Witness statement
Louis Charalambous
Third
Defendants
Exhibit LC 3

Dated: 19 February 2020

IN THE HIGH COURT OF JUSTICE **CLAIM NO. QB-2018-006323**

QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

BETWEEN:

JOHN CHRISTOPHER DEPP II

Claimant

and

(1) NEWS GROUP NEWSPAPERS LTD

(2) DAN WOOTTON

Defendants

THIRD WITNESS STATEMENT OF LOUIS CHARALAMBOUS

I, **Louis Charalambous** of Simons Muirhead & Burton LLP, 87-91 Newman Street, London W1T 3EY **WILL SAY**:

1. I am a partner at Simons Muirhead & Burton LLP ('SM&B'), which acts for both Defendants in this action, and I am authorised to make this statement on their behalf. I make this statement in support of the Defendants' Application Notice dated 19 February 2020.

2. The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, a source of the information is identified. Facts and matters derived from these other sources are true to the best of my knowledge and belief.

Background

3. This is a libel claim brought by the Claimant, Mr Depp, who is a world-famous actor more commonly known as Johnny Depp. The First Defendant, News Group Newspapers Ltd, is the publisher of *The Sun* newspaper and its associated website. The Second Defendant, Mr Wootton, is a journalist employed by the First Defendant who wrote the articles complained of. The claim is for damages and an injunction in respect of an article published online on the First Defendant's website on 27 April 2018 and an article published in *The Sun* on 28 April 2018.

4. The claim form was issued on 1 June 2018 and the particulars of claim ("PoC") were served on 13 June 2018. The Claimant alleges that the words complained of meant that:

   "the Claimant was guilty, on overwhelming evidence, of serious domestic violence against his then wife, causing significant injury and leading to her fearing for her life, for which the Claimant was constrained to pay no less than £5 million to compensate her, and which resulted in him being subjected to a continuing court restraining order; and for that reason is not fit to work in the film industry." (PoC [10])

5. The Claimant has separately issued a libel claim in the United States against his former wife Ms Amber Heard in respect of a publication in the Washington Post entitled, *"I spoke up against sexual violence — and faced our culture's wrath. That has to change."* ("the US libel proceedings"). The US libel proceedings are on-going. There have also been divorce proceedings in the US between the Claimant and Ms Heard.

The Re- Amended Defence and Amended Reply

6. The Defendants served an Amended Defence on 21 June 2019. This has recently been reamended by consent. I refer in this statement to the Re-Amended Defence (Re-AmDef). The Defendants rely on a substantive defence of truth pursuant to section 2 of the Defamation Act 2013, in the meaning that *"the Claimant beat his wife Amber Heard causing her to suffer significant injury and on occasion leading to her fearing for her life"* (ReAmDef [8]).

7. The Particulars of Truth are set out at ReAmDef [8(a)] to [8(q)]. The Defendants rely on a number of alleged incidents of abuse from 2012 to 2016 (some of which took place over multiple days), and allege more generally that *"throughout their relationship the Claimant was verbally and physically abusive towards Ms Heard, particularly when he was under the influence of alcohol and/or drugs"* (ReAmDef [8(a)]).

8. The Claimant served an Amended Reply ("AmRep") on 26 July 2019 setting out a detailed response to the Defendants' factual case. He is due to file a Re Amended Reply but at the time of drafting this statement has not done so. The Claimant denies that the words complained of in the meaning relied on by the Defendants is true. The Claimant's overarching case is that *"he has never hit or committed any acts of physical violence against Ms Heard"* and *"has never done more than grab her arms to prevent her punching him in the face"* (AmRep [2.1]), and he denies each of the specific allegations of violence as alleged in the AmDef.

9. The Claimant also claims that the only substance to which he was addicted during the period in question was Roxicodone (witness statement paragraph 21). An important issue at trial will be what substances (prohibited drugs, prescription drugs and alcohol) the Claimant was using during the relationship with Ms Heard and what effect these had on him; and what his mental state was generally during that relationship. It is the Defendants' case that the Claimant frequently lost control of himself during the relationship, partly because of his heavy drug and alcohol use, and also that his memory has been impaired by his heavy use of drugs, including prescription drugs, and alcohol, throughout that relationship.

The Trial

10. The trial is due to be heard by a Category A Judge over 10 days (plus 1 day reading) from 23 March to 3 April 2020. A pre-trial review is listed for 26 February 2020. The parties have agreed that there will be an exchange of reply evidence, which the Defendants propose takes place before the pre-trial review.

Reason for this application

11. On 5 February 2020 I received an email from the Claimant's US lawyer Mr Waldman, which I exhibit at page 1 of LC 3. The email said:

Dear Mr. Charalambous:

It's Adam Waldman writing.

When we met last, you said "amber heard would have to be gone girl" for her abuse allegations to be false. One audio tape alone (plus frankly a mountain of other evidence) has shown her to be so. There are more tapes to come. I assume you were blindsided by these tapes, which Ms Heard has admitted she possesses, because she didn't provide them to you.

If you would like to discuss a way out of the morass for your client, please call me. I'm in Los Angeles on +12025504507.

Kind regards
Adam

12. The reference to 'one audio tape alone' was to an audio tape recording of a conversation between the Claimant and Amber Heard which had been provided to the US publisher of Mail Online and which appeared on the Mail Online website on 31 January 2020. I exhibit a copy of the article at pages 2-22 of LC 3.

13. On 5 February (the same day as Mr Waldman's email) a further article appeared on Mail Online concerning another recording of Ms Heard which had been provided to the publisher. I exhibit a copy of the article at pages 23-52 of LC 3.

14. I was unaware of either recording until these reports appeared on Mail Online. They had not been disclosed by the Claimant in these proceedings, and still have not been. I have now listened to the parts of the recordings that have been placed on YouTube. As is apparent from the Mail Online articles, the recordings obviously contain matters which potentially shed light on the issues in this case and therefore fall within the scope of CPR 31.6.

