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Transcript of Hearing

Date: May 20, 2022

Case: Depp, II -v- Heard

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Transcript of Hearing
Conducted on May 20, 2022

1 (1 to 4)

1	1	1	3
1	VIRGINIA:	1	A P P E A R A N C E S
2	IN THE CIRCUIT COURT OF FAIRFAX COUNTY	2	ON BEHALF OF THE PLAINTIFF AND COUNTERCLAIM
3	-----x	3	DEFENDANT:
4	JOHN C. DEPP, II, :	4	BENJAMIN G. CHEW, ESQUIRE
5	Plaintiff and :	5	ANDREW C. CRAWFORD, ESQUIRE
6	Counterclaim Defendant, :	6	BROWN RUDNICK LLP
7	v. : Civil Action No.	7	601 Thirteenth Street, Northwest
8	AMBER LAURA HEARD, : CL-2019-0002911	8	Suite 600
9	Defendant and :	9	Washington, D.C. 20005
10	Counterclaim Plaintiff. :	10	202.536.1700
11	-----x	11	
12	HEARING	12	SAMUEL A. MONIZ, ESQUIRE
13	BEFORE THE HONORABLE PENNEY AZCARATE, and jury.	13	CAMILLE M. VASQUEZ, ESQUIRE
14	Fairfax, Virginia	14	BROWN RUDNICK LLP
15	Friday, May 20, 2022	15	2211 Michelson Drive
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19		19	
20	Job No.: 443904	20	
21	Pages: 1 - 156	21	
22	Reported by: Carol A. Lowe, RPR	22	
2	2	4	4
1	Held at:	1	A P P E A R A N C E S C O N T I N U E D
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14		14	ON BEHALF OF THE DEFENDANT AND COUNTERCLAIM
15		15	PLAINTIFF:
16		16	ADAM S. NADELHAFT, ESQUIRE
17		17	CHARLSON, BREDEHOFT, COHEN, BROWN &
18		18	NADELHAFT, P.C.
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2 (5 to 8)

<p>5</p> <p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2 J. BENJAMIN ROTTENBORN, ESQUIRE</p> <p>3 WOODS ROGERS PLC</p> <p>4 10 South Jefferson Street</p> <p>5 Suite 1400</p> <p>6 Roanoke, VA 24038</p> <p>7 540.983.7707</p> <p>8</p> <p>9 ELAINE D. MCCAFFERTY, ESQUIRE</p> <p>10 WOODS ROGERS PLC</p> <p>11 123 East Main Street</p> <p>12 5th Floor</p> <p>13 Charlottesville, VA 22902</p> <p>14 434.220.5685</p> <p>15</p> <p>16 PIETRO F. SANITATE, ESQUIRE</p> <p>17 WOODS ROGERS PLC</p> <p>18 Riverfront Plaza, West Tower</p> <p>19 901 East Byrd Street</p> <p>20 Suite 1550</p> <p>21 Richmond, VA 23219</p> <p>22 804.343.5020</p>	<p>7</p> <p>1 to the side.</p> <p>2 And then also the defendant has</p> <p>3 withdrawn UU, VV, WW, XX, YY, ZZ, AAA and BBB.</p> <p>4 All right. So those have been withdrawn. That</p> <p>5 leaves us with the stacks we're going to be</p> <p>6 working with to begin with. Okay? All right.</p> <p>7 So we'll look to the first instructions</p> <p>8 we have. Plaintiff's 1 and 2 are the first</p> <p>9 instructions which are the liability issues. And</p> <p>10 that correlates with Defendant's A, B -- A and B;</p> <p>11 correct? All right. Everybody is with me so far?</p> <p>12 MR. ROTTENBORN: That's right, Your</p> <p>13 Honor.</p> <p>14 THE COURT: Okay. All right. So we</p> <p>15 have those two jury instructions that we oppose.</p> <p>16 And I've read your objections. Since I think they</p> <p>17 need to be figured out a little bit, we can do --</p> <p>18 I think -- I understand what you're trying to do</p> <p>19 with these instructions.</p> <p>20 I think it's better if we try to follow</p> <p>21 Instruction 37.000 as much as possible because</p> <p>22 it's a model instruction. And this is not the</p>
<p>6</p> <p>1 P R O C E E D I N G S</p> <p>2 (The court reporter was sworn.)</p> <p>3 THE COURT: All right. Are we ready to</p> <p>4 do jury instructions?</p> <p>5 MR. MONIZ: Yes, Your Honor.</p> <p>6 THE COURT: All right. Let's go ahead.</p> <p>7 What I'm going to do is I'm going to set aside the</p> <p>8 ones that are agreed upon or at least not --</p> <p>9 there's no objection to. Let's put it that way.</p> <p>10 So, just for the record, let me go through those.</p> <p>11 So the ones that the defendant does not</p> <p>12 object to the plaintiff's jury instructions are</p> <p>13 Plaintiff's Number 3, Number 5, Number 6, Number</p> <p>14 7, Number 8, Number 9, Number 10, Number 12,</p> <p>15 Number 13, Number 18 and Number 30.</p> <p>16 So I'm just going to put those to the</p> <p>17 side for a moment, because we have multiples and</p> <p>18 there will be no objection.</p> <p>19 Now, then for -- on the defendant's</p> <p>20 stack the plaintiff has no objection to</p> <p>21 Defendant's I, Defendant's J, L, M, N, O, P, Q, R,</p> <p>22 S, T, U, V, X, BB, HH and LL. So I'll put those</p>	<p>8</p> <p>1 finding instruction. This is just an instruction</p> <p>2 to tell the jury, okay, this is what the case is</p> <p>3 and this is what you're going to be looking at.</p> <p>4 So I don't want to get too much in the</p> <p>5 weeds on this instruction. They have a finding</p> <p>6 instruction which is what they're going to be</p> <p>7 focusing on to decide liability. So on this one</p> <p>8 we should just be looking at the thirty-seven</p> <p>9 hundred; just basically going from that matter.</p> <p>10 So I'd like to follow the model as much as</p> <p>11 possible.</p> <p>12 And Mr. Depp's Jury Number 1, it -- I do</p> <p>13 agree "adopted" is not part of the evidence and</p> <p>14 shouldn't be a part of it. It should just be -- I</p> <p>15 understand you want to have more than number one</p> <p>16 on the model instruction, did the defendant make</p> <p>17 the following statement. You want to make it, did</p> <p>18 the defendant make or publish any of the following</p> <p>19 statements.</p> <p>20 Is there any objection to that, getting</p> <p>21 rid of the word "adopt"? That was your objection;</p> <p>22 was the "adopt."</p>

