

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY



FILED
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2022 JUL -1 2:44

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

JOHN C. DEPP, II,

Plaintiff and Counterclaim-Defendant,

v.

Civil Action No.: CL-2019-0002911

AMBER LAURA HEARD,

Defendant and Counterclaim-Plaintiff.

**DEFENDANT AND COUNTERCLAIM PLAINTIFF'S POSITION ON ENFORCING
THE CONFIDENTIALITY DESIGNATIONS UNDER THE PROTECTIVE ORDER**

At the June 24, 2022 hearing, the Court asked the parties to consider permitting the Court to unseal all previously sealed filings on the record, even if not introduced at trial. The Court indicated that in the event the record goes up to the Court of Appeals, "there shouldn't be anything sealed. We've had the trial." 6/24/22 Hearing Tr., Ex. 1, at 16. The Court asked the parties to review and consider whether this was the intention of the parties and respond to the Court's expressed intention to unseal everything on the record absent objection or a basis for not unsealing. 6/24/22 Hearing Tr., Ex. 1, at 13-16. This filing constitutes Defendant and Counterclaim Plaintiff's position with respect to the unsealing of any portions of the record not introduced at trial.

The governing document is the Stipulated Amended Protective Order ("Operative Protective Order") entered by this Court on June 21, 2021. A copy is attached as Ex. 2.

Paragraph 32 provides:

This Amendment shall continue to be binding after the conclusion of this Litigation except (a) that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal and never unsealed); and (b) that a Party

may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of the Amendment

The vast majority of the remaining sealed documents in this case include pleadings, motions, attachments to pleadings and motions, deposition transcripts, attachments to deposition transcripts, hearing transcripts, and exhibits not introduced at trial. Many of the attachments or exhibits contain sensitive information, including medical and mental health information, that was intended by the parties to remain private and confidential, and should not be summarily unsealed. Some of the record documents are also confidential schedules and other documents labeled as such by other Courts and potentially subject to other Court Orders. Defendant and Counterclaim Plaintiff therefore objects to a blanket unsealing of the entire record including all documents currently filed under seal.

With respect to procedures for sealed documents in the Court of Appeals, it is counsels' understanding that this Court would submit to the Court of Appeals any documents under seal separately from the unsealed portions as part of the Record. Further, Va. Rule 5A:25(i) provides for any sealed documents to be separately designated and filed as a sealed Appendix.

Notwithstanding our objections and citation to the controlling Operative Protective Order in support of the Objections and expressed position that it was not the intention of Defendant and Counterclaim Plaintiff that the entire Court record be unsealed after trial, recognizing the greater convenience in being able to transfer records with minimal sealed documents, Defendant and Counterclaim Plaintiff is willing to review the Court's complete Record for all currently sealed documents and work with counsel for Plaintiff and Counterclaim Defendant to reach agreement on as many of the documents as possible to be unsealed. Counsel for Defendant and Counterclaim Plaintiff is willing to engage in this exercise over the next two weeks to ensure the

review and conferring with counsel is complete, and any modifications are submitted to the Court, before the Judgment becomes final.

July 1, 2022

Respectfully submitted,



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Adam S. Nadelhaft (VSB #91717)
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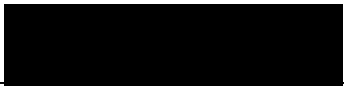
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 1st day of July, 2022, by email, by agreement of the parties, addressed as follows:

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Transcript of Hearing

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

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Transcript of Hearing
Conducted on June 24, 2022

1 VIRGINIA:
2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY
3 -----X
4 JOHN C. DEPP, II, :
5 Plaintiff, :
6 v. : Case No.
7 AMBER LAURA HEARD, : CL-2019-0002911
8 Defendant. :
9 -----X
10
11 HEARING
12 Before the Honorable PENNEY AZCARATE
13 Fairfax, Virginia
14 Friday, June 24, 2022
15 11:01 a.m.
16
17
18
19
20 Job No.: 453718
21 Pages: 1 - 20
22 Reported by: Carol A. Lowe, RPR

1 Hearing held at:
2
3
4 CIRCUIT COURT OF FAIRFAX COUNTY
5 4110 Chain Bridge Road
6 Courtroom 5J
7 Fairfax, Virginia 22030
8 (703) 691-7320
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1 A P P E A R A N C E S
2 ON BEHALF OF THE PLAINTIFF:
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14 NADELHAFT
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22

