> <p>8 going to be fulfilled or not.</p> <p>9 Q In your experience, is it common</p> <p>10 practice for anonymous donors, when making</p> <p>11 donations to in one paragraph, state that they</p> <p>12 wish to remain anonymous and in the very next</p> <p>13 paragraph, identify themselves?</p> <p>14 A Yes.</p> <p>15 Q That is common?</p> <p>16 A It is common for donors to want to</p> <p>17 remain anonymous publicly, but allow the charity</p> <p>18 to note who they are.</p> <p>19 Q Between June 2018 and the dates on</p> <p>20 which you sent the letters to Ms. Heard and</p> <p>21 Mr. White in June of 2019, were any additional</p> <p>22 funds received from Ms. Heard?</p>	<p>7030</p> <p>1 A No.</p> <p>2 Q As of October of 2018, how much money</p> <p>3 had Ms. Heard directly donated to the Children's</p> <p>4 Hospital?</p> <p>5 A \$250,000.</p> <p>6 Q As of March 30th --</p> <p>7 COURT REPORTER: I'm sorry, I didn't</p> <p>8 heard the end of that.</p> <p>9 A Sorry, I just realized. You said</p> <p>10 October 2018?</p> <p>11 Q Correct.</p> <p>12 A Okay. \$250,000.</p> <p>13 Q Okay. As of March 30th, 2019, how much</p> <p>14 money had Ms. Heard directly donated to Children's</p> <p>15 Hospital?</p> <p>16 A \$250,000.</p> <p>17 EXAMINATION BY COUNSEL FOR THE DEFENDANT AND</p> <p>18 COUNTERCLAIM PLAINTIFF</p> <p>19 BY MS. BREDEHOFT:</p> <p>20 Q What is your understanding of the</p> <p>21 length of time over which Ms. Heard pledged the</p> <p>22 gift of 3.5 million to Children's Hospital?</p>
<p>7029</p> <p>1 A No.</p> <p>2 Q Okay. So as of June 2018, a total of</p> <p>3 \$250,000 had been received, as far as the</p> <p>4 Children's Hospital is concerned, from Ms. Heard</p> <p>5 and that was the same amount that had been donated</p> <p>6 a year later in June of 2019; is that correct?</p> <p>7 A Correct.</p> <p>8 Q As of the date of this deposition,</p> <p>9 March 30th, 2021, how much in total has Ms. Heard</p> <p>10 donated to the Children's Hospital?</p> <p>11 A For this particular gift? I mean, for</p> <p>12 this -- in her lifetime?</p> <p>13 Q From 2016 to present.</p> <p>14 A \$250,000.</p> <p>15 Q Ms. Goldbronn, do you recall we were</p> <p>16 speaking about this letter a few minutes ago?</p> <p>17 A Correct.</p> <p>18 Q All right. And this is a letter you</p> <p>19 sent to Ms. Heard, correct?</p> <p>20 A Correct.</p> <p>21 Q Did you ever get a response to this</p> <p>22 letter?</p>	<p>7031</p> <p>1 A There was no date arrangement with</p> <p>2 Ms. Heard to have this pledge paid off at a</p> <p>3 particular time.</p> <p>4 Q If Ms. Heard were to pay this, the rest</p> <p>5 of the 3.5 million in two years or five years,</p> <p>6 would CH -- Children's Hospital welcome that?</p> <p>7 A The CHLA welcomes every and any</p> <p>8 donation that comes its way.</p> <p>9 Q Has Amber Heard's pledge of the</p> <p>10 \$3.5 million to Children's Hospital expired, to</p> <p>11 your knowledge?</p> <p>12 A Not that I'm aware of, no. It has not</p> <p>13 expired.</p> <p>14 THE COURT: All right. Thank you.</p> <p>15 Your next witness.</p> <p>16 MR. CHEW: Your Honor, I think we've</p> <p>17 concluded our witnesses for today. We will have</p> <p>18 more live witnesses tomorrow.</p> <p>19 THE COURT: Okay.</p> <p>20 Ladies and gentlemen, that will be the</p> <p>21 end of your day for today. Again, do not do any</p> <p>22 outside research, do not discuss the case with</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

97 (7032 to
7035)