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3 (9 to 12)

<p style="text-align: right;">9</p> <p>1 MR. MONIZ: I think we're fine dropping 2 "adopt," Your Honor. 3 THE COURT: Okay. So -- so for the 4 first instruction everything in the first part is 5 fine. Just getting rid of the word or "adopt" and 6 just make it made or published is fine. 7 And when -- there was also an objection 8 to "suggest." I -- 9 MR. ROTTENBORN: That's right. 10 THE COURT: So you don't have a problem 11 with it saying, do any of Ms. Heard's statements 12 imply or insinuate anything about Mr. Depp as long 13 as we take out the "suggest" word? Okay. 14 MR. ROTTENBORN: That's right, Your 15 Honor. 16 THE COURT: So any objection now? We'll 17 just take out the "suggest" word. 18 MR. MONIZ: I -- yeah, I think that's 19 fine, Your Honor. 20 THE COURT: Okay. All right. Then so 21 number two is fine. Number three. Number four. 22 I don't think there's any issue with that. I</p>	<p style="text-align: right;">11</p> <p>1 finding ones are for. And each finding one has to 2 be separate. That's the law in Virginia. You 3 have to have the -- the statements separate. So I 4 can't have them together like you have them. 5 MR. ROTTENBORN: Okay. As long as -- 6 THE COURT: So when we get to the 7 finding we're going to do each of them separate. 8 MR. ROTTENBORN: Got it. Okay. 9 THE COURT: Okay? Again, this is just 10 to give them a brief overview -- 11 MR. ROTTENBORN: I'm sorry. 12 THE COURT: -- of what -- 13 MR. ROTTENBORN: Yeah. 14 THE COURT: -- they're doing, if that's 15 okay. 16 MR. ROTTENBORN: Understood. 17 THE COURT: Okay. 18 MR. ROTTENBORN: So I -- I think with 19 that the only other -- the only other thing that 20 we'd say is I think -- our position is that his 21 claim is not a defamation per se claim because the 22 implication of potential domestic abuse, which is</p>
<p style="text-align: right;">10</p> <p>1 think number five -- are the implications -- again 2 take out "suggestions" -- or insinuations. So 3 we'll take out "suggestions" there. Six, take out 4 "suggestions." Seven, take out "suggested." 5 And then is there any objection then to 6 Number 1 if we do that? 7 MR. ROTTENBORN: So two -- two small 8 objections, Your Honor, or two -- two objections, 9 Your Honor, I think in light of the changes that 10 you've made. 11 THE COURT: Okay. 12 MR. ROTTENBORN: One, we think that 13 there -- there may need to be some clarifying 14 language if -- we understand the desire to keep 15 the instructions as -- as trimmed down as possible 16 and have alternative -- 17 THE COURT: Right. 18 MR. ROTTENBORN: -- statements. But I 19 think that there needs to be some statement to the 20 jury that for each of the statements they need to 21 find each of -- 22 THE COURT: Well, that's what the</p>	<p style="text-align: right;">12</p> <p>1 nowhere on the face of the article, is not 2 defamation per se in the same way that our 3 counterclaim which is saying essentially 4 obstruction of justice, falsifying police reports, 5 all sorts of things that are clear crimes, that's 6 defamation per se. We don't believe that -- 7 THE COURT: But -- 8 MR. ROTTENBORN: -- their defamatory 9 implication is defamation per se. So we think it 10 should be 37.010. 11 THE COURT: But just in the state of the 12 case, I do believe Judge White already found 13 defamation per se for domestic assault. Correct? 14 That was in his... 15 MR. ROTTENBORN: Okay. 16 THE COURT: I -- I understand that. And 17 when I looked through everything since -- you 18 know, I don't like to go backwards. But I do 19 believe -- am I right or wrong? 20 MR. CHEW: That's correct, Your Honor. 21 I was -- I argued that and -- yes. 22 MR. ROTTENBORN: Does Your Honor -- and</p>