15. I believe that it is apparent from Mr Waldman's email to me that the Claimant has long been in possession of at least one of these audio recordings- which is unsurprising given they feature the Claimant – and has further recordings which he is threatening to put into the public domain unless my clients settle this case on terms advantageous to the Claimant. I also believe it is clear that the Claimant is responsible for leaking these recordings to Mail Online in order to put pressure on my clients or on their principal witness, Ms Heard. On 10 February I wrote to the Claimant's solicitors Schillings to ask whether their client leaked the recordings to Mail Online and to explain whether he has any further recordings, but at the date of this statement have had no response.

16. This is obviously very concerning. It is also consistent with the Claimant's persistent failure to comply with his duties of disclosure in these proceedings, as described in detail below.

17. However the failures in disclosure were not just the responsibility of the Claimant. I believe that his previous solicitors Brown Rudnick, who were replaced during the week of 3 February 2020, failed to comply with their duties regarding disclosure, for example by redacting materials which plainly should not have been redacted, as explained below, and by failing to disclose documents which obviously fall within the ambit of CPR 31.6. Brown Rudnick have also engaged in correspondence on the topic of disclosure which is, I consider, misleading, as I set out below.

18. As a result of Mr Waldman's email I now believe that the Claimant has been deliberately withholding disclosable documents from the Defendants in order to place the Defendants under a disadvantage. I also have no faith at all that the Claimant's former solicitors Brown Rudnick carried out their duties properly. This is why the Defendants seek an ordering requiring the Claimant's new solicitors to carry out a proper disclosure exercise in respect of as yet undisclosed documents, verified with a statement of truth, to ensure the Claimant's disclosure duties have been properly complied with. I also ask that the court make an order that unless the orders be complied with the claim be struck out. This is because of the imminence of trial and the risk of unfairness if the Claimant does not comply with his disclosure obligations as a matter of urgency.

Issues with the Claimant's disclosure

19. Master McCloud's CCMC directions included the usual order for standard disclosure by exchange of lists, to take place by 6 September 2019 (extended by agreement to 13 September 2019).

20. The numerous letters from SM&B to the Claimant's solicitors, which I exhibit at LC 3 pages 114-203, attest to this. It has been an excessively lengthy process that has put my clients to unnecessary costs, and even now, months later, many points remain unresolved.

Form N265 / Disclosure statement

21. In a good example of the approach the Claimant has taken to his disclosure obligations, and in particular as to his lack of personal engagement with the process, we did not receive a Form N265 signed by him personally until 9 January 2020, almost four months after the date for exchange of lists. A copy is exhibited at pages 53-58 of LC 3.

22. The form provided on 13 September 2019 had instead been signed by a representative of Brown Rudnick, the Claimant's then solicitors. Further, the wording of the disclosure statement in the standard form had been altered to say: "I certify that I understand the duty of disclosure and to the best of my knowledge ~~I have~~ the Claimant has carried out that duty. I further certify that the list of documents set out in or attached to this form, is a complete list of all documents which are or have been in ~~my~~ the Claimant's control and which ~~I am~~ he is obliged under the order to disclose".

23. We wrote on 4 October 2019 to say that this was not acceptable, noting that CPR 31.10(7) (which makes provision in for a lawyer to sign off on behalf of a company) did not apply given that the Claimant is an individual, and that as per Arrow Trading and Investments and another v Edwardian Group Ltd and others [2004] EWHC 1319 (Ch): *'The purpose of the rule [CPR 31.10] is to bring home to each party his or her individual responsibility for giving standard disclosure. Except to the extent permitted by the rules, it requires the party himself to make the disclosure statement'.*

24. We had to chase this up various times, Brown Rudnick having said on 10 October 2019 that *'we will ask our client to sign form N265 and will then provide the signed form to you'.* They then promised an amended version of the form to take account of further searches being carried out (as to that, see further below); and following yet another chaser from my firm on 20 December, they advised on 23 December that the

Claimant was travelling and unable to provide a signed copy. As I said above, the signed copy was only finally received this year, on 9 January 2020.

Text Message Spreadsheet: the accidentally disclosed documents

25. The Claimant's original form N265 exhibited hereto at pages 59-63 of LC 3 states that 'data from the iCloud backup of the Claimant's phone was extracted in 2017'. The summary page of the excel spreadsheet confirms that it was prepared in 2017, and that it contained material from the "Dembrowski iCloud backup". Christi Dembrowski is the Claimant's sister. The form says that the messages were then manually reviewed, search terms were applied, reports were made, and the reports were reviewed manually.

26. The Claimant disclosed an Excel spreadsheet of text messages which he indicated was a combination of a list of messages between (1) him and Amber Heard; and (2) him and various third parties, all from the Claimant's mobile telephone ("the Spreadsheet"). Separately, the Claimant also disclosed a schedule of text messages from Stephen Deuter's phone ("Deuters Schedule"). Mr Deuters was the Claimant's assistant.

27. On the face of it, the Spreadsheet disclosed by the Claimant's solicitors contained approximately 400 text messages. The paralegal at this firm who did this task has explained to me that she was trying to determine how many text messages were in the document, but this was not possible because it started at around row 8,000 and the row numbering was not sequential. She therefore double clicked a line between two rows of text messages which then revealed swathes of further text messages. Due to what Brown Rudnick later called a "technical error", the Spreadsheet also contained circa 70,000 text messages. It became apparent that these 70,000 messages had been disclosed inadvertently. These included a large amount of irrelevant material as well as some privileged messages which I examined in accordance with the Court of Appeal guidelines in *Mohammed Al Fayed and Ors v Commissioner of Police of the Metropolis [2002] EWCA Civ 780* to ascertain whether these messages were included as an "obvious mistake". As set out in the correspondence I found that they were. Thereafter I deleted all of the privileged material in accordance with the guidelines. The Spreadsheet also contained a great deal of other relevant messages, which were not included in the list the Claimant had intended my clients to receive. As referred to in the Schedule below, key text messages were also missing from the Deuters Schedule.

28. We notified Brown Rudnick of this and agreed to delete the Spreadsheet, so the 400/70,000 figures I have given above are my firm's best approximation (because we have not been able to access the Spreadsheet as originally disclosed in order to confirm the exact figures). Meanwhile, SM&B had compiled our own Schedule of messages taken from the full Spreadsheet that we considered relevant to the matters at issue (irrespective of the Claimant's intention to disclose them), which we sent to Brown Rudnick inviting them to agree it. As a result of our analysis of the messages we concluded that there were some 800 messages which the Claimant had not intended to disclose but which were disclosable.