1 P R O C E E D I N G S
2 (The court reporter was sworn.)
3 THE COURT: All right. And this matter,
4 it's just on the docket today for entry of order;
5 correct?
6 MR. CHEW: Yes, Your Honor.
7 MS. BREDEHOFT: Correct, Your Honor.
8 THE COURT: All right. So I have two
9 orders.
10 MR. CHEW: Yes, Your Honor.
11 THE COURT: Okay. So what are --
12 MS. BREDEHOFT: As a practical matter
13 there's three differences, Your Honor. And I had
14 sent last evening to Samy a red line. We really
15 just have three issues. I have another copy of
16 the red line.
17 And if you want to share mine with me,
18 because I -- for some reason I only have two.
19 These are the -- these are the
20 differences. One of them I think is more a matter
21 of semantics, Your Honor. Ms. Heard with her
22 counterclaim had one count of defamation and had

13
1 THE COURT: Okay.
2 MR. CHEW: Thank you, Your Honor.
3 THE COURT: All right. Anything
4 further?
5 MS. BREDEHOFT: No, Your Honor.
6 THE COURT: All right. I will sign this
7 order. I will give -- actually, I'll --
8 MS. BREDEHOFT: Your Honor, I'm signing
9 his order.
10 THE COURT: I think you need to sign it.
11 All right. So I can -- give it to Ms.
12 Bredehoft to sign.
13 MS. BREDEHOFT: Oh, okay. I'll sign
14 that one.
15 THE COURT: All right.
16 MS. BREDEHOFT: Okay?
17 THE COURT: All right. I'll sign that.
18 And I'll get copies to you.
19 MR. CHEW: Thank you very much, Your
20 Honor.
21 THE COURT: All right. The only other
22 question I had was there are some -- the clerks

14
1 have asked me about it, because there were some of
2 the hearings that were under seal.
3 Is that still -- are they staying under
4 seal? Because now if it's going to be appealed to
5 the Court of Appeals, there's a question with
6 that. So that's why...
7 MS. BREDEHOFT: I'd have to look at -- I
8 know that we filed a number of transcripts. And
9 we filed certain ones under seal that were under
10 seal because we didn't want to violate any of the
11 Court's orders obviously in that.
12 I don't have that list in front of me.
13 It was a pretty extensive list. And there were
14 certain --
15 THE COURT: Right.
16 MS. BREDEHOFT: -- ones. I would have
17 to look at that before making any kind of
18 determination on that.
19 MR. CHEW: If we could also
20 double-check, please, Your Honor.
21 THE COURT: Okay. That's fine. If you
22 could just get back to Samy to find out, because


15
1 I'd -- I'd rather unseal as much as I possibly
2 could at this point.
3 Most of the things -- items in -- at
4 least the hearings were sealed because we didn't
5 want to have any taint to the jury. But since
6 that's cleared -- and for like the motion in
7 limine issues and things, I'm just thinking
8 that --
9 MR. CHEW: And -- I apologize, Your
10 Honor. And our assumption is once the trial was
11 on things would not be sealed anymore.
12 THE COURT: Correct. And that was my
13 assumption too. So I just -- but when you started
14 filing things under seal I was a little confused.
15 MS. BREDEHOFT: Yeah. And I'm not sure
16 that that was my assumption, that everything
17 suddenly became unsealed. I think it depended
18 upon the circumstances. So I'll go back and look,
19 Your Honor.
20 THE COURT: Well, my -- my intention is
21 to unseal everything.
22 MS. BREDEHOFT: So --

16
1 THE COURT: Okay? So that's where I'm
2 at. So if you can -- if you provide me something
3 different than that, I'll take a look at that.
4 But especially when it goes up to the Court of
5 Appeals on appeal there shouldn't be anything
6 sealed. We've had the trial.
7 MS. BREDEHOFT: We -- we absolutely will
8 do so, Your Honor. There is one more ministerial
9 thing.
10 THE COURT: Sure. Sure.
11 MS. BREDEHOFT: In this judgment order
12 which -- which went back and forth a few times --
13 and a lot of it reflects my edits from earlier
14 judgment orders -- I had included in here that we
15 incorporate the jury verdict form. And Mr. Chew
16 agreed with me. And it's in this judgment order.
17 It's still not on the record, the verdict --
18 THE COURT: No, because it's signed by
19 the foreperson whose name is under seal.
20 MS. BREDEHOFT: Can we block that
21 signature out and -- and then still file that?
22 Because we've -- in this judgment order we've