<p style="text-align: right;">7032</p> <p>1 anybody, and we'll see you tomorrow morning at 2 9:00 a.m., okay? Thank you. 3 (Whereupon, the jury exited the 4 courtroom and the following proceedings took 5 place.) 6 THE COURT: All right. You want to 7 have a seat for just a moment, because we do have 8 a few proffers going to be done. 9 Just for the record, we talked about it 10 earlier. I will charge the 30 minutes extra time 11 for today to the plaintiff's team, so we can stay 12 on time. 13 MR. CHEW: Understood, Your Honor. 14 THE COURT: Okay. And I believe, 15 Mr. Rottenborn, you had some proffers you wanted 16 to do for testimony? 17 MR. ROTTENBORN: We did, Your Honor, 18 testimony and a few exhibits. Mr. Nadelhaft is 19 going to do that. 20 THE COURT: Mr. Nadelhaft, if you want 21 to proffer testimony for the record as to 22 testimony the Court has sustained objections.</p>	<p style="text-align: right;">7034</p> <p>1 the therapy session, Ms. Heard reported to her 2 that she was slapped by Mr. Depp, that he hit her 3 in the head, had her hair pulled by Mr. Depp, 4 kicked her in the leg, and Mr. Depp gave Ms. Heard 5 bruises. 6 Ms. Heard also reported that Mr. Depp 7 was the first to initiate any violence. Ms. Heard 8 also reported that she hid in a bathroom to 9 protect herself from Mr. Depp. 10 Ms. Heard also reported to Dr. Anderson 11 that Mr. Depp threw a phone at her on May 21st, 12 2016, hit her and held her hair. 13 Ms. Heard also reported to Dr. Anderson 14 that she was a victim of -- that she was a victim 15 to Mr. Depp's abuse. The testimony is contained 16 in Dr. Anderson's deposition transcript, which is 17 Exhibit A. 18 The Court also excluded records of 19 Dr. Anderson from Ms. Heard's and Mr. Depp's 20 therapy sessions and a treatment summary, which 21 are Exhibits B and C. 22 Mr. Depp objected to Dr. Anderson's</p>
<p style="text-align: right;">7033</p> <p>1 MR. NADELHAFT: Your Honor, it's a box 2 here. 3 THE COURT: That's fine. You can stay 4 there, as long as you stay close to the 5 microphone. I appreciate it. 6 MR. NADELHAFT: And, Your Honor, what I 7 was going -- what I will do is I'll explain what 8 we're proffering the evidence for, and we have 9 copies. 10 THE COURT: Good. 11 MR. NADELHAFT: Which I'll provide to 12 you. I'll provide them to you electronically. I 13 don't have another copy for you right now, but 14 we'll provide one for you. 15 THE COURT: That's fine. Go ahead. 16 Yes, sir. 17 MR. NADELHAFT: Okay. Your Honor, for 18 Laurel Anderson, on March 31st, 2022, the 19 defendant attempted to designate certain portions 20 of the deposition testimony for trial. Dr. Laurel 21 Anderson, a clinical psychologist who worked with 22 Ms. Heard and Mr. Depp. Dr. Anderson testified in</p>	<p style="text-align: right;">7035</p> <p>1 testimony as described and medical records, 2 stating that they were hearsay and that they did 3 not fall into any exceptions, including statements 4 for purposes of medical treatment. The Court 5 sustained the objection on the grounds of the 6 testimony and the exhibits were hearsay. 7 For Dr. Kipper, on March 31st, 2022, 8 the defendant attempted to designate certain 9 portions of the deposition testimony for trial of 10 Dr. David Kipper, Mr. Depp's physician. 11 Dr. Kipper testified Ms. Heard voiced concerns of 12 Mr. Depp's behavior while on drugs and alcohol, 13 that Mr. Depp tried to fight and push Ms. Heard 14 while attempting detox on his island and that she 15 found lots of cocaine in February 2016. 16 Dr. Kipper also testified he told Mr. Depp to 17 "bury the dragon," which referred to the bad 18 feelings that Mr. Depp has inside him. This 19 testimony is contained in Dr. Kipper's deposition 20 transcript, which is Exhibit D. 21 Dr. Kipper also testified about an 22 email he wrote explaining Mr. Depp's detox</p>

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Conducted on May 24, 2022

98 (7036 to
7039)