29. I set out below some of the messages which the Claimant had not intended to disclose but which were contained in the 70,000 messages.

From	To	Message	Date
The Claimant	Amber Heard	You know what I want, who I am and where I want to go with us... You know very well what type of fucking man I am. And, yet... You lay a gauntlet before me that you know is the very species of danger that will always attract me into a very tempting test... What's behind that door??? Almost impossible to nit take you on... You want me to roll the dice??? This sounds more like an aggravated ultimatum than the soft words that could help to make us both feel better!!! Don't test me, please...	9/9/2013 11:03:50 PM(UTC+0)
Paul Bettany	The Claimant	I just thought of a way for us to make a lot of money! I know you already have a lot of money but I mean A LOT of money and with very little effort. First of all we buy Amber a pet beaver and then we take pictures of you shaving said beaver. All that's left is to do is to create a website with the domain name "Johnny Depp shaves Amber Hurd's beaver" and then we sell advertising space like fucking crazy!!! Clearly there are many spin offs- you could poke, stroke, punch etc.	6/4/2013 2:45:12 PM(UTC+0)
The Claimant	Paul Bettany	Lets burn Amber!!!	6/11/2013 5:04:53 PM(UTC+0)

The Claimant	Paul Bettany	Let's drown her before we burn her!!! I will fuck her her burnt corpse afterwards to make sure she is dead...	6/11/2013 6:23:46 PM(UTC+0)
The Claimant	Paul Bettany	I'm gonna properly stop the booze thing, darling... Drank all night before I picked Amber up to fly to LA, this past Sunday... Ugly, mate... No food for days... Powders... Half a bottle of Whiskey, a thousand red bull and vodkas, pills, 2 bottles of Champers on plane and what do you get...??? An angry, aggro Injun in a fuckin' blackout, screaming obscenities and insulting any fuck who got near... I'm done. I am admittedly too fucked in the head to spray my rage at the one I love... For little reason, as well I'm too old to be that guy But, pills are fine!!!	5/30/2014 5:45:08 PM(UTC+0)
The Claimant	Chrsti Dembrowski	I'm so happy that I never, ever have to deal with that conniving, thieving whore again!!!! Hope Mom's doing Snoopy dances!!! Love your guts... Me	8/18/2016 4:51:44 PM(UTC+0)

30. Eventually, Brown Rudnick did not take issue with any of the messages contained in our Schedule. On 11 October 2019 Brown Rudnick provided a new Spreadsheet which contains all of those messages. The Claimant can therefore be taken to have accepted that these messages are relevant under CPR 31.6. However, the Court should note that these text messages only came into the Defendants' possession as a result of a "technical error", and no explanation has been given about why they were not included in the messages that were intended to be disclosed – as they obviously should have been.

31. This serves as an illustration of the general stance that appears to have been taken by the Claimant, whereby until pressed he only discloses material that he considers helps his case, or at least is not unhelpful to it.

Undisclosed text messages

32. Separately, and concerningly, the spreadsheets of text messages provided by the Claimant (either in the intentional or unintentional part, and old and new versions) omit various text messages which are referred to in the pleadings in this claim. All of these messages are referred to either in the Claimant's pleadings or in the Defendants' pleadings, which were based on declarations made in the US libel proceedings. As is apparent from the relevant parts of the Amended Reply (set out below) there has never been any issue that the text messages in question were sent.

33. I have set out to the best of my knowledge when these text messages were subsequently disclosed (to the extent that they have been) in the below table. As is apparent he has only very recently disclosed the majority of these messages. Moreover, he omitted them all from the spreadsheet of messages which he provided to us. In respect of some pleaded texts the Defendant has still given no disclosure.

34. I caveat that by saying that it is difficult to comprehensibly check what has been disclosed by the Claimant and when CPR 31.10 (3) requires a party to serve a list of documents, which "must identify the documents in a convenient order and manner." The additional guidance provided in PD 31A paragraphs 3.1 to 3.3 sets out that it would be usual to list of the documents in date order, number them consecutively and give a concise description for each document. We have received the majority of the Claimant's disclosure in batches sporadically/piecemeal over the course of four months, mainly after we have chased up specific items. In accordance with PD 31A.3 and PD 31B.30, when additional documents are disclosed an additional schedule of documents should be provided. The absence of this makes it more difficult to conduct a proper review of what the Clamant has disclosed.

Where pleaded	*Text referred to*	*Status of Disclosure*
2.82 of the Amended Reply	The Claimant texted Whitney Heard on 21 May 2016 at 7.30pm in response to a text he received from her at 7.15pm, suggesting his arrival may have been later than 7.15pm'	Still have not been disclosed by the Claimant
Para 8.a.2 Re-Amended Defence	'disco bloodbath' and 'hideous moment' text message	Ds disclosed this text message exchange in a screenshot within the Exhibit to Amber Heard's April 2019 US Declaration. C first disclosed these by way of a screenshot on 29 January 2020. This text exchange was not in the spreadsheet of text messages disclosed by BR.
Para 2.2B.5 Amended Reply	It is admitted that the Claimant had an exchange of texts with Ms	Ds disclosed this text message exchange in a screenshot within

(replying to Para 8.a2. Amended Defence)	Heard on 12 March containing the words quoted therein"	the Exhibit to Amber Heard's April 2019 Declaration.
Para 8.a.4 Re-Amended Defence	Stephen Deuters texted the Amber Heard saying the Claimant was apologetic and appalled at his behavior during the flight and cried when he was told he had kicked Ms Heard.	C first disclosed on 29 January 2020. They were contained within a a video of a person scrolling through text messages between Amber Heard and Stephen Deuters as Exhibit 9 to Amber Heard's Exhibits to the 2016 Divorce proceedings. This text message exchange was not in the Deuters Schedule disclosed by BR.
Para 8.a.4 Re-Amended Defence	[the Claimant] sent Ms Heard a text message, admitting "Once again, I find myself in a place of shame and regret. Of course, I am sorry... I will never do it again... My illness somehow crept up and grabbed me... I feel so bad for letting you down."	Ds disclosed this text message exchange in a screenshot within the Exhibit to Amber Heard's April 2019 US Declaration. C first disclosed these by way of a screenshot on 24 January 2020 in Exhibit 5 to Amber Heard's Divorce Exhibits. This text exchange was not in the spreadsheet of text messages disclosed by BR.
Para 2.2D Amended Reply (replying to Para 8.a.4 Amended Defence)	It is admitted that Stephen Deuters had a text exchange with Ms Heard on 25 May 2014 in which Mr Deuters said that the Claimant had cried when he had been told that he "kicked" Ms Heard. [...] As to the second sentence: it is admitted that the Claimant sent	See above.

