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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

FILED  
COURT SERVICES

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JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**DEFENDANT'S EMERGENCY MOTION TO COMPEL AND TO ENFORCE THE COURT'S OCTOBER 18 ORDER AND MEMORANDUM IN SUPPORT**

COMES NOW the Defendant Amber Laura Heard ("Defendant"), by counsel, and moves this Court for an Order enforcing the Court's October 18 Order requiring Plaintiff John C. Depp, II ("Plaintiff") to execute a HIPAA waiver to allow Defendant to subpoena Plaintiff's relevant medical records. Defendant states as follows:

1. The parties appeared before the Court on October 18 for a hearing on Defendant's motion to compel. At the conclusion of that hearing, the Court granted Defendant's motion to compel in full. The Court stated that "the Complaint is broad enough to place these things in issue, places his mental condition in, issue[.]" *See* 10/18/19 Hrg. Tr., attached as Exhibit A.

2. The Court's October 18 Order entered at the conclusion of that hearing states that "within seven (7) days of this Order, Plaintiff must execute a HIPAA waiver to allow Defendant to subpoena Plaintiff's relevant medical records." *See* Order, attached as Exhibit B.

3. After repeated requests from Defendant's counsel, including emails and a teleconference on October 31 in which Defendant's counsel both requested the HIPAA waiver and explained the need for it to be complete and comprehensive, Plaintiff's counsel finally sent them

a copy of Plaintiff's HIPAA waiver late in the day on October 31, 2019. *See* HIPAA Waiver, attached as Exhibit C.

4. The HIPAA waiver is incomplete, however, because it does not authorize the release of Plaintiff's mental health records. In fact, Plaintiff deliberately left that box unchecked. Defendant's counsel immediately brought this issue to the attention of Plaintiff's counsel and demanded a full and complete HIPAA waiver, but Plaintiff's counsel has refused, stating that Plaintiff's mental condition was not the subject of Defendant's motion to compel or request for a HIPAA waiver. *See* Counsel Email Exchange, attached as Exhibit D.

5. This is plainly wrong. Among the requests for relief in Defendant's motion to compel was a request that the Court enter an order instructing Plaintiff to execute HIPAA releases to allow Defendant to subpoena third party medical providers for his medical records, which could help demonstrate the link between Plaintiff's drug and alcohol abuse, mental health (including prescription drugs given to treat mental health issues), and his abuse of Defendant or other romantic partners. *See* Def's 9/27 Br. at 4-5. Moreover, the Court very clearly found that Plaintiff's "mental condition" was at issue in this case and ordered Plaintiff to execute an appropriate HIPAA release. This finding was indisputably correct, because (as stated more fully in Defendant's Memorandum in Support of her Rule 4:10 Motion for an Independent Mental Examination of Plaintiff ("IME Memo")), Plaintiff's claim is based on a declaration Defendant submitted in connection with a Domestic Violence Restraining Order in which she stated that Plaintiff's mental conditions in combination with his rampant use of alcohol and drugs were inextricably intertwined with the abuse she suffered at his hands. *See, e.g.*, IME Memo at 1-3 and Exhibit 1 ¶5 ("Johnny['s] relationship with reality oscillates, depending upon his interaction with alcohol and drugs. As Johnny's paranoia, delusions and aggression increased throughout our

relationship so has my awareness of his continued substance abuse.”). And, of course, Plaintiff’s mental condition also bears on his ability to recall the events he has put at issue.

6. Thus, Defendant has a right to subpoena third-party medical providers about any matter at issue in this case, regardless of whether she requested these same records from Plaintiff. Plaintiff’s refusal to provide a HIPAA waiver consistent with the Court’s findings is gamesmanship that is in direct violation of the Court’s Order.

7. In further defiance of the Court’s Order, in Plaintiff’s interrogatory responses served on October 28, Plaintiff refused to respond to an interrogatory seeking the identity of each mental and/or physical health care provider to Plaintiff since 2010. Instead, Plaintiff stated that he would produce unnamed documents in a future document production that would contain such names. *See* Excerpt of Pl’s Interrogatory Responses, attached as Exhibit E. This is in direct violation of Va. Sup. Ct. Rule 4:8(f), which requires a party relying on business records to answer interrogatories to “specify the records from which the answer may be derived or ascertained,” not simply to say that some future production to be made at an unknown time will contain some of the requested information. *Dawson v. Bd. of Supervisors*, 2002 Va. Cir. LEXIS 126, at \*3 (Loudoun Co. Cir. Ct. 2002) (“[I]f a party decides to exercise the option to provide business records in lieu of answering an interrogatory then the strict requirements of the Rule [4:8(f)] must be met”).

8. The parties met and conferred about this issue, and while Plaintiff’s counsel stated that they might provide names of medical providers, it is clear from their improper limitation of the HIPAA authorization that if they provide any names at all, they do not intend to produce names of Plaintiff’s mental healthcare providers. This is improper in light of the discovery Defendant has sought and the Court’s Order on Defendant’s motion to compel.

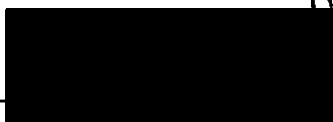
9. Defendant seeks this relief on an emergency basis because further delays in discovery would prejudice Defendant in light of the case schedule. There are already two motions noticed in this case for November 8 and November 15. Permitting Plaintiff to continue to obstruct discovery for nearly another month would cause significant prejudice to Defendant, especially given that she will need to provide lead time to Plaintiff's medical providers to respond to subpoenas.

10. Defendant's counsel certifies that it has in good faith conferred with Plaintiff's counsel in an effort to resolve this dispute without Court intervention.