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4 (13 to 16)

<p style="text-align: right;">13</p> <p>1 I'm sorry for -- for not having this at the top of 2 my head. Was it in a -- was it in a dispositive 3 order, Your Honor? 4 THE COURT: Yeah. It was -- it was one 5 of -- 6 MR. ROTTENBORN: My understanding was 7 that he had found that it could potentially be. 8 MR. CHEW: I think it was in the opinion 9 letter, Your Honor. I -- we -- 10 THE COURT: Yeah. He found it as -- 11 MR. ROTTENBORN: Okay. 12 THE COURT: -- defamation -- 13 MR. ROTTENBORN: Okay. 14 THE COURT: -- per se -- 15 MR. ROTTENBORN: All right. 16 THE COURT: -- in his opinion letter. 17 MR. ROTTENBORN: We -- we have that 18 here. Yeah. 19 THE COURT: Okay. 20 MR. ROTTENBORN: Okay. 21 THE COURT: So I just -- 22 MR. ROTTENBORN: Okay.</p>	<p style="text-align: right;">15</p> <p>1 THE COURT: -- 80 different 2 instructions. Okay. All right. Withdraw stack 3 and give. 4 So the ones that we do end up -- I'll go 5 over them in the end, but the ones that we end up 6 instructing I'm going to need clean copies without 7 any cites on them as well. Okay? 8 MR. ROTTENBORN: Yeah. 9 THE COURT: Okay. All right. So we're 10 giving that one. All right. And now for -- that 11 leaves us with the second one which is Ms. Heard's 12 claims against Mr. Depp. 13 And when I look at that I -- there's -- 14 as far as Plaintiff's Number 2, there are items in 15 here that I don't believe for this particular 16 instruction should be in. I think the cleaner one 17 is Instruction B by the defendant. 18 But does any -- do you have any 19 objection to the Defendant's B being the 20 liability? 21 MR. MONIZ: Just one minute. Sorry, 22 Your Honor.</p>
<p style="text-align: right;">14</p> <p>1 THE COURT: Because of that -- and 2 that's the -- 3 MR. ROTTENBORN: Just to make the 4 record -- 5 THE COURT: -- the rule of the case. 6 MR. ROTTENBORN: -- we -- we don't 7 believe that that -- we disagree with that ruling, 8 but we understand. 9 THE COURT: That's where we are. 10 MR. ROTTENBORN: That's where we are. 11 THE COURT: Okay. All right. So as far 12 as Instruction 1 then with those corrections and 13 deletions, we'll give -- we'll give 1. Based on 14 that I won't give Instruction A of defendant 15 because that's the liability issue also. Okay? 16 MR. ROTTENBORN: Okay. 17 THE COURT: Understood? 18 MR. ROTTENBORN: Yeah. 19 THE COURT: Okay. So I'm going to try 20 to make clean stacks up here, because I will 21 forget as we go through -- 22 MR. ROTTENBORN: What's in them.</p>	<p style="text-align: right;">16</p> <p>1 THE COURT: Sure. And I'll just give 2 you an example. Number six in Number 2, employee 3 or independent contractor. We'll get into that 4 later, but that's not going to be in there. 5 Also, are the statements pure 6 expressions of opinion, again, that's already been 7 decided. So none of that gets in there. So 8 that's why I think B is a cleaner... 9 MR. MONIZ: I think -- I think we're 10 okay with -- I mean, I think B is basically a 11 mirror image of what we're ending up with on -- 12 THE COURT: Okay. 13 MR. MONIZ: -- 1. So I think that's 14 okay. 15 THE COURT: All right. So we'll give B. 16 And we'll withdraw then 2. 17 MR. ROTTENBORN: Thank you, Your Honor. 18 THE COURT: Okay. All right. For -- 19 Plaintiff's 3 was -- there was no objection. So 20 we'll move to Plaintiff's 4, expert witnesses. 21 And I think this mirrors -- well, the -- 22 the defendant has -- if you pull up their</p>