	Ms Heard a message containing the words quoted therein, but it is denied that the said text message amounted to an admission that the Claimant had behaved in the way alleged."	
Para 8.a.6 Re-Amended Defence	The Claimant sent Ms Heard text messages apologising for his behaviour and calling himself a "fucking savage" and a "lunatic".	This was exhibited to AH's April 2019 Declaration but has not been disclosed elsewhere by C (including the spreadsheet of text messages disclosed by BR).
Para 2.2F Amended Reply (replying to Para 8.a.6 Amended Defence)	[...] it is denied that [...] the text messages sent on that date were an apology for any kind of violence on the part of the Claimant	

35. These are all, of course, relevant messages. The Claimant's approach to disclosure of them has been deficient and illustrative of the wholly unsatisfactory way in which he and his previous solicitors have approached their responsibilities as to disclosure.

36. On 10 October 2019 Brown Rudnick stated in correspondence exhibited at pages 132-135 of LC 3 that the pleaded text messages were not in the data that had been collected from the Claimant's iCloud; they advised that they were making investigations as to why that may be the case. On 17 October 2019 they said they were continuing to investigate what had happened to these messages and were looking into whether the Claimant possessed any other mobile devices that he used at the relevant times; see pages 139-140 of LC 3. On 6 November 2019 the explanation given was that the text messages 'were not in the data that has been collected' see pages 148-149 of LC 3. On 25 November my firm required confirmation about whether these text messages had been deleted, and if so by whom. We also asked what else has been deleted that should have been disclosed. A copy of this letter can be found at pages 152-153 of LC 3.

37. As per the correspondence, Brown Rudnick stated that further searches had been carried out (including keyword searches) and that the messages still did not appear. There was no explanation as to why that might be the case.

38. In their letter of 23 December 2019 at pages 164-166 of LC 3, Brown Rudnick simply stated that the Claimant's position as to the missing text messages is as set out in his second witness statement of 12 December 2019. However that statement contains no such explanation as to the manner in which the messages were (or in some cases were never) disclosed. He does not say whether they were deleted, or what efforts he has made to search for text messages.

39. I remain very concerned that the Claimant has not carried out a proper search for relevant text messages. He appears to have had very little if any involvement personally on the attempts to obtain text messages which may shed light on the issues in these proceedings. There therefore remains the very real possibility that if he made a proper effort to search for such messages further relevant messages would be found.

40. I refer at paragraph 64 below to an exhibit list to Ms Heard's statement from the US divorce proceedings dated 9 August 2016 which refers to various text messages and other documents. A copy of the exhibit list is enclosed at pages 69-73 of LC 3. This includes various documents which were obviously within the scope of CPR 31.6 including text messages. None of these documents, including text messages, were disclosed by the Claimant in his original list. As best as I can tell, some have still not been disclosed by the Claimant. This is, frankly, incomprehensible, and adds to my concerns about how the Claimant and his then solicitors carried out the disclosure exercise.

41. For this reason I ask the court for orders relating to the disclosure of text messages, as set out in the draft order.

Claimant's computer(s)

42. Initially – remarkably - the Claimant's own computer (or computers) were not searched. Brown Rudnick advised in correspondence on 10 October 2019 that they did not consider it would be reasonable or proportionate to search his computer(s). Clearly, this was not acceptable under standard disclosure criteria.

43. On 6 November 2019 Brown Rudnick confirmed that the Claimant's computer had now been imaged (nearly two months after exchange of disclosure by lists was due to take place). Brown Rudnick also advised that the documents found to be disclosable as a result of this exercise would be disclosed as soon as possible. On 25 November my firm wrote to Brown Rudnick to chase the results of this search as no documents had been received. On 26 November Brown Rudnick advised that there were no disclosable documents as a result of the search exercise carried out on the Claimant's computer. This is, to say the least, surprising.

44. Finally on 23 December 2019 the Claimant disclosed emails between himself and Michael Mann dated 8-9 June 2016, and emails between himself and Rob Marshall dated 21 June 2016. Copies of these emails are enclosed at pages 64- 68 of LC 3. These emails were disclosed despite the Claimant's solicitors having originally stated in correspondence on 17 October 2019 that the Defendant's email account returned no results relevant to the issues in dispute. Also, although it is possible that he does not use his computer for emails, I find it surprising that these emails were not found as a result of a search of the Claimant's computer.

45. Given the above, I consider it reasonable and appropriate for the Claimant's new UK solicitors to confirm that they are satisfied that the search carried out into the Claimant's computer has been properly carried out.

Medical records (Dr Kipper notes)

46. The Claimant's drug use and the resulting effect on his behaviour is a key matter at issue in these proceedings, as is apparent from the various pleaded incidents of violence. The Claimant deals with the issue in his second witness statement of 12 December 2019: for example, he makes a case that the only drug he has been addicted to is Roxicodone. He says he is not '*a general drug addict [...] nor did any drug or alcohol ever make [him] undertake violence against anyone*'. However, in his disclosure list only one item that could be considered a medical record was included, an email from Dr Kipper to the Claimant's sister. Plainly there was more material in the Claimant's control, but again we had to repeatedly press for it.

47. It is evident that there are outstanding medical records in the Claimant's control which he has not obtained from medical practitioners, or which have not been disclosed.