11. WHEREFORE, Defendant Amber Laura Heard, by counsel, moves the Court for entry of an Order compelling Plaintiff immediately (1) to execute a HIPAA waiver that includes his mental health records and (2) to provide a list of all requested medical providers so that Defendant may subpoena them. Defendant also requests that the Court award her reasonable attorney's fees for having to bring this motion and issue an Order to Show Cause why Plaintiff should not be held in contempt for violating the Court's October 18 Order.

Dated this 1st day of November, 2019

Respectfully submitted,  
Amber L. Heard

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*Counsel to Defendant Amber Laura Heard*

**CERTIFICATE OF SERVICE**

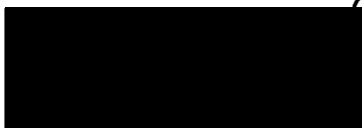
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# Exhibit A



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# Transcript of Hearing

**Date:** October 18, 2019  
**Case:** Depp, II -v- Heard

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHN C. DEPP, II, )

Plaintiff, )

-vs- ) NO. CL-2019-0002911

AMBER LAURA HEARD, )

Defendant. )

-----X

Hearing

BEFORE THE HONORABLE BRUCE D. WHITE

Fairfax, Virginia

Friday, October 18, 2019

10:49 a.m.

Job No.: 268360

Pages: 1 - 28

Reported by: Theresa R. Hollister, CCR

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Hearing held at:

Fairfax County Circuit Court  
4110 Chain Bridge Road  
Courtroom 5H  
Fairfax, Virginia 22030  
(703) 691-7320

Pursuant to notice, before Theresa R.  
Hollister, Certified Court Reporter and Notary  
Public for the Commonwealth of Virginia.

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P R O C E E D I N G S

(Court reporter duly sworn by the Court.)

MR. ROTTENBORN: Good morning, Your Honor. Ben Rottenborn from Woods Rogers here on behalf of Amber Heard.

THE COURT: Good morning.

MR. QUINN: Good morning, Your Honor. John Quinn from Kaplan Hecker, also for Ms. Heard.

THE COURT: Good morning.

MR. GILMORE: Good morning, Your Honor. Robert Gilmore from Stein Mitchell on behalf of plaintiff, Johnny Depp.

THE COURT: Good morning.

MR. CHEW: Good morning, Your Honor. Ben Chew for Johnny Depp.

THE COURT: Good morning. I'm ready when you all are.

MR. ROTTENBORN: We're here today on Ms. Heard's motion to compel discovery responses from plaintiff Johnny Depp. I'd like to start very briefly, Your Honor, with the discussion of what this case is about. So this case is a \$50 million

1       defamation case that stems from a 2018 op-ed that  
2       Ms. Heard wrote in the Washington Post.

3                       THE COURT: I've read your complaint.

4                       MR. ROTTENBORN: And Your Honor saw in  
5       the complaint that op-ed doesn't contain a word  
6       about Mr. Depp. It talks about Ms. Heard being a  
7       public figure and facing backlash so -- from  
8       speaking out against domestic abuse. So what the  
9       plaintiff does and the theory of plaintiff's case is  
10      that they try to revive -- and they admit, they use  
11      the word revive -- these 2016 allegations of  
12      domestic abuse that Ms. Heard made about Johnny Depp  
13      in obtaining a protective order in California state  
14      court, a temporary restraining order against  
15      Mr. Depp. 2016 allegations as cited in paragraph 2,  
16      paragraph 3, paragraph 5, and paragraph 6 of the  
17      complaint. I'd be happy to hand that up to, Your  
18      Honor.

19                      THE COURT: You don't need to hand me the  
20      complaint. You can assume that I've read the  
21      complaint. I may not have memorized it, but I've  
22      done my best to familiarize myself with this case.

1 MR. ROTTENBORN: Thank you, Your Honor.  
2 One thing I would ask, permission to hand up to the  
3 court is Ms. Depp's -- or Ms. Heard's 2016  
4 declaration that she filed in California because  
5 that's what this case is really about.

6 Now, we have a motion for leave to file a  
7 demurrer on the 2018 op-ed. And I know that's not  
8 an issue in front of the court today, but we believe  
9 that the 2018 op-ed standing alone, there's no way  
10 it's defamatory.

11 So when what plaintiff has done is try to  
12 bootstrap these comments that Ms. Heard made in a  
13 sworn statement in 2016 and say all of those are  
14 false. And with Your Honor's leave, I would just  
15 like to just go through a few of those, because I  
16 think that they frame all of the discussion about  
17 the requests that are in dispute.

18 THE COURT: You all gave me a 20-minute  
19 time limit. You've got 10 minutes to do it. Use  
20 your 10 minutes how you'd like.

21 MR. ROTTENBORN: Thank you.

22 THE COURT: I'm sure you'll use it the

1 way you think is most efficient.

2 MR. ROTTENBORN: So as Your Honor can see  
3 in that declaration, and I'll just hit a few  
4 highlights. In paragraph 4, Ms. Heard says, "During  
5 the entirety year of our relationship, Johnny has  
6 been verbally and physically abusive to me."

7 Paragraph 5, she ties that abuse, that  
8 physical abuse, that verbal abuse to Mr. Depp's  
9 long-held and widely acknowledged public and private  
10 history of drug and alcohol abuse. She says that  
11 when he is high on drugs or drunk on alcohol or  
12 both, as is often the case, according to Ms. Heard,  
13 that that is when he is abusive. And not only is he  
14 abusive, but he's destructive to property. So the  
15 context of the statements that Ms. Heard made in  
16 2016, that Mr. Depp is now suing her for \$50 million  
17 on, are that -- is that when Mr. Depp was abusive to  
18 Ms. Heard when he was on alcohol and drugs.