17
1 incorporated it. And that's what --
2 THE COURT: All right.
3 MS. BREDEHOFT: -- we typically do with
4 judgment orders.
5 THE COURT: Any objection to that?
6 MR. CHEW: No, Your Honor.
7 THE COURT: All right. We can -- we can
8 do that.
9 MS. BREDEHOFT: Wonderful.
10 THE COURT: All right. We'll do that --
11 MS. BREDEHOFT: Thank you.
12 THE COURT: -- attach that to it. Okay.
13 MS. BREDEHOFT: And we will answer --
14 we'll look at that and we'll answer that no later
15 than next Friday when we file the post-trial
16 motions, Your Honor --
17 THE COURT: All right.
18 MS. BREDEHOFT: -- on the seal.
19 THE COURT: That's fine. And when you
20 appeal there will be a suspension bond too. You
21 understand that?
22 MS. BREDEHOFT: We plan on addressing

18
1 that with the post-trial motions, Your Honor.
2 THE COURT: Well, I can address it right
3 now. If you --
4 MS. BREDEHOFT: I -- I'd prefer to be
5 able to --
6 THE COURT: I understand what you
7 prefer, but I'm going to tell you the suspension
8 bond would be the amount of judgment plus six
9 percent interest for a year because that's what it
10 should be.
11 MS. BREDEHOFT: Okay.
12 THE COURT: Okay. So that's one less
13 thing you have to address.
14 MS. BREDEHOFT: Well, will Your Honor
15 permit me to at least address that in the
16 post-trial motions?
17 THE COURT: If you wish, but that's my
18 order right now.
19 MS. BREDEHOFT: I understand, completely
20 understand.
21 THE COURT: Okay.
22 MS. BREDEHOFT: Thank you, Your Honor.

19
1 THE COURT: All right. Anything further
2 on this?
3 MR. CHEW: No, Your Honor. Thank you
4 very much.
5 THE COURT: Anything further?
6 MS. BREDEHOFT: No.
7 THE COURT: All right. We'll get a copy
8 of this order for you.
9 MS. BREDEHOFT: I hope Your Honor had a
10 great vacation, by the way.
11 THE COURT: Okay. I -- the Court is in
12 recess.
13 (Off the record at 11:10 a.m.)
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1 CERTIFICATE OF SHORTHAND REPORTER
2 I, CAROL A. LOWE, the court reporter
3 before whom the foregoing hearing was taken, do
4 hereby certify that the foregoing transcript is a
5 true and correct record of the proceedings; that
6 said proceedings were taken by me stenographically
7 and thereafter reduced to typewriting under my
8 supervision; and that I am neither counsel for,
9 related to, nor employed by any of the parties to
10 this case and have no interest, financial or
11 otherwise, in its outcome.
12
13
14
15
16
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18 
19 _____
20 Carol A. Lowe, RPR
21
22

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

STIPULATED AMENDED PROTECTIVE ORDER

This amendment (the "Amendment") to the Protective Order entered in the above-captioned action on September 25, 2019 (the "Protective Order") is made and entered into by and among Plaintiff John C. Depp, II ("Mr. Depp") and Defendant Amber Laura Heard ("Ms. Heard") (collectively, the "Parties" and each a "Party").

RECITALS

The Protective Order was entered in the above-captioned action (the "Action") on September 25, 2019.

The Parties anticipate that the Action will be tried in April 2022 (the "Virginia Trial").

In May 2018, Mr. Depp initiated a libel suit against News Group Newspapers Ltd and Dan Wootton (the "UK Defendants") in the United Kingdom over an article published by the UK Defendants entitled "GONE POTTY How can JK Rowling be 'genuinely happy' casting wife beater Johnny Depp in the new Fantastic Beasts film?" The libel suit contended the article falsely claimed that Mr. Depp committed serious domestic violence against Amber Heard, causing significant injury and leading to her fearing for her life. (the "UK Action").

Among others, Mr. Depp and Ms. Heard each submitted multiple witness statements in the UK Action.

A sixteen-day trial of the UK Action was conducted between July 7, 2020 and July 28, 2020. Among others, Mr. Depp and Ms. Heard each provided live testimony at the trial of the UK Action.

On November 2, 2020, Justice Nicol handed down a judgment in the UK Action (the "UK Judgment"), dismissing Mr. Depp's libel action and finding that the statements in the article were true. Mr. Depp petitioned Justice Nicol for permission to appeal, which petition was denied on November 16, 2020.