<p style="text-align: right;">7036</p> <p>1 treatment. In the email, Dr. Kipper wrote to 2 Mr. Depp's sister that Mr. Depp had fundamental 3 issues with anger, romanticized the drug culture, 4 and had no patience if his needs were not met. 5 This email is Exhibit C -- Exhibit E. 6 Mr. Depp objected to Dr. Kipper's 7 testimony and the email, stating it was hearsay 8 and it did not fall into any exceptions, including 9 statements for purposes of medical treatment. The 10 Court sustained the objection on the grounds of 11 the testimony, and the exhibits were hearsay. 12 Deborah Lloyd. On March 21st, 2022, 13 the defendant attempted to designate certain 14 portions of the deposition testimony for trial of 15 Debbie Lloyd, Mr. Depp's nurse. Ms. Lloyd 16 testified Ms. Heard voiced concerns about 17 Mr. Depp's behavior while on drugs and alcohol and 18 that Mr. Depp worked himself up into a rage and 19 was trying to fight Ms. Heard while he was 20 attempting detox on his island. The testimony is 21 contained in Ms. Lloyd's deposition transcript, 22 which is Exhibit F.</p>	<p style="text-align: right;">7038</p> <p>1 Ms. Heard, where Ms. Heard recorded the incident 2 of abuse. These text messages are Exhibits I, J, 3 K, L, and M. 4 Ms. Falati also testified that on 5 May 21st, 2016, Ms. Heard reported that Mr. Depp 6 became completely delusional and crazed and hit 7 Ms. Heard in the face while she was on the phone 8 with iO Tillett Wright. Ms. Falati testified to 9 text messages reporting this as well, which are 10 contained in Exhibit N. 11 The testimony is contained in 12 Ms. Falati's deposition transcript, which is 13 Exhibit O. 14 Mr. Depp objected to Ms. Falati's 15 testimony, portions of the nursing notes, and the 16 text messages referenced, stating it was hearsay 17 that did not fall into any exception, including 18 statements for purposes of medical treatment. The 19 Court sustained the objection on the grounds the 20 testimony and portions of the nursing notes and 21 the text messages were hearsay. 22 Amy Banks, Dr. Amy Banks. On</p>
<p style="text-align: right;">7037</p> <p>1 Also, Ms. Lloyd kept nursing notes on 2 these issues that she testified to, which is 3 Exhibit G. 4 Mr. Depp objected to Ms. Lloyd's 5 testimony and portions of the nursing notes, 6 stating it was hearsay that did not fall into any 7 exceptions, including statements for purposes of 8 medical treatment. The Court sustained the 9 objection on the grounds of the testimony and 10 portions of the nursing notes were hearsay. 11 Erin Boreum-Falati. On March 31st and 12 April 1st, 2022, the defendant attempted to 13 designate certain portions of the deposition 14 testimony for trial of Ms. Falati, Ms. Heard's and 15 Mr. Depp's nurse. Ms. Falati testified that 16 Ms. Heard reported to her, on December 16th, 2015, 17 that Mr. Depp headbutted Ms. Heard in the 18 forehead. This also was contained in Ms. Falati's 19 nursing notes, which is Exhibit H. Ms. Falati 20 further testified that Ms. Heard reported being 21 freaked out after the December 2015 incident and 22 testified to text messages between herself and</p>	<p style="text-align: right;">7039</p> <p>1 April 29th, 2022, the defendant attempted to 2 designate certain portions of the deposition 3 testimony for trial of Dr. Amy Banks, a clinical 4 psychologist and relationship consultant who 5 worked with Ms. Heard and Mr. Depp. Dr. Banks 6 testified that in therapy sessions, Ms. Heard 7 reported that Mr. Depp attacked her physically, 8 including by hitting her with his hand. Dr. Banks 9 also testified that Ms. Heard reported that 10 Mr. Depp cut his finger off and burned himself 11 with a cigarette. Dr. Banks also reported that 12 Ms. Heard told her that Mr. Depp initiated the 13 violence while in session with Mr. Depp, and 14 Mr. Depp did not object to the characterization of 15 the violence. 16 Finally, Dr. Banks testified that she 17 believed Ms. Heard's accounts of the violence and 18 that Ms. Heard was a victim of domestic abuse. 19 This testimony is contained in Dr. Banks' 20 deposition transcript, which is Exhibit P. 21 Mr. Depp objected to Dr. Banks' 22 testimony, stating it was hearsay that did not</p>

Transcript of Jury Trial - Day 22
Conducted on May 24, 2022

99 (7040 to
7043)