19 So as part of our discovery requests in  
20 this case, we have asked for evidence of Mr. Depp's  
21 alcohol and drug use. Mr. Depp brought this  
22 lawsuit. Mr. Depp is suing Ms. Heard for \$50



1 million. Virginia law and this court's practices  
2 grant defendants broad discovery into anything that  
3 is relevant or might be relevant in the context of  
4 the case. And as the Roanoke Memorial Hospital case  
5 has said and held for 30 years, and many other  
6 courts have said, the question of whether something  
7 is relevant can't be determined in darkness. The  
8 question of whether something is relevant must be  
9 determined in the context of the case. And when  
10 this case is about the truth or the falsity of these  
11 statements that Ms. Heard made in 2016, alleging  
12 that Mr. Depp was destructive to property, was  
13 abusive to her when he was using drugs and alcohol,  
14 that opens the door to discovery of his destruction  
15 of property, of his abuse of drugs and alcohol. He  
16 put that at issue. He opened the door to it. And  
17 now Mr. Depp is trying to deny Ms. Heard the  
18 evidence that she needs, in part, to prove that  
19 those statements that she made in 2016 were true.

20 Now, all of defendant's -- plaintiff's  
21 defenses to what we're seeking here go toward  
22 admissibility. And that's another point, Your

1 Honor. Right now the standard is relevant or might  
2 be relevant. The standard is not a motion in  
3 limine. We believe that all the evidence that we're  
4 seeking will ultimately be admissible, but that's  
5 not the standard here.

6 What they're asking the court to do is to  
7 hold, as a matter of law, essentially, that in a  
8 case in which a defendant has accused a plaintiff of  
9 being abusive when he was drunk or when he was high,  
10 that she can't take evidence or discovery on his  
11 drug or alcohol abuse. And that, that position is  
12 just preposterous, Your Honor.

13 In addition, evidence of drug and alcohol  
14 abuse, the State v. Woodson [sic] case we cite in  
15 our brief talks about drug use was so intertwined  
16 with the facts of the case, that it became part and  
17 parcel of the entire case.

18 That's the same thing here. Drug use and  
19 the destruction of property are so intertwined with  
20 the allegations that Mr. Depp is claiming are false  
21 and that Ms. Heard will prove are true, that they  
22 are part and parcel of the entire case. And

1 plaintiff cannot put its head in the sand and deny  
2 us discovery to that, to those pieces of  
3 information.

4           Moving on, Your Honor, to the request 43  
5 and 44 about this finger injury. Mr. Depp put this  
6 finger injury, this graphic allegation regarding his  
7 finger being severed, into his complaint. He says  
8 in his declaration he filed in this case what his  
9 doctor told him about it. And now he's refusing to  
10 sign a HIPAA release to grant us access to the  
11 records of what his doctor told him about it, or the  
12 treatment of that, or other statements that he may  
13 have made about Ms. Heard to his doctor.

14           He claims in his opposition that what the  
15 doctor said isn't the most relevant evidence. Well,  
16 as Your Honor well knows, that's not the standard  
17 for discovery in Virginia. We're just at the  
18 beginning of discovery. The standard is not let the  
19 plaintiff decide which evidence is the most relevant  
20 and allow them to give that. Virginia Code  
21 8.1-399(B) says the physical or mental condition of  
22 someone is at issue, it must be disclosed.

1                   Now, what the plaintiff will say is,  
2 well, it's not at issue, Your Honor. But it very  
3 much is at issue and it very much was put at issue  
4 by Mr. Depp. He could have written a short and  
5 plain statement as is permitted in Virginia,  
6 alleging defamation. And instead he larded up his  
7 complaint with lots of allegations about both him  
8 and about Ms. Heard and the relationship. Ms. Heard  
9 deserves the right to test those allegations through  
10 discovery and try to disprove those allegations.

11                   Another category, Your Honor, that he put  
12 at issue in the complaint, is he says he is not a  
13 perpetrator of domestic violence. He says, I've  
14 never abused Ms. Heard or any other woman. He said  
15 that on page 2 of his declaration and in paragraph  
16 23 of his complaint, he says he is not a perpetrator  
17 of domestic violence. So we have requested  
18 documents relating to Mr. Depp's commission of  
19 domestic violence against other romantic partners.  
20 They've have said, no, that's not relevant. Again,  
21 it very much is relevant and it very much was put in  
22 issue by Mr. Depp.

1 Same thing for his medical records, that  
2 he -- communications with one of his doctors, this  
3 guy, Dr. Kipper, who treated him, I believe he was  
4 involved with the finger incident, but also treated  
5 him for substance abuse. Mr. Depp says that those  
6 are privileged. Well, the Hall versus Lashbrook  
7 case that we cited talks about how evidence of abuse  
8 of other romantic partners, Your Honor, is very  
9 relevant to, to cases involving abuse.

10 Evidence of Mr. Depp's medication that he  
11 may have been prescribed by this doctor that may  
12 have interacted with drugs and alcohol in a way that  
13 made him even more violent or that may have affected  
14 his memory -- and that gets to another point, Your  
15 Honor, the Via versus Commonwealth case. The  
16 Virginia Supreme Court talks about evidence that  
17 bears on a witness's memory is highly relevant. And  
18 medical evidence that Mr. Depp may have from his  
19 doctors is relevant to that question as well.