Mr. Depp applied to the Court of Appeal (Civil Division) in the United Kingdom ("UK Court of Appeal"), to request permission to appeal the UK Judgment. Mr. Depp later applied for permission to adduce and submit new evidence in support of his appeal ("UK Appeal").

Following a hearing held on March 18, 2021, the Court of Appeal (Civil Division) in the United Kingdom handed down a judgment on March 25, 2021 denying Mr. Depp's application for permission to appeal and to adduce the new evidence (the "Judgment on Permission to Appeal").

In the course of the UK Action, certain pleadings and witness evidence contained information, within confidential schedules, that was deemed confidential by way of an Order of Justice Nicol dated April 8, 2020 and sealed on April 9, 2020. The terms of this Order extended to the parts of the trial that were held in private and the transcripts thereof. The UK Judgment and Judgment on Appeal also contained confidential schedules dealing with such underlying confidential information.

Ms. Heard seeks to produce and file in this Action the Confidential Judgments and related confidential schedules described in Section 3(a)(vi), and is applying to the UK High Court for

permission to release the documents. The Parties therefore are entering into this Stipulated Amendment to Protective Order to govern the treatment of this, and other related, confidential information.

Having found that the Parties, by, between, and among their respective counsel, have agreed to the terms set forth herein, and good cause having been shown,

IT IS STIPULATED AND ORDERED that:

1. This Amendment is being entered into to facilitate the production, exchange, and discovery of documents and information that the Parties agree merit confidential treatment. This Amendment shall govern the handling of documents, deposition testimony, deposition exhibits, interrogatory responses, admissions, electronically stored information (“ESI”) and any other information or material produced, given or exchanged by and among the Parties and any non-parties to the above-captioned action (the “Litigation”) in connection with discovery in the Litigation (such information or material hereinafter referred to as “Discovery Material.”).

2. Either Party may designate Discovery Material in connection with this Litigation as “Confidential” either by notation on the document, statement on the record of the deposition, written notice to counsel for the Parties hereto, or by other appropriate means. In the case of documents produced in native, electronic form, the confidentiality can be designated on the placeholder sheet produced along with that document, or in a confidentiality metadata field. Such designations shall constitute a representation to the Court that such Discovery Material is not reasonably believed to be already in the public domain.

3. As used herein:

- a. “Confidential Information” shall mean all Discovery Material, and all information contained therein, and other information designated as

“Confidential,” that the Producing Party (as defined below) reasonably and in good faith believes constitutes and/or contains:

- i. personally identifying information, including but not limited to contact information, addresses, phone numbers, email addresses, social security numbers, identification card numbers, driver’s license numbers, passport numbers, or other government identification numbers, and any other similar information, but excluding Financial Information (as defined below);
- ii. Medical records, including documents containing medical and/or psychological conditions, diagnoses, or treatment, communications with health care providers and their staff (including any doctor, surgeon, psychiatrist, dentist, nurse, psychologist, therapist, counselor, medical advisor, mental health provider, or specialist), and any information that would be protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- iii. Information in the nature of private journals or journal entries;
- iv. Any documents or testimony having the same general subject matter as the documents described in Section 3(a)(vi);
- v. Any other documents or information the Parties agree in writing or otherwise permitted by the Court should be treated as Confidential; and
- vi. The following documents from the UK Action and UK Appeal:
 1. All Confidential Schedules;

2. The Confidential Judgment of Justice Nicol, dated November 2, 2020;
 3. the Confidential Judgment of the Court of Appeal, dated March 25, 2021;
 4. Confidential trial transcripts, including any evidence adduced during the portions of the trial of the UK Action held in private on the 4th, 12th, and 14th days of trial, which are reflected in the separate confidential trial transcripts from those three trial dates;
 5. The following sections of the transcript of the deposition of Kristina Sexton, dated December 18, 2019, which was included in the trial bundle for the UK Action as document F106: pages 98-104, pages 112-18, page 180-84;
 6. Text messages between Ms. Heard and Danie Streisand on November 16, 2018, which was included in the trial bundle for the UK Action as document H56.
- b. Nothing in this Amendment shall be construed to limit or restrict the Parties' right to apply, to vary, change, amend, or terminate the confidential status of the documents in Section 3(a)(vi) by written agreement or application to the U.S. Court.
- c. "Protected Information" shall mean Confidential Information.
- d. Should Protected Information become part of the public domain, without any violation of this Order, such Protected Information will no longer be subject to

the protections of this Amendment. Should some, but not all, Protected Information become part of the public domain, without any violation of this Order, and either Party believes that additional information should be disclosed, the Parties may agree in writing or any Party may petition this Court for further relief.