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5 (17 to 20)

<p>17</p> <p>1 Instructions T, U and V, those discuss expert 2 witnesses as well. So let's look at those 3 together. And I think there was no objection to 4 T, U and V. Correct? The plaintiffs didn't 5 object to T, U and V. 6 MR. CRAWFORD: I believe that's correct, 7 Your Honor. 8 THE COURT: All right. So based on that 9 we have T, U and V all about expert witnesses, can 10 you withdraw this one? 11 MR. CRAWFORD: We can withdraw 4, Your 12 Honor. 13 THE COURT: Perfect. So we'll withdraw 14 4. And we will use the T, U and V. 15 Then the next one that wasn't objected 16 to is Number 11 on the plaintiff's which is the 17 Allen charge. That would only be given if the -- 18 if the jury is hung or something. So we'll put 19 that to the side or -- 20 MR. MONIZ: Yes, Your Honor. 21 THE COURT: -- withdraw it for now. 22 Okay?</p>	<p>19</p> <p>1 well start talking about this now because this -- 2 and the finding instruction talks about the 3 statutory immunity. All right. You're going to 4 have to walk a path with me here. 5 MR. MONIZ: Okay. 6 THE COURT: Okay? 7 MR. MONIZ: Okay. 8 THE COURT: Because when we're going 9 through these jury instructions it's becoming 10 quite clear that there's some things we need to 11 talk about. All right. 12 So 8.01-223.2 is immunity of persons for 13 statements made at public hearings or communicated 14 to a third party. Okay. We've already had 15 pretrial motions that you have the anti-SLAPP 16 defense. 17 Now, when you get to the bottom of 18 this -- because I know in here you say that -- 19 evidence that Ms. Heard has lost her statutory 20 immunity. She actually doesn't have statutory 21 immunity unless -- because it says in the last 22 sentence of Subsection A, the immunity provided by</p>
<p>18</p> <p>1 MR. MONIZ: All right. 2 THE COURT: And, actually, I have a 3 federal Allen charge that I think is a little 4 better than this if we -- hopefully we won't have 5 to get to it. 6 MR. MONIZ: Hopefully not, Your Honor. 7 THE COURT: But that's -- that I will 8 withdraw for the moment. All right. 9 So that leaves us with Number 14 which I 10 believe could be -- is -- defendant has C, D and E 11 as their finding instructions. And, again, the 12 reason that Number 14 can't be given is because 13 you have all of the statements together. 14 MR. MONIZ: Right. 15 THE COURT: So I can't -- 16 MR. MONIZ: We can -- we can split that 17 apart. 18 THE COURT: Well, the defendant already 19 has. So why don't we just look at theirs. 20 MR. MONIZ: Okay. 21 THE COURT: Okay? All right. So let's 22 look at Defendant's C. All right. I might as</p>	<p>20</p> <p>1 this section shall not apply -- so she doesn't 2 have it -- to any statement made with -- and then 3 they give the definition of actual malice -- 4 actual or constructive knowledge that they are 5 false or with reckless disregard for whether they 6 are false; which word for word is the definition 7 of actual malice. 8 So here's -- here's the path I'm 9 walking. Okay? 10 MR. ROTTENBORN: Okay. 11 THE COURT: So the -- if she has 12 immunity, she -- she does not have immunity if 13 there's actual malice. In this particular case 14 it's very unique because they're public figures. 15 The only way you find liability is with actual 16 malice. 17 So if the jury finds that there is 18 defamation in this case and actual malice, then 19 there is no immunity. And so if there's -- 20 there's no way she can be -- if they don't find 21 actual malice, there is no liability. So there's 22 no defense. So I -- I don't know how this comes</p>

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6 (21 to 24)

