

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

John C. Depp, II, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Amber Laura Heard, )  
 )  
 Defendant. )

Civil Action No.: CL-2019-0002911

**OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF ORIGINAL DEVICES AND OPERATING SYSTEM DRIVES AND CLOUD BACKUPS OF THESE ORIGINAL DEVICES AS REQUESTED IN PLAINTIFF'S SEVENTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, AND FOR SANCTIONS**

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 Adam S. Nadelhaft (VSB #91717)  
 Clarissa K. Pintado (VSB 86882)  
 David E. Murphy (VSB #90938)  
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Not satisfied after issuing 206 RFPs and receiving hundreds of thousands of pages of documents, photographs, communications, and videos, Mr. Depp now seeks for Ms. Heard to produce all of her original devices for imaging. Then from that imaging, Mr. Depp seeks all photographs regardless of subject matter on 344 different days between 2012-16, along with all text messages, emails, and draft emails regardless of subject matter between Ms. Heard and 38 different individuals, over a period of seven years. **Att. 1.** Mr. Depp then requests a “third party” review **ALL** of this data for relevance, privilege, work product, and other privacy issues.<sup>1</sup> Id. Mr. Depp is unable to articulate any specific basis for this extraordinary request other than a naked suspicion, with no proof whatsoever, that Ms. Heard’s discovery has been “staged, modified, or otherwise falsified,” even though Mr. Depp told the UK Court that he did not dispute the accuracy of metadata and that “an analysis of all the digital images will not yield much more, if anything.” But Mr. Depp does not even attempt to meet his burden by identifying any specific document supporting his allegations, let alone provide any supporting evidence. The Motion is far beyond what the Virginia Rules allow, and should be denied.<sup>2</sup>

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<sup>1</sup> Mr. Depp suggests paying the Conciliator to perform this herculean task. But the Conciliator exchanged multiple *ex parte* communications with both sides, would be disqualified from further conciliation, and only has a snapshot understanding of the issues as they relate to disclosed disputes. There is no way any third party is in a position to unilaterally determine relevance, responsiveness, privilege, confidentiality, or work product in sifting through millions of documents, and the cost, time, and burden would be astronomical, as it requires reviewing all pleadings, Requests, and Court Orders, then reviewing millions of documents. **Att. 11, ¶ 9.** This has never been permitted in Virginia (or anywhere to our knowledge), and for good reason - there would be no need for discovery if this was acceptable. Litigants would simply pay a third party to review all devices, become a case expert, and select what he/she thinks is privileged, private, and “relevant.” The parties would have no recourse, would be completely at the mercy of the third-party’s judgment, and would be responsible for their astronomical fees.

<sup>2</sup> Mr. Depp also filed this Motion without informing Ms. Heard or the Court in violation of ¶ 3 of the Conciliator Order (**Att. 2**), while the parties were setting up a meet and confer with their IT consultants. **Att. 3.** The Court should admonish Mr. Depp for this conduct.

## ARGUMENT

### **I. Mr. Depp's Proposal is Overbroad, Unduly Burdensome, and Unlimitedly Expensive**

Mr. Depp's failure to "sufficiently specify and tailor" his requests for forensic review is merely a backdoor attempt to re-litigate the Court's Orders denying his motions to compel narrower Requests subsumed by this Proposed Order. For example, the Court denied as overbroad Mr. Depp's Requests seeking all communications between Ms. Heard and her partner Ms. Butti or "any other Person" on six different topics, but Mr. Depp *now seeks* to obtain all communications between Ms. Heard and Ms. Butti and 37 other individuals<sup>3</sup> over seven years with no topic-limitation whatsoever. Att. 4, RFPs 42-43; Att. 5.<sup>4</sup>

In *Albertson v. Albertson*, this Court ruled against a proposal much like Mr. Depp's because "Rule 4:9 does not allow a party to access computer files *carte blanche*" because "unfettered access to Plaintiff's computer files would be improper." 73 Va. Cir. 94, 98, n. 6; 101 (Fairfax 2007) (MacKay, J.). This Court only granted forensic discovery on three very specific categories relevant to that case, and even then Ordered a protocol where the "Plaintiff shall review and mark all files which are responsive to the three categories...and provide Defendant with an opportunity to inspect and copy the responsive documents." *Id.* 101-02.<sup>5</sup>

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<sup>3</sup> Mr. Depp also seeks all communications between Ms. Heard and her ex-wife Tasya Van Ree, despite Virginia's marital communications protections. Rule 2:504; Va. Code § 8.01-398.

<sup>4</sup> *Valdes v. Greater Naples Fire Rescue Dist.*, 2018 U.S. Dist. LEXIS 152744, at \*13-16 (M.D. Fl. Sept. 7, 2018) ("Greater Naples failed to sufficiently specify and tailor its requests and failed to supply sufficient information for the Court to determine what production to which Greater Naples may be entitled and fashion appropriate directives to the parties about such production.").

<sup>5</sup> *Albertson* is consistent with courts throughout the country. *Covad Commns. Co. v. Revonet, Inc.*, 258 F.R.D. 5, 11 (D.D.C. 2009) ("Because these examinations raise issues of confidentiality and can produce thousands of documents that have to be reviewed for relevance and privilege, 'compelled forensic imaging is not appropriate in all cases, and courts must consider the significant interests implicated by forensic imaging before ordering such procedures.'"); *Valdes*, 2018 U.S. Dist. LEXIS 152744, at \*13-16 (request for "'all [Plaintiff's] electronic devices and email account information[,] for devices he owned from April 2016 to the present, including cell

And Mr. Depp's proposal that the Conciliator review the discovery would task him with reviewing millions of documents to "identify and isolate any irrelevant or privileged information," without even identifying what qualifies as "relevant," and forces the Conciliator into an inappropriate role that would also require "a herculean level of effort." Att. 11, ¶ 9.

## II. Unsubstantiated Speculation Does Not Justify the Discovery Mr. Depp Seeks

Mr. Depp further claims, without any evidence, that the desired forensic inspection is "vitally necessary" to evaluate Ms. Heard's evidence, and that her "evidence has been staged, modified, or otherwise falsified." Mr. Depp then attempts to shift the burden of proof on his own Motion to Ms. Heard by asking "if she has not falsified her evidence, then what is she hiding?" But Mr. Depp provides no basis other than his bare conjecture for these accusations.

Contrary to Mr. Depp's unsubstantiated "theory," Courts have held that mere skepticism of a claimed deficiency is insufficient to justify Mr. Depp's scorched-earth forensic review:

"It is the rare case that a litigant does not allege some deficiency in the production of [ESI], particularly email...I cannot find any authority in the cases to date that permit a court to conclude that allegations of deficiencies in themselves automatically require a forensic search whenever a party claims there are...This would result in forensic examinations in virtually every case, which could increase the cost of litigation"

*Covad Commns*, 258 F.R.D. at 13-14; *Tingle v. Hebert*, 2018 U.S. Dist. LEXIS 60301, at \*18 (M.D. La. Apr. 10, 2018) ("[M]ere skepticism...and a mere desire to check that the opposition has been forthright in its discovery responses are not sufficient reasons to warrant drastic discovery measures like an exhaustive computer forensic examination."). Mr. Depp's harassing and baseless accusations that Ms. Heard must be "hiding" something – simply because her evidence confirms Mr. Depp's abuse – does not come close to justifying this relief.<sup>6</sup>

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phones, computers, and iPads, is overly broad and not proportional to the needs of the case").

<sup>6</sup> Mr. Depp completely ignores these limitations, and instead cites distinguishable trade secrets cases. In *Genworth Fin. Wealth Mgmt. v. McMullan*, the Defendant was impeached and

Nor does Mr. Depp meet his high burden by claiming, without any evidence, that his purported expert witness has “determined” that Ms. Heard’s photographs appear to have been run through a photo editing program. But Mr. Neumeister’s expert disclosure did not identify a single specific piece of evidence to support these unsubstantiated allegations, and only speculatively claims that “the majority” of the multimedia produced by Ms. Heard are “not authentic,” that it is “easy” to alter metadata and photographs, that audio recordings “can” be altered to add in certain sounds, and that “some” photographs were passed through a photo editing application called Photo3 (but does not even identify what “Photo3” is).

Additionally, Mr. Depp himself has produced in identical form some of the very evidence he falsely claims Ms. Heard “manipulated.” For example, Ms. Heard attached a text message to her Declaration referencing a “disco bloodbath.” **Att. 6.** Mr. Depp produced an identical text message as DEPP8495, and filed a Witness Statement in the U.K. referencing his use of this phrase and agreeing he sent these text messages (**Atts. 7-8**). And in the U.K. litigation, Ms. Heard submitted an expert report regarding the authenticity of her evidence (**Att. 9**), and Mr. Depp confirmed that he “does not dispute the accuracy of the accompanying date/time metadata” and that “an analysis of all the digital images will not yield much more, if anything, than what the Court can see from the images.” (**Att. 10, ¶¶ 564, 570(ix)**).

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“admitted that he spoliated evidence when he discarded a personal computer [in a trash can], on which he admittedly accessed and transmitted...proprietary information,” and gave other false testimony. 267 F.R.D. 443, 447-48 (D. Conn.) (“it is the Defendants’ apparent deceit, obstreperousness, and destruction of relevant information...that necessitates the retention of a neutral forensic computer expert”). In *IHS Global Ltd. v. Trade Data Monitor, LLC*, the Plaintiff had already “established” that proprietary and confidential information was stored on a laptop, and the forensically-relevant inquiry was the time of access. 2019 U.S. Dist. LEXIS 220327, at \*11-14 (D. S.C. Dec. 23, 2019). Finally, in *Vaughan Co. v. Global Bio-Fuels Tech., LLC*, the Defendant agreed at deposition “that he would make the laptop available for inspection.” 2016 U.S. Dist. LEXIS 159048, at \*5-6 (N.D. N.Y. May 20, 2016).

Further, Mr. Depp's own expert has been unable to identify a single document supporting these allegations, and also confirmed *he did not even image or have possession of any of Mr. Depp's devices*, answering Mr. Depp's refusal to agree to the relief he seeks against Ms. Heard and confirming that Mr. Depp did not even follow the methods he now claims are "vitally necessary."

On the contrary, Ms. Heard's forensic discovery consultant, Mr. Ackert has confirmed that Ms. Heard's devices have been appropriately forensically imaged, and proposed a reasonable, rational, and specifically tailored protocol to resolve this dispute. **Att. 11**, ¶¶ 10-14. It is incumbent on Mr. Depp to identify the specific documents he falsely alleges are altered, manipulated, or falsified, along with specific reasons and evidence supporting these allegations, as opposed to the scorched-earth fishing expedition proposed by Mr. Neumeister. *Id.* For example, in her Cross-Motion, Ms. Heard identified specific audio recordings that Mr. Depp refused to produce complete versions of despite a Court Order, and this contemptuous refusal reveals actual evidence of spoliation, as opposed to Mr. Depp's unsubstantiated allegations.

Mr. Depp also agrees with *all* of Ms. Heard's arguments, including claiming that the very relief he seeks "lacks reasonable particularity" and is "beyond the scope of discovery." **Att. 12**. Mr. Depp further objected to Ms. Heard's more specific Request as harassing; beyond the scope of discovery; raising significant issues of confidentiality, privacy, and privilege/work product; requiring a heightened showing of relevance; no routine right of direct access to original ESI; and that Court's must "guard against undue intrusiveness, undue burden, and significant overbreadth" caused by forensic discovery. *Id.*


#### **CONCLUSION**

For these reasons, Ms. Heard respectfully request the Court deny Mr. Depp's Motion with prejudice, and award Ms. Heard her attorney's fees and costs.

Dated this 22<sup>nd</sup> day of October 2021.

Respectfully submitted,

Amber L. Heard

  
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Adam S. Nadelhaft (VSB No. 91717)  
Clarissa K. Pintado (VSB No. 86882)  
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*Counsel to Defendant and Counterclaim-  
Plaintiff Amber Laura Heard*

**CERTIFICATE OF SERVICE**

I certify that on this 22<sup>nd</sup> day of October 2021, a copy of the foregoing was served by email, pursuant to the Agreed Order dated August 16, 2019, as follows:

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# ATTACHMENT 1

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

[PROPOSED] ORDER

Upon consideration of Plaintiff's Motion to Compel Defendant Amber Heard's Production of Original Devices and Operating System Drives and Cloud Backups of These Original Devices as Requested in Plaintiff's Seventh Set of Requests for Production ("Plaintiff's Motion"), Defendant's opposition thereto, arguments of counsel, and being fully advised, it is, this \_\_\_ day of October 2021, hereby ORDERED as follows:

1. Plaintiff's Motion is GRANTED.
2. Defendant Amber Laura Heard ("Ms. Heard") shall produce her original devices, including mobile devices and computers (including laptops and iPads), as well as operating system drives and cloud backups of these original devices (the "Requested Material"), for purposes of performing a physical imaging of all relevant data from the original devices, as requested in Plaintiff's Seventh Set of Requests for Production.
3. Mr. Depp's retained forensic expert, Bryan Neumeister and/or Mr. Neumeister's colleague, Matt Erickson, will travel to the location of Ms. Heard's devices and conduct an on-site forensic imaging of the Requested Material on a date agreeable to the parties but no later than

November 5, 2021. Depending on the type of device, a “physical” (byte-by-byte), “CheckM8,” or “advanced logical” image will be taken.

4. After the Requested Material is imaged, relevant categories of data will be extracted for review and analysis using the following parameters:

- a. **Photographs of Ms. Heard:** All photographs of Ms. Heard taken during the following time periods, which all correspond to dates in which Ms. Heard alleges that Mr. Depp abused her:

<b>Date of Alleged Abuse</b>	<b>Time Period To Be Searched</b>
Late 2012/Early 2013	December 15, 2012 – January 15, 2013
March 8 and 22, 2013	March 6, 2013 – April 5, 2013
June 2013	June 1 – June 30, 2013
May 24, 2014	May 22, 2014 – June 7, 2014
August 17, 2014	August 15, 2014 – August 31, 2014
December 17, 2014	December 15, 2014 – December 31, 2014
January 25, 2015	January 23, 2015 – February 8, 2015
March 3-5, 2015	March 1, 2015 – March 19, 2015
March 22-23, 2015	March 20, 2015 – April 6, 2015
August 2015	August 1, 2015 – August 31, 2015
November 26, 2015	November 24, 2015 – December 10, 2015
December 15, 2015	December 13, 2015 – December 29, 2015
December 29, 2015	December 29, 2015 – January 12, 2016
April 21, 2016	April 19, 2016 – May 5, 2016
May 21, 2016	May 19, 2016 – June 4, 2016

July 22, 2016	July 15, 2016 – July 29, 2016
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- b. **Deleted Photographs:** All deleted photographs of Ms. Heard taken during the time periods outlined in the second column of the table in paragraph 4(a).
- c. **Recordings of Ms. Heard or Mr. Depp:** All video and audio recordings of Mr. Depp or Ms. Heard for the time periods outlined in the second column of the table in paragraph 4(a).
- d. **Other Recordings of Mr. Depp:** All other video and audio recordings of Mr. Depp not otherwise captured by the parameters set forth in paragraph 4(c) from December 2012 to December 2016.
- e. **Text Messages:** All text messages between Ms. Heard and the following individuals from December 2012 through June 2019:
  - i. Mr. Depp;
  - ii. Dr. David Kipper;
  - iii. Dr. Connell Cowan;
  - iv. Debbie Lloyd;
  - v. Erin Boerum;
  - vi. David Heard;
  - vii. Paige Heard;
  - viii. Whitney Henriquez (Heard);
  - ix. Raquel (“Rocky”) Pennington;
  - x. Josh Drew;
  - xi. iO Tillet Wright;

- xii. Kate James;
- xiii. Melanie Inglessis;
- xiv. Samantha McMillen;
- xv. Taysa van Ree;
- xvi. Bianca Butti;
- xvii. Travis McGivern;
- xviii. Laura Divenere;
- xix. Tara Roberts;
- xx. Ben King;
- xxi. Starling Jenkins;
- xxii. Amanda de Cadenet;
- xxiii. Stephen Deuters;
- xxiv. Nathan Holmes;
- xxv. Sean Bett;
- xxvi. Isaac Baruch;
- xxvii. Elizabeth Marz;
- xxviii. Kristina Sexton;
- xxix. Josh Richman;
- xxx. James Franco;
- xxxi. Samantha McMillan;
- xxxii. Kevin Murphy;
- xxxiii. Christian Carino;
- xxxiv. Brandon McCullough;

xxxv. Jennifer Howell;

xxxvi. Christie Dembrowski;

xxxvii. Anthony Romero; and

xxxviii. Elon Musk.

f. **Emails:** All emails between Ms. Heard and the individuals listed in paragraph 4(e) from December 2012 through June 2019.

g. **Draft emails from Ms. Heard:** All draft emails from Ms. Heard from December 2012 through June 2019.