- e. "Producing Party" shall mean the Party to this Litigation and/or any non-party producing Protected Information in connection with discovery in this Litigation, or the Party asserting the confidentiality designation, as the case may be.
- f. "Receiving Party" shall mean the Party to this Litigation and/or any non-party receiving Protected Information in connection with discovery in this Litigation.

4. ESI designated as "Confidential" shall be so designated by including a "Confidential" in the body of the electronic document or by affixing a stamp with such notice to the medium (including, but not limited to, tapes, CDs, DVDs, and flash drives) on which the ESI is stored before copies are delivered to a Receiving Party. Printouts of any such ESI designated as Confidential Discovery Material shall be treated in accordance with the terms of this Amendment. Notwithstanding the foregoing, Excel documents or any other type of electronically stored information produced in native format (together, "Natively Produced ESI") need not be produced using a means sufficient to ensure that every page of such document, when printed, contains the appropriate mark or stamp. Instead, the Disclosing Party shall use reasonable means to designate "Confidential" as appropriate, by (a) producing a TIFF placeholder image corresponding to the Natively Produced ESI that includes a "Confidential" mark; and (b) including

"Confidential" as appropriate, on the label of the media or in the transmittal e-mail containing the Natively Produced ESI.

5. The designation of any Discovery Material as "Confidential" is not intended to, and shall not be construed as, an admission that the Discovery Material is relevant, not subject to an applicable privilege or protection, admissible, or reasonably calculated to lead to the discovery of admissible evidence. The Receiving Party may, at any time, notify the Producing Party that the Receiving Party does not concur in the designation of Discovery Material as "Confidential". The Parties shall confer in good faith regarding any such disagreement over the classification of Discovery Material and if the Producing Party does not agree to change the designation of such Discovery Material, the Receiving Party may move the Court for an order removing the designation of such Discovery Material as Protected Information. Upon such a motion, the Producing Party shall bear the burden to prove that the Discovery Material in question is Protected Information. If such a motion is filed, the Discovery Material shall be deemed Protected Information, with the same confidentiality designation as asserted by the Producing Party, unless and until the Court rules otherwise.

6. In order to expedite the production of voluminous materials, a Producing Party may, but is not required to, produce materials without a detailed review for confidentiality designation and may designate collections of documents that, by their nature, contain Confidential Information as "Confidential," notwithstanding that some of the documents within the collection may not qualify for such designation. A Party's "bulk" designation of documents shall not constitute waiver of any Party's rights set forth in Paragraph 17 of this Amendment. Notwithstanding the foregoing, a Receiving Party may at any time challenge the designation of

one or more particular documents on the grounds that the document(s) do not qualify for protection, including as provided in Paragraphs 5 and 25 of this Amendment.

7. A Producing Party must redact unique identifiers pertaining to financial records, including bank account numbers, credit card numbers, usernames and passwords ("Financial Information"). Documents containing Financial Information shall be redacted but shall not be designated as "Confidential" in full solely on the grounds that they contain Financial Information.

8. Except with the prior written consent of the Producing Party or by Order of the Court, Confidential Information shall not be furnished, shown or disclosed to any person or entity except to:

- a. the Parties themselves;
- b. counsel of record for the Parties to this Litigation and their associated attorneys, including Adam Waldman, who has already seen the documents deemed Confidential by the UK Courts prior to the date of this Amendment and who shall sign Exhibit A before being provided any additional information, paralegals and other professional personnel (including support staff) who are directly assisting such counsel in the preparation of this Litigation for trial or other proceeding herein, are under the supervision or control of such counsel, and who have been advised of their obligations hereunder;
- c. expert witnesses and members of the expert witnesses' staff working under the expert witnesses' supervision, provided, however, that such Confidential Information is furnished, shown or disclosed to them in accordance with Paragraph 10 hereof;

- d. third-party vendors or consultants retained by the Parties or their counsel to furnish technical services in connection with this Litigation and who have been advised of their obligations hereunder;
- e. the Court and court personnel, if filed in accordance with Paragraph 16 hereof;
- f. a person before whom a deposition is taken, including stenographic reporters, videographers and any necessary secretarial, clerical or other personnel of such person, if furnished, shown or disclosed in accordance with Paragraph 14 hereof;
- g. trial and deposition witnesses, if furnished, shown or disclosed in accordance with Paragraphs 12 and 13, respectively, hereof;
- h. any other person agreed to by the Parties.