20 So not only the finger injury, but  
21 communications with Dr. Kipper that mention  
22 Ms. Heard or mention his other romantic partners is,

1 again, highly relevant, not because Ms. Heard put it  
2 at issue, but because Mr. Depp put it at issue, by  
3 saying that everything that she said in 2016 is  
4 false and is a lie.

5 THE COURT: I've got you with about 2  
6 minutes left.

7 MR. ROTTENBORN: Thank you, Your Honor.  
8 I'll wrap up briefly.

9 THE COURT: I was willing to give you all  
10 30 minutes and put you at the end of the docket, but  
11 you all are the ones that wanted to do it, so.

12 MR. ROTTENBORN: Well, we think we can  
13 cover it in this short amount of time.

14 Your Honor, just very quickly, payments  
15 to other witnesses, that's highly relevant to their  
16 credibility. Mr. Depp is refusing to say -- he said  
17 in his complaint all these allegations about  
18 witnesses being neutral and supporting his side of  
19 the story. And now he's refusing to disclose  
20 evidence about whether or not he paid them. Again,  
21 that goes straight to his credibility.

22 Surveillance footage, again, he put in

1 his complaint that he has surveillance footage that  
2 exonerates him. And now he's refusing to produce or  
3 at least refusing to give us details about  
4 surveillance footage at other properties that he and  
5 Ms. Heard shared.

6 And so, for all of those reasons, all of  
7 the things that we're seeking, Your Honor, are  
8 issues that Mr. Depp put at issue in his complaint.  
9 He's suing Ms. Heard for \$50 million and it is  
10 improper --

11 THE COURT: You have mentioned that three  
12 times. Is there a different standard I should apply  
13 if someone sues for \$50 million instead of for  
14 \$100,000?

15 MR. ROTTENBORN: Not at all, Your Honor,  
16 but whether --

17 THE COURT: Then we probably shouldn't  
18 dwell on that.

19 MR. ROTTENBORN: What I'm asking the  
20 court to apply is Virginia's broad standard of  
21 discovery related to relevance, especially on issues  
22 that Mr. Depp put at issue. Thank you.

1 THE COURT: Okay. Thank you.

2 MR. GILMORE: Good morning, Your Honor  
3 Robert Gilmore for Plaintiff Johnny Depp.

4 THE COURT: Good morning.

5 MR. GILMORE: Defendant's motion to  
6 compel is a fishing expedition, plain and simple,  
7 Your Honor. It's intended to harass Mr. Depp and  
8 it's intended to distract the court, the parties,  
9 the jury from what's the sole issue in this case.

10 THE COURT: It isn't distracting the jury  
11 because this is discovery. It doesn't mean it's  
12 admissible just because it is discovery.

13 MR. GILMORE: Well, discovery has to be  
14 reasonably calculated to lead to the discovery of --

15 THE COURT: No, I've said that because  
16 you said it's going to mislead the jury.

17 MR. GILMORE: I think --

18 THE COURT: Hold on. I think you are  
19 telling me something that's not really an issue for  
20 me today.

21 MR. GILMORE: Well, whether it's  
22 admissible is, to some extent, an issue today,



1 because if there's no hope of the discovery that the  
2 parties --

3 THE COURT: You and I are fencing over  
4 words now that have no real impact on this, other  
5 than when somebody makes a representation in court  
6 that I don't think is right, I like to correct them  
7 on it. When you say this ruling today is affecting  
8 what happens to the jury, that really isn't correct  
9 because we aren't at that stage yet. So you can  
10 move on to your argument and I'll quit my diatribe.

11 MR. GILMORE: I understand. I'll move  
12 on, Your Honor.

13 The sole issue in this case is whether  
14 Amber Heard was lying when she claimed to be the  
15 victim of domestic abuse by Mr. Depp. So the  
16 categories of discovery are not -- that Ms. Heard  
17 seeks -- are not relevant for that sole issue.

18 Let's start with the medical records  
19 first. Virginia Code 8.01-399 says treatment  
20 records and testimony from a treating physician are  
21 not discoverable unless the treatment has been put  
22 at issue. Mr. Depp, Mr. Depp's medical condition

1 has not been put at issue by him. This isn't a  
2 personal injury case. Ms. Heard is trying to put at  
3 issue his medical condition. She is the defendant.  
4 A defendant can't put a plaintiff's medical  
5 condition at issue as some sort of cause to then pry  
6 open discovery into medical conditions and  
7 treatment.

8 That's the holding of multiple cases that  
9 we cite in our briefs. For instance, the Second  
10 Circuit in the In Re Simms case, dealing with the  
11 therapist/patient privilege that federal courts  
12 recognize, cites the privilege is not overcome when  
13 the plaintiff's mental state is put in issue only by  
14 the defendant. And the D.C. circuit reached that  
15 same conclusion in the Coke [sic] case that we also  
16 cite.

17 But that's what Ms. Heard is trying to do  
18 here. Ms. Heard points to no cases where a court  
19 said an opposing party is allowed to put at issue  
20 the medical condition of the opponent as the basis  
21 for discovery. The only case that they cite, the  
22 Pettis versus Godfrey [sic] case, that was a medical

1 malpractice case brought by the plaintiff. So, of  
2 course, the plaintiff was putting his medical  
3 condition at issue there.

4 It makes sense that an opposing party  
5 isn't able to say, oh, I think that my opponent is  
6 crazy, that allows me to investigate and get all of  
7 his mental health records. If that were allowed,  
8 litigants always would assert that there was some  
9 physical or psychological condition of the opponent  
10 that's at issue and then try and use that to open up  
11 potentially sensitive or embarrassing discovery to  
12 harass the opponent or even to deter them from  
13 continuing with the case.