2. Only the extracted data (as opposed to the forensic image) can be and will be reviewed by anyone. The remaining data from the forensic image will be destroyed on site promptly after the imaging and extraction has occurred.

3. Once the extraction is complete, Stephen Cochran, the Court-appointed conciliator, will act as the neutral third-party attorney and will review the extracted data to identify and isolate any irrelevant or privileged information that will not be subject to Mr. Neumeister's forensic analysis. Any irrelevant or privileged information identified by the third-party attorney will be isolated and destroyed on-site and will not be disclosed to or reviewed by anyone else, including Mr. Neumeister.

4. The relevant data from the extraction will, in the first instance, be treated as attorneys' and expert's eyes only. Mr. Neumeister will conduct his analysis of the relevant data from the extraction and the parties' attorneys (and Ms. Heard's expert(s)) will be permitted to review this set of data. Once both parties' attorneys have had an opportunity to review the data that Mr. Neumeister has/will be analyzing, the data shall be re-designated or de-designated consistent with the operative Protective Order in this action.

October \_\_\_\_, 2021

The Honorable Penney S. Azcarate  
Chief Judge, Fairfax County Circuit Court

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

**WE ASK FOR THIS:**

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*Counsel for Plaintiff John C. Depp, II*



**SEEN AND OBJECTED TO:**

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*Counsel to Defendant Amber Laura Heard*

# ATTACHMENT 2

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff and Counterclaim-Defendant

v.

AMBER LAURA HEARD

Defendant and Counterclaim-Plaintiff.

Civil Action No.: CL-2019-0002911

CONSENT ORDER FOR APPOINTMENT OF  
CONCILIATOR AND DISCOVERY CONCILIATION PROTOCOL

THIS CONSENT ORDER CAME BEFORE THE COURT upon the Court's appointment of a discovery Conciliator and to establish an agreed protocol for meeting and conferring on any discovery disputes and then mediating with the Court-appointed discovery Conciliator Stephen G. Cochran (the "Conciliator") before filing any motions. Based on the signatures of their counsel below, and it otherwise being proper to do so, the Parties hereby agree to the following Conciliation Protocol, and it is hereby **ORDERED** as follows:

I. For any disputes regarding a Party's objections or responses to, or any other disputes regarding, any Requests for Production of Documents, Interrogatories, Requests for Admissions, Requests for Inspection, Depositions or Requests for Examination (collectively, "Discovery Dispute"), the Party seeking to meet and confer on any Discovery Dispute shall first send the other Party (copying the Conciliator) a written communication specifically identifying the Discovery at issue, and the specific reasons the Party seeks to meet and confer on that Discovery.

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2. If the Parties are unable to resolve the Discovery Dispute between themselves, they shall then seek to schedule a telephone conference with the Conciliator in a further attempt to resolve the dispute.

3. If the Parties remain unable to resolve all or part of the Discovery Dispute following communications with the Conciliator and the Conciliator determines that the Discovery Dispute is ripe for filing with the Court, then the Party intending to bring a motion may do so, but shall first communicate with opposing counsel and the Court's law clerk to determine availability of the Court and opposing counsel, and after obtaining mutually agreeable dates may then file a motion in accordance with Va. Sup. Ct. R. 4:15.

4. Except as provided in Paragraph 7, the parties will at all times comply with the Court's Rules respecting Conciliation, including specifically "All proceedings are informal and confidential. The Conciliator's recommendations or suggestions are not binding upon the parties and are not disclosed to the Court." This includes all communications between the parties in attempting to resolve the discovery disputes.

5. All Discovery Disputes or other matters resolved through the Conciliator, whether in whole or in part, shall be reduced to a Consent Order reflecting the terms of the Parties' agreement on the resolved Discovery.

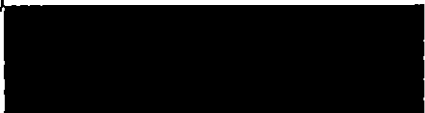
6. If either Party believes the Discovery Dispute is an emergency, or exigent circumstances exist, that Party shall state the specific grounds for this position in the Meet and Confer Communication, and unless the parties agree that it may be filed without Conciliation, shall request the Conciliator's permission to file a motion without scheduling a telephone conference with the Conciliator. The Conciliator shall then opine whether the matter can be

expedited in the Conciliation process, and/or whether any emergency or exigent circumstances exist justifying filing without the benefit of the Conciliator's participation.

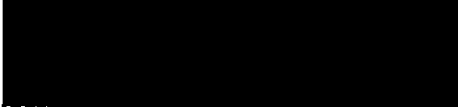
7. The Conciliator shall determine the order, priority, and ripeness of all motions regarding any Discovery Disputes. The Court shall determine the mutuality of any Discovery Disputes and whether they are subject to cross-motions practice. The Conciliator shall consider in making this determination the timing of the requests giving rise to the dispute, the relationship to other discovery issues, the need for the information given the progress of the case, how long the discovery issue has been outstanding and any other factor the Conciliator deems appropriate. For all Discovery Disputes pre-dating this Consent Order, each Party shall send the Conciliator by September 15 (copying the other Party) a written communication listing in priority that Party's current outstanding motions and describing the motions. The Conciliator shall then determine the order and priority of motions practice regarding those pre-existing Discovery Disputes.

**SO ORDERED.**

ENTERED this 9 day of September 2021

  
The Honorable Penney S. Azcarate  
Chief Judge, Fairfax County Circuit Court

**WE ASK FOR THIS:**



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*Counsel to Defendant and Counterclaim-Plaintiff, Amber-Laura Heard*

**WE ASK FOR THIS:**



Benjamin G. Chew. (VSB No. 29113)  
Andrew C. Crawford (VSB No. 89093)  
Camille M. Vasquez (*pro hac vice*)  
BROWN RUDNICK LLP  
601 Thirteenth Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 536-1700  
Facsimile: (202) 536-1701  
bchew@brownrudnick.com  
cvasquez@brownrudnick.com  
*Counsel for Plaintiff and Counterclaim-Defendant John C. Depp II*

# ATTACHMENT 3

**From:** Chew, Benjamin G.  
**To:** David Murphy  
**Cc:** Elaine Bredehoff; Stephen Cochran; brittenborn@woodsrogers.com; mdailey@qrsn.com; Moniz, Samuel A.; Vasquez, Camille M.  
**Subject:** Re: Draft Consent Order re Conciliator Protocol  
**Date:** Thursday, September 02, 2021 10:02:06 AM

---

Dear David,

Thanks for your message.

We will digest and get back to you re a date and time for your requested meet and confer on Ms. Heard's latest purported issues. Subject to your schedule, and Camille's schedule; I believe we should try to shoot for some time this coming Wednesday.

Best regards,

Ben

Sent from my iPhone

On **Sep 1, 2021, at 5:32 PM, David Murphy <DMurphy@cbcbllaw.com>** wrote:

**CAUTION: External E-mail. Use caution accessing links or attachments.**

---

Ben and Camille,

This email follows our requests for a meet and confer to discuss the inspection of Mr. Depp's electronic devices, as requested in our 7<sup>th</sup> RFPs, and now we are adding the 13<sup>th</sup> Requests for Production of Documents, based on your objections and refusal to produce any responsive documents. As we have already suggested, we should attempt to resolve our mutual issues on the electronic devices, and perhaps involve our IT people in a second call. Ms. Heard also seeks to schedule a meet and confer on the other issues from the 13<sup>th</sup> RFPs once we have agreed to the final Conciliator Protocol Order.

**Mutual Dispute Regarding Inspection of Devices & Digital Forensic Protocols**

**As you know and as discussed in recent emails on August 9 and August 24, Ms. Heard requested Mr. Depp's original source materials and metadata in Request No. 8 of her 7<sup>th</sup> Requests for Production served on July 24, and to which Mr. Depp objected on August 17, 2020. Mr. Depp's objections included overbroad, unduly burdensome, harassing, relevance, "privacy," vague, and ambiguous, and Mr. Depp refused to produce anything.**

**In addition to the 7<sup>th</sup> RFPs, and with the hope to resolve any outstanding objections, Ms. Heard served Request No. 7 in her 13<sup>th</sup> Requests for the Production of Documents, seeking the inspection and copying of the devices identified by Mr. Depp. Mr. Depp objected on relevance, harassing, and "devices and data" being vague/ambiguous. But the devices**



sought in this Request were those identified by Mr. Depp in response to Interrogatory No. 3 of Ms. Heard's 1<sup>st</sup> Sets of Interrogatories, so please clarify how these objections make sense.

Mr. Depp further objected that this Request is beyond the scope of Rule 4-1, and nearly copied *verbatim* Ms. Heard's objections to similar Requests from Mr. Depp. Mr. Depp's objections reveal why we have attempted multiple times to combine the meet and confer on these overlapping issues- to negotiate and agree to a proper, complete, and mutual protocol involving each side's lit consultants. But unfortunately, you have refused to even attempt to mutually resolve these issues, despite Request No. 8 of Ms. Heard's 7<sup>th</sup> Requests for Production pending since August 2020.

Please let us know when you are prepared to have a meet and confer on these overlapping issues so we can reach a mutual resolution and protocol without burdening the Court with this dispute.

#### **Mr. Depp's General Objections & Objections to Definitions**

1. **7<sup>th</sup> General Objection:** Mr. Depp's 7<sup>th</sup> General Objection objects to producing documents that Mr. Depp contends

"are protected from disclosure as being a trade secret or other confidential business or proprietary information. Or documents or information that, if produced or disclosed, would result in the violation of any contractual obligation to third parties, or any applicable right to privacy if Plaintiff or third parties."

We previously discussed this type of objection during the meet and confer on the 10<sup>th</sup> Requests. First, are there actually documents that Mr. Depp is refusing to produce based on this objection? Second, I am not aware that this is a valid objection in Virginia in the first place, and if you contend it is please be prepared to identify authority supporting that position. When I previously requested authority on the 10<sup>th</sup> RFPs, none was ever provided, so I am assuming Mr. Depp has none. Third, some of these documents would be covered by the Protective Order in this case. Finally, to the extent any types of documents described in this objection are not covered by the Protective Order, that is no basis to refuse to produce them, particularly because *Mr. Depp* was the party who refused to extend the protections of that Protective Order. For all of these reasons, please withdraw this objection.

2. **9<sup>th</sup> General Objection:** Mr. Depp's 9<sup>th</sup> General Objection reserves the right to produce documents on a rolling basis, which Ms. Heard has consistently objected to. Instead, I suggest we agree on a date by which Mr. Depp will produce responsive documents, and thereafter supplement based on his duties to do so, which would resolve this issue.

this litigation.

-  
Mr. Depp then curiously responded that he would produce all communications between him and Marilyn Manson "from January 1, 2016 to the present referring, reflecting, or otherwise relating to any claims or allegations of domestic abuse or violence" against Mr. Depp or Ms. Heard- *exactly* what Ms. Heard requested. Please clarify the contradictions between the boilerplate objections and the response, and please also withdraw these objections as they clearly serve no purpose based on Mr. Depp's own responses.

- 
2. **Request 3-6:** These Request seek all communications from January 1, 2013 to the present relating to Ms. Heard or any of the allegations/defenses in this action between Mr. Depp and IO Tillett Wright (No. 3), Raquel Pennington (No. 4), Whitney Henriquez (No. 5), and Joshua Drew (No. 6). Mr. Depp again asserted his typical boilerplate relevance, overly broad, unduly burdensome, harassing, and lacking in reasonable particularity objections to all of these Requests. Mr. Depp also somehow asserted privilege and work produce objections in response to Request Nos. 4-6, but its unclear how any of these communications could be protected by attorney-client privilege or work product. Please clarify how this is possible. Mr. Depp also asserted objections that "devices and data" is vague and ambiguous, despite those phrases not even appearing in these Requests. Mr. Depp objecting to phrases that do not appear in these Requests only further reveals the boilerplate nature of his discovery objections.

Mr. Depp then responded that he would produce all communications between himself and these individuals from January 1, 2013 to the present "relating to Ms. Heard or any of the allegations or defenses in this action." It is again unclear what Mr. Depp is even objecting to, as he is agreeing to produce exactly what was requested. Please clarify.

Thank you for your attention to these issues, and while we are awaiting resolution of the Conciliation Order, we request that Mr. Depp respond in writing to this email. We look forward to resolving as many of these issues as possible without having to burden the Conciliator, and the Court, with further discovery issues.

David E. Murphy  
Charlson Bredehoff Cohen & Brown, P.C.  
11260 Roger Bacon Drive, Suite 201  
Reston, Virginia 20190  
PH: (703) 318-6800  
FX: (703) 318-6808

---

**From:** Elaine Bredehoff <[ebredehoff@charlsonbredehoff.com](mailto:ebredehoff@charlsonbredehoff.com)>  
**Sent:** Tuesday, August 24, 2021 1:13 PM

**To:** Chew, Benjamin G. <BChew@brownrudnick.com>

**Cc:** Stephen Cochran <scochran@rcplaw.net>; brottenborn@woodsrogers.com; David Murphy <DMurphy@cbcbiaw.com>; mdailey@grsm.com; Moniz, Samuel A. <SMoniz@brownrudnick.com>; Stephen Cochran <scochran@rcplaw.net>; Vasquez, Camille M. <CVasquez@brownrudnick.com>

**Subject:** RE: Draft Consent Order re Conciliator Protocol

Ben: I am back from Wisconsin (the other "W" state) and wanted to address your request for conciliation with this email chain, because you did not respond directly to it, and it contains the critical information responsive to your most recent email.

I have reviewed your red-line to the Consent Order to the Conciliator and Discovery Conciliation Protocol. It is clear we have some significant differences which need to be resolved. I have spent some time thinking this through to reach compromise, so we can move forward with the other issues we both have in the queue. The following appear to be the issues, what I interpret as your position, and my response and suggested resolution:

1. Complying with the Rules and not disclosing any aspect of the conciliation, including the parties' proposals to resolve, and the Conciliator's recommendations or suggestions. As I noted below, the Fairfax Rules quite clearly prohibit the parties' use of anything that occurred in the Conciliation process in advancing their positions to the Court. I alerted you to the Rules and sent you the website, after you made several references to Steve Cochran and what he allegedly said or recommended, during the motion to compel. I then included language in the Consent Order prohibiting this. You took it out. Then Camille, in advancing your proposed Order to the Court over ours, wrote in an email to Chief Judge Azcarate's law clerk:

Mr. Depp also notes that during their meet and confers, the parties settled on pleadings, portions of depositions, and exhibits thereto. The parties did not contemplate review and production of all documents from the other litigations.

As specifically quoted below, this is prohibited under the Rules. Your team rejected our suggested compromises. It is clear you believe that you can use the Conciliation process, and more specifically, your version of what was said, as an imprimatur to attempt to win arguments at the hearing, after you have rejected those negotiated terms during the Conciliation process. Your continued use of the Conciliation process to advance your position is not only against the Rules, it is causing precisely what compliance with the Rules is intended to prevent – we now feel chilled by your conduct, and uncomfortable advancing any further suggested compromises on the discovery motions, unless and until you agree to be bound by the Rules and comply with the Rules.

Our suggested compromise. Include language in the Order that specifically states: The parties will at all times comply with the Courts Rules respecting Conciliation, including specifically "All proceedings are informal and confidential. The Conciliator's recommendations or suggestions are not binding upon the parties and are not disclosed to the Court."

2. **The order of the discovery motions.** It is clear you would like to jump to the front of the line with all of your new discovery issues, ignoring that we have had in queue, with two meet and confers already behind us. **In addition, although the two issues you included in your email – a Rule 4:10 examination and IT forensics requests – are MUTUAL, and would be cross motions, you appear to think you can just force your side through, without providing any consideration to the mutuality of these situations. Yet the mutuality of these situations is what will most likely result in resolution – knowing they apply equally to both sides.** You use the term "monopolized" to describe our more recent Friday motions, to try to justify taking yours out of order and prioritizing. Not only were ours earlier, and we have already had two meet and confers, but when we scheduled motions this past summer, you had NONE in the queue. Thus, there was nothing to "monopolize." I have always agreed that if we both have a number of timely discovery motions, we would work together on scheduling. And I always have honored that agreement.

Our suggested compromise: We let the Conciliator decide the order of the discovery motions. That enables us to provide to Steve Cochran all the earlier emails, requests and information, and he can decide in which order. We have not yet had that opportunity, and would welcome the ability to share this with Steve, and let him decide the order once he has both our positions and data.

3. Trying to reserve the ability to file a discovery motion without going through the Conciliation process. Chief Judge Azcarate made very clear at the July 2 hearing that "ALL" discovery motions needed to go through the Conciliator before the motion could be filed with the Court. That is the point of appointing a Conciliator – to assist the Court and attempt to bring as many of the outstanding issues to resolution without the need for the intervention of the Court.