48. As set out at paragraph 4 (d) of my firm's letter to Brown Rudnick dated 4 October 2019, exhibited at pages 117-122 of LC 3, the Claimant has made a positive case in his Amended Reply about periods of his sobriety. We stated that there would be documents in his control which are relevant to these and his other assertions about his sobriety which needed to be disclosed.

49. In response to this, on 10 October 2019 Brown Rudnick stated in correspondence 'our reviewers did not find any documents that are relevant to the matters set out in paragraph 4(d)'. We did not find this credible.

50. On 17 October Brown Rudnick confirmed that they had requested that their client provide medical records he has within his control, admitting that they did not initially search medical records as a standalone category because – mystifyingly - they did not consider it proportionate to do so. They also stated that they continued to maintain this to be the case but had none the less asked the Claimant to provide them with medical records within his control so that they could carry out a manual review for the purpose of disclosure.

51. On 25 October Brown Rudnick advised that the Claimant was in the process of executing a HIPAA waiver in the US to enable the records to be released to him. Such a waiver allows doctors to provide information on a patient's health to third parties, they also said they were hopeful that the records would be disclosed by early the following week.

52. Despite the assurances by Brown Rudnick as to the timing of disclosure, before 23 December only one medical record had been disclosed in relation to the Claimant's positive case about his drug use/ addiction issues; a letter from the Claimant's private doctor, Dr David Kipper dated 15 March 2015.

53. On 23 December 2019 Brown Rudnick provided medical records from Dr Kipper but they said they had 'redacted information not relevant to these proceedings'. The records had been very heavily – almost entirely in some cases – redacted. We wrote to say that this was inappropriate, not least because as per CPR 31.19 (3), there must be a "right or duty" allowing a party to redact part of a document, and the grounds for doing so must be set out.

54. It is my understanding that Dr Kipper was solely treating the Claimant for his addiction issues. Therefore, I would expect all of Dr Kipper's records of his treatment of the Claimant during the period of his relationship with Ms Heard to fall within the scope of CPR 31.6.

55. It is not just the extreme reluctance of the Claimant to disclose medical records which I find concerning. It is also the manner in which Brown Rudnick redacted the medical records which they did decide to disclose. For example, the Claimant has disclosed notes relating to the Bahamas trip in August 2014, which he accepts took place to try and reduce his dependence on painkillers. Almost all of the rest of the notes contemporaneous with the Bahamas trip were redacted. Brown Rudnick wrote saying

that they considered our requests to be disproportionate, but nevertheless they would carry out the review exercise again. When Brown Rudnick re-disclosed these medical notes with redactions lifted, it was immediately obvious that they should never have made some of the original redactions. As an example, the following – obviously relevant/disclosable - notes relating to the 2014 Bahamas trip had previously been redacted:

Kjp jd 52 20/08/2014 2315 RN [nurse] received text from fiancé stating "he's manic, full on flipping out, give up, not to call you guys". Instructed to give HS meds and additional Seroquel 50mg and to call if RN needs to go assess patient.

Kjp kd 53 20/08/14 0820 RN received text from fiancé stating, "he seems calmer, not as crazed".

Kjp kd 53 20/08/14 0820 RN received text from fiancé stating "we need help ,he's at the border, refusing to take his meds." Fiancé informed RN would come right over.

Also disclosed this second time around were additional medical records highly relevant to the pleaded issues in the case. For example, on 24/06/14 1200 (Kjp 34) the entry states *'Fiancé voiced concerns of patient's behavior while using drugs and alcohol'.* The explanation given for why these medical records were not disclosed earlier was that *'a broader time frame for relevant documents which goes beyond the specific incidents alleged' –See Brown Rudnick's letter of 3 February at page [192 of LC 3.* However, the original N265 form stated that documents were searched from 2012 – this is another inconsistency which is cause for concern.

56. Again I believe that neither the Claimant nor his previous solicitors made proper efforts to comply with their disclosure obligations in relation to medical records, and that the orders the Defendants now seek are needed to ensure that the process is properly executed.

Disclosure from the other medical professionals

57. Brown Rudnick stated in their letter of 24 January 2020 that it was not proportionate under CPR 31.7 to have to undertake searches of all of the Claimant's medical records. I disagree.

58. Since we objected to this approach, Brown Rudnick advised that the Claimant has also requested medical records from some other doctors, namely Alan Blaustein M.D. and David Kulber, M.D. and provided HIPAA authorisation records to Connell Cowan,

Ph.D., Amy Banks, M.D and Laurel Anderson, PhD. CNN. (Dr Blaustein is mentioned in Dr Kipper's letter of 15 March 2015 and his medical records will likely contain evidence relevant to these proceedings). The Claimant has not said whether there are other medical practitioners or therapists who he consulted on relevant issues during the period of his relationship with Ms Heard, namely the end of 2011 to May 2016.

59. At this time of writing, none of the medical records from the medical practitioners identified above have been disclosed. The Claimant's position was originally that because these medical records have not been provided to him they are not within his control (see Brown Rudnick's letter of 13 January 2020 at pages 170-171 of LC 3). As we have had to point out, this is of course not correct - in accordance with CPR 31.8 (b)/(c) this material is in his control, because he has a right to possession/copies of it.

60. I therefore seek an order in the terms of the draft in order to ensure that the Claimant and his new solicitors carry out their duties in respect of medical disclosure properly.

US libel proceedings and Depp/Heard divorce proceedings

61. A major issue with the Claimant's disclosure has been his continuing failure to provide disclosure of relevant documents in his control arising from his divorce from Ms Heard and the US libel proceedings, including transcripts of depositions of people who are also witnesses in the current proceedings, plus exhibits to those transcripts. This has been covered extensively in the correspondence enclosed at pages 114-204 of LC 3, and I refer to the main examples below.

2016 exhibits

62. As discussed at paragraph 40 as part of their divorce proceedings, both Mr Depp and Ms Heard provided lists of witnesses and exhibits which were relevant to Ms Heard's allegations of domestic violence. The Claimant's list of exhibits was filed on 8 August 2016. Neither the list itself nor the exhibits were disclosed by the Claimant, despite them being in his control and their clear relevance to the matters at issue in the current proceedings. He also did not disclose Ms Heard's 2016 list or her exhibits. We had to specifically request this material and it was eventually disclosed on 24 January 2020. These documents should have been disclosed without my firm having to request them.