<p>21</p> <p>1 into play.</p> <p>2 MR. ROTTENBORN: Okay.</p> <p>3 MS. MCCAFFERTY: The -- the statute is</p> <p>4 phrased differently. Chief Judge White when he</p> <p>5 was providing -- presiding held that the</p> <p>6 statements were matters of public concern so that</p> <p>7 the first prong was satisfied and immunity</p> <p>8 attached.</p> <p>9 And we would view the statute as</p> <p>10 requiring an instruction on whether immunity was</p> <p>11 lost because of actual malice.</p> <p>12 THE COURT: It doesn't attach. This</p> <p>13 statute doesn't say that. And he ruled that it</p> <p>14 was a matter of public concern. And I did too.</p> <p>15 Okay.</p> <p>16 MR. ROTTENBORN: Okay.</p> <p>17 THE COURT: But I'm not saying that</p> <p>18 immunity attaches, because that's not what -- the</p> <p>19 statute says it cannot attach if it's actual</p> <p>20 malice. Okay? The immunity provided by this</p> <p>21 section shall not apply to any statements. That</p> <p>22 doesn't say that you lose your immunity. It says</p>	<p>23</p> <p>1 anti-SLAPP statute.</p> <p>2 Then -- then I would have to go back and</p> <p>3 show that it's actual malice at that point. And</p> <p>4 he might be able to get his defense in, but in</p> <p>5 this particular case since we have to show actual</p> <p>6 malice --</p> <p>7 MR. ROTTENBORN: Understood, Your Honor.</p> <p>8 And I'm just looking at the -- is the -- is the</p> <p>9 standard -- I know it's very similar. I'm just</p> <p>10 seeing if the standard for immunity is in any way</p> <p>11 materially different from the standard for actual</p> <p>12 malice, because the language is slightly different</p> <p>13 which is sort of weird; because I agree with you</p> <p>14 that it's almost the same.</p> <p>15 MS. MCCAFFERTY: Actual malice doesn't</p> <p>16 have the phrase "constructive knowledge." So it</p> <p>17 could potentially be different. And we would</p> <p>18 maintain it is.</p> <p>19 THE COURT: But wouldn't you think that</p> <p>20 would be a lower standard than actual malice?</p> <p>21 MR. MONIZ: Yes.</p> <p>22 MS. MCCAFFERTY: Well, it --</p>
<p>22</p> <p>1 it shall not apply if the statements are actual</p> <p>2 malice.</p> <p>3 MR. ROTTENBORN: Okay.</p> <p>4 THE COURT: So it's not something that</p> <p>5 she's lost. And also I just don't know how --</p> <p>6 it's almost a moot point in this case at this</p> <p>7 point because -- since you have to find actual</p> <p>8 malice.</p> <p>9 There's just no way -- I mean, I can</p> <p>10 give an instruction about what statutory immunity</p> <p>11 is. But if they find actual malice, there is no</p> <p>12 immunity. And if they don't find actual malice,</p> <p>13 there's no liability in this particular case.</p> <p>14 I mean, it would be different if it was</p> <p>15 just a reckless disregard; if somebody -- if I --</p> <p>16 if I sued Samy -- I'm not going to sue you. But</p> <p>17 if I sued Samy --</p> <p>18 MR. ROTTENBORN: You never know.</p> <p>19 THE COURT: -- and he -- he was giving</p> <p>20 the defense, I would only have to show a reckless</p> <p>21 disregard. I wouldn't have to show actual malice</p> <p>22 in that matter. And his defense is this</p>	<p>24</p> <p>1 MR. ROTTENBORN: Reckless disregard.</p> <p>2 MS. MCCAFFERTY: So this looks like</p> <p>3 actual -- it could be actual malice or</p> <p>4 constructive knowledge.</p> <p>5 THE COURT: Right. But if it's</p> <p>6 constructive knowledge, that's less than actual</p> <p>7 malice.</p> <p>8 MR. ROTTENBORN: I understand your</p> <p>9 position, Your Honor. And it's -- I agree it's --</p> <p>10 it's materially close enough that that's -- that's</p> <p>11 fine. And I agree. If the jury finds actual</p> <p>12 malice, then immunity would be lost.</p> <p>13 THE COURT: Or never attached.</p> <p>14 MR. ROTTENBORN: Never -- never</p> <p>15 attached.</p> <p>16 THE COURT: So that just -- so now we</p> <p>17 can go back to the jury instructions, because I</p> <p>18 don't know how you --</p> <p>19 MR. ROTTENBORN: Right. So if we -- if</p> <p>20 we go to Instruction C, then I think if we just</p> <p>21 get rid of -- of paragraph 11 --</p> <p>22 THE COURT: Okay.</p>

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7 (25 to 28)