Our suggested compromise: Let the Conciliator decide when any discovery motion is ripe for filing with the Court. If there is an emergency or exigent

Elaine

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(703) 919-2735 (mobile)  
(703) 318-6808 (fax)  
[www.cbcbllaw.com](http://www.cbcbllaw.com)

---

**From:** Elaine Bredehoft

**Sent:** Monday, August 09, 2021 11:09 AM

**To:** Chew, Benjamin G. <[BCheW@brownrudnick.com](mailto:BCheW@brownrudnick.com)>; Vasquez, Camille M.

<[CVasquez@brownrudnick.com](mailto:CVasquez@brownrudnick.com)>

**Cc:** Stephen Cochran <[scochran@rcplaw.net](mailto:scochran@rcplaw.net)>; brottenborn@woodsrogers.com; David Murphy <[DMurphy@cbcbllaw.com](mailto:DMurphy@cbcbllaw.com)>; mdailey@grsm.com; Moniz, Samuel A. <[SMoniz@brownrudnick.com](mailto:SMoniz@brownrudnick.com)>

**Subject:** RE: Draft Consent Order re Conciliator Protocol

Ben: Thank you for your emails.

Initially, I would appreciate your providing any edits you have to the Conciliator's Protocol. Let's work on this and finalize. I read the transcript from the Friday hearing and was, frankly, taken aback at your numerous references to Steve Cochran, our Conciliator, and allegedly what he said and thought. These are clear violations of our policies and procedures. One of the primary purposes of conciliation, like mediation and settlement conferences, is to encourage dialogue and compromise, without using that information or statements against anyone.

Please see the following:

[http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/local\\_adr\\_prgms.html](http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/local_adr_prgms.html),

<https://www.fairfaxlawfoundation.org/page/4>. As set forth in the Fairfax

procedures:

**"All proceedings are informal and confidential. The Conciliator's recommendations or suggestions are not binding upon the parties and are not disclosed to the Court." (emphasis added)**

To ensure your compliance going forward, we have included this language in the Consent Order. I am attaching a revised draft incorporating this and the suggested compromise below.

confer to work through any issues.

On the devices, we first asked for Depp's metadata and original source materials in our 7<sup>th</sup> RFPs, issued in August 2020. You have refused to provide. You are now asking for ours. We are happy to work with you, again, on a mutual basis, developing the proper protocol with the IT specialists. I am confident we can work with the IT specialists to work out a mutually agreeable process and protocol for these. This will require us working with our IT consultants and likely scheduling a four-way call to work out the technical aspects of the reviews. Once we have your agreement these can be mutually worked out, we will work with you on scheduling and setting out the protocol and logistics.

To summarize, I would appreciate your reviewing and providing your suggested edits to the Consent Order. As a compromise on the order of the issues for conciliation, we request that the 11<sup>th</sup> and 12<sup>th</sup> RFPs be placed first and second in line (and frankly, I think they can be combined and be one motion), and we will agree to move our 4<sup>th</sup> and 5<sup>th</sup> RFAs behind the mutual 4:10 examinations and mutual device requests.

Please let me know your thoughts on the above and responses so we can move forward with scheduling calls between us, with the IT experts, and with Steve Cochran, our Conciliator.

Thank you for your thoughtful consideration and response. Elaine

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(703) 318-6808 (fax)  
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---

**From:** Chew, Benjamin G. <[BCheW@brownrudnick.com](mailto:BCheW@brownrudnick.com)>

**Sent:** Saturday, August 07, 2021 2:58 PM

**To:** Elaine Bredehoft <[ebredehoft@charlsonbredehoft.com](mailto:ebredehoft@charlsonbredehoft.com)>; Vasquez, Camille M. <[CVasquez@brownrudnick.com](mailto:CVasquez@brownrudnick.com)>

**Cc:** Stephen Cochran <[scochran@rcplaw.net](mailto:scochran@rcplaw.net)>; brottenborn@woodsrogers.com; David Murphy

# ATTACHMENT 4

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD

Defendant.

Civil Action No.: CL-2019-0002911

**DEFENDANT AMBER LAURA HEARD'S RESPONSES AND OBJECTIONS TO  
PLAINTIFF'S THIRD SET OF REQUESTS FOR PRODUCTION**

Pursuant to Rule 4:9 of the Rules of the Supreme Court of Virginia ("Rules"), Defendant Amber Laura Heard, by and through her attorneys, submits these responses and objections (the "Responses") to Plaintiff John C. Depp's Third Set of Requests for Production dated August 14, 2020 (the "Requests").

**GENERAL OBJECTIONS**

The following general objections and responses (the "General Objections") are incorporated into each specific objection and response (the "Specific Objections") as if fully set forth therein:

1. Defendant objects to the Requests to the extent they are duplicative, cumulative, or seek information that has been or will be provided through other means of discovery.
2. Defendant objects to the Requests to the extent they are vague, ambiguous, overly broad, unduly burdensome, seek information not relevant to the claims or defenses of any party, or are not proportional to the needs of the case.
3. Defendant objects to the Requests to the extent they impose any obligations or requirements beyond the scope of the Rules or any case law interpreting them.



**41. All Communications between You and Rami Sarabi that refer or relate to Your relationship with Mr. Depp, including without limitation any Communications that refer or relate to the Action, the Divorce Action, the U.K. Action, any claims of abuse or violence involving Mr. Depp, and any injuries You contend You suffered as a result of any conduct by Mr. Depp.**

**RESPONSE:**

Defendant objects to this request on the grounds that it is overbroad and unduly burdensome and seeks Information that is not relevant to the claims or defenses in this action and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request to the extent it seeks information that is already available to and equally accessible to Plaintiff. Defendant objects to this request to the extent it seeks privileged information protected from disclosure, including information protected by the attorney-client privilege or work product doctrine and any other applicable privilege, immunity or protection. Subject to the foregoing specific and general objections, Defendant has produced in this action and/or the U.K. litigation (which Plaintiff already possesses from the trial bundles) non-privileged responsive documents and will produce any additional, non-privileged documents that are identified by a reasonable search that refer or relate to the claims and defenses in this case.

**42. All Communications between You and Bianca Butti that refer or relate to Your relationship with Mr. Depp, including without limitation any Communications that refer or relate to the Action, the Divorce Action, the U.K. Action, any claims of abuse or violence involving Mr. Depp, and any injuries You contend You suffered as a result of any conduct by Mr. Depp.**

**RESPONSE:**

Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it seeks information that is not relevant to the claims or defenses in this action and not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this request to the extent it seeks privileged information protected from disclosure, including

information protected by the attorney-client privilege or work product doctrine and any other applicable privilege, immunity or protection.

Notwithstanding any non-privileged, responsive documents Defendant may have produced in this action and/or the U.K. litigation (which Plaintiff already possesses from the trial bundles), Defendant stands on the objections.

**43. All Communications between You and any other Person that refer or relate to Your relationship with Mr. Depp, including without limitation any Communications that refer or relate to the Action, the Divorce Action, the U.K. Action, any claims of abuse or violence involving Mr. Depp, and any injuries You contend You suffered as a result of any conduct by Mr. Depp.**

**RESPONSE:**

Defendant objects to this request on the grounds that it is overbroad and unduly burdensome because it seeks information that is not relevant to the claims or defenses in this action and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request to the extent it seeks information that is already available to and equally accessible to Plaintiff. Defendant objects to this request to the extent it seeks privileged information protected from disclosure, including information protected by the attorney-client privilege or work product doctrine and any other applicable privilege, immunity or protection.


Notwithstanding any non-privileged, responsive documents Defendant may have produced in this action and/or the U.K. litigation (which Plaintiff already possesses from the trial bundles), Defendant stands on the objections.

**44. All Documents that evidence or reflect any donations made by You of any settlement payments made to You by Mr. Depp in connection with the Divorce Action.**

**RESPONSE:**

September 4, 2020

AS TO OBJECTIONS:



Elaine Charlson Bredehoft (VSB No. 23766)  
Adam S. Nadelhaft (VSB No. 91717)  
David E. Murphy (VSB No. 90938)  
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[dmurphy@cbcblaw.com](mailto:dmurphy@cbcblaw.com)

J. Benjamin Rottenborn (VSB No. 84796)  
Joshua R. Treece (VSB No. 79149)  
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[brottenborn@woodsrogers.com](mailto:brottenborn@woodsrogers.com)  
[jtreece@woodsrogers.com](mailto:jtreece@woodsrogers.com)

*Counsel to Defendant Amber Laura Heard*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 4<sup>th</sup> day of September 2020, by email, by agreement of the parties, addressed as follows:

Benjamin G. Chew, Esq.  
Andrew C. Crawford, Esq.  
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[bwchew@brownrudnick.com](mailto:bwchew@brownrudnick.com)  
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Camille M. Vasquez, Esq.  
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[cvasquez@brownrudnick.com](mailto:cvasquez@brownrudnick.com)

Adam R. Waldman, Esq.  
THE ENDEAVOR LAW FIRM, P.C.  
1775 Pennsylvania Avenue, N.W., Suite 350  
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[awaldman@theendeavorgroup.com](mailto:awaldman@theendeavorgroup.com)

*Counsel for Plaintiff John C. Depp, II*

  
Elaine Charlson Sredewitz (VSB NO. 23706)

# ATTACHMENT 5

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 MATTER CAME TO BE HEARD upon Plaintiff John C. Depp, II's, ("Plaintiff" or "Mr. Depp") Motion to Compel Defendant Amber Laura Heard ("Defendant"), pursuant to Rule 4:12 of the Rules of the Virginia Supreme Court, to produce all non-privileged documents in response to Plaintiff's Second and Third Sets of Requests for Production of Documents; and supplement Defendant's responses to Plaintiffs Second Interrogatories; and upon consideration of the briefs, exhibits and argument of counsel, it is hereby

**ORDERED** that Plaintiff's Motion is **GRANTED** in part and **DENIED** in part; and it is further

**ORDERED** that Defendant Amber Laura Heard shall produce all documents in her possession, custody, and control in response to Plaintiff's Second Set of Request No. 7 on or before January 4, 2021; and it is further

**ORDERED** that Plaintiff's Motion to Compel No. 23 of the Plaintiff's Second Set of Requests and Nos. 50 and 51 of the Third Set of Requests is denied, for the reasons set forth at the hearing; and it is further

*No env 12/30/20*

**ORDERED** that Plaintiff's Motion to Compel Nos. 42, 43 and 52 of the Plaintiff's Third Set of Requests is denied, for the reasons set forth at the hearing; and it is further

**ORDERED** that Defendant shall produce all documents in her possession, custody, and control in response to Plaintiff's Third Set of Requests for Production of Documents Nos. 44, 45 and 47 on or before January 4, 2021; and it is further

**ORDERED** that Defendant shall supplement Defendant's responses to Plaintiff's Second Interrogatories Nos. 1, 7 and 9.

**SO ORDERED.**

Dated: December 30, 2020



Hon. Bruce D. White  
Chief Judge, Fairfax County Circuit Court

*Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.*

WE ASK FOR THIS:

**Endorsement Waived  
Per Rule 1:13**

Benjamin G. Chew (VSB 29113)  
Andrew C. Crawford (VSB 89093)  
BROWN RUDNICK LLP  
601 Thirteenth Street, N.W.  
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Camille M. Vasquez (admitted *pro hac vice*)  
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[cvasquez@brownrudnick.com](mailto:cvasquez@brownrudnick.com)

*Counsel for Plaintiff John C. Depp, II*

SEEN AND EXCEPTED TO FOR THE REASONS SET FORTH IN THE MEMORANDUM  
AND AT THE HEARING:

**Endorsement Waived  
Per Rule 1:13**

---

J. Benjamin Rottenborn (VSB No. 84796)  
Joshua R. Treece (VSB No. 79149)  
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Elaine Charlson Bredehoft (VSB No. 23766)  
Adam S. Nadelhaft (VSB No. 91717)  
David E. Murphy (VSB No. 90938)  
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[dmurphy@cbcbllaw.com](mailto:dmurphy@cbcbllaw.com)

*Counsel to Defendant Amber Laura Heard*



# ATTACHMENT 6

AT&T 4G 4:23 PM  
Messages (21) Steve Edit

On my way...

Mar 12, 2013, 2:37 PM

Just thought you should know that there exists a book titled, "Disco Bloodbath". That's all...

We need that book!

Is it about last Friday night, by any chance?

Delivered

How can you make me smile about such a hideous moment??? Yes, it is... Funny bitch. I fucking love you, you cunt!!!

iMessage Send

# ATTACHMENT 7

On behalf of: Claimant  
Witness: John Christopher Depp II  
No: Second  
Exhibit: JD2  
Date: 12 December 2019

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
MEDIA AND COMMUNICATIONS LIST

Claim No. HQ18M01923

B E T W E E N:

JOHN CHRISTOPHER DEPP II

Claimant

-and-

(1) NEWS GROUP NEWSPAPERS LTD  
(2) DAN WOOTTON

Defendants

---

**SECOND WITNESS STATEMENT OF  
JOHN CHRISTOPHER DEPP II**

---

I, JOHN CHRISTOPHER DEPP II, of Infitum Nihil, 1472 N Sweetzer Avenue, LA 90069, USA, WILL SAY as follows:

1. I am the Claimant in these proceedings.
2. Unless stated otherwise, the facts and matters referred to in this witness statement are within my own knowledge and true or are true to the best of my knowledge, information and belief based on sources stated within this witness statement.

On behalf of: Claimant  
Witness: John Christopher Depp II  
No: Second  
Date: 12 December 2019

3. There is now produced to me and marked "Exhibit JD2" a paginated bundle of true copy documents referred to in this witness statement. References to page numbers are references to Exhibit JD2, unless otherwise stated.
4. I make this witness statement in support of my claim in these proceedings.

#### A. INTRODUCTION

5. These proceedings relate to an article published by the Defendants, which appeared online on 27 April 2018 and in hard copy on 28 April 2018 (together, the "Article"). As set out in the Particulars of Claim dated 13 June 2018, at paragraph 10, the Article included words which I contend meant and were understood to mean that I was guilty, on overwhelming evidence, of serious domestic violence against my former wife, Ms Amber Heard, causing significant injury and leading to her fearing for her life. The Article further suggested that I was constrained to pay no less than £5 million to compensate Ms Heard for my alleged behavior, that my actions resulted in me being subjected to a continuing court restraining order, and that, for that reason, I am not fit to work in the film industry. The Article said that JK Rowling should not continue to cast me in the Fantastic Beast series, referring to me as the "wifebeater" in the online version.
6. In these proceedings the Defendants rely on various allegations made by Ms Heard, the vast majority of which have only been made subsequent to the Defendants publishing/authoring the Article. I have consistently denied Ms Heard's allegations of domestic violence since she first made them in May 2016, when she applied to the California Court for a temporary restraining order (the "TRO Application"). I note that at the time that she made the TRO Application, the only specific, particularised allegations of abuse referred to by Ms Heard were alleged to have occurred on 21 April 2016 and 21 May 2016. These were the accusations on which the Defendants had initially relied for the Article.
7. The Article relates to my casting in *Fantastic Beasts: The Crimes of Grindelwald*, in which I was cast in around November 2016.

On behalf of: Claimant  
Witness: John Christopher Depp II  
No: Second  
Date: 12 December 2019

33. I understand from my solicitors that the Defendants also allege that on March 8<sup>th</sup>, 2013 Ms Heard and I were in her home in Los Angeles. They state that I was getting drunk and high on drugs and was angry that Ms Heard had hung up a painting given to her by someone she had formerly dated. Allegedly my team and Ms Heard asked her sister to come over to try to intervene with me, which she did. After Ms Heard's sister left, they state that I hit Ms Heard so hard that blood from her lip ended on the wall. They state that I subsequently sent Ms Heard a text message referring to that evening as a 'disco bloodbath' and a 'hideous moment' and that the morning after this incident I tried to set fire to the painting.

34. I cannot remember if I was with Ms Heard at her home on March 8<sup>th</sup>, 2013. I know that at some point around this time I did ask Ms Heard to remove a painting that she had received from her former wife from the bedroom, as a courtesy to me. I do not recall the exact date I asked Ms Heard to do this. I do not remember Ms Heard's sister being asked to come over either by Ms Heard or by any member of my team when this happened. I certainly did not hit Ms Heard at all, then or ever, and her accusation that I hit her so hard that blood from her lip ended up on the wall is precisely the kind of picturesque but absurd lie she often tells. Insofar as I exchanged texts with Ms Heard on March 12<sup>th</sup>, 2013 (and I do not remember whether I did or not), my intention in apologising would have been, as always, to placate Ms Heard. ~~The words "disco bloodbath" and a "hideous moment" would not have referred to any physical abuse.~~ I also did not try to set fire to the painting in question at any point in time.

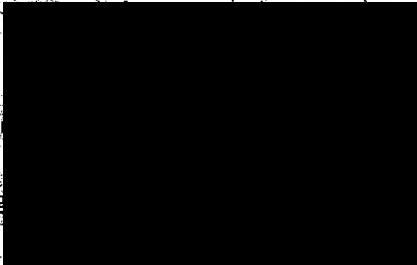
*May 24<sup>th</sup> and 25<sup>th</sup>, 2014*

35. The Defendants also allege that on or about May 24<sup>th</sup>, 2014 Ms Heard and I were travelling on a private aeroplane from Boston to Los Angeles. They state that, after drinking heavily, I threw objects at Ms Heard causing her to retreat to a different seat. Then, I, allegedly, provocatively pushed a chair at her as she walked by, yelled at her, and taunted her. They state that when Ms Heard stood up, I kicked her in the back, causing her to fall over, threw my boot at her while she was on the ground and continued to scream obscenities until I went into the bathroom of the aeroplane and passed out. This story is nothing but one more pathological lie made up by Ms Heard.