63. Of further concern is the fact that Brown Rudnick had said in earlier correspondence (e.g. their letter of 13 January 2020 exhibited at pages 170-171 of LC 3) that there had

been "no discovery or production of documents" in the divorce proceedings. I consider that this was misleading.

64. Documents were in fact exhibited by the Claimant and by Ms Heard in those proceedings which obviously fell within the scope of CPR 31.6. By way of example, the text messages exhibited at exhibit 12 of Amber Heard's exhibit list in the divorce proceedings (pages 69-73 of LC3) relate to the 2014 Bahamas trip, I enclose copies of these messages at pages 74-87 of LC 3. Of further concern is the fact that many of these messages were not even included by Brown Rudnick in the Spreadsheet of text messages the Claimant has disclosed in these proceedings.

65. On 24 January 2020 Brown Rudnick claimed that the Claimant did not have the exhibits to the depositions in the Depp/Heard 2016 divorce proceedings and were going to request these from the court file. As at 3 February 2020 Brown Rudnick were waiting to receive these. Nothing materialised. The Defendants have now obtained these from Amber Heard's US lawyers.

66. I still do not know whether the Claimant's UK lawyers have been provided with all the documents from the divorce and US libel proceedings and have conducted a review of those documents for the purpose of disclosure in the proceedings. I therefore request an order compelling both the Claimant and his UK lawyers to comply with their disclosure duties.

Depositions / Protective Order

67. We have made various requests in correspondence for copies of the deposition transcripts/exhibits from the US libel claim. The Claimant initially refused to provide any of these on 26 November and again on 23 December 2019, saying, through Brown Rudnick, that depositions taken in the US proceedings were subject to a Protective Order and were either confidential or within the period in which they could be designated confidential. See pages 154-156 and 164 to 166 of LC 3.

68. Having now obtained a copy of the Protective Order (from Ms Heard's US lawyers), a copy of which is exhibited hereto at pages 81-94 of LC 3, it is immediately apparent that the Claimant was always able to disclose documents covered by it as long as he obtained the consent of the "producing Party" or Ms Heard's agreement; see paragraph 3m of the Protective Order enclosed at page 83 of LC 3.

69. Despite this clear procedure, and before we had sight of the order, the Claimant did his best to obfuscate and delay. In their letter of 26 November Brown Rudnick had written stating that they would consider whether '*any steps can be taken to enable our client to disclose any deposition transcripts*' and would revert as a matter of urgency. On 23 December 2019 they said that *'subject to [the protective order] if [the Claimant] has in his control any non-privileged documents that fall within CPR 31.6 that have not already been disclosed in these proceedings, [he] will disclose them'.*

70. On 13 January 2020 Brown Rudnick wrote stating that they were reviewing the documents disclosed by Ms Heard in the US proceedings for the purpose of disclosure. Enclosed with their letter were certain deposition transcripts, including that of Joshua Drew, who is a witness for the Defendants in the current proceedings. However, only some of the exhibits to his deposition were disclosed, the Claimant maintaining that the rest were confidential; plus on the same grounds the Claimant also withheld disclosure of other deposition transcripts. I believe that scrutinising these claims of confidentiality is illustrative of the Claimant's approach since it demonstrates that the Claimant has chosen to withhold documents which quite obviously fall within the scope of CPR 31.6.

Joshua Drew

71. Joshua Drew and his (now) ex-wife Raquel "Rocky" Pennington lived in the neighbouring penthouse to the Claimant and Amber Heard. Mr Drew was witness to some of the pleaded incidents, including certain events which took place on 21 May 2016. One missing exhibit was Exhibit 16 – "Email from Joshua Drew to Amber Heard dated 22 May 2016, subject: Statement from JD and RP".

72. We have since obtained that exhibit (and the others) from Ms Heard's US lawyers. We enclose a copy of this exhibit hereto at pages 102-105 of LC 3. The email dated 22 May 2016 deals with the events of the previous day, a key pleaded incident in this claim. It is Mr Drew's contemporaneous account of that incident and is clearly relevant to this claim. It was an email from Mr Drew to Amber Heard, so any confidentiality (if it fell under the terms of the Protective Order) belonged to Mr Drew or Ms Heard, not to the Claimant. Likewise, the other texts which were not disclosed were texts between Ms Heard and Mr Drew. They all meet the CPR 31.6 test and should have been disclosed by the claimant. The Claimant's stance on confidentiality does not bear scrutiny.

Lisa Beane

73. Lisa Beane was the Office Manager for Dr David Kipper in Beverley Hills from 2014 until 2017, at which time the Claimant and Amber Heard were both treated by Dr Kipper. On 24 January 2020 Brown Rudnick wrote concerning the depositions in the US proceedings and associated documents, and stated that Lisa Beane's deposition had been 'designated confidential'. They gave no further explanation as to why the Claimant was not disclosing it.

74. We have since received a partially redacted version of Lisa Beane's deposition transcript and its exhibits, including medical notes, from Ms Heard's US lawyers. These relate in particular to the issue of what Ms Heard said to staff at Dr Kipper's medical practice after the alleged attack by the Claimant on her on 15 December 2015 (one of the pleaded incidents of violence); and what injuries that staff at the practice observed and noted at the time. The documents are, obviously, of real potential significance in this case, yet were not disclosed by the Claimant. I exhibit an extract from the relevant medical notes at pages 106-107 of LC 3. Again, any confidentiality in these documents belongs to Ms Heard, not to the Claimant.

75. Particularly in the light of the fact that the Claimant's former solicitors said they were actively investigating the issue of confidentiality in the US proceedings, it is completely unacceptable that he has withheld these documents from us. Maintaining confidentiality over documents in the US proceedings has long since ceased being a plausible excuse. As long ago as 26 November 2019 Brown Rudnick acknowledged in their letter the need to disclose immediately documents from the US proceedings which fell within the scope of CPR 31.6.