<p>25</p> <p>1 MR. ROTTENBORN: -- would that -- I</p> <p>2 think that would do it.</p> <p>3 THE COURT: I think that satisfies it.</p> <p>4 Correct.</p> <p>5 MR. ROTTENBORN: Okay.</p> <p>6 THE COURT: Any objection to that then?</p> <p>7 MR. MONIZ: A couple of additional</p> <p>8 objections, Your Honor. First of all, nine,</p> <p>9 paragraph nine, the -- the requirement that</p> <p>10 Mr. Depp sustained actual damage, the court has</p> <p>11 found that this is defamation per se --</p> <p>12 THE COURT: Right.</p> <p>13 MR. MONIZ: -- so that nine should come</p> <p>14 out as well.</p> <p>15 THE COURT: All right.</p> <p>16 MR. MONIZ: In -- in paragraph one it</p> <p>17 says, Ms. Heard made the following statement.</p> <p>18 Consistent with Your Honor's prior ruling, I think</p> <p>19 that should say made or published.</p> <p>20 THE COURT: Okay. And that's -- made or</p> <p>21 published.</p> <p>22 MR. ROTTENBORN: That's fine, Your</p>	<p>27</p> <p>1 MR. MONIZ: And just a couple more</p> <p>2 points, Your Honor.</p> <p>3 THE COURT: Hold on. Yeah. I think we</p> <p>4 get nine out as well as -- do you agree,</p> <p>5 Mr. Rottenborn?</p> <p>6 MR. ROTTENBORN: I agree.</p> <p>7 THE COURT: Okay.</p> <p>8 MR. ROTTENBORN: And we would just</p> <p>9 renumber 10 as number nine.</p> <p>10 THE COURT: Number 10 would be number</p> <p>11 nine. Okay. Yes, sir. What else?</p> <p>12 MR. MONIZ: Oh, I'm sorry. So three</p> <p>13 and -- three, four and five are a little bit</p> <p>14 problematic because it says -- three is the</p> <p>15 statement is false. Four is the statement has a</p> <p>16 defamatory implication.</p> <p>17 The issue is whether the defamatory</p> <p>18 implication is false not whether the statement</p> <p>19 itself is false. A literally true statement with</p> <p>20 a false defamatory implication can still sustain</p> <p>21 a -- a claim for defamation. So that language I</p> <p>22 think is a little bit problematic for us.</p>
<p>26</p> <p>1 Honor.</p> <p>2 THE COURT: All right. Made or</p> <p>3 published. And then did you hear him talk about</p> <p>4 number nine about the actual damages?</p> <p>5 MR. ROTTENBORN: I -- I didn't. I'm</p> <p>6 sorry. Can you --</p> <p>7 THE COURT: Since we -- since Judge</p> <p>8 White had found that it was per se.</p> <p>9 MR. ROTTENBORN: Yeah. I think as long</p> <p>10 as both -- it's -- it's the same for both, then</p> <p>11 that's fine.</p> <p>12 THE COURT: Okay. So --</p> <p>13 MR. MONIZ: Just a couple -- just a</p> <p>14 couple more points.</p> <p>15 THE COURT: Sure. Well --</p> <p>16 MR. ROTTENBORN: Just to be clear, would</p> <p>17 we get rid of --</p> <p>18 THE COURT: Well, we'll just --</p> <p>19 MR. ROTTENBORN: -- just strike through</p> <p>20 number --</p> <p>21 THE COURT: Yeah, I think so. Let me</p> <p>22 just find the finding instruction to make sure.</p>	<p>28</p> <p>1 THE COURT: I mean, if we look at the</p> <p>2 finding instruction, 37.090, defendant made the</p> <p>3 following statement, which we changed to made or</p> <p>4 published the following statement, and you put the</p> <p>5 words, it was heard or seen by someone other than</p> <p>6 plaintiff, it was about the plaintiff and it was</p> <p>7 false.</p> <p>8 MR. MONIZ: Right. All -- all I'm</p> <p>9 saying, Your Honor, is I -- I do think that since</p> <p>10 this is defamation by implication it's a little</p> <p>11 bit different because the question is whether the</p> <p>12 defamatory implication is false, not whether the</p> <p>13 statement itself is false. I mean, a true</p> <p>14 statement that carries a defamatory implication --</p> <p>15 THE COURT: Well, the -- the defamatory</p> <p>16 implication you're getting in this is that it's</p> <p>17 about Mr. Depp.</p> <p>18 MR. MONIZ: Right.</p> <p>19 THE COURT: That's the only implication.</p> <p>20 MR. MONIZ: Yeah. That's what we're</p> <p>21 talking about, the -- the defamatory implication</p> <p>22 about Mr. Depp. So I -- I just think it might be</p>