On behalf of: Claimant  
Witness: John Christopher Depp II  
No: Second  
Date: 12 December 2019

I believe the above statements are true.

Signature



John Christopher Depp II

Date: 12 December 2019

# ATTACHMENT 8



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Claim No QB-2018-006323  
 IN THE HIGH COURT OF JUSTICE  
 QUEEN'S BENCH DIVISION  
 MEDIA AND COMMUNICATIONS LIST  
 Royal Courts of Justice,  
 Strand,  
 London, WC2A 2LL.  
 Wednesday, 8th July, 2020  
 Before:  
 MR. JUSTICE NICOL

BETWEEN:  
 JOHN CHRISTOPHER DEPP II  
 Claimant  
 -and-  
 (1) NEWS GROUP NEWSPAPERS LIMITED  
 (2) DAN WOOTTON  
 Defendants

**PROCEEDINGS**  
 (DAY 2)

(TRANSCRIPT PREPARED WITHOUT ACCESS TO COURT BUNDLES)

Marten Walsh Cherer Limited, 2nd Floor, Quality House,  
 6-9 Quality Court, Chancery Lane, London, WC2A 1HP.  
 Telephone No: 020 7067 2900. Fax No: 020 7831 6864.  
 Email: info@martenwalshcherer.com. www.martenwalshcherer.com

MR. DAVID SHERBORNE, MS. ELEANOR LAWS QC and MS. KATE WILSON  
 (instructed by Schillings) appeared for the Claimant.  
 MS. SASHA WASS QC, MR. ADAM WOLANSKI QC and MS. CLARA HAMER  
 (instructed by Simons Muirhead & Burton) appeared for  
 the Defendants.

1 DEPP - WASS  
 2 morning.  
 3 MS. WASS: Yes.  
 4 MR. JUSTICE NICOL: I appreciate that Mr. Depp has been giving  
 5 evidence and will have been giving evidence for some time.  
 6 MS. WASS: Yes.  
 7 MR. JUSTICE NICOL: When the morning is going to be three hours,  
 8 I think it is only fair to him that we take a break, but the  
 9 timing of the break I will leave to you.  
 10 MS. WASS: Thank you very much.  
 11 MR. JUSTICE NICOL: Whenever is convenient in your  
 12 cross-examination.  
 13 MS. WASS: Thank you very much.  
 14 MR. JUSTICE NICOL: But if you can plan at about 11.30, roughly  
 15 speaking.  
 16 MS. WASS: Thank you very much, yes.  
 17 MR. JUSTICE NICOL: Good. Yes.  
 18 MS. WASS: Mr. Depp, I am going to ask you now about some events  
 19 in March 2013, all right?  
 20 A. Yes.  
 21 Q. But before I do, can you just answer this question yes or no.  
 22 Were you taking cocaine in March 2013?  
 23 A. It is very difficult to recollect if I was taking cocaine in  
 24 March 2013. It is possible.  
 25 Q. You do not remember, but it is possible?

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1 DEPP  
 2 MR. JOHN CHRISTOPHER DEPP, RECALLED  
 3 CROSS-EXAMINATION BY MS. WASS, CONTINUED  
 4 MR. JUSTICE NICOL: Mr. Sherborne, were you able to take  
 5 instructions from Mr. Depp on the sixth and seventh witness  
 6 statements?  
 7 MR. SHERBORNE: I was, my Lord, yes.  
 8 MR. JUSTICE NICOL: And have you had a word with Ms. Wass about  
 9 whether you need to examine in chief about that before she  
 10 continues her cross-examination?  
 11 MR. SHERBORNE: To be honest, I have not, and that is partly  
 12 because, as a result of the earlier starts, there is a lot of  
 13 setting up to be done, but we are also waiting for Ms. Laws.  
 14 MR. JUSTICE NICOL: I am sorry that Ms. Laws is not here, but we  
 15 are going to continue.  
 16 MR. SHERBORNE: I understand that, my Lord. I am trying to  
 17 explain why there is a certain amount of time taken up trying  
 18 to work out where she is because it is very uncharacteristic  
 19 that she is not here. I have not had an opportunity to do so.  
 20 My present understanding is that I am not going to be asking  
 21 any further questions.  
 22 MR. JUSTICE NICOL: Right, there we are.  
 23 MR. SHERBORNE: If I can leave it on that basis, my Lord?  
 24 MR. JUSTICE NICOL: Good. All right. Ms. Wass, I said yesterday  
 25 that I would be minded to take a break in the middle of the

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1 DEPP - WASS  
 2 A. I do not remember.  
 3 Q. All right. The first time Ms. Heard met "the monster" was in  
 4 early 2013, when you and she were in her house together, and  
 5 I am going to ask you some questions about that.  
 6 A. Yes.  
 7 Q. Do you accept that you spent some time in her house in Orange  
 8 Avenue, was it?  
 9 A. Yes.  
 10 Q. Before she moved into the Eastern Columbia Building?  
 11 A. Yes.  
 12 Q. She lived there with her sister, Whitney?  
 13 A. There was a period, yes, where her sister lived there.  
 14 Q. And you and Whitney got on very well together?  
 15 A. Yes.  
 16 Q. At that time?  
 17 A. Yes.  
 18 Q. And Whitney would really act as an intermediary between the  
 19 two of you if you had had an argument in this sort of period?  
 20 A. She has attempted to act as an intermediary, yes.  
 21 Q. Right.  
 22 A. A number of times.  
 23 Q. All right. I think you felt so close to Whitney at that stage  
 24 that you saved her telephone number on your phone as "Sis"?  
 25 A. Yes.

[Page 185]

1 DEPP - WASS  
 2 Q. On 12th March, if we can go to -- could we go to page -- would  
 3 my Lord give me a moment, because there are references -- I am  
 4 going to ask you to go to page 20 of the text schedule and I am  
 5 going to explain something to the court. There is a series of  
 6 four texts which are in the wrong chronological order. They  
 7 can be found in another document, but rather than go to other  
 8 documents I am going to deal with it in this way, because  
 9 I think you are familiar with this text exchange.  
 10 (To the witness) On 12th March, could you go to the --  
 11 do you have page 20 at the bottom, Mr. Depp?  
 12 A Yes, page 20.  
 13 Q. If you go five up  
 14 MR. JUSTICE NICOL: Five up from the bottom?  
 15 MS. WASS: From the bottom.  
 16 MR. JUSTICE NICOL: So, the one that says "Working mate"?  
 17 THE WITNESS: Yes.  
 18 MS. WASS: No, sorry. Well, I forget whether it is five or four,  
 19 but it is one below that.  
 20 MR. JUSTICE NICOL: "Just thought you should know"?  
 21 MS. WASS: Yes, exactly.  
 22 THE WITNESS: Yes.  
 23 MS. WASS: Do you see on the right hand side, it says  
 24 "21.02.2013"?  
 25 A. Yes, ma'am.

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1 DEPP - WASS  
 2 Q. In fact, that is a text exchange which took place on  
 3 12th March 2013, you know what the text is about, the "Disco  
 4 bloodbath" text?  
 5 A. I am familiar with the Disco bloodbath text.  
 6 Q. It is in a place because the day and the month has been put  
 7 the wrong way, it should be earlier in the bundle. If you  
 8 need to see it in another format, I can show you.  
 9 A. This is fine, thank you.  
 10 Q. You sent a text to Ms. Heard: "Just thought you should know  
 11 there exists a book titled 'Disco bloodbath', that is all.  
 12 She said: "We need that book". She then said: "Is it about  
 13 last Friday night, by any chance?" You said: "How can you  
 14 make me smile about such a hideous moment? Yes it is. Funny  
 15 bunch, if it's a love on you, am?" These are texts sent  
 16 between you and Ms. Heard on 3rd March. Do you agree with  
 17 that?  
 18 A. Yes, I do.  
 19 Q. All right. Can I ask you to look at bundle 6.  
 20 MR. JUSTICE NICOL: Sorry, you said 3rd March.  
 21 MS. WASS: Sorry, 12th March. It is a problem that seems to cause  
 22 difficulties with this text, because the 3 and the 12 has been  
 23 put in a different order.  
 24 MR. JUSTICE NICOL: It would be the American way.  
 25 MS. WASS: Exactly. But the text exists as an exhibit to

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1 DEPP - WASS  
 2 Ms. Heard's statement, so we see the screenshot, but Mr. Depp  
 3 is not challenging, I do not think, that those texts were  
 4 exchanged with Ms. Heard on 12th March.  
 5 THE WITNESS: I am not challenging it.  
 6 MS. WASS: All right. Unless my Lord wants me to ---  
 7 MR. JUSTICE NICOL: No, that is fine.  
 8 MS. WASS: (To the witness) You should have tab 6 because the  
 9 texts are there. Could you go to 148F, please. It is in  
 10 tab 6.  
 11 MR. JUSTICE NICOL: I think mine finishes at 148E. So, would this  
 12 be then in file ---  
 13 MS. WASS: File 7. Mr. Depp, do you have it there?  
 14 THE WITNESS: I do.  
 15 MR. JUSTICE NICOL: Just a moment. (Pause) What is the  
 16 page number you want to refer to, please?  
 17 MS. WASS: F894.261.  
 18 MR. JUSTICE NICOL: I am afraid something has happened to my  
 19 bundles. I do not have that.  
 20 MS. WASS: I can see Ms. Wilson has found another copy. Thank you  
 21 very much. I am very grateful. (Pause) (Same handed)  
 22 MR. JUSTICE NICOL: Do you have the page that Ms. Wass is talking  
 23 about?  
 24 THE WITNESS: Yes, I do, your Lordship.  
 25 MS. WASS: Do you recognise that kitchen top, or not?

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1 DEPP - WASS  
 2 A. I do not recognise this kitchen top.  
 3 Q. If I were to suggest to you that was a photograph taken on  
 4 8th March 2013 of your cocaine, lines of your cocaine, what  
 5 would you say?  
 6 A. I would wonder if it were mine. I would wonder why it is  
 7 photographed.  
 8 Q. So, are you saying you cannot help us as to whether you  
 9 recognise it or not? My question was, do you recognise the  
 10 area where this was taken?  
 11 A. I recognise that those appear to be lines of cocaine. I see a  
 12 straw, a little bundle and I see clearly my credit card.  
 13 Q. Yes. So, it looks as if the credit cards may have had  
 14 something to do with putting the lines of cocaine in that  
 15 formation?  
 16 A. Yes, it does.  
 17 Q. Do you recognise the work surface or tabletop?  
 18 A. I am sorry, I do not recognise it.  
 19 Q. Then, I presume you cannot say the date in that case, you are  
 20 not able to say whether you agree or not, whether it was  
 21 8th March?  
 22 A. I am not even able to say if that is cocaine or not.  
 23 Q. We will have to draw our inferences from that in due course.  
 24 A. Yes, ma'am.  
 25 Q. In the bedroom of the house that Ms. Heard shared with her

# ATTACHMENT 9

**CLAIM NO: QB 2018 006323 Depp v NGN & Wootton**

**IN THE COURT OF..**

**Queen's Bench Division of The High Court**

**BETWEEN:**

**(1) MR JOHN CHRISTOPHER  
DEPP II**

**Claimants**

**-and-**

**(1) NGN  
(2) Dan Wootton**

**Defendant**

---

**REPORT OF TIMOTHY JAMES LATULIPPE, MSc**

**Expertise: Computer & Digital Forensics**

**On the instruction of: Simons Muirhead & Burton LLP**

**19<sup>th</sup> July 2020**

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## **Introduction**

On 18<sup>th</sup> July 2020 iDiscovery Solutions (“iDS”) were instructed by Simons Muirhead & Burton LLP (Defendant’s Counsel) via formal letter in an e-mail transmission. The instruction relates to providing forensic analysis and opinion on issues relating to the integrity of select audio and graphic image files (photos).

Central to the claim are several graphic image files dating from May 2016, December 2015 as well as an audio file recording referred to as “the Boston plane audio recording”.

## **Issues Addressed and Statement of Instruction**

I was instructed by counsel to address issues relating to the veracity of certain graphic image files and one audio file recording: May 2016 Images, December 2015 Images and Boston Plane Audio Recording, respectively.

As regards point (2) in my initial draft report memorandum and correlating to point (2) in counsel’s initial letter of instruction dated 16<sup>th</sup> July 2020, I was interpreting the request as stated. Specifically, I was instructed to assess whether *metadata* were edited, modified or otherwise manipulated, rather than a question of the photos themselves showing evidence of edits, enhancements or manipulation.

As it relates to a photograph from 21<sup>st</sup> March 2013 titled, “13.03.21 AH.jpg” disclosed Friday, 10<sup>th</sup> July, this shows a time of 06:31 AM. A copy showing the same photograph dated 21<sup>st</sup> March 2013 at 11:31 PM can be explained as a time zone discrepancy.

### May 2016 Images

- (a) I was asked to address the ways in which any photo could be edited, enhanced or otherwise manipulated in the native environment of a device, particularly an iPhone handset that would have been in use May 2016.
- (b) I was asked to address –generally speaking –how it would be possible to detect such enhancements, edits or manipulation through data forensic examination.
- (c) I was asked to address –generally speaking –whether images can be edited, enhanced or manipulated in such a way as to later avoid detection through forensic examination, and if so, how?
- (d) I was asked to address with specific reference to the metadata for the May 2016 images, what the probability that those images have been subject to editing, enhancement or manipulation.
- (e) I was asked to address the nature of basis on which any editing, enhancement or manipulation of the above may have occurred.

- (f) I was asked to address the basis on which I reached conclusions on both (d) and (e).

#### December 2015 Images

- (g) I was asked to address based on available metadata, the date and times each picture was taken.
- (h) I was asked to address with reference to the metadata for the December 2015<sup>1</sup> images, what the probability that those images have been subject to editing, enhancement or manipulation?
- (i) I was asked to address the nature of any editing, enhancements or manipulation which have or may have occurred in relation to the December 2015 images.
- (j) I was asked to address the basis on which I reached conclusions to (g), (h) and (i) above.

#### Boston Plane Audio Recording

- (k) I was asked to address based on the available metadata, on what date and time was the audio recording made?
- (l) I was asked to address my opinion of the probability that this audio recording had been subject to editing, enhancement or manipulation.
- (m) I was asked to address the nature of any editing, enhancement or manipulation which has or may have occurred.
- (n) I was asked to address the basis on which I reached conclusions to (k), (l) and (m) above.

### **My Investigation of the Facts**

#### A. Edits, enhancements, or manipulations as regards May 2016 Images

In May 2016, there were three methods by which photos could be edited, enhanced, or manipulated on a device, particularly an Apple iPhone handset.

- One method would use the features that are built into the device operating system. In May 2016, that operating system would have been the Apple iOS version 9.<sup>2</sup> Examples of built in Apple iOS photo editing functionality in version 9 include, but is not limited to, cropping, rotating, red eye reduction, and enhancing (e.g. light enhancement).

---

<sup>1</sup> Note that the 18<sup>th</sup> July letter of instruction made a reference to December 2016 when in fact December 2015 is the correct period.

<sup>2</sup> Released on 16 September 2015. <https://support.apple.com/en-us/HT209441>

- Another method would use a third-party application that could be purchased and downloaded to the device from Apple's application store ("App Store")<sup>3</sup>. These applications are submitted to Apple by third-parties and, once vetted by Apple as an approved application, are available for purchase and download. Often, the developers of these applications provide additional photo editing features that are not built into the Apple iOS operating system.
- A third method would require an export of the image from the Apple iPhone handset to another device (e.g. a laptop computer) where the image can be edited by a third-party application (e.g. Adobe Photoshop). As with mobile device applications from the App Store, often the developers of these applications provide additional photo editing features that are not built into the Apple iOS operating system.

#### B. Detection of edits, enhancements, or manipulations as regards May 2016 Images

- To detect enhancements and forensically investigate whether an image file has been altered or edited, I would first examine the internal metadata fields that are generated by the device used to create the image file. There are hundreds of internal metadata fields including, but limited to, geolocation metadata, camera make/model/lens metadata, and multiple fields that record date and time metadata. I would then analyse all of the internal metadata fields in totality, looking for patterns of metadata updates, such as date/time fields that are out of alignment (e.g. modified after it was created), and additional fields added by editing software and applications, such as IPTC<sup>4</sup> metadata that would be added by applications post-image creation.

#### C. Avoiding detection as regards May 2016 Images

Internal metadata that I would rely on for a forensic investigation can be theoretically altered and/or removed in an anti-forensic manner. However, this cannot be performed using built-in functionality on an Apple iPhone handset and would require a high level of user sophistication and deep understanding of cameras, computers, and the hundreds of internal metadata fields that are embedded in an image file.