9. Before any disclosure of Protected Information is made pursuant to Paragraph 8(b) hereof, counsel for the Receiving Party shall obtain from the intended recipient of the Protected Information such person's written undertaking, in the form of Exhibit A attached hereto, to comply with and be bound by its terms.

10. Protected Information shall be utilized by the Receiving Party only for purposes of this Litigation, and for no other purposes.

11. Any Party may designate as Confidential Information all or portions of transcripts of depositions, or exhibits thereto, containing Confidential Information, by making such designation either by statement of Counsel on the record at the deposition itself or by written notice, sent by Counsel to all Parties within twenty (20) days after receipt of the deposition transcript or other pretrial testimony and, provided that only those portions of the transcripts designated as "Confidential" shall be deemed Confidential Information. The transcripts of any

such deposition or exhibit shall be marked by the court reporter as "Confidential." Prior to the expiration of twenty (20) days after the date of the deposition or pretrial testimony, either Party may seek written consent from the other Party or relief from the Court to use the deposition transcript or other pretrial testimony not designated "Confidential" at any hearing.

12. The Parties may in good faith disclose Protected Information at any hearing if it relates directly to the subject matter of the hearing, and after prior notice to the Court and counsel and an opportunity to object to its use. Subject to any rulings by the Court, the Parties may disclose Protected Information at trial, including through argument or the presentation of evidence. Any transcripts of testimony or exhibits intended to be used at trial must comply with the terms of the Scheduling Order and the Rules of the Court.

13. This Amendment shall not preclude counsel for the Parties from using Protected Information during any deposition in this Litigation, provided that prior to any such use, the Party intending to use Protected Information shall: (a) provide a copy of this Amendment to the witness, and others to whom disclosure is intended to be made; (b) explain the Amendment to said persons and/or cause them to read the Amendment; and (c) request that said persons execute the undertaking attached hereto as Exhibit A, if such persons are not covered by Paragraph 8 of this Amendment. The time it takes to make this request described in this Paragraph shall not be used against any time limits a Party has in the deposition where the request is being made. Should any said person refuse to execute the undertaking, counsel for the Parties may still use the Protected Information during the deposition and the Parties agree that the use of such Protected Information during the deposition shall not negate its treatment as Protected Information pursuant to this Amendment.

14. A Party may designate as Confidential Information any Discovery Material produced or given by any non-party to this case, or any portion thereof. In the case of documents, designation shall be made by notifying all counsel, in writing, of those documents that are to be stamped and treated as Confidential Information at any time up to thirty (30) days after actual receipt of copies of those documents by counsel for the Party asserting the confidentiality designation. Prior to the expiration of such thirty (30) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), either party may seek written consent from the other party or relief from the Court to use Discovery Material not marked as "Confidential" at any hearing. In the case of testimony, designation shall be made by notifying all counsel, in writing, of those portions of a transcript which are to be stamped or otherwise treated as Confidential Information at any time up to thirty (30) days after the final transcript is received by counsel for the Party asserting the confidentiality designation.

15. As to the filing with the Court of Discovery Material that has previously been designated as "Confidential" or containing Protected Information:

- a. Any Receiving Party who seeks to file with the Court any Discovery Material that has previously been designated by any Producing Party as "Confidential" or containing Protected Information, and any pleading, brief or memorandum which reproduces, paraphrases or discloses Protected Information shall file this material under seal and, in doing so, shall take care such that only that portion of a filing that contains the Protected Information is filed under seal. Nothing in this paragraph shall apply to the designation of and use of Protected Information at trial, on which the parties may reach a separate agreement prior to the trial.

b. All pleadings, briefs or memoranda which reproduce, paraphrase or disclose any documents which have previously been designated by a Party as "Confidential" or containing Protected Information, shall identify such documents by the production number ascribed to them at the time of production.

16. Any person receiving Protected Information shall not reveal or discuss such information with any person not entitled to receive such information under the terms hereof.

17. Any Discovery Material that may contain Protected Information that has been inadvertently produced without identification as to its protected nature as provided in Paragraphs 2 and/or 14 of this Amendment, may be so designated by the Party asserting the confidentiality designation by written notice to the undersigned counsel for the Receiving Party identifying the Discovery Material as "Confidential" within a reasonable time following the discovery that the document or information has been produced without such designation.

18. Extracts and summaries of Protected Information shall also be treated as Confidential in accordance with the provisions of this Amendment.