14 Let me address the documents about drug  
15 or substance abuse. As my colleague, Mr. Chew, said  
16 at our last hearing in front of Your Honor,  
17 Mr. Depp, he's owned his past struggles in this  
18 area. He has nothing to hide. But that's not the  
19 issue in this case. The issue in this case is not  
20 whether Mr. Depp was a drug or alcohol abuser. It's  
21 about whether he abused Ms. Heard physically, as she  
22 has falsely alleged. He did not.

1           The extent that any documents about  
2 substance abuse involve medical treatment for  
3 substance abuse, they are not subject to discovery  
4 under Virginia Code 8.01-399. And even documents  
5 that don't involve medical treatment still are not  
6 subject to discovery, because they cannot yield  
7 admissible evidence. Essentially, what Ms. Heard  
8 wants to argue is that because Mr. Depp supposedly  
9 did one bad thing, take drugs or abuse alcohol, he  
10 is more likely to have hit her. But that is classic  
11 propensity evidence that Rule 404 prohibits. And  
12 that's the only kind of evidence, inadmissible  
13 evidence, that this discovery could possibly yield.  
14 That's why it is not discoverable because it is not  
15 relevant, it's not reasonably calculated to lead to  
16 discoverable evidence.

17           When you also consider that what would  
18 this evidence be used for, it is not admissible. It  
19 would be prejudicial, this kind of information would  
20 only lead to prejudicial evidence that would not be  
21 admitted.

22           We saw what happened at the last hearing.

1 Ms. Heard's lawyers tried to wave around what they  
2 thought were embarrassing and salacious documents to  
3 pressure us to accede to their position on the  
4 motion for the protective order. We're worried that  
5 they're going to try to do those tactics throughout  
6 this case. And that's why we think that allowing  
7 this kind of discovery is just going to feed into  
8 that. They want to taint the jury, harass my  
9 client, and distract from what's at in their case,  
10 whether their client is lying. That's not a proper  
11 purpose for discovery.

12 Finally, with respect to Mr. Depp's past  
13 alleged acts, those are not discoverable, because it  
14 is, again, the kind of classic propensity evidence  
15 that Rule 404 does not allow.

16 The prior allegation, we're not aware of  
17 any document, Mr. Depp having any document  
18 reflecting an allegation by any of Mr. Depp's other  
19 romantic partners.

20 THE COURT: Let me ask you a question.  
21 Does your complaint say that your client avers that  
22 he's not a domestic abuser and has never abused

1 anyone? If that is in the complaint, why aren't  
2 they entitled to do discovery to find out whether  
3 that's a truthful statement that your client has put  
4 in the complaint?

5 MR. GILMORE: That is a truthful  
6 statement. That is his claim.

7 THE COURT: Then why aren't they allowed  
8 to do discovery to see whether it is truthful or  
9 not? They don't just need to take his word for it,  
10 do they?

11 MR. GILMORE: That statement is not  
12 relevant to what is at issue in this case.

13 THE COURT: Well, somebody thought it was  
14 relevant enough to put it in the complaint.

15 MR. GILMORE: Understood. There are many  
16 reasons why things are said in complaints. Truthful  
17 statements are made. But whether that is a relevant  
18 issue for the case to allow open-ended discovery on,  
19 is a wholly different matter, Your Honor. Mr. Depp  
20 understood that this case, since the public op-ed,  
21 is going to be in the public press. And so it's  
22 important for him to say that. But what's at issue

1 is whether he abused Ms. Heard as she falsely  
2 claims.

3 THE COURT: Say that again. That  
4 Mr. Depp put that in his complaint because he knew  
5 that this would be in the press and it was important  
6 for him to put it in the press?

7 MR. GILMORE: Mr. Depp --

8 THE COURT: That's the motivation for  
9 that being in the complaint? That's what you're  
10 saying on the record?

11 MR. GILMORE: Much of this is to, as to  
12 his character and his conduct, absolutely, Your  
13 Honor. But it is important for him to have stated  
14 that. He is facing a public op-ed that was leveled  
15 at him by Ms. Heard. But the issue in terms of what  
16 is defamatory is whether she had abused -- whether  
17 he had abused Ms. Heard.

18 And so the kind of discovery Ms. Heard  
19 tries to shoehorn her argument into some sort of  
20 modus operandi argument. But that's a bogus  
21 argument.

22 The Western Alliance Bank case that we

1 cite --

2 THE COURT: You have about 2 minutes left  
3 as well. Thank you.

4 MR. GILMORE: Thank you, Your Honor.  
5 Modus operandi refers to evidence so nearly  
6 identical in method as to earmark them as the  
7 handwork of the accused. Ms. Heard cannot seriously  
8 argue that Mr. Depp engaged in some sort of  
9 distinctive method of domestic abuse towards her  
10 that would be proven by showing he engaged in a  
11 similarly distinctive method of abuse. That would  
12 be a non-sensible argument.

13 And the arguments that they make for  
14 discovery into arrests that don't even involve  
15 domestic abuse allegations, and that are decades  
16 old, are similarly irrelevant and meritless, a  
17 fishing expedition.

18 For all these reasons, Your Honor, we  
19 respectfully ask that the court deny Ms. Heard's  
20 motion in its entirety.