To avoid detection, an individual would have to first create an extraction of the image file in a manner that maintains all image metadata, then use a photo editing application to alter the image, followed by a metadata editing application that can update and/or remove specific internal metadata fields to obfuscate a forensic analysis that would examine the hundreds of metadata fields in totality. This would all have to be performed in a manner that would not alter, edit, or add any new internal metadata fields in the process. In my experience, the average user of an iPhone, even one who

<sup>3</sup> <https://www.apple.com/ios/app-store/>

<sup>4</sup> <https://iptc.org/standards/photo-metadata/#:~:text=The%20IPTC%20Photo%20Metadata%20standard,described%20and%20easily%20accessed%20later.>



creates and/or edits pictures often, does not possess the level of sophistication needed to perform image manipulation anti-forensics and avoid detection.

D. Probability that May 2016 images have been altered.

To determine whether there is evidence that the May 2016 images have been altered, I examined the internal metadata of each image as follows:

- I analysed the internal metadata related to the device that created the images.
- I analysed all internal metadata fields and looked for inconsistencies in the values that could suggest the images were altered, such as modified date metadata that post-dates created data metadata.
- I analysed all metadata fields and looked for evidence of third-party IPTC metadata fields, such as those that are added by Adobe image editing software when an image is altered or edited.

The chart below details the results of my analysis as it relates to the May 2016 images.

Images - Trial Bundle	Device that Created the image	Metadata Inconsistencies	Third Party Metadata Fields
F894.155.JPG	iPhone 6	No	No
F894.157.JPG	iPhone 6	No	No
F894.159.JPG	iPhone 6	No	No
F894.161.JPG	iPhone 6	No	No
F894.163.JPG	iPhone 6	No	No
F894.165.JPG <sup>5</sup>	iPhone 6	Yes	Yes
F894.167.JPG	iPhone 6	No	No
F894.169.JPG	iPhone 6	No	No
F894.171.JPEG	iPhone 6	No	No
F894.173.JPG <sup>6</sup>	iPhone 6	Yes	Yes
F894.175.JPG	iPhone 6	No	No
F894.177.JPG	iPhone 6	No	No
F894.179.JPEG	iPhone 6	No	No
F894.181.JPEG	iPhone 6	No	No
F894.183.JPEG	iPhone 6	No	No
F894.187.JPEG	iPhone 6	No	No
F894.189.JPEG	iPhone 6	No	No
F894.191.JPG	iPhone 6	Yes	Yes
F894.193.JPG	iPhone 6	No	No

<sup>5</sup> This appears to visually be duplicative with no 167.

<sup>6</sup> This appears to visually be duplicative with no 175.

F894.195.JPG	iPhone 6	No	No
F894.216.JPG	iPhone 6	Yes	Yes
F894.218.JPG	iPhone 6	Yes	Yes
F894.222.JPG	iPhone 6	No	No

E. Nature or basis of editing as regards May 2016 Images

The metadata for five of the images I analysed (F894.165.JPG, F894.173.JPG, F894.191.JPG, F894.216.JPG, and F894.218.JPG) indicate one or more of the following inconsistencies:

- Missing geolocation metadata. Often, editing software can strip Geolocation metadata during the image editing process.
- Incorrect software metadata that does not conform to Apple iOS version 9.
- Addition of third-party metadata fields.

F. How did I reach my conclusion regarding the May 2016 Images

There are eighteen images from May 2016 that do not appear to be altered. This is based on my examination of the internal metadata and the analyses I have detailed in the sections above. Specifically:

- The internal metadata confirms that the images were taken with an iPhone 6 using the Apple iOS version 9 (specifically version 9.3.1)
- The internal metadata confirms that there are no inconsistencies between the date/time metadata fields
- The internal metadata does not include any built-in or third-party editing metadata fields.

There are five images from May 2016 that appear to be altered. To identify whether unedited versions of these five images exist, I examined the following sources of evidence:

- A forensic image of an Apple iPad Pro 10.5" belonging to Ms Amber Heard
- A forensic image of an Apple iPhone X belonging to Ms Amber Heard

From the above two sources, I have extracted unedited copies of four of these five images and include them as annexes to my report. The chart below identifies the unedited copy for each image.<sup>78</sup>

Images - Trial Bundle	Unedited version	Source	Metadata Inconsistencies	Third Party Metadata Fields
F894.165.JPG	8935109A-40CB-4924-90F6-74F823F4E7DD.jpeg	iPhone X NO for both	No	No
F894.173.JPG	24368DF7-9FFD-45AB-BAAE-5EBDD07DE9E2.JPG	iPhone X	No	No
F894.191.JPG	3EDD699D-BD5C-4396-933C-B2AA97F69ED5.jpeg	iPhone X	No	No
F894.218.JPG	E5DE0259-23F3-4005-8981-01CD446A9EB7.JPG	iPad Pro 10.5"	No	No

G. Dates and times for each of the December 2015 Images based on available metadata.

For the December 2015 images, I performed the following analyses to confirm that they were created between 16<sup>th</sup> December 2015, and 18<sup>th</sup> December 2015:

- Extracted the internal metadata of the images using two different extraction programmes.
- Reviewed the values for all available internal date/time metadata fields to confirm they match.
- Reviewed the values for all available internal date/time metadata fields to confirm that they have values that indicate the pictures were created on the 16<sup>th</sup> December 2015, 17<sup>th</sup> December 2015, or 18<sup>th</sup> December 2015 and were not modified after they were created.
- For each picture I reviewed the values of all available internal metadata fields to determine if there was any evidence of internal metadata manipulation.

Below is a table listing the images for which I have been able to analyse the internal metadata:

<sup>7</sup> Photos from the iPhone X were created on the on or after 20<sup>th</sup> July 2018. As such, any editing of the trial bundle versions would have been on or after 20<sup>th</sup> July 2018.

<sup>8</sup> Photos from the iPad Pro 10,5" were created on or after 6<sup>th</sup> October 2018. As such, any editing of the trial bundle versions would have been on or after 6<sup>th</sup> October 2018.

December 2015 Image - Filename	ExifFD:DateTimeOriginal
F894.095 - ALH_00001586.JPEG	2015:12:16 10:41:03
F894.097 - ALH_00000505.JPEG	2015:12:16 10:58:58
F894.099 - ALH_00000509.JPEG	2015:12:16 10:57:10
F894.101 - ALH_00000517.JPEG	2015:12:16 10:41:26
F894.103 - AHA_00000002.JPEG	2015:12:16 14:39:48
F894.105 - AHA_00000003.JPEG	2015:12:16 14:39:56
F894.107 - AHA_00000004.JPEG	2015:12:16 14:40:40
F894.109 - AHA_00000005.JPEG	2015:12:16 14:40:44
F894.112 - AHA_00000006.JPEG	2015:12:16 14:40:54
F894.114 - AHA_00000008.JPEG	2015:12:16 14:41:18
F894.118 - ALH_00000515.JPEG	2015:12:16 11:44:13
F894.120 - AHA_00000028.JPEG	2015:12:16 11:44:00
F894.122 - AHA_00000027.JPEG	2015:12:16 10:56:58
F894.124 - ALH_00000511.JPEG	2015:12:16 14:41:02
F894.132 - AHA_00000010.JPEG	2015:12:17 00:46:09
F894.134 - AHA_00000011.JPEG	2015:12:17 00:46:16
F894.136 - AHA_00000012.JPEG	2015:12:17 00:46:17
F894.139 - AHA_00000013.JPEG	2015:12:17 00:46:26
F894.141 - AHA_00000014.JPEG	2015:12:17 10:19:46
F894.143 - AHA_00000015.JPEG	2015:12:17 10:19:52
F894.145 - AHA_00000016.JPEG	2015:12:17 10:20:41
F894.147 - AHA_00000007.JPEG	2015:12:18 14:40:55

#### H. Edits, enhancements, or manipulations as regards December 2015 Images

The three methods by which photos could be edited, enhanced, or manipulated on a device, particularly an Apple iPhone handset, in May 2016 are the same three methods by which photos could be edited, enhanced, or manipulated in December 2015. This is because the same operating system would have been in use - the Apple iOS version 9.<sup>9</sup> As such, I follow the same analyses for the December 2015 images.

To determine whether there is evidence that the December 2015 images have been altered, I examined the internal metadata of each image as follows:

- I analysed the internal metadata related to the device that created the images.
- I analysed all internal metadata fields and looked for inconsistencies in the values that could suggest the images were altered, such as modified date metadata that post-dates created data metadata.

<sup>9</sup> Released on 16 September 2015. <https://support.apple.com/en-us/HT209441>

- I analysed all metadata fields and looked for evidence of third-party IPTC metadata fields, such as those that are added by Adobe image editing software when an image is altered or edited.

The chart below details the results of my analysis as it relates to the December 2015 images.

December 2015 Image - Filename	Device that Created the image	Metadata Inconsistencies	Third Party Metadata Fields
F894.095 - ALH_00001586.JPEG	iPhone 6	Yes	Yes
F894.097 - ALH_00000505.JPEG	iPhone 6	Yes	Yes
F894.099 - ALH_00000509.JPEG	iPhone 6	Yes	Yes
F894.101 - ALH_00000517.JPEG	iPhone 6	Yes	Yes
F894.103 - AHA_00000002.JPEG	iPhone 6	Yes	Yes
F894.105 - AHA_00000003.JPEG	iPhone 6	Yes	Yes
F894.107 - AHA_00000004.JPEG	iPhone 6	Yes	Yes
F894.109 - AHA_00000005.JPEG	iPhone 6	Yes	Yes
F894.112 - AHA_00000006.JPEG	iPhone 6	No	No
F894.114 - AHA_00000008.JPEG	iPhone 6	No	No
F894.118 - ALH_00000515.JPEG	iPhone 6	Yes	Yes
F894.120 - AHA_00000028.JPEG	iPhone 6	Yes	Yes
F894.122 - AHA_00000027.JPEG	iPhone 6	Yes	Yes
F894.124 - ALH_00000511.JPEG	iPhone 6	Yes	Yes
F894.132 - AHA_00000010.JPEG	iPhone 6	Yes	Yes
F894.134 - AHA_00000011.JPEG	iPhone 6	Yes	Yes
F894.136 - AHA_00000012.JPEG	iPhone 6	Yes	Yes
F894.139 - AHA_00000013.JPEG	iPhone 6	Yes	Yes
F894.141 - AHA_00000014.JPEG	iPhone 6	Yes	Yes
F894.143 - AHA_00000015.JPEG	iPhone 6	Yes	Yes
F894.145 - AHA_00000016.JPEG	iPhone 6	Yes	Yes
F894.147 - AHA_00000007.JPEG	iPhone 6	Yes	Yes

- Nature of any edits, enhancements or manipulation that may or has occurred in relation to the December 2015 images

The metadata for 20 of the December 2015 images I analysed indicates one or more of the following inconsistencies:

- Missing geolocation metadata. Often, editing software can strip Geolocation metadata during the image editing process.

- Incorrect software metadata that does not conform to Apple iOS version 9.
- Addition of third-party metadata fields.

J. The basis on which I reached conclusions to (G), (H) and (I) above.

There are two images from December 2015 that do not appear to be altered. This is based on my examination of the internal metadata and the analyses I have detailed in the sections above. Specifically:

- The internal metadata confirms that the images were taken with an iPhone 6 using the Apple iOS version 9 (specifically version 9.2)
- The internal metadata confirms that there are no inconsistencies between the date/time metadata fields
- The internal metadata do not include any built-in or third-party editing metadata fields.

To identify whether unedited versions of the twenty other December 2015 images exist, I examined the following sources of evidence:

- A forensic image of an Apple iPad Pro 10.5" belonging to Ms Amber Heard

From the above source, I have extracted unedited copies<sup>10</sup> of 18 of these twenty images and include them as annexes to my report. The chart below identifies the unedited copy for each image.<sup>11</sup>

December 2015 Image - Filename	Unedited version	Source	Metadata Inconsistencies	Third Party Metadata Fields
F894.095 - ALH_00001586	5D3C8B2B-2446-45C0-A979-5F4D012969CA.JPG	iPad Pro 10.5"	No	No
F894.097 - ALH_00000505	D111845D-08E4-4C61-BA11-AFE5E354B087.JPG	iPad Pro 10.5"	No	No
F894.099 - ALH_00000509	00DFB1C8-A44D-441C-99B9-7CFE312365DA.JPG	iPad Pro 10.5"	No	No
F894.103 - AHA_00000002	IMG_0008.JPG	iPad Pro 10.5"	No	No
F894.107 - AHA_00000004	IMG_0009.JPG	iPad Pro 10.5"	No	No
F894.109 - AHA_00000005	IMG_0147.JPG	iPad Pro 10.5"	No	No

<sup>10</sup> Note: a lack of Geolocation specific metadata as a feature is not a pure indication that an image has been altered.

<sup>11</sup> Photos from the iPad Pro 10,5" were created on or after 6<sup>th</sup> October 2018. As such, any editing of the trial bundle versions would have been on or after 6<sup>th</sup> October 2018.

F894.116 - AHA_00000009	IMG_0153-2.JPG	iPad Pro 10.5"	No	No
F894.118 - ALH_00000515	1B8B2F6E-FFF1-4B9C-9A4D- C70BA197C72B.JPG	iPad Pro 10.5"	No	No
F894.120 - AHA_00000028	IMG_3322.JPG	iPad Pro 10.5"	No	No
F894.122 - AHA_00000027	D05A6D9A-696D-4BBB- 93A7-6733CE1AFBE1.JPG	iPad Pro 10.5"	No	No
F894.124 - ALH_00000511	IMG_0150.JPG	iPad Pro 10.5"	No	No
F894.132 - AHA_00000010	IMG_0173.JPG	iPad Pro 10.5"	No	No
F894.132 - AHA_00000011	5AA0DCA7-645E-4D9C- A5A4-6F504FFC708A.JPG	iPad Pro 10.5"	No	No
F894.132 - AHA_00000012	6D37E3B2-9670-4704- AE7C-05B5BD819DA9.JPG	iPad Pro 10.5"	No	No
F894.139 - AHA_00000013	IMG_0177.JPG	iPad Pro 10.5"	No	No
F894.141 - AHA_00000014	IMG_0180.JPG	iPad Pro 10.5"	No	No
F894.143 - AHA_00000015	IMG_0181.JPG	iPad Pro 10.5"	No	No
F894.145 - AHA_00000016	IMG_0182.JPG	iPad Pro 10.5"	No	No

K. Based on available metadata, on what day and time was the Boston Plane Audio Recording made.

- The audio file was created on 25<sup>th</sup> May 2014, 02:11<sup>12</sup> UTC (no daylight savings applied internally).
- This consists of the date and time when the audio file commenced recording and when it stopped, and subsequently the actual writing of the audio file, relative to its *duration* (11 minutes, 39 seconds).
  - i. The audio track began recording on 24<sup>th</sup> May 2014 at 21:00:03 Boston time (-05:00 EDT offset).
  - ii. If the 05:00 hours are added back in to normalise to UTC, this becomes 25<sup>th</sup> May 2014 at 02:00:03.
  - iii. If you then account for the *duration* of the track (11 minutes, 39 seconds), the overarching date of creation for the audio file comes

<sup>12</sup> An e-mail from counsel that references the Boston plane audio as F894.277, *F148j. Boston Plane Freakout Incident Properties* shows the media created as 25<sup>th</sup> May 2014 at 03:11, precisely 1 hour ahead of the correct date. The reason for this 1-hour discrepancy is that the Windows computer interpreting those metadata are applying a +1 Summertime/daylight savings time bias when it reads that field and reports it.

back to 25<sup>th</sup> May 2014 at 02:11:42, which is short by 3 seconds. This is explained by the delay on the original iPhone handset stopping the audio track and writing the ultimate audio file (time to compute). This is 21:11:42 on 24<sup>th</sup> May *Boston Time*.

- iv. Generally speaking, mobile phones that are active in non-connectivity zones (e.g. up in the air), retain their date and time clock settings of their source until the point of next connectivity (e.g. landing in another time zone).

L. Probability that the Boston Plane Audio Recording has been subject to editing, enhancement or manipulation.

- The probability that the audio file was subject to any editing is very low. The maths and pattern of metadata seen above from a source device containing this audio file does not show any anomalous data points. Additionally, there was very little built-in capability to edit audio recordings on an iPhone 4s – limited to audio track length trim functions - and I do not see any third-party editing metadata in this audio recording.

M. The nature of any editing, enhancement or manipulation which has or may have occurred.

- I have not seen any patterns or indications that this audio file was edited, enhanced or in some way manipulated.

N. Basis on which I reached a conclusion on (K), (L) and (M) above.

- I was able to locate an historic copy of the audio recording on a forensic backup copy of an iPhone 4s belonging to Amber van Ree.
- This audio recording file analysed was from the backup copy from its earliest available location.