<p style="text-align: right;">7040</p> <p>1 fall into any exceptions, including statements for 2 purposes of medical treatment and for providing 3 improper expert witness opinion. The Court 4 sustained the objections on the grounds that the 5 testimony about the abuse was hearsay and that 6 Dr. Banks' testimony that Ms. Heard was a victim 7 of domestic abuse was improper expert opinion. 8 Connell Cowan. On April 29th, 2022, 9 the defendant attempted to designate certain 10 portions of the deposition testimony for trial of 11 Dr. Connell Cowan, a clinical psychologist who 12 worked with Ms. Heard. Dr. Cowan testified that 13 in the therapy session, Ms. Heard reported abuse 14 by Mr. Depp, including text messages and medical 15 notes, where Ms. Heard reported, in December of 16 2015, that "Johnny did a number on me." 17 This testimony is contained in 18 Dr. Cowan's deposition transcript, which is 19 Exhibit Q. 20 It's also contained in Dr. Cowan's 21 medical notes, in Exhibit R, at Depp 9122 through 22 23, and is contained in text messages that are</p>	<p style="text-align: right;">7042</p> <p>1 the cutting and burning himself as speculation, 2 and the testimony regarding the drugs Mr. Depp was 3 taking as hearsay that did not fall into any 4 exceptions, including statements for purposes of 5 medical treatment. The Court sustained the 6 objections on these grounds. 7 Bonnie Jacobs. On May 4th, 2022, the 8 defendant attempted to introduce into evidence the 9 treatment notes of Dr. Bonnie Jacobs, a clinical 10 psychologist who worked with Ms. Heard. The 11 treatment notes show Ms. Heard reporting abuse by 12 Mr. Depp, including sexual violence. The 13 treatment notes are Exhibit Y. And based on the 14 Court's ruling, the defendant did not call Bonnie 15 Jacobs as a witness. 16 Mr. Depp objected to Dr. Jacobs' notes 17 as hearsay that did not fall into any exceptions, 18 including statements for purposes of medical 19 treatment. The Court sustained the objections on 20 those grounds. 21 I have some more. 22 THE COURT: As long as you don't just</p>
<p style="text-align: right;">7041</p> <p>1 Exhibits S and T. 2 Mr. Depp objected to Dr. Cowan's 3 testimony, stating it was hearsay and did not fall 4 into any exceptions, including statements for 5 purposes of medical treatment. The Court 6 sustained the objection on the grounds that the 7 testimony about the abuse was hearsay. 8 Allen Blaustein. On April 29th, 2022, 9 the defendant attempted to designate certain 10 portions of the deposition testimony for trial of 11 Dr. Allen Blaustein, a clinical psychologist who 12 worked with Mr. Depp. Dr. Blaustein testified 13 that in a therapy session, Mr. Depp reported that 14 he had cut himself as a child and burned himself 15 with cigarettes. Dr. Blaustein also testified 16 about the drugs that Mr. Depp was on, as reported 17 to him by Ms. Lloyd. This testimony is contained 18 in Dr. Blaustein's deposition transcript, which is 19 Exhibit U. 20 This information is also contained in 21 emails, which are Exhibits V, W, and X. Mr. Depp 22 objected to Dr. Blaustein's testimony regarding</p>	<p style="text-align: right;">7043</p> <p>1 keep turning every page in that book. I'm not 2 staying for that. 3 MR. NADELHAFT: It is not. 4 THE COURT: Okay. 5 MR. NADELHAFT: The U.K. judgment on 6 April 29th, 2022, Ms. Heard moved to allow 7 evidence and questioning regarding the U.K. 8 judgment and for admission of the judgment itself, 9 which is Exhibit Z. In support for a motion, 10 Ms. Heard argued that Mr. Depp had opened the door 11 to the admission of the judgment by presenting 12 evidence of damages after the day of the judgment 13 on November 2nd, 2020. For example, Ms. Heard 14 observed that Mr. Depp had sought damages for 15 losing his role in Pirates of the Caribbean 6, a 16 movie that's not yet been made. Ms. Heard further 17 observed that Mr. Depp testified that the op-ed 18 caused him and his family irreparable harm, 19 therefore, suggesting that his reputational harm 20 had continued to the present. 21 Ms. Heard noted that Mr. Depp's expert 22 designation indicated Michael Spindler relied on</p>

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7047)