US Declarations

76. As part of the US libel proceedings, various people who are witnesses in the current proceedings have given declarations (which are separate to the deposition transcripts referred to above). They were within the Claimant's control and they meet the disclosure test. Despite this, copies of the declarations in the US libel proceedings were not disclosed until 24 January 2020, after we again had to specifically request copies.

77. I still do not know whether all the declarations, depositions and exhibits from the US libel proceedings have been disclosed by the Claimant. As discussed at paragraph 65] above, shortly before the Claimant changed solicitors Brown Rudnick informed us on 3 February 2020 that they were waiting to receive the missing exhibits to the divorce proceedings from the court reporter. No update has been provided on this. Hence the

Defendants apply for an order requiring Schillings to carry out a proper disclosure exercise in respect of these documents.

The Recordings featuring Amber Heard

78. The Defendants seek an order requiring the disclosure of all recordings in the Claimant's control featuring Amber Heard. As I explain above, Mr Waldman's email of 5 February demonstrates that the Claimant has had such recordings in his possession and retains further recordings which he is threatening to leak into the public domain.

79. I should add that Mr Waldman's threat is consistent with other steps Mr Waldman has taken in the US proceedings to provide documents to the media to advance his client's cause. Mr Waldman obtained a declaration from an individual called Laura Divenere dated 29 June 2019. I exhibit at page 108 of LC 3 a message he sent to Ms Divenere putting pressure on her to cooperate with him by providing a declaration supporting the Claimant's account. However I have been informed by Amber Heard's US lawyers that Ms Divenere's declaration which I exhibit at pages 109-111 of LC 3 has not ever been produced or otherwise relied on by the Claimant in the US libel proceedings. Instead it has been deployed in the media: it was attached as a link to an article published by The Blast enclosed hereto at pages 105-106 of LC 3. It is my firm belief that Mr Waldman must have supplied the declaration to Blast for publication – it is difficult to see how else they could have obtained it.

80. Further Ms Divinere's declaration has never been disclosed by the Claimant in these proceedings.

The present Application for Disclosure

81. My firm has written to the Claimant's former solicitors, Brown Rudnick and current solicitors, Schillings, on the deficiencies in disclosure on multiple occasions, repeatedly chasing them up, identifying gaps in their disclosure and insisting that they comply with their disclosure duties properly. I believe that unless the Claimant is made subject to an order in the terms sought, he will continue to fail to engage properly, or at all, with his disclosure obligations in these proceedings. Moreover, for the reasons set out above, I believe that Brown Rudnick's approach to disclosure was seriously deficient, demonstrating the need for the order in the terms sought to ensure that the Claimant's new legal representatives carry out their duties properly to ensure a fair trial is possible.

82. The Defendants also seek an order that the Claimant pay the costs that the Defendants have been forced to incur in continually chasing up disclosure by the Claimant. Had the Claimant and his former solicitors complied with their duties properly the Defendants would not have needed to incur these costs, which have been very substantial indeed. I will serve a schedule of the costs which the Defendants have incurred in connection with the Claimant's deficient disclosure before the hearing of the PTR.

Permission to call Joshua Drew as witness and application to extend time for serving notices under the Civil Evidence Act 1995

83. My second witness statement of 10 December 2019 dealt with five intended witnesses for whom the Defendants sought permission to serve witness summaries (namely, Raquel Rose Pennington, Elizabeth Marz, Melanie Inglessis, Joshua Drew, and Amanda de Cadenet). I explained at paragraph 14 of that witness statement that, while the Defendants were seeking permission to serve witness summaries because none of the witnesses were at that stage prepared to provide a signed witness statement, we were continuing to make every effort to obtain signed statements from each of the witnesses, and that if we were able to obtain and serve signed statements before trial then we would do so.

84. Following a hearing before Deputy Master Bard, permission was granted on 11 December, and we served copies of the witness summaries, along with my second statement, on Brown Rudnick on 16 December 2019, which was the date agreed between the parties for service of witness statements, summaries, and notices under the Civil Evidence Act 1995.

85. In that letter we also addressed the hearsay requirements under CPR 33 and the Civil Evidence Act 1995, saying that:

86. *We take the view that, to the extent that the witness statements, summaries or the exhibits thereto contain hearsay evidence, our clients are complying with section 2(1)(a) of the Civil Evidence Act 1995 by serving the said statements, summaries and exhibits on your client (and to the extent necessary we understand the words "witness statement" in CPR 33.2(1) to include a "witness summary"). Our intention is that all witnesses, including the five for whom we have served witness summaries, will be called at trial, and that any hearsay evidence contained in the statements, summaries or exhibits thereto will be given by them in oral evidence and relied on by our clients. We therefore do not propose to serve separate hearsay notices, not least because CPR 33.2(3)(c) (the requirement in a hearsay notice to "give the reasons why the witness will <u>not</u> be called") cannot sensibly apply to this situation. Please confirm that*

you agree with this approach, alternatively that to this extent your client waives compliance with the duty to give notice (as the parties may do under s. 2(3) of the Civil Evidence Act).

87. Brown Rudnick did not confirm whether they agreed or disagreed with this approach to the hearsay notices. No hearsay notices have been served on behalf of the Claimant.

88. To some extent, matters have since moved on in respect of these witnesses, as I set out below.

Joshua Drew

89. The position as at 10 December 2019 was set out in my second witness statement at paragraphs 34 to 38. Mr Drew has since signed a witness statement dated 12 February 2020, which we served on the Claimant's solicitors on 13 February and confirmed that he will give live evidence at trial.

90. The content of the statement is materially identical to the witness summary, save that it also refers to and exhibits the transcript of Mr Drew's deposition in the US libel claim, which took place in the US on 19 November 2019, along with the accompanying exhibits to that deposition. As set out earlier in this statement, we only obtained copies of the deposition transcript on 13 January 2020 and the full set of exhibits still more recently.