## **Statements**

### **Statement of Compliance**


I understand my duty as an expert witness is to the court. I have complied with that duty and will continue to comply with it. This report includes all matters relevant to the issues on which my expert evidence is given. I have given details in this report of any matters which might affect the validity of this report. I have addressed this report to the court. I further understand that my duty to the court overrides any obligation to the party from whom I received instructions.

### **Statement of Conflicts**

I confirm that I have no conflict of interest of any kind, other than any which I have already set out in this report. I do not consider that any interest which I have disclosed affects my suitability to give expert evidence on any issue on which I have given evidence and I will advise the party by whom I am instructed if, between the date of this report and the trial, there is any change in circumstances which affects this statement.

### **Declaration of Awareness**

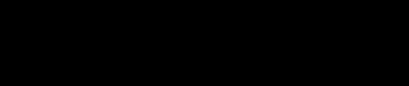
I confirm that I am aware of the requirements of Part 35 and Practice Direction 35, and the Guidance for the Instruction of Experts in Civil Claims 2014.

Signature  .....

Date 19th July 2020 .....

### **Statement of truth**

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signature ... 

Date 19th July 2020 .....

## **My Experience and Qualifications**

I am a Director and co-head of the iDS Europe practice. My professional background is that of a data forensic examiner and investigative technologist. I have worked on data forensic matters for thirteen years in both North America and Europe. I hold an advanced degree in Data Forensic Science and Management (MSc) and a university qualification in Computer & Digital Forensics (BSc). I also serve as an expert advisor on leveraging technology in eDisclosure matters in and around litigation, internal compliance and investigations, as well as investigations driven by regulatory authorities.

I have worked on hundreds of matters involving the investigation of electronic information including, but not limited to: theft of intellectual property, trade secret theft and misappropriation, document and e-mail falsification, insider trading, price rigging, OFAC violations, FCPA and employment matters relating to team moves and violations of restrictive covenants.

I have testified in live proceedings in America in Federal, State and Military venues, in addition to taking part in depositions and the filing of affidavits, declarations and expert reports. In England I have provided expert evidence in the form of witness statements and reports.

I am a frequent speaker and author on issues relating to electronic disclosure and investigative technology. I am also a member of several data forensic specific consortia including: The International Society of Forensic Computer Examiners (ISFCE), The High-Tech Crime Consortium (HTCC), The International Association of Computer Investigative Specialists (IACIS) and the Digital Forensic Certification Board (DFCB), of which I am a board member. I hold software specific certifications in Encase Forensic (ENCE) Cellebrite mobile phone forensics (CCPA). I hold non-software specific certifications as a Certified Computer Examiner (CCE #887), as well as certified Mac and iOS Certified Forensic Examiner (MiCFE) from Blackbag Technologies.

## **Experience and Qualifications of Others Involved in Testing**

I was assisted by iDS colleague and data forensic expert, Mr Julian Ackert. Julian is a Managing Director at iDiscovery Solutions ("iDS"), an expert services and consulting firm that provides independent computer forensics, electronic discovery expert testimony and analysis, original authoritative studies, and strategic consulting services to the business and legal community.

He has over 20 years of experience in consulting and litigation technologies that focus on electronic discovery and computer forensics. He holds a Bachelor of Science degree in Computer Science from the University of Virginia.

Specifically, he has extensive experience creating and implementing preservation, collection, and production strategies and performing computer forensics and metadata analysis on electronic data.

He has performed preservation, collection, analysis, and production of electronically stored information ("ESI") in hundreds of matters. He has also provided testimony in several cases, some of which are described below:

- a) The analysis of document metadata and computer forensic issues in an employee breach of contract case for the financial industry;
- b) The analysis of document metadata and computer forensic issues in employee theft-of-trade-secrets case in the healthcare industry; and
- c) The analysis of document metadata and computer forensic issues in employee theft-of-trade-secrets case in the transportation industry.
- d) The analysis of document metadata and computer forensic issues in employee theft-of-trade-secrets case for the high-technology industry.

## **Statement of Methodology**

I was able to examine the documents discussed herewith by utilising both professionally licenced and open-source, freely available data forensic software and techniques. My methodology for examining the internal metadata available for the files included the use of more than one tool as a means of cross validation.

I was able to review and analyse different copies of the files in question as either duplicates of the images and audio from disclosure, the original source devices housing the files, or later release versions of devices containing data from older devices no longer available.

I was able to perform cause and effect testing on test data not related to this matter that matched the variables of time and type of files being considered.

## List Documents or Data I have Examined

### May 2016 Images

<b>Images -Trial Bundle</b>
F894.155.JPG
F894.157.JPG
F894.159.JPG
F894.161.JPG
F894.163.JPG
F894.165.JPG
F894.167.JPG
F894.169.JPG
F894.171.JPEG
F894.173.JPG
F894.175.JPG
F894.177.JPG
F894.179.JPEG
F894.181.JPEG
F894.183.JPEG
F894.187.JPEG
F894.189.JPEG
F894.191.JPG
F894.193.JPG
F894.195.JPG
F894.216.JPG
F894.218.JPG
F894.222.JPG

### December 2015 Images

<b>December 2015 Image</b>
F894.095 - ALH_00001586.JPEG
F894.097 - ALH_00000505.JPEG
F894.099 - ALH_00000509.JPEG
F894.101 - ALH_00000517.JPEG
F894.103 - AHA_00000002.JPEG
F894.105 - AHA_00000003.JPEG
F894.107 - AHA_00000004.JPEG
F894.109 - AHA_00000005.JPEG
F894.112 - AHA_00000006.JPEG
F894.114 - AHA_00000008.JPEG

F894.118 - ALH_00000515JPEG
F894.120 - AHA_00000028JPEG
F894.122 - AHA_00000027JPEG
F894.124 - ALH_00000511JPEG
F894.132 - AHA_00000010JPEG
F894.134 - AHA_00000011JPEG
F894.136 - AHA_00000012JPEG
F894.139 - AHA_00000013JPEG
F894.141 - AHA_00000014JPEG
F894.143 - AHA_00000015JPEG
F894.145 - AHA_00000016JPEG
F894.147 - AHA_00000007JPEG

Boston Plane Audio Recording

“recordings/file\_1/20140524 210003.m4a” (Source: iPhone 4s Backup)

Sources of Evidence

Evidence
Forensic extraction of an Apple iPad Pro 10.5"
Forensic extraction of an Apple iPhone X
Forensic backup of an iPhone 4s

**Glossary of Technical Terms**

**Images:** these refer to graphic image files, or “photographs”.

**Audio recording:** refers to an audio recording made electronically by a mobile phone or computing device.

**Voice Memo:** refers to an audio recording made electronically by a mobile phone or computing device.

**Metadata:** refers to the “data about data”. These are information points within electronic files that store dates, times, authorship, devices used to print or make photos and much more.

**EXIF Metadata:** refers to a specific type of metadata that is commonly used for audio/visual type electronic files such as audio, video and graphic image files.

**IPTC Metadata:** Refers to a sub-type of metadata created for use in digital photography and stands for “International Press Telecommunications Council.

**Operating System:** The basic, baseline software that powers a computer or mobile tablet or handset (e.g. Microsoft Windows, or Apple iOS for iPhones)

## **Annexes**

- A. Actual photos for printing by Counsel provided as actual photo files in a ZIP file.

# ATTACHMENT 10



Neutral Citation Number: [2020] EWHC 2911 (QB)

Case No: QB-2018-006323

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 02/11/2020

Before :

**MR JUSTICE NICOL**

Between :

<b>John Christopher Depp II</b>	<b><u>Claimant</u></b>
- and -	
<b>(1) News Group Newspapers Ltd.</b>	<b><u>Defendants</u></b>
<b>(2) Dan Wootton</b>	

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**Eleanor Laws QC, David Sherborne and Kate Wilson (instructed by Schillings) for the Claimant**

**Sasha Wass QC, Adam Wolanski QC and Clara Hamer (instructed by Simons Muirhead and Burton) for the Defendants**

Hearing dates: 7<sup>th</sup>-10<sup>th</sup> July 2020; 13<sup>th</sup>-17<sup>th</sup> July 2020; 20-24<sup>th</sup> July 2020; 27<sup>th</sup>-28<sup>th</sup> July 2020

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE NICOL



v) Although Mr Sherman had submitted that any disclosure to Mr Murphy was accidental, I do not accept that was the case. Her statement that she wished her views to be communicated to various people, including Mr Depp, strongly indicates the contrary.

vi) Ms Diviniere herself had sent the email chain to Mr Murphy.

558. Accordingly, in my view, it was open to Mr Sherborne to rely on the exchange. In the exchange which was forwarded to Mr Murphy, there is a draft email from Mr Sherman to Alexander (I assume Alexander Rufus-Isaacs, one of the Defendants' US lawyers) in which Mr Sherman says,

'My client's position is that she voluntarily gave a truthful and accurate declaration in the other case based on her best recollection of the events and if compelled by the US District Court to testify; her testimony will be completely consistent with that position.'

559. In her email letter which she wrote on 10<sup>th</sup> March 2020 at 6.36am (and which she had asked to be forwarded to all counsel involved), Ms Diviniere had said

'My declaration is 100% truthful and that will not change. In retrospect where I may have thought I was unduly pressured to write and sign my declaration I now believe that was not the case. My declaration went through three iterations with my complete involvement and understanding. Again, I signed knowing that my declaration was truthful best to my recollection. I did the best I could do.'

560. However, while I agree with Mr Sherborne that he may rely on these statements, I have to decide what I make of Ms Diviniere's evidence taken as a whole. In my view her vacillation severely undermines the weight which I can give to her evidence.

**The Defendants' application for permission to adduce expert evidence**

561. I have said that the Defendants wished to adduce expert evidence. Their application notice was issued on Friday 17<sup>th</sup> July 2020 (day 9 of the trial). The application notice said that the expert evidence which the Defendants wished to adduce was

'as to the timing and authenticity of the metadata relating to images taken in May 2016 as disclosed to us by the Claimant in January 2020.'

562. The background to the application was explained by Jeffrey Smele in his 3<sup>rd</sup> witness statement, also of 17<sup>th</sup> July 2020. Mr Smele is a partner in the Defendants' solicitors, Simons Muirhead and Burton. Mr Smele explains that the photographs were taken in May 2016 and purported to show injuries to Ms Heard's face which she said had been caused by Mr Depp. Those photographs have always been in the trial bundles.

563. Mr Smele further explains that the May 2016 photographs had been disclosed to the Defendants by the Claimant on 29<sup>th</sup> January 2020 by the Claimant's previous solicitors, Brown Rudnick. The photographs had been accompanied by a spreadsheet which purported to give the date and time on which the photograph had been created. The spreadsheet said that the date of some of the photographs was 21<sup>st</sup> May 2016; the date of others was 22<sup>nd</sup> May 2016. In each case, however, the time was given as 00.00. Mr

Smele said that on 10<sup>th</sup> July 2020 Ms Heard had provided the Defendants with further copies of some of the same photographs, but this time accompanied by the metadata for the photographs. **The metadata showed that the photographs had indeed been created on 21<sup>st</sup> and 22<sup>nd</sup> May but at various times.** These copies were disclosed to the Claimant's current solicitors, Schillings, on 10<sup>th</sup> July 2020. Simons Muirhead and Burton asked Schillings to confirm that they agreed with the metadata. At that stage the Claimant was still giving evidence. Schillings said in an email on 16<sup>th</sup> July 2020 that they hoped to respond once his evidence was concluded (which it was, on Monday 13<sup>th</sup> July 2020). **On 15<sup>th</sup> July 2020 Simons Muirhead and Burton asked Schillings to confirm,**

**'(a) You accept that date/time metadata (as extracted from the JPEG files) is accurate in respect of each image enclosed.'**

(b) You are not alleging that the May 2016 images have been falsified or otherwise manipulated; and if you are making any such allegation, in what respects you claim that the images have been manipulated.'

564. On 17<sup>th</sup> July 2020 Schillings replied,

**'We do not dispute the accuracy of the accompanying date/time metadata to the May 2016 images'**

We do not accept that the May 2016 images have not been edited or otherwise manipulated. The metadata you refer to does not address edits including where an image has been saturated or otherwise "photoshopped". Some files have "edited" in the filename.'

565. Mr Smele also said that the Defendants had instructed an IT expert called Timothy LaTulippe of iDiscovery Solutions to advise them. Mr Smele exhibited a letter dated 17<sup>th</sup> July 2020 from Mr LaTulippe which summarised his conclusions.

566. Mr Wolanski made the application that same afternoon (17<sup>th</sup> July 2020). Mr Sherborne, who represented the Claimant on this matter, objected that he had not had time to consider the application or respond to it. Since the application notice had only been issued that morning, I agreed that it would not be fair to the Claimant to consider the application until the Claimant had had such an opportunity. That said, the matter was plainly urgent. I arranged for the application to be considered at 9.30am on Monday 20<sup>th</sup> July 2020. Before we next sat my clerk received (a) a formal report from Mr LaTulippe (of the same date) (b) a note from Mr Wolanski; (c) a letter dated 19<sup>th</sup> July 2020 from KLDISCOVERY, who had been instructed on behalf of the Claimant and (d) a skeleton argument from Mr Sherborne. It seemed to me that 30 minutes (which was the Defendants' time estimate for the application) would be insufficient. I, therefore, said that I would consider the application on the basis of written submissions and I set a tight timetable for these. Mr Sherborne and Mr Wolanski both provided further submissions. On Wednesday 22<sup>nd</sup> July 2020 I announced that I would refuse the application for reasons which I would give in the reserved judgment after the trial. This I am now doing.

567. Mr Wolanski drew attention to CPR r. 32.19 which says,

‘(1) A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves a notice that he wishes the document to be proved at trial.

- (2) A notice to prove a document must be served –
- (a) By the latest date for serving witness statements; or
  - (b) within 7 days of disclosure of the document,
- whichever is later.’

568. Mr Wolanski recognised that the rule does not address challenges to the authenticity of documents disclosed *by* the party who wishes to challenge their authenticity, but, he submitted, any such challenge ought still to be signalled promptly, to allow a proper investigation to take place including proper time for any application for expert evidence to be made. He submitted that principle had not been observed. Any difficulty created by the late notice of the Defendants’ application was therefore due to the Claimant’s delay in giving the Defendants notice that they were intending to allege that Ms Heard’s photos had been manipulated.

569. Mr Wolanski recognised that the application had expanded somewhat since Friday 17<sup>th</sup> July in that it now included expert evidence as to two further matters:

- i) The authenticity of images which had been taken of Ms Heard in December 2015 and which she had also produced to the Claimant in the course of the Virginia libel proceedings, and
- ii) The authenticity of a recording of part of the flight from Boston to Los Angeles (incident 4). This recording had been disclosed by the Defendants on 1<sup>st</sup> July 2020 as a digital file together with underlying metadata. Mr Wolanski submitted that the authenticity had not been challenged until, on Friday 10<sup>th</sup> July 2020, the Claimant questioned whether it was a recording made on that flight.

570. Mr Sherborne resisted the application to adduce expert evidence. He argued:

- i) As Schillings had made clear, there was no dispute that the timings in the Schedule to Brown Rudnick’s letter of 29<sup>th</sup> January 2020 were wrong and the Claimant accepted that the date and times of the metadata in the copies of the photographs which Simons Muirhead and Burton had sent on 10<sup>th</sup> July 2020 were correct.
- ii) Mr Smele’s witness statement said that Mr LaTulippe had been instructed ‘in order to put the metadata beyond doubt’, but that was unnecessary because the metadata was not challenged.
- iii) The formal report of Mr LaTulippe considerably expanded on the application notice which had been issued in that:
  - a) It addressed whether the May 2016 images had been manipulated (and not just their metadata).

- b) It considered the December 2015 images of Ms Heard and not just the May 2016 photographs.
- c) It considered the Boston plane recording.

Mr Sherborne submitted that the Defendants should not be allowed to shift their position in this manner.

- iv) It had to be remembered that the documents have originated from Ms Heard. They had come into the Claimant's possession as a result of discovery in the Virginia libel proceedings. The Claimant did not have access to the original devices on which they had been created. **He did not challenge that they had been created by Ms Heard or the dates and times on which they had been created**
- v) By r.35.1 'Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.' - see also *British Airways v Spencer* [2015] EWHC 2477 (Ch) at [22]-[23]. The Defendants had not been able to show that test was satisfied here.
- vi) At [63] of *British Airways* Warren J. (after citing a passage from Warby J's judgment in *Mitchell v News Group Newspapers Ltd* [2014] EWHC 3590 (QB) had said,

'This, it seems to me, is saying something very different from the proposition that, because expert evidence may prove of assistance, it should be admitted. A judgment needs to be made in every case, and, in making that judgment, it is relevant to consider whether, on the one hand, the evidence is necessary (in the sense that a decision cannot be made without it) or whether it is or very marginal relevance with the court being well able to decide the issue without it, in which case a balance has to be struck and the proportionality of its admission assessed. In striking that balance, the court should, in my judgment, be prepared to take into account disparate factors including the value of the claim the effect of a judgment either way on the parties, who is to pay for the commissioning of the evidence on each side and the delay, if any, which the production of the such evidence would entail (particularly delay which might result in vacating the trial date).'