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<p>29</p> <p>1 a little more helpful for the jury to clarify --</p> <p>2 THE COURT: Well, you still -- they</p> <p>3 still have to show that the statement is false,</p> <p>4 though.</p> <p>5 MR. ROTTENBORN: Correct.</p> <p>6 MR. MONIZ: Right. The statement about</p> <p>7 Mr. Depp is false.</p> <p>8 THE COURT: Right. The statement is</p> <p>9 false. I mean, if you want to have in number</p> <p>10 four, the statement has a defamatory</p> <p>11 implication --</p> <p>12 MR. MONIZ: About Mr. --</p> <p>13 THE COURT: -- to -- to Mr. Depp or</p> <p>14 towards Mr. Depp...</p> <p>15 MR. ROTTENBORN: I -- I don't think it's</p> <p>16 a defamatory -- it's up to the jury. It's up to</p> <p>17 them to argue what the defamatory implication is.</p> <p>18 It's up to the jury to decide if there is one.</p> <p>19 THE COURT: Well, I understand. That's</p> <p>20 what -- that the statement has a defamatory</p> <p>21 implication, that's what this is asking. But the</p> <p>22 implication -- the only implication --</p>	<p>31</p> <p>1 so we're going to fall back under Pendleton to a</p> <p>2 defamatory implication, then that -- whatever</p> <p>3 implication they suggest to the jury has to be</p> <p>4 false.</p> <p>5 THE COURT: I think the only implication</p> <p>6 in this case is that it's about Mr. Depp. I don't</p> <p>7 think there's any other implication. On the face</p> <p>8 the defamatory statements --</p> <p>9 MR. ROTTENBORN: That -- that --</p> <p>10 THE COURT: -- are either true or false.</p> <p>11 I mean, the only implication in this case is</p> <p>12 the -- that it's Mr. Depp that she's talking</p> <p>13 about.</p> <p>14 MR. ROTTENBORN: And that Mr. Depp --</p> <p>15 that -- that the statements --</p> <p>16 THE COURT: That the statements are</p> <p>17 false.</p> <p>18 MR. ROTTENBORN: -- suggest that he</p> <p>19 abused her.</p> <p>20 THE COURT: Yeah.</p> <p>21 MR. ROTTENBORN: Right.</p> <p>22 THE COURT: But that goes with the</p>
<p>30</p> <p>1 MR. ROTTENBORN: I mean, we could say</p> <p>2 the statement has a defamatory implication about</p> <p>3 Mr. Depp.</p> <p>4 THE COURT: Okay.</p> <p>5 MR. ROTTENBORN: I don't --</p> <p>6 MR. MONIZ: So --</p> <p>7 MR. ROTTENBORN: -- I don't have a</p> <p>8 problem with that.</p> <p>9 THE COURT: Okay.</p> <p>10 MR. MONIZ: Yeah. I think, Your Honor,</p> <p>11 the problem --</p> <p>12 THE COURT: Okay.</p> <p>13 MR. MONIZ: -- that the problem is</p> <p>14 actually three and seven, the interaction between</p> <p>15 those two. They make it seem as if we have to</p> <p>16 prove both that the statement is false and that</p> <p>17 the defamatory implication of the statement is</p> <p>18 false.</p> <p>19 MR. ROTTENBORN: Well, I think that's</p> <p>20 right. I mean, whatever implication they are</p> <p>21 suggesting if the words are literally true and</p> <p>22 they're saying, well, the words are literally true</p>	<p>32</p> <p>1 statements are false. I agree. I don't think you</p> <p>2 need seven.</p> <p>3 MR. ROTTENBORN: Okay.</p> <p>4 THE COURT: So we can strike seven. So</p> <p>5 that would leave us with one, two, three, four,</p> <p>6 five, six and eight and then 10; which we'll</p> <p>7 change the numbering around.</p> <p>8 MR. ROTTENBORN: Okay.</p> <p>9 MR. MONIZ: And on four, Your Honor,</p> <p>10 just so I'm following, are -- are we changing that</p> <p>11 to the statement has a defamatory --</p> <p>12 THE COURT: The statement has a</p> <p>13 defamatory implication about Mr. Depp.</p> <p>14 MR. ROTTENBORN: Okay.</p> <p>15 THE COURT: All right?</p> <p>16 MR. ROTTENBORN: Yeah.</p> <p>17 THE COURT: So if we can do that on C, D</p> <p>18 and E, that should take care of those three</p> <p>19 instructions.</p> <p>20 MR. ROTTENBORN: Yeah. And just to --</p> <p>21 just to be clear, Your Honor, so we're clear on</p> <p>22 the statutory immunity, if Ms. Heard prevails,</p>