21 THE COURT: Thank you.

22 You can have a minute to reply.



1 MR. ROTTENBORN: Thank you, Your Honor.  
2 Your Honor, I think you grasp the issue  
3 fully, which is that Mr. Depp has put these claims  
4 at issue in his complaint. His motivation for doing  
5 that, whether it's to rehabilitate his image  
6 publicly or because it's relevant to the lawsuit in  
7 his mind, is irrelevant. He has made allegations in  
8 the complaint that he is not a perpetrator of  
9 domestic violence against Ms. Heard or any other  
10 woman. He has made other allegations that go  
11 straight to these discovery requests. And Ms. Heard  
12 deserves the right to test those allegations,  
13 particularly when the core of this case, plaintiff's  
14 theory of this case is that statements that  
15 Ms. Heard made in 2016 were, were false. And in  
16 those statements she said that when he abused her he  
17 was on drugs and alcohol and was destroying property  
18 often as well.

19 Now, as for the medical records, this is  
20 the last thing I will touch on, he put these at  
21 issue. He references his finger, his medical  
22 treatment of his finger in his complaint. He put it

1 at issue by saying that statements that she made  
2 about his medical condition, his substance abuse,  
3 were false.

4 And so, for all those reasons, as I think  
5 Your Honor recognized in this case about domestic  
6 abuse, which it's a matter of common sense, domestic  
7 abuse and abuse of drugs and alcohol are often  
8 intertwined, as numerous case law and cases have  
9 side, Ms. Heard is entitled to the full discovery  
10 that she seeks. Thank you.

11 THE COURT: Thank you.

12 The motion to compel is granted. I will  
13 say that I probably would not grant it as to some of  
14 the matters, such as the medical records that might  
15 be protected under 8.01-399 of the code, but I think  
16 that the complaint is broad enough to place these  
17 things in issue, places his mental condition in,  
18 issue, even though it may or may not really be an  
19 issue in this case, nevertheless it's put in the  
20 complaint for a purpose. I'm told by counsel that  
21 now, perhaps, that purpose is merely so that the  
22 press will get it and not really so much related to

1 the lawsuit. And that's a little troubling.

2 But nonetheless, the motion to compel is  
3 granted as to all matters at this point.

4 Would you all do an order. Of course,  
5 note your exceptions.

6 MR. ROTTENBORN: Yes, Your Honor. Thank  
7 you very much.

8 THE COURT: And the time for production,  
9 you all are able to come up with an agreement on  
10 that?

11 MR. CHEW: We actually planned to discuss  
12 that right after this hearing.

13 THE COURT: Okay. Thank you. Hope  
14 everybody has a good weekend.

15 (The hearing was concluded at 11:11 a.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, Theresa R. Hollister, the court reporter before whom the foregoing hearing was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



\_\_\_\_\_

Theresa R. Hollister  
Court Reporter

# Exhibit B

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

ORDER

THIS CAUSE comes at the request of Defendant Amber Laura Heard, by counsel, who has filed a motion to compel discovery by Plaintiff John C. Depp, II. Having reviewed the parties' pleadings and heard their argument on this matter, it is hereby:

ORDERED that Defendant's motion is granted. *By November 15, 2019* ~~Within seven (7) days of this Order.~~

Plaintiff must produce all non-privileged, responsive documents requested by Defendant's Document Requests 4, 5, 15, 17-21, and 30-44. In addition, within seven (7) days of this Order, Plaintiff must execute a HIPAA waiver to allow Defendant to subpoena Plaintiff's relevant medical records.

ENTERED this *18<sup>th</sup>* day of *October*, 2019.

Judge, Circuit Court for the County of Fairfax

*c. 11/15/19  
10/18/19*

*We ask for this:*

*1. Benjamin Rottenborn (USB # 84796)  
woods Rogers PLLC  
10 S. Jefferson St. Suite 1400  
Roanoke, VA 24014  
{2651208-1, 121024-00001-01}*

*SEEN & OBJECTED TO FOR  
THE REASONS STATED IN  
PLAINTIFF'S OPPOSITION  
BRIEF AND IN ORAL ARGUMENT  
ON OCTOBER 18, 2019:*

*Benjamin G. Chow (USB # 29113)*

# Exhibit C

## HIPAA Privacy Authorization Form

### \*\*Authorization for Use or Disclosure of Protected Health Information

(Required by the Health Insurance Portability and Accountability Act, 45 C.F.R. Parts 160 and 164)\*\*

#### \*\*1. Authorization\*\*

I authorize \_\_\_\_\_ (healthcare provider) to use and disclose the protected health information described below to \_\_\_\_\_ (individual seeking the information).

#### \*\*2. Effective Period\*\*

This authorization for release of information covers the period of healthcare from:

a.  Past to Present.

\*\*OR\*\*

b.  all past, present, and future periods.

#### \*\*3. Extent of Authorization\*\*

a.  I authorize the release of my complete health record (including records relating to mental healthcare, communicable diseases, HIV or AIDS, and treatment of alcohol or drug abuse).

\*\*OR\*\*

b.  I authorize the release of my complete health record \_\_\_\_\_ in relation to the \_\_\_\_\_ following categories:

Mental health records

Communicable diseases (including HIV and AIDS)

Alcohol/drug abuse treatment

Other (please specify): Physical injuries



4. This medical information may be used by the person I authorize to receive this information for medical treatment or consultation, billing or claims payment, or other purposes as I may direct.

5. This authorization shall be in force and effect until 1/3/2020 (date or event), at which time this authorization expires.

6. I understand that I have the right to revoke this authorization, in writing, at any time. I understand that a revocation is not effective to the extent that any person or entity has already acted in reliance on my authorization or if my authorization was obtained as a condition of obtaining insurance coverage and the insurer has a legal right to contest a claim.

7. I understand that my treatment, payment, enrollment, or eligibility for benefits will not be conditioned on whether I sign this authorization.