19. The production or disclosure of Protected Information shall in no way constitute a waiver of each Party's right to object to the production or disclosure of other information in this Litigation or in any other action.

20. A Producing Party's inadvertent disclosure in connection with this Litigation of one or more documents that such Producing Party believes constitute, contain or reflect information otherwise protected by the attorney-client privilege, the common interest privilege, the work product doctrine or any other privilege or immunity from discovery ("Privileged Documents"), shall not constitute a waiver with respect to such Privileged Documents or generally of such privilege or immunity. If a Receiving Party receives materials that appear to be subject to an

attorney-client privilege, the common interest privilege, or otherwise protected by a discovery privilege or immunity, the Receiving Party must refrain from further use or examination of the materials that may be privileged, and shall immediately notify the Producing Party, in writing, that he or she possesses material that appears to be privileged. In the event a Producing Party discovers it has inadvertently disclosed Privileged Documents, the Producing Party may provide notice to the other Parties advising of the disclosure and requesting return or destruction of the Privileged Documents. Upon such notice, the Receiving Party shall make no further use or examination of the Privileged Documents and shall immediately segregate them in a manner that will prevent further disclosure or dissemination of their contents, and, within ten (10) days of receiving such notice of inadvertent production of Privileged Documents, the Receiving Party shall destroy or return all original documents identified by the Producing Party in such notice (whether electronic or hard copy), shall destroy or delete any and all copies (whether electronic or hard copy), and shall expunge from any other document, information or material derived from the inadvertently produced Privileged Documents. The party clawing back the inadvertently produced documents will provide the Receiving Party with a privilege log that reasonably identifies the basis for the assertion of privilege.

21. If, based on (1) the privilege log entries provided to the Receiving Party by the Producing Party, or (2) the Receiving Party's review of documents that occurred prior to the assertion of privilege and claw-back, there is a dispute over whether the clawed back documents at issue are protected from disclosure by virtue of a privilege or immunity from discovery, the original documents shall nevertheless be immediately destroyed or returned to the Producing Party along with all copies (whether electronic or hard copy) thereof. All counsel shall undertake reasonable efforts to resolve the issue of whether the documents are privileged without court

intervention. To the extent counsel cannot resolve the issue, the Receiving Party may bring a motion to compel production of the Privileged Documents but may not assert as a ground for compelling production the fact or circumstance that the Privileged Documents had already been produced. In conjunction with such a motion, the Receiving Party may request that the Court review *in-camera* the clawed back documents at issue, and, if the Court so orders, the Producing Party shall provide the Privileged Documents under seal to the Court for *in-camera* review. In the event of a motion to compel production of the Privileged Documents, the burden is on the Producing Party to provide, in its opposition to the motion to compel, information regarding the content and context of the Privileged Documents sufficient to establish the applicability of any asserted privilege or immunity from discovery.

22. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Information it has received from a Producing Party to any person or in any circumstance not authorized under this Order, the Receiving Party must promptly, after discovery of the disclosure, (a) notify the relevant Producing Party of the unauthorized disclosure(s) in writing, (b) make reasonable efforts to retrieve all copies of the Discovery Material containing Protected Information from the person or persons to whom unauthorized disclosures were made (the "Unauthorized Recipient(s)"), (c) inform the Unauthorized Recipient(s) of all the terms of this Amendment, and (d) request the Unauthorized Recipient(s) to execute the undertaking attached hereto as Exhibit A.

23. The Parties agree that they may not have an adequate remedy at law in the event that a court of competent jurisdiction determines that there is an actual or threatened breach of this Amendment by either Party and agree that, under such circumstances, the Parties may be entitled

to specific performance and/or injunctive relief to enforce the terms hereof, in addition to any remedy to which they may be entitled at law or in equity.

24. The provisions of this Amendment shall be binding upon the Parties. All modifications of, waivers of and amendments to this Amendment must be in writing and signed by, or on behalf of, the Parties.

25. This Amendment is entered into without prejudice to the right of either Party to seek relief from, or modification of, this Amendment or any provisions thereof by properly noticed motion to the Court or to challenge any designation of confidentiality as inappropriate under the Rules of the Supreme Court of Virginia or other applicable law.

26. This Amendment may be changed by further order of this Court, and without prejudice to the rights of a Party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

27. In the event that additional Parties join or are joined in this Litigation, they shall not have access to Protected Information until the newly joined Party, by its counsel, has executed and filed with the Court its agreement to be fully bound by this Amendment.