- vii) The application for permission to rely on expert evidence had been made extremely late which itself was a reason not to permit it (see White Book 35.0.2).
- viii) **Mr Laithwaite had initially thought that five of the images had been altered, but, from access to Ms Heard's devices he could see that four of the five had not in fact been altered.** This conclusion created further problems: first the devices in question appeared to have been acquired after the images had been created; and second the Claimant did not have access to the devices in question.
- ix) Mr Sherborne said (in paragraph 47 of his submissions made at 06.46 on 20th July 2020) that the Claimant's position,

**is not that Ms Heard went into the bathroom of the penthouse and took flawless photos of herself which she then photoshopped. While many of the**

photos show little, if anything, the Claimant's case is that Ms Heard altered her appearance in a number of possible ways before taking photographs in an attempt to show some sort of marks. The selection of filters or subsequent editing may have been an attempt to highlight the effect of whatever she did – for example making her face redder. But, critically, an analysis of all the digital images will not yield much more, if anything, than what the Court can see from the images and decide from them and the surrounding evidence of eyewitnesses.<sup>9</sup>

- x) So far as the audio recording was concerned, the Claimant had asked for the metadata on 9<sup>th</sup> July 2020. Mr LaTulippe was apparently able to access the device on which it had been recorded.
- xi) There was a practical problem to do with the location of the devices and the location of the Claimant's expert.
- xii) In any event, there would not be time on the present trial timetable to address adequately this expert evidence.

571. **Despite Mr Wolanski's submissions in response (dated 21<sup>st</sup> July 2020) I reached the clear conclusion that the Defendants' application should be refused for the following reasons.**

- i) As Mr Wolanski accepted, r.32.19 does not, in terms, apply to the situation regarding the May 2016 photographs because they were disclosed *by* him, *to* the Defendants, not *by* the Defendants *to* Mr Depp.
- ii) Mr Wolanski may be right that, by reference to some more general principle, ordinarily it would assist the court if advance notice was given of challenges to the authenticity of other documents. However, in this case the May 2016 images were disclosed by the Claimant because, in the Virginia libel proceedings, they had been disclosed to him by Ms Heard. In those circumstances there is force in Mr Sherborne's submission that the Claimant was not able to express a view as to whether they were authentic or not. In any event, as I have noted, all the times in the Brown Rudnick schedule were precisely midnight. That could not have been the correct time at which each of the several photographs had been taken. The Defendants would thus have been alerted at an early stage to the suspect nature of those times and, could, if they had wished, have investigated them at an earlier stage.
- iii) The application has been made at a very late stage. There have been further delays while there have been discussions between the parties (and Ms Heard's own lawyer, David Price QC) as to whether the Claimant could have access to all the material and all the devices to which Mr LaTulippe had access. Plainly such access would be necessary for the Claimant to have an adequate opportunity to meet this evidence. From messages which I received after the submissions referred to above, it seems that this could have been arranged. Nonetheless, the time for the Claimant's expert to review the necessary materials would be very tight.

- iv) The normal process would be that, once the Claimant's expert had reported, the experts would meet to identify their areas of agreement and disagreement (see r.35.12 which gives the court power to direct that such a meeting shall take place). That is a valuable exercise, but time would not permit it if the experts were to give evidence in the current timetable. The Court would not, therefore, have that assistance.
- v) I shared Mr Sherborne's scepticism that the expert evidence could be heard within the current trial time estimate, particularly, but not exclusively if the experts had been unable to meet in advance of giving evidence. In March I had increased the time estimate for the trial from 10 days to 15 days. I had added a further day in the course of the present trial. It would not be right or proportionate to extend it yet again.
- vi) **Schillings' letter of 17<sup>th</sup> July had accepted that the time and dates of the May 2016 were as disclosed in Ms Heard's July 2020 copies of the photographs. Mr Sherborne had said what his client's case regarding the photographs was going to be and what it was not going to be in paragraph 47 of his submissions of 20<sup>th</sup> July 2020 and which I have quoted above. In those circumstances the contribution which expert evidence could make is diminished.**
- vii) In *British Airways* Warren J. had envisaged situations at either end of the possible spectrum. This case, like many others, is somewhere in between, but the principle of proportionality is in play as Warren J. said. In my view it would not be proportionate to grant the Defendants' application.

572. It follows that the expert evidence will play no part in this trial. The material which I have seen for the purpose of considering this application will be disregarded. That includes the proposed expert evidence in relation to incidents 4, 12 and 14.

#### **Conclusions on Incident 14**

573. Incident 14 is one where the conflict in evidence is particularly sharp. I have listed those who saw Ms Heard in the days following the incident and who said that her face had no sign of injury. On the other hand, there is evidence which I find compelling of witnesses who saw Ms Heard with injuries to her face and who took photographs of these. I prefer the evidence of the latter for several reasons:

- i) Some of their evidence is contemporaneous. Thus, for instance, Mr Tillett Wright heard Ms Heard yelp down the phone. He was sufficiently alarmed for her safety to call 911 even though he was in New York at the time. Other parts are near contemporaneous. Thus, the accounts given by Mr Drew and Ms Pennington were drafted on the following day. Mr Tillett Wright also sent his email (which I have quoted above and which broadly accords with his subsequent statement) on 22<sup>nd</sup> May 2016.
- ii) There are the photographs. The metadata is not disputed and shows that one of the photographs of Ms Heard's face was taken before the first pair of police officers arrived. I have quoted above what Mr Sherborne said was the Claimant's position. Since one of the photographs was taken before the arrival of the police it could not have been the product of later manufacture or fakery

# ATTACHMENT 11

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff and Counterclaim-Defendant,

v.

Civil Action No.: CL-2019-0002911

AMBER LAURA HEARD,

Defendant and Counterclaim-Plaintiff.

**Declaration of Julian Ackert**

1. I am a Managing Director at iDiscovery Solutions, Inc. (“iDS”), an expert services and consulting firm that provides independent digital forensics analysis, electronic discovery services, expert testimony, original authoritative studies, and strategic consulting services to the business and legal community.

2. I have over 20 years of experience in consulting and litigation technologies that focus on electronic discovery and digital forensics. I have a Bachelor of Science degree in Computer Science from the University of Virginia. My curriculum vitae is attached here to as Exhibit A, which details my professional experience and all articles and testimony I have completed over the last ten years.

3. Specifically, I have extensive experience creating and implementing



preservation, collection, and production strategies and performing digital forensics and metadata analysis on electronically stored information (“ESI”). I have performed preservation, collection, analysis, and production of ESI in hundreds of matters.

4. This declaration is based on my personal knowledge, years of experience, training, education, and the information provided to date. The opinions provided herein are given to a reasonable degree of professional certainty.

5. My forensic analysis and testimony rate is \$525/hour and iDS is also being reimbursed for reasonable expenses and the cost of other employees working under my supervision. My opinions are not contingent on fees earned by iDS in this matter.

6. When I state “I,” “Myself,” or “iDS” I mean this work was done by me, or by people working at my direction and supervision within iDS.

7. iDS has been retained by Ms. Amber Laura Heard (“Ms. Heard”) through her counsel in this matter to provide digital forensic preservation and analysis services and electronic discovery consulting, search, and production services.

8. I have reviewed Plaintiff’s Motion to Compel Production of Defendant’s Devices,<sup>1</sup> as well as Defendant’s Cross Motion to Compel Production of Plaintiff’s Devices<sup>2</sup> and understand that there are allegations of falsified evidence in this case. I also understand that Plaintiff has proposed a protocol by which Plaintiff’s expert would first forensically image all of Ms. Heard’s devices and data sets, then Plaintiff’s expert would extract certain categories of data (“Requested Material”) from those images, followed by a review for non-relevant and privileged

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<sup>1</sup> Plaintiff John C. Depp, II’s Motion to Compel Defendant Amber Laura Heard’s Production of Her Original Devices and Operating System Drives and Cloud Backups of these Original Devices as Requested in Plaintiff’s Seventh Set of Requests for Production, September 24, 2021.

<sup>2</sup> Defendant and Counterclaim-Plaintiff Amber Laura Heard’s Memorandum Supporting Cross Motion to Compel Mr. Depp’s Production of Forensic Evidence and For Sanctions, October 15, 2021.

material by a court-appointed conciliator.

9. I understand from Plaintiff's proposed order that the list of Requested Material includes text/chat and email communications between Ms. Heard and 38 individuals over an approximate 7 year timeframe, as well as all photographs, deleted photographs, audio/video recordings and deleted audio/video recordings during various time periods over a 3 ½ year timeframe. In my experience, the volume of the Requested Material could be hundreds of thousands, if not millions, of documents. Plaintiff's proposal that one individual, the court appointed conciliator, will review this volume of data for relevance and privilege would require a herculean level of effort.

10. There has already been significant work performed by Defendant's legal team in this case, including forensic imaging of devices and data sets, extraction of data from those devices and data sets, review by Defendant's counsel for responsiveness, and production of data from devices and data sets. Plaintiff's proposed protocol is not focused on the allegations of evidence manipulation, does not specifically identify the documents that allegedly have been manipulated, and does not account for the work that has already been performed.

11. I have worked on dozens of cases where opposing experts request analysis of forensically sound data sets so that they can opine on the allegations of evidence manipulation. In these cases, I have previously implemented a more appropriate approach that is targeted to the specific allegations of evidence manipulation, is less costly and will take less time, as explained below.

12. First, Plaintiff and Defendant experts review an inventory of all devices and data sets forensically imaged to date. These prior preservations are often the best source of evidence for analysis as they are essentially "point in time" preservations as compared to the devices

currently in use.

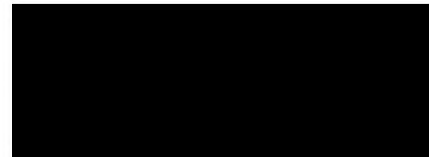
13. Next, based on Plaintiff expert's specific identification of images, videos, and other documents produced that have allegedly been falsified, Defendant's expert extracts data, including all metadata, for those specifically identified images, videos, and/or other documents according to forensically sound extraction protocols that are agreed upon by both experts. It is important to specifically identify and target extractions to manage the cost and effort associated with any responsiveness and privilege review.

14. My proposed approach saves cost and effort as there would be no cost and effort associated with material that is not subject to the allegations of falsification, and there would be a more manageable cost and effort associated with responsiveness and privilege review as the data extractions are focused on the issues related to the allegedly falsified images, videos, and/or documents.

15. I reserve the right to supplement my findings if additional evidence or information is provided to me.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22<sup>nd</sup> day of October, 2021.



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Julian Ackert

# **Exhibit A**



## **JULIAN ACKERT**

**Managing Director**



Mr. Julian Ackert, a Managing Director at iDiscovery Solutions (iDS) in Washington DC, has over 20 years of consulting and project management experience in the technology and litigation industries.

He has extensive experience with forensic data collection, computer forensic analysis, creating and implementing preservation and collection strategies, managing electronic data processing and review endeavors, analyzing complex transactional data systems, and working with large multi-national corporations to establish and develop methodologies and best practices for litigation preparedness. Mr. Ackert has written expert reports and provided testimony on the forensic preservation, acquisition, and analysis of electronic information. Additionally, he has worked on several international projects involving complex data privacy, collection, and review challenges.

Mr. Ackert is a member of The Sedona Conference, Working Group 11 (Data Security and Privacy Library) and Working Group 12 (Trade Secrets). Prior to joining iDS, he was a Principal and New York regional lead at LECG and a Manager at FTI Consulting. Mr. Ackert began his career designing, developing, and implementing Knowledge Management / Content Management applications, government middleware solutions, and E-business applications for Federal Government services at Accenture.

**iDiscovery Solutions, Inc.**

202.249.7865

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[Profile on LinkedIn](#)

[@iDiscoveryInc](#)



## SELECT CONSULTING EXPERIENCE

- Directed a team of consultants on the identification, preservation, collection and production of structured data for an antitrust MDL. Implemented custom preservation and collection protocols and extracted approximately 10 terabytes of structured data from proprietary client database systems for analysis and review. Developed a structured data ESI protocol that governed the parameters of structured data productions.
- Managed a team of consultants on the analysis of 100s of millions of database records for a complex litigation in the commercial real estate industry. Analyzed trends and patterns in the database records that assisted counsel with identifying potentially relevant employees, partner relationships, and timeframes of interest.
- Managed a team of UK and US consultants on a data preservation and email data analysis endeavor. Established an on-site review room in the UK and worked with UK outside counsel to ensure that electronic discovery processes upheld EU data privacy laws.
- Directed a team of computer forensic consultants and contractors on forensic data preservation, backup tape recovery, email, and electronic file culling and search for approximately 100 custodians. Established an onsite triage center at an offshore facility to handle nearly 5 terabytes of data. Authored expert report on the methods, processes, types, and volumes of data pre-served, processed, and delivered for attorney review.
- Led a data analysis engagement consisting of metadata examination on Lotus Notes database documents. Acted as the client's Subject Matter Expert on Lotus Notes databases and authored expert testimony on the electronic discovery methods implemented during the project and subsequent project findings.
- Managed investigative team of computer forensic and complex data analysis consultants through the preservation, acquisition, and analysis of over 5 billion rows of NYSE trade data. Analysis period covered over 5 years of transactional data focusing on the alleged fraudulent trading activity. Additional responsibilities included administration of a SQL database containing key transactional trade data.
- Managed a data acquisition, e-file processing, and document review project in response to an SEC inquiry of over 45 custodians. Engagement required leading a multi-city team of computer forensic professionals through the forensic acquisition, electronic data processing, and document review phase of a project with a condensed project timeline of three weeks.
- Led multi-national electronic discovery preservation and analysis team on an internal audit committee investigation of a global metallurgy company. Engagement required managing computer forensic technicians through data preservation, forensic analysis, and automated culling of both Finnish and English enterprise email, financial data, and business documents related to the investigation.

## EDUCATION

- University of Virginia, Charlottesville, VA



- School of Engineering and Applied Sciences
- B.S. Computer Science, January 1998

## SELECT PUBLICATIONS

- "GDPR and Data Maps: "X" Marks the Spot to Delete", Today's General Counsel, July 2018
- "5 Tips to Help Mitigate Insider Theft", Metropolitan Corporate Counsel, March 2017
- "A Practical Approach to Data Preservation and Collection", Metropolitan Corporate Counsel, May 2015
- "Big Data: The Elephant in The E-Discovery Room", Metropolitan Corporate Counsel, June 2013

## TESTIFYING EXPERIENCE

1. Declaration on computer forensic analysis activities, Sunlight Financial LLC, and Sunlight Financial Holdings, Inc. v. Duncan Hinkle, and Sunstone Credit, Inc., August 2021
2. Declaration on ESI search and production, Gilead Tenofovir Cases, JCCP No. 5043, July 2021
3. Deposition on forensic data analysis activities, Lainhart et. al. and Doyle et. al. v. Louisville/Jefferson County Metro Government, July 2021
4. Expert report on forensic data analysis activities, Lainhart et. al. and Doyle et. al. v. Louisville/Jefferson County Metro Government, June 2021
5. Deposition on computer forensic analysis activities, Havana Docs Corporation v. Carnival Corporation d/b/a Carnival Cruise Line, June 2021
6. Declaration on computer forensic analysis activities, eHealthInsurance Services, Inc. v. Healthpiolt Technologies LLC., May 2021
7. Declaration on computer forensic analysis activities and spoliation issues, Medidata Solutions, Inc. and MDSOL Europe Limited v. Veeva Systems, Inc., April 2021
8. Declaration on computer forensic analysis activities, Havana Docs Corporation v. Carnival Corporation d/b/a Carnival Cruise Line, March 2021
9. Cour Testimony on computer forensic analysis activities, State of Maryland v. Darrian McAfee
10. Expert report on forensic data analysis activities, Kaelin et. al. v. Louisville/Jefferson County Metro Government, January 2021
11. Declaration on computer forensic analysis activities, Sequoia Benefits & Insurance Services DBA Sequoia Consulting Group v. Sageview Advisory Group et. al., January 2021
12. Declaration on computer forensic analysis activities, Doneyda Perez v. DirectTV Group Holdings LLC, et al., December 2020
13. Declaration on ESI search and production protocols, Trust-ED Solutions, LLC v. Gilbert, LLP, No-vember 2020
14. Declaration on computer forensic analysis activities, Smithfield Packaged Meats Sales Corp. v. Dietz & Watson, Inc. and Chris Conrad, November 2020
15. Declaration on ESI review and production effort, Gilead Tenofovir Cases, JCCP No. 5043, August 2020
16. Declaration on collection and production of social media, Adrian Holley, et al. v. Gilead Sciences, Inc., August 2020
17. Declaration on collection and production of social media, Gilead Tenofovir Cases, JCCP No. 5043, July 2020
18. Declaration on computer forensic analysis activities, Doneyda Perez v. DirectTV Group Holdings LLC, et al., July 2020