<p style="text-align: right;">7044</p> <p>1 Mr. Depp's earnings from 2019 to 2021 when 2 reaching his opinion, which resulted in an 3 amendment to the designation. 4 The Court found Mr. Depp had not opened 5 the door to the admission of the U.K. judgment and 6 overruled the motion, which the Court did again 7 today with Mr. Bania's opinions. 8 Finally, Adam Bercovici. On May 19th, 9 2022, Ms. Heard attempted to call Adam Bercovici, 10 who is an expert in the policing and the 11 Los Angeles Police Department policing of domestic 12 violence calls for service. Mr. Bercovici would 13 have testified to his qualifications in the field 14 of policing and LAPD policing of domestic violence 15 calls for service as follows and further outlined 16 in Ms. Heard's fourth supplemental and rebuttal 17 disclosures, dated March 21, 2022. Mr. Bercovici 18 spent 30 years with the LAPD, retiring in 2012 at 19 the rank of lieutenant. He has extensive 20 experience as a patrol officer, a field 21 supervisor, uniform watch commander, both as 22 sergeant 2nd, and lieutenant 1, along with</p>	<p style="text-align: right;">7046</p> <p>1 THE COURT: Okay. That's fine. If you 2 can give Jamie our copy, we'll make sure it 3 becomes a part of the record as well. 4 MR. NADELHAFT: Thank you. 5 THE COURT: All right. Do you have any 6 proffer, Mr. Chew, at this point? 7 MR. CHEW: Not at this time, Your 8 Honor. Thank you. 9 THE COURT: Okay. All right. Then I 10 think there's just a couple things I need from 11 you, like tomorrow, let me -- by the end of the 12 day tomorrow, if I could get clean jury 13 instructions without the cites on them, for the 14 ones that have been admitted. Also, the verdict 15 forms as well. If that's been worked out, okay? 16 MR. ROTTENBORN: Your Honor, we sent 17 revised jury instructions to them yesterday 18 morning, and a revised jury form today. So just 19 waiting to hear back. We'll coordinate. 20 THE COURT: Sure. All right. Thank 21 you. 22 Are you working with Jamie about some</p>
<p style="text-align: right;">7045</p> <p>1 multiple assignments as an officer in charge, 2 lieutenant 2nd of specialized detective units. 3 During his tenure with the LAPD, 4 Mr. Bercovici held numerous positions directly 5 responding to and overseeing subordinate officers' 6 responses to the domestic violence calls for 7 service, including as patrol officer, supervisor, 8 watch commander and assistant watch commander. 9 And, actually, this, Your Honor, is a -- the 10 person who prepared this, prepared a longer brief 11 of what he was going to say. I can -- is it okay 12 to just submit it rather than hearing me read it 13 all? 14 THE COURT: All right. Any objection 15 to that? 16 MR. CHEW: No objection. 17 THE COURT: No objection. That's fine. 18 MR. NADELHAFT: And with that, that's 19 the proffer. 20 THE COURT: You just scared me with the 21 size of that. 22 MR. NADELHAFT: No, I understand.</p>	<p style="text-align: right;">7047</p> <p>1 exhibits? There's some that both sides noted that 2 were in evidence that are not, so I want to make 3 sure everybody gets everything cleared up. 4 MS. BREDEHOFT: We're caught up. 5 THE COURT: You're caught up? 6 MS. BREDEHOFT: I believe so, Your 7 Honor. 8 THE COURT: Good. Just keep that 9 going. Make sure that's taken care of. 10 As far as time left, Sammy -- today, I 11 can give you a rough estimate for two reasons, 12 one, you had some depositions, so make sure you 13 give the breakdowns to Sammy about those. 14 Two, Sammy wasn't here today. He had a 15 mandatory CLE that he had to do, so I just did a 16 rough estimate, and I want to qualify that as a 17 "rough" estimate. But it looks like the plaintiff 18 has used about five hours today and the defendant 19 used about an hour 15 minutes, okay? Again, rough 20 estimate. Don't expect them to be the same, but 21 Sammy's going to get to it this evening and send 22 you an email this evening with the actual accurate</p>

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101 (7048 to
7051)

1 times, okay? 2 Anything else? 3 MR. CHEW: No, thank you, Your Honor, 4 thank you. 5 THE COURT: All right. 6 MR. ROTTENBORN: No, Your Honor. 7 THE COURT: Thank you. Have a good 8 evening. See you in the morning. 9 MR. ROTTENBORN: Thank you. 10 THE BAILIFF: All rise. 11 (Whereupon, the trial was recessed at 12 5:08 p.m. to reconvene at 9:00 a.m., Wednesday, 13 May 25, 2022.) 14 15 16 17 18 19 20 21 22	7048	
1 CERTIFICATE OF SHORTHAND REPORTER 2 I, JUDITH E. BELLINGER, RPR, CRR, the 3 court reporter before whom the foregoing hearing 4 was taken, do hereby certify that the foregoing 5 excerpt transcript is a true and correct record of 6 the proceedings; that said proceedings were taken 7 by me stenographically and thereafter reduced to 8 typewriting under my direction; and that I am 9 neither counsel for, related to, nor employed by 10 any of the parties to this case and have no 11 interest, financial or otherwise, in its outcome. 12 IN WITNESS WHEREOF, I have hereunto set 13 my hand and affixed my notarial seal this 25th day 14 of May, 2022. 15 My Commission Expires: September 30, 2024 16 17 <i>Judith E. Bellinger</i> 18 _____ 19 NOTARY PUBLIC IN AND FOR 20 THE COMMONWEALTH OF VIRGINIA 21 22	7049	