8. I understand that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by federal or state law.

  
\_\_\_\_\_  
Signature of patient or personal representative

John C. Depp II  
\_\_\_\_\_  
Printed name of patient or personal representative and his or her relationship to patient

10/25/19  
\_\_\_\_\_  
Date

# Exhibit D

## **Rottenborn, Ben**

---

**From:** Robert Gilmore <RGilmore@steinmitchell.com>  
**Sent:** Friday, November 01, 2019 11:40 AM  
**To:** Rottenborn, Ben; 'Vasquez, Camille M.'; Treece, Joshua R.  
**Cc:** Chew, Benjamin G.; Weingarten, Elliot J.; Kevin Attridge; Suda, Casey; John Quinn  
**Subject:** Re: Depp v. Heard: HIPAA Authorization

**\*\*EXTERNAL EMAIL\*\***

---

Ben,

Your discovery requests that were the subject of your motion to compel did not seek documents about Mr. Depp's "mental condition" writ large. Your requests only concerned documents about treatment for drug or alcohol use, and physical injuries. Similarly, your request for a HIPAA waiver did not go beyond those requests. Mr. Depp's signed release is consistent with your motion and the Court's order. Your threat to seek contempt is without merit and improper.

Regards,  
Rob Gilmore

**Robert B. Gilmore**  
**Stein Mitchell Beato & Missner LLP**  
901 15<sup>th</sup> Street, NW, Suite 700  
Washington DC 20005  
D 202.601.1589  
C 202.352.1877  
F 202.296.8312  
[rgilmore@steinmitchell.com](mailto:rgilmore@steinmitchell.com)  
[www.steinmitchell.com](http://www.steinmitchell.com)

---

**From:** "Rottenborn, Ben" <brottenborn@woodsrogers.com>  
**Date:** Friday, November 1, 2019 at 10:00 AM  
**To:** "'Vasquez, Camille M.'" <CVasquez@brownrudnick.com>, "Treece, Joshua R." <jtreece@woodsrogers.com>  
**Cc:** Ben Chew <BChew@brownrudnick.com>, Robert Gilmore <RGilmore@steinmitchell.com>, "Weingarten, Elliot J." <EWeingarten@brownrudnick.com>, Kevin Attridge <KAttridge@steinmitchell.com>, "Suda, Casey" <CSuda@brownrudnick.com>, John Quinn <jquinn@kaplanhecker.com>  
**Subject:** RE: Depp v. Heard: HIPAA Authorization

Camille,

Thank you for sending this, but it is incomplete. The box for "mental health records" needs to be checked. Judge White clearly ruled at the October 18 hearing that "the complaint is broad enough to . . . place[] his mental condition in, issue." And the Order the Court entered that day states that by October 25, "Plaintiff must execute a HIPAA waiver to allow Defendant to subpoena Plaintiff's relevant medical records." Accordingly, Defendant is entitled to medical records relating to Plaintiff's mental health. By failing to execute an appropriate waiver, Mr. Depp is already in violation of the

Court's order. Please send a waiver with the mental health box checked by 2:00 Eastern today. If Mr. Depp is not willing to provide it, we reserve all rights to seek immediate and emergency relief, including a show cause re: civil contempt.

Ben

**Ben Rottenborn**  
**Woods Rogers PLC**  
10 S. Jefferson Street, Suite 1400 | Roanoke, VA 24011  
P (540) 983-7540 | F (540) 983-7711  
brottenborn@woodsrogers.com  
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 **Please consider the environment before printing this email**

**From:** Vasquez, Camille M. <CVasquez@brownrudnick.com>  
**Sent:** Thursday, October 31, 2019 9:18 PM  
**To:** Rottenborn, Ben <brottenborn@woodsrogers.com>; Treece, Joshua R. <jtreece@woodsrogers.com>  
**Cc:** Chew, Benjamin G. <BChew@brownrudnick.com>; Robert Gilmore <RGilmore@steinmitchell.com>; Weingarten, Elliot J. <EWeingarten@brownrudnick.com>; Kevin Attridge <KAttridge@steinmitchell.com>; Suda, Casey <CSuda@brownrudnick.com>  
**Subject:** Depp v. Heard: HIPAA Authorization

**\*\*EXTERNAL EMAIL\*\***

---

Ben,

Pursuant to our call today, attached please find the full version of the HIPAA authorization.

**brownrudnick**

**Camille M. Vasquez**  
Associate

Brown Rudnick LLP  
2211 Michelson Drive  
Seventh Floor  
Irvine, CA 92612  
T: 949-440-0240  
F: 949-252-1514  
Direct fax: 949-486-3667  
cvasquez@brownrudnick.com  
www.brownrudnick.com

\*\*\*\*\*  
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To the extent Brown Rudnick is a "data controller" of the "personal data" (as each term is defined in the European General Data Protection Regulation) you have provided to us in this and other communications between us, please see our [privacy statement and summary here](#) which sets out details of the data controller, the personal data we have collected, the purposes for which we use it (including any legitimate interests on which we rely), the persons to whom we may transfer the data and how we intend to transfer it outside the European Economic Area.

\*\*\*\*\*

# Exhibit E



objects to this Interrogatory as calling for information that is neither relevant nor proportional to this case. Not every entity in which Mr. Depp holds an interest is relevant to this case.