28. The Parties agree to be bound by the terms of this Amendment pending the entry by the Court of this Amendment, and any violation of its terms shall be subject to the same penalties and sanctions, as if this Amendment had been entered by the Court.

29. If any Receiving Party is subpoenaed in any other action or proceeding, is served with a document demand or is otherwise compelled by law to produce documents (collectively, a "Demand"), and such Demand seeks Discovery Material that was produced or designated as Protected Information, or that reflects or contains Protected Information, by someone other than the Receiving Party, the Receiving Party shall give prompt written notice by hand or electronic or

facsimile transmission, within five (5) business days of receipt of such Demand, to the Party or its counsel who produced or designated the material as Protected Information. The Receiving Party shall not produce any of the Producing Party's Protected Information, unless court-ordered or otherwise required by law, for a period of at least ten (10) business days after providing the required notice to the Producing Party. If, within ten (10) business days of receiving such notice, the Producing Party gives notice to the Receiving Party that the Producing Party opposes production of its Protected Information, the Receiving Party shall object, citing this Amendment, and not thereafter produce such Protected Information, except as required by law. The Producing Party shall be solely responsible for pursuing any objection to the requested production. Nothing herein shall be construed as requiring the Receiving Party or anyone else covered by this Amendment to challenge or appeal any order requiring production of Protected Information covered by this Amendment, or to subject itself to any penalties for non-compliance with any legal process or order, or to seek any relief from this Court. In the event that Protected Information is produced to a non-party to this Amendment in response to a Demand, such Discovery Material shall continue to be treated in accordance with the designation as Confidential Information by the Parties to this Amendment.

30. For the avoidance of doubt, nothing herein shall preclude counsel from giving advice to his or her client in this Litigation that includes a general evaluation of Protected Information, provided that counsel shall not disclose the contents of any Protected Information in violation of the terms of this Amendment.

31. Any Party, in conducting discovery from non-parties in connection with the Litigation, shall provide any non-party from which it seeks discovery with a copy of this Order so as to inform each such non-party of his, her, or its rights herein. If a non-party provides discovery

to any Party in connection with the Litigation, the provisions of this Order shall apply to such discovery as if such discovery were being provided by a Party. Under such circumstances, the non-party shall have the same rights and obligations under the Order as held by the Parties. For the avoidance of doubt, non-parties may designate Discovery Material as Confidential Information pursuant to Paragraphs 3(a) and 3(b) as set forth herein.

32. This Amendment shall continue to be binding after the conclusion of this Litigation except (a) that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal and never unsealed); and (b) that a Party may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of the Amendment.

33. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.


34. Within one hundred eighty (180) days after the final termination of this Litigation by settlement (including, to the extent applicable, final court approval of such settlement) or exhaustion of all appeals, all Protected Information produced or designated and all reproductions thereof, shall be returned to the Producing Party or shall be destroyed, at the option of the Producing Party, which option shall be communicated in writing to the Receiving Party promptly. In the event that any Producing Party opts for destruction of its Protected Information, the Receiving Party shall certify, in writing, within one hundred eighty (180) days of the final termination of this Litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. These best efforts need not include destroying Protected Information residing on



back-up tapes or other disaster recovery systems. Notwithstanding anything to the contrary, lead counsel of record for the Parties may retain copies of documents constituting work product, reports, pleadings, motion papers, discovery responses, deposition and trial transcripts and deposition and trial exhibits. This Amendment shall not be interpreted in a manner that would violate any applicable canons of ethics or codes of professional responsibility. For the avoidance of doubt, experts, third-party vendors and consultants who have received Protected Information shall also be required to return or destroy such Protected Information pursuant to the terms of this paragraph.

35. The Amendment constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof.

36. The Amendment shall be effective as of the date upon which both Parties have executed the Amendment.

AGREED, STIPULATED, AND ACCEPTED:

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SO ORDERED THIS 21 DAY OF JUNE, 2021:



The Honorable Penney S. Azcarate
CHIEF JUDGE, FAIRFAX COUNTY
CIRCUIT COURT

EXHIBIT A

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

Civil Action No.: CL-2019-0002911

v.

AMBER LAURA HEARD

Defendant.

CONSENT TO DISCOVERY PROTECTIVE ORDER

I, the undersigned, hereby certify that I have been provided with a copy of the Agreed Protective Order for the production and exchange of Protected Material entered in the above-captioned action and hereby agree to be bound by the terms and conditions thereof.

Signature: _____

Name: _____

Business Affiliation: _____

Address: _____

Date: _____