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<p>33</p> <p>1 then nothing --</p> <p>2 THE COURT: She's --</p> <p>3 MR. ROTTENBORN: -- we've said today --</p> <p>4 we're -- we're entitled to seek -- and that's what</p> <p>5 we --</p> <p>6 THE COURT: You're entitled to seek</p> <p>7 attorneys' fees.</p> <p>8 MR. ROTTENBORN: Right. And that's</p> <p>9 what we --</p> <p>10 THE COURT: And going back to attorneys'</p> <p>11 fees, that's something I should address too. For</p> <p>12 some reason it was set with a jury. We don't do</p> <p>13 juries with attorneys' fees in Virginia. So</p> <p>14 that's wrong.</p> <p>15 MR. ROTTENBORN: Right.</p> <p>16 THE COURT: Also, the only person that</p> <p>17 seems to be entitled to attorneys' fees is, if</p> <p>18 any --</p> <p>19 MR. ROTTENBORN: Correct.</p> <p>20 THE COURT: -- Ms. Heard. If she wins,</p> <p>21 she's entitled to attorneys' fees for the</p> <p>22 anti-SLAPP. So I just want to make sure everybody</p>	<p>35</p> <p>1 that way.</p> <p>2 MR. MONIZ: Yeah. The statute is</p> <p>3 permissive --</p> <p>4 THE COURT: It is permissive.</p> <p>5 MR. MONIZ: -- not mandatory.</p> <p>6 THE COURT: Yes. Exactly. So there</p> <p>7 still could be an argument --</p> <p>8 MR. ROTTENBORN: Correct.</p> <p>9 THE COURT: -- but it would be a bench</p> <p>10 trial.</p> <p>11 MR. ROTTENBORN: Agreed.</p> <p>12 THE COURT: Okay. So then we're going</p> <p>13 to withdraw 14, Plaintiff's 14, because we've got</p> <p>14 that taken care of. All right.</p> <p>15 And going onto the finding instructions</p> <p>16 on the counterclaim which would be 15, again,</p> <p>17 that's -- 15 has them all together. So let's just</p> <p>18 go to F -- F, G and H of the defendant's and see</p> <p>19 where we are with those. All right.</p> <p>20 Well, actually, Number 15 was your</p> <p>21 defamation. I'm sorry. Well, let's do the</p> <p>22 finding instructions first.</p>
<p>34</p> <p>1 is on the same page with that. Understood?</p> <p>2 MR. ROTTENBORN: Thank you.</p> <p>3 MR. MONIZ: Understood based on the --</p> <p>4 based on the rulings.</p> <p>5 THE COURT: Yes.</p> <p>6 MR. MONIZ: Yeah.</p> <p>7 THE COURT: I mean, that's where we're</p> <p>8 at. I mean, there is no other attorneys' fees</p> <p>9 contractually or --</p> <p>10 MR. ROTTENBORN: Correct.</p> <p>11 THE COURT: -- anywhere else. Okay. So</p> <p>12 I just wanted to make sure. So if we do get to</p> <p>13 that stage, we'll talk about the attorneys'</p> <p>14 fees --</p> <p>15 MR. ROTTENBORN: Okay.</p> <p>16 THE COURT: -- issue later.</p> <p>17 MR. ROTTENBORN: Thank you.</p> <p>18 THE COURT: Okay. So, yes, she -- she</p> <p>19 still would be entitled to attorneys' fees based</p> <p>20 on if she's not found liable on that. Okay? All</p> <p>21 right. We'll work from there. Well, at least</p> <p>22 she's able to argue attorneys' fees. Let's put it</p>	<p>36</p> <p>1 MR. ROTTENBORN: Okay.</p> <p>2 THE COURT: And then we'll go back to</p> <p>3 defamation by implication. Those -- that's a</p> <p>4 different one. All right. So let's just look at</p> <p>5 Defendant's F -- F, G and H. All right.</p> <p>6 Is there any objection to these finding</p> <p>7 instructions by the plaintiff?</p> <p>8 MR. MONIZ: I'm sorry. My -- my</p> <p>9 numbering is a little off because of --</p> <p>10 THE COURT: Oh, it was 6, 7 and 8.</p> <p>11 MR. MONIZ: Thank you, Your Honor.</p> <p>12 THE COURT: No problem.</p> <p>13 MR. MONIZ: I apologize.</p> <p>14 THE COURT: That's okay. I just changed</p> <p>15 them for the record because it's just much easier</p> <p>16 this way.</p> <p>17 MR. MONIZ: So there are a couple of</p> <p>18 issues I -- that -- that we have on these,</p> <p>19 unfortunately, as well. I -- I think that these</p> <p>20 should address the agency issue because you only</p> <p>21 get to liability on behalf of Mr. Depp if the jury</p> <p>22 also finds that --</p>

<p>37</p> <p>1 THE COURT: All right. We can address 2 that right now. Okay. An attorney and a client 3 have a principal and agency relationship. There's 4 no evidence of independent contractor. An 5 attorney has never been an independent contractor. 6 Your roofer is an independent contractor. An 7 attorney is not an independent contractor. 8 MR. MONIZ: Well