19. Expert report on forensic data analysis activities, Smithfield Packaged Meats Sales Corp. v. Dietz & Watson, Inc. and Chris Conrad, June 2020
20. Declaration on ESI review and production effort, Adrian Holley, et al. v. Gilead Sciences, Inc., May 2020
21. Declaration on ESI production protocols, Adrian Holley, et al. v. Gilead Sciences, Inc., April 2020
22. Declaration on computer forensic analysis activities, Krista Brill v. Draeger, Inc. and Miguel Angel Armendariz, April 2020
23. Deposition on computer forensic analysis activities, Medidata Solutions, Inc. and MDSOL Europe Limited v. Veeva Systems, Inc., April 2020
24. Trial Testimony on computer forensic analysis activities, Smithfield Packaged Meats Sales Corp. v. Dietz & Watson, Inc. and Chris Conrad, March 2020
25. Declaration on computer forensic analysis activities, Jesus Jiminez v. CRC Property Management West, Inc., March 2020
26. Declaration on computer forensic analysis activities, Denver Cooley v. Solar Turbines Incorporated, February 2020
27. Supplemental expert report on forensic data analysis activities, Medidata Solutions, Inc. and MDSOL Europe Limited v. Veeva Systems, Inc., February 2020
28. Declaration on ESI data types, Anthony Robles, Individually and on Behalf of Other Persons Similarly Situated v. The Coca-Cola Company, Coca-Cola Refreshments USA, Inc., and Does 1-10, February 2020
29. Declaration on computer forensic analysis activities, Smithfield Packaged Meats Sales Corp. v. Dietz & Watson, Inc. and Chris Conrad, January 2020
30. Expert report on forensic data analysis activities, Medidata Solutions, Inc. and MDSOL Europe Limited v. Veeva Systems, Inc., January 2020
31. Declaration on ESI collection and production effort, Kristopher Lawson, Vincent McCleery, and Sean McMurrin, Individually and on Behalf of Other Persons Similarly Situated v. Love's Travel Stops & Country Stores, Inc., December 2019
32. Declaration on ESI review and production effort, Sandra Wolford et. al. v. Bayer Corp. et. al., December 2019
33. Declaration on ESI systems and data recovery options, In the Matter of Certain Lithium Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Processes Thereof, October 2019
34. Trial Testimony on computer forensic analysis activities, Futrend Technology Inc. v. Microhealth LLC, et. al., October 2019
35. Supplemental expert report on forensic data analysis activities, Futrend Technology Inc. v. Microhealth LLC, et. al., October 2019
36. Declaration on collection, search, and disposition process, Strategic Delivery Solutions, LLC v. Stallion Express, LLC, September 2019
37. Expert report on forensic data analysis activities, Futrend Technology Inc. v. Microhealth LLC, et. al., July 2019
38. Declaration on social media e-Discovery, Helen McLaughlin v. Bayer Essure Inc, et. al., May 2019
39. Declaration on ESI collection and search scoping, Sandra Wolford et. al. v. Bayer Corp. et. al., May 2019
40. Declaration on computer forensic analysis activities, Employee Benefit Services of Maryland, Inc. v. Nicholas Mafale, May 2019
41. Declaration on collection activities, IQVIA Inc. et. al. v. Veeva Systems, Inc., May 2019
42. Declaration on ESI collection and search scoping, Sandra Wolford et. al. v. Bayer Corp. et. al., April 2019
43. Declaration on production activities, Synchronisys, Inc. v. DataSync, Inc. et. al., February 2019
44. Declaration on collection and production activities, Catalus Capital USVI, LLC et. al. v. The Service-master Company, LLC, et. al., January 2019
45. Declaration on collection and search protocols, Strategic Delivery Solutions, LLC v. Stallion Express, LLC, December 2018
46. Expert Report on computer forensic analysis activities, Quandra Speights v. The Boeing Company, December 2018





47. Affidavit on computer forensic analysis activities, Futrend Technology Inc. v. Microhealth LLC et. al., October 2018
48. Affidavit on preservation, collection and search protocols, Sarah Lankford Sprecher v. Leroy E. Myers, Jr., September 2018
49. Declaration on computer forensic analysis activities, Yifat Oren et. al, v. Stefanie Cove, et. al., August 2018
50. Trial Testimony on metadata and computer forensic analysis activities, Broadcast Sports International, LLC v. Gil Pascal, et. al., June 2018
51. Declaration on computer forensic analysis activities, Airgas, Inc. v. The Carlyle Group, Carlyle Investment Management, LLC, and Leslie Graff, June 2018
52. Supplemental Declaration on e-Discovery deduplication and production protocols, Helen McLaughlin v. Bayer Essure Inc, et. al., May 2018
53. Declaration on computer forensic analysis activities, Charlotte Pinckney and Kyle Pinckney v. The Pep Boys Manny Moe & Jack O/D/B/A Pep Boys, May 2018
54. Declaration on e-Discovery deduplication and production protocols, Helen McLaughlin v. Bayer Essure Inc, et. al., March 2018
55. Declaration on e-Discovery deduplication and production protocols, Hannah Dorman et. al. v. Bayer, Corp, et. al., February 2018
56. Court Testimony on computer forensic analysis activities, MRP UO Partners, LLC, et. al, v. Raymond Rahbar, Jr. et. al., October 2017 – November 2017
57. Deposition on computer forensic analysis activities, MRP UO Partners, LLC, et. al, v. Raymond Rahbar, Jr. et. al., September 2017
58. Declaration on computer forensic analysis activities, MRP UO Partners, LLC, et. al, v. Raymond Rahbar, Jr. et. al., August 2017
59. Deposition on computer forensic analysis activities, Broadcast Sports International, LLC v. Gil Pascal, et. al., July 2017
60. Declaration on computer forensic analysis activities, Meridian Imaging Solutions, Inc. et. al. v. Omni Business Solutions LLC, et. al., July 2017
61. Declaration on computer forensic analysis activities, Yadkin Bank v. George Mason Mortgage, Inc. et. al, June 2017
62. Declaration on computer forensic analysis activities, Nichole Baibos v. ConnectYourCare LLC, May 2017
63. Expert report on forensic data analysis activities, Broadcast Sports International, LLC v. Gil Pascal, et. al., April 2017
64. Declaration on preservation and collection protocols, MD Helicopters, Inc. v. Aerometals, Inc., April 2017
65. Affidavit on computer forensic analysis activities, Yadkin Bank v. George Mason Mortgage, Inc. et. al, March, 2017
66. Court Testimony on metadata and computer forensic analysis activities, George Mason Mortgage, Inc. v. Caliber Home Loans, Inc., February 2017
67. Deposition on computer forensic analysis and deletion activities, Medidata Solutions, Inc. v. Michael Petrarca and Bioclinica, Inc., November 2016
68. Expert Rebuttal Report on data breach analysis, Employment Background Investigations, Inc. v. Federal Insurance Company, October 2016
69. Expert Report on data breach analysis, Employment Background Investigations, Inc. v. Federal Insurance Company, July 2016
70. Affidavit on computer forensic analysis activities, Compass Systems, Inc. v. Frank D. Deaton, July 2016
71. Affidavit on computer forensic analysis activities, Broadcast Sports International, LLC v. Gil Pascal, et. al., June 2016
72. Affidavit on forensic analysis and data recovery, Felicia M. Barlow Clar et. al, v. Kyle C. Muehlhauser, et. al, May 2016



73. Affidavit on preservation and collection protocols, IN RE: Blue Cross Blue Shield Antitrust Litigation, December 2015
74. Affidavit and Court Testimony on computer forensic analysis activities, Stradtman v. Republic Services, Inc., May 2015
75. Expert report and Deposition on metadata and forensic data analysis activities, Headfirst Baseball LLC, et al., v. Robert Elwood, et al., May 2015
76. Expert report and Deposition on metadata and forensic data analysis activities, Integrated Direct Marketing, LLC v. Drew May and Merkle, Inc., April 2015
77. Expert report on metadata and forensic data analysis activities, George Mason Mortgage, Inc. v. Caliber Home Loans, Inc. et al., April 2015
78. Court Testimony on metadata and computer forensic analysis activities, JK Moving & Storage, Inc. v. Daniel Pesta, et al, August 2014
79. Declaration on forensic examination of document metadata, US District Court (New Jersey) Grand Jury investigation of a drug wholesale company, February 2014
80. Declaration on collection and analysis of document metadata, Everett v. Everett, February 2014
81. Affidavit and Expert Report on forensic data analysis activities, Symphony Health Solutions v. David Gascoigne, January 2014
82. Court Testimony on computer forensic analysis activities, Taylor v. Republic Services Inc, et al, January 2013
83. Affidavit on preservation and collection protocols, King Industries, Inc. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the US and Canada, December 2012
84. Deposition on issues associated with alleged metadata spoliation, Dyncorp International v. Jane T. Flowers, et al, July 2012
85. Trial Testimony on metadata, forensic analysis, and e-Discovery best practices, City Pharmacy of Elkton v. Northside Pharmacy, April 2012
86. Declaration on forensic collection of social media content, Peters v. Veez Grille, January 2012
87. Affidavit and Expert Report on metadata, forensic data analysis, and e-Discovery best practices, City Pharmacy of Elkton v. Northside Pharmacy, May 2011

## **SELECT SPEAKING ENGAGEMENTS AND CONFERENCES**

1. Sedona Conference Working Group 11 – “Artificial Intelligence (AI) model transparency: Core principles in promoting transparency of AI and algorithms”, October 2019
2. Sedona Conference Working Group 11 – “Data Security and Privacy Legal issues in Artificial Intelligence”, March 2018
3. Webinar, Metropolitan Corporate Counsel – “Data Breach Response: Orchestrating Legal & Technical Resources to Contain & Mitigate”, March 2017
4. Sedona Conference Working Group 11 – “Privacy by Design”, St. Petersburg, January 2017
5. CLE, ZwillGen, Cloud Computing and Mobile Devices, November 2016
6. Sedona Conference Working Group 11 – “Privacy by Design”, Seattle, August 2016
7. The Exchange (Today’s General Counsel Institute) – “Strategic Use of Objections and Responses Under New Rule 34”, Chicago, June 2016
8. CLE Panel, “Engaging and Managing the Presentation and Preparation of Expert Witnesses in Bankruptcy and Federal Court”, May 2016
9. CLE Webinar, The Knowledge Group – “Mobile Data and BYOD: Mitigating eDiscovery and Data Breach Risks”, April 2016
10. CLE Webinar, The Knowledge Group – “Mobile Privacy and Security Issues in 2015: Practical Guidance to Mitigate Data Breaches”, August 2015
11. The Exchange (Today’s General Counsel Institute) - “The Importance of Project and Process Management”, Chicago, June 2015



12. Masters Conference - "Cloud Computing and Mobile Devices – How to Be Prepared for Litigation", Philadelphia, July 2014
13. The Exchange (Today's General Counsel Institute) - "The 'eWorkplace' and its Impact on eDiscovery", New York, July 2014
14. Masters Conference - "Discussion and Debate Over Potential Changes to the Federal Rules of Civil Procedure", Chicago, May 2014
15. Masters Conference, "Predictive Analytics and Its Effect on Big Data", Chicago, May 2014
16. Chicago Association of Litigation Support Managers (CALSM-posium), "Forensic Collection Trends Now and into the Near Future", October 2013
17. CLE, Tydings & Rosenberg LLP, "E-Discovery Primer", October 2013
18. Masters Conference, "Cloud Computing and Mobile Device Usage: Challenges They Bring to Your Litigation", July 2013
19. CLE, Williams & Connolly LLP, "Mobile Forensics for Lawyers", January 2013
20. Chicago Association of Litigation Support Managers (CALSM-posium), "How to Prepare for E-Discovery Supplementation Obligations", October 2012
21. Paraben Forensic Innovations Conference, "Analyzing Structured Data", November 2010

## **PROFESSIONAL AFFILIATIONS**

- The Sedona Conference, Working Group 11 (Data Security and Privacy)
- The Sedona Conference, Working Group 12 (Trade Secrets)



# ATTACHMENT 12

**VIRGINIA :**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA**

JOHN C. DEPP, II

*Plaintiff and Counterclaim  
Defendant,*

v.

AMBER LAURA HEARD,

*Defendant and  
Counterclaim Plaintiff.*

Civil Action No.: CL-2019-0002911

**PLAINTIFF AND COUNTERCLAIM DEFENDANT JOHN C. DEPP, II'S RESPONSES  
AND OBJECTIONS TO DEFENDANT AND COUNTERCLAIM PLAINTIFF  
AMBER LAURA HEARD'S THIRTEENTH REQUEST FOR PRODUCTION**

Pursuant to Rule 4:9 of the Rules of the Supreme Court of Virginia, Plaintiff and Counterclaim Defendant John C. Depp, II ("Plaintiff" and/or "Mr. Depp"), by and through his undersigned counsel, hereby responds and objects to Defendant and Counterclaim Plaintiff Amber Laura Heard's ("Defendant" and/or "Ms. Heard") Thirteenth Set of Requests for Production of Documents (each, a "Request" and collectively, the "Requests"), dated August 3, 2021 and served in the above captioned action ("Action") as follows:

**GENERAL OBJECTIONS**

1. These General Objections are incorporated into each specific response to the numbered Requests below as if fully repeated therein and are intended, and shall be deemed, to be in addition to any specific objection included in any response below. The assertion of the same, similar, or additional objections or partial responses to the individual Requests does not

terms “devices and data” are vague and ambiguous. Plaintiff further objects to this request on the grounds that it is lacking in reasonable particularity.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff will produce and/or has already produced all communications between Plaintiff and Joshua Drew from January 1, 2013 to the present relating in any manner to Ms. Heard, or any of the allegations or defenses in this Action.

7. Please make the following devices and electronically stored information, identified in your Response to Defendant Amber Laura Heard' s First Set of Interrogatories, available for inspection and copying at the law office of Charlson Bredehoft Cohen & Brown, P.C. no later than August 24, 2021:
  - a. iPhone
  - b. iPad
  - c. MacBook Pro
  - d. iCloud account
  - e. devices and data belonging to Stephen Deuters collected in May 2017 (iPad and iPhone) and
  - f. devices and data belonging to Nathan Holmes collected in March 2018 (iPhone)
  - g. Any other devices from which any recordings, photos or other documents of any nature have been produced by you or anyone within your possession, custody or control.

**RESPONSE:**

Plaintiff repeats and incorporates by this reference the General Objections and Objections to Definitions and Instruction above, as though set forth in full. Plaintiff further objects to this Request on the grounds that it **seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this Request as harassing because it seeks information unrelated to the subject matter of this case.**

Plaintiff further objects to this Request on the grounds that it seeks **confidential, proprietary, and private personal and/or business information of Plaintiff and/or third parties to this litigation, which is not subject to discovery in this action** Plaintiff further objects to this Request to the extent that it seeks documents protected by the **attorney-client privilege, work product doctrine, and/or any other applicable privilege, immunity, or protection.** Plaintiff further objects to this request on the grounds that the terms “devices and data” are vague and ambiguous. Plaintiff further objects to this request on the grounds that it is **lacking in reasonable particularity,**

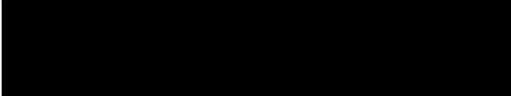
**Plaintiff further objects to this Request on the grounds that it is beyond the scope of discovery** as defined in Va. Sup. Ct. R. 4:1(b)(1) and **is beyond the scope of a permissible Request for Production pursuant to Va. Sup. Ct. R. 4:9.** A request to access, extract, inspect, and/or test Plaintiff’s devices **raises significant issues of confidentiality and privacy, is subject to the balancing required by Va. Sup. Ct. R. 4-1(b)(1), and requires a heightened showing of relevance and discoverability that Defendant has not demonstrated in this case. Such a request does not create a routine right of direct access to a party’s electronic information and devices, as Courts guard against undue intrusiveness, undue burden, and significant overbreadth that results from the requested type of access, extraction, inspection, and/or testing.** For all of these reasons, Plaintiff objects to this Request as overly broad, unduly burdensome, harassing, and seeking information not reasonably calculated to lead to the discovery of admissible evidence regarding the claims and defenses in this case, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the discovery in resolving the issues at stake in the litigation. Defendant has not made the requisite showing under the Rules.

**Plaintiff will not produce documents in response to this request as currently posed.**

**Plaintiff is willing to meet and confer to discuss the scope of this request.**

Dated: August 24, 2021

Respectfully submitted,

  
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*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

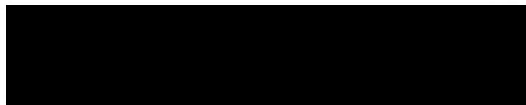


**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of August 2021, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

J. Benjamin Rottenborn (VSB No. 84796)  
Joshua R. Treece (VSB No. 79149)  
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Benjamin G. Chew