Subject to and without waiving the foregoing objections, Plaintiff identifies the following: A Contrario, Brave Pictures, Inc., Contre Courant, The Depp Irrevocable Trust, HST Archives, LLC, Scaramanga Bros., Inc., L.R.D. Productions, Inc., Infinitum Nihil, Inc., Infinitum Nihil Publishing, LLC, Infinitum Nihil Records, LLC, Infinitum Nihil Media, LLC, Infinitum Nihil Music, LLC, JDM Ventures, LLC, John C. Depp II Insurance Trust, John C. Depp II Living Trust, L.R.D. Productions, Inc., Le Hameau du Bebe, LLC, Stratton Films, Inc., The Mooh Investment Trust, P Music Group, LLC, Versailles Road Trust, Sweetzer Trust, LLC, SCI La Pierre, Stratton Films, Inc., and Vajoliroja, LLC.

8. Identify and describe any and all electronic systems You and/or any entities listed in Your answer to Interrogatory No. 7 use to effect, track, monitor, or create records of incoming and outgoing payments, including without limitation any system maintained with or having any relation to City National Bank. Further identify and describe any and all outgoing and incoming payments, from 2010 to the present, to or from the individuals listed in Defendant's Request for Production No. 16 made using each such system, including the amount and purpose of each such payment.

**ANSWER:**

In addition to the foregoing General Objections and Objections to Definitions and Instructions, Plaintiff objects to this Interrogatory as overly broad and unduly burdensome, and to the extent that it seeks the information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege, immunity, or protection. Plaintiff further objects to this Interrogatory as calling for information that is neither relevant nor proportional to this case.

In light of the foregoing objections, Plaintiff will not be responding to this Interrogatory.

9. Identify each mental and/or physical health care provider (including drug and/or alcohol addiction/dependency care or treatment providers, counselors or therapists) that You saw or consulted or who examined You or provided treatment or services to You from



January 1, 2010 to the present and state the reason and duration You saw or consulted or received treatment or services from each identified provider. The answer to this Interrogatory should include visits to emergency rooms; any addiction, drug or alcohol treatment or therapy session(s); and visits with or physical or mental health treatment from any doctor, surgeon, psychiatrist, nurse, psychologist, therapist, counselor, medical advisor, specialist, or other provider.

**ANSWER:**

In addition to the foregoing General Objections and Objections to Definitions and Instructions, Plaintiff objects to this Interrogatory as overly broad and unduly burdensome, and to the extent that it seeks the information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege, immunity, or protection. Plaintiff further objects to this Interrogatory as calling for information that is neither relevant nor proportional to this case. Not all of Mr. Depp's medical treatment is relevant to this Action. Plaintiff further objects to this Interrogatory to the extent it calls for confidential, personal business, financial, medical, or other proprietary information protected by law, including information that may be protected by the physician-patient privilege and/or the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Plaintiff further objects on the grounds that this Interrogatory calls for a medical and/or legal conclusion. Plaintiff further objects to this Interrogatory to the extent it is intended to harass Plaintiff, and constitutes an invasion of privacy. Plaintiff further objects to this Interrogatory because it seeks information more readily obtained by other means, including by way to deposition testimony and/or document discovery.

Subject to and without waiving the foregoing objections, Plaintiff will identify non-privileged documents responsive to this Interrogatory, if any, by Bates number following document production, in accordance with Rule 4.8(f).

10. For each prescription drug You have been prescribed to take since 2010 or that you currently take: (a) identify the physician and/or health care provider who wrote the prescription; (b) state the name of the drug and the dosage to be taken; and (c) identify

each pharmacist who filled the prescription and such pharmacist's pharmacy and/or place of employment.

**ANSWER:**

In addition to the foregoing General Objections and Objections to Definitions and Instructions, Plaintiff objects to this Interrogatory as overly broad and unduly burdensome, and to the extent that it seeks the information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege, immunity, or protection. Plaintiff further objects to this Interrogatory as calling for information that is neither relevant nor proportional to this case. Not all of Mr. Depp's medical treatment is relevant to this Action. Plaintiff further objects to this Interrogatory to the extent it calls for confidential, personal business, financial, medical, or other proprietary information protected by law, including information that may be protected by the physician-patient privilege and/or the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Plaintiff further objects on the grounds that this Interrogatory calls for a medical and/or legal conclusion. Plaintiff further objects to this Interrogatory to the extent it is intended to harass Plaintiff, and constitutes an invasion of privacy. Plaintiff further objects to this Interrogatory because it seeks information more readily obtained by other means, including by way to deposition testimony and/or document discovery.

Subject to and without waiving the foregoing objections, Plaintiff will identify non-privileged documents responsive to this Interrogatory, if any, by Bates number following document production, in accordance with Rule 4.8(f).

11. For each instance of physical violence or abuse alleged in Ms. Heard's Declaration, state whether You were under the influence of or had consumed any alcohol, medication, or drugs on the days of each such incident, and, if so, state as to each substance consumed (including alcohol) the identity of the substance consumed, the amount of the substance consumed, the date and time each such substance was consumed, the name and address of the place(s) where the substance was consumed, the location and person from which the substance was acquired or obtained, any witnesses present at the time of consumption, and the effect of the substance on You.

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Direct: (703) 460-9350

2019 NOV - 11 3: 02

NOV 11 2019  
JOHN T. FREY  
CLERK OF CIRCUIT COURT  
FAIRFAX, VA

*Via Hand Delivery*

Clerk of Court  
Fairfax County Circuit Court  
4110 Chain Bridge Road  
Fairfax, Virginia 22030

**Re: John C. Depp II v. Amber Laura Heard**  
**Fairfax County Circuit Court**  
**Case No. CL2019-0002911**

Dear Clerk:

Enclosed please find an original and one copy of Defendant's Emergency Motion to Compel to be filed in the above-referenced matter.

Please return the file stamped copy to me via the waiting courier.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Courtney L. Moore

Enclosures