91. Mr Drew has confirmed that he wishes to attend the trial in person to give oral evidence on behalf of the Defendants, and the Defendants wish to call him to do so. I therefore seek permission pursuant to CPR 32.10 and/or relief from sanctions under CPR 3.9 to call Mr Drew to give oral evidence at trial. The Claimant has been caused no prejudice by the late service of Mr Drew's witness statement as its content is almost identical to the witness summary which was served in time on 16 December 2019. The only material difference (beyond the addition of brief introductory paragraphs 1 and 2 of the statement) is the addition of the information contained in Mr Drew's deposition transcript in the US libel proceedings, which the Claimant already had at the time that the Defendants served Mr Drew's witness summary.

Raquel Rose Pennington

92. The position as at 10 December 2019 was set out in my second statement at paragraphs 24 to 29. As I said in that statement, Ms Pennington was deposed as part of the US divorce proceedings (on 16 June and 14 July 2016), and provided a

Declaration dated 27 May 2016. I exhibited the Declaration and the deposition transcripts to Ms Pennington's witness summary.

93. Ms Pennington lives in the US. She is still represented by Anya Goldstein. Without any waiver of privilege, in January this year I made further attempts, through Ms Goldstein, to contact Ms Pennington about giving evidence in this claim. Ms Goldstein has informed me that she passed these requests on but has not (at the time of writing) had any response or update from Ms Pennington. Ms Goldstein did not say to me that Ms Pennington no longer stood by the account she provided in her Declaration and deposition, or give me any reason why she believed Ms Pennington had not responded to her.

94. Given that (on present information) it appears that it will not be possible to call Ms Pennington to give oral evidence at trial, I also give notice under CPR 33.2(3) of the Defendants' intention to rely on the content of her deposition transcripts and Declaration as hearsay evidence. Since the service of the witness summary for Ms Pennington, the Defendants have also received a copy of a 2-page statement from Ms Pennington relating to the events of 21 May 2016, which was emailed by Joshua Drew to Amber Heard on 22 May 2016 at 9:43pm. We obtained this on 7 February 2020 from Ms Heard as part of the exhibits to Mr Drew's deposition in the US libel proceedings. The Defendants also intend to rely on the content of this statement as hearsay evidence. Under CPR 33.2(4), a party proposing to rely on hearsay evidence must serve the notice no later than the latest date for serving witness statements (which in this case was 16 December 2019). I therefore ask the Court retrospectively to extend the time for giving notice and/or grant relief from sanctions..As I say above, at the time of serving Ms Pennington's witness summary on 16 December 2019, the Defendants intended that she would be called at trial and had not yet obtained her 2-page statement relating to the events of 21 May 2016.

Elizabeth Marz

95. The position as at 10 December 2019 was set out in my second statement at paragraphs 30 to 33. As I said in that statement, Ms Marz was deposed as part of the US divorce proceedings (on 15 July 2016). I exhibited the transcript of that deposition to Ms Marz's witness summary.

96. Ms Marz lives in the US and is also still represented by Anya Goldstein. Without any waiver of privilege, in January this year I made further attempts, through Ms Goldstein, to contact Ms Marz about giving evidence in this claim. Ms Goldstein has informed me that she passed these requests on, but that Ms Marz remained unwilling to give a witness statement or to meet with/speak to me. Ms Goldstein did not tell me why Ms

Marz was unwilling to give a witness statement mor meet or speak with me. Ms Goldstein did not say to me that Ms Marz no longer stood by the account she provided in her Declaration and deposition, or give me any reason why she believed Ms Marz had not responded to her.

97. Given that it seems that it will not be possible to call Ms Marz to give oral evidence at trial, I also give notice under CPR 33.2(3) of the Defendants' intention to rely on the content of her deposition transcript as hearsay evidence. Since the service of the witness summary for Ms Marz, the Defendants have also received a transcript of Ms Marz's deposition on 26 November 2019 in the US libel proceedings, and drafts of a declaration for Ms Marz dated July-August 2019 which were exhibited to that deposition transcript. We received the 2019 deposition transcript from the Claimant on 13 January 2020, and these exhibits on 24 January 2020. The Defendants also intend to rely on these documents as hearsay evidence. I therefore ask the Court retrospectively to extend the time for giving notice and/or grant relief from sanctions. As I say above, at the time of serving Ms Marz's witness summary on 16 December 2019, the Defendants intended that she would be called at trial and had not yet obtained her 2019 deposition transcript and exhibits thereto.

Additional documents

98. On 19 February 2019 the Defendants served on the Claimant a further notice under the Civil Evidence Act 1995. This notice covers both the declarations, depositions and statements of Ms Pennington and Ms Marz referred to above, and a number of other documents. As set out extensively earlier in this witness statement, the Claimant has failed to comply with his disclosure obligations, and as a result some of these documents have only come into the Defendants' possession since 16 December 2019 (the date for service of witness statements), including for example documents relating to the Claimant's medication and health, medical records of Ms Heard, telephone records of Kevin Murphy, documents from the Los Angeles Police Department relating to telephone records on 21 May 2016, and additional photographs of Ms Heard and damage to property. Others of these documents were in the Defendants' possession, such as for example some journal entries of the Claimant and Ms Heard, the Rolling Stone article, and some photographs of Ms Heard and damage to property, but no hearsay notice was previously served in respect of these documents. I ask the Court retrospectively to extend the time for giving notice and/or grant relief from sanctions. Given the Claimant's failings which has resulted in piecemeal and late disclosure of documents, and the further searches/disclosure which I have requested, I cannot say that the list as at today's date is necessarily exhaustive both in relation to the documents disclosed to-date and in the future, and the Defendants may need to serve

a further list in due course (which we will serve as soon as practicable, should that be the case).

Statement of Truth

I believe that the facts stated in this witness statement are true

Dated this 19 day of February 2020

Signed .....

Louis Charalambous

Partner, Simons Muirhead & Burton LLP

Witness statement
Louis Charalambous
Third
Defendants
Exhibit LC 3

Dated: 19 February 2020

IN THE HIGH COURT OF JUSTICE **CLAIM NO. QB-2018-006323**

QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

BETWEEN:

JOHN CHRISTOPHER DEPP II

Claimant

and

(1) NEWS GROUP NEWSPAPERS LTD

(2) DAN WOOTTON

Defendants

Exhibit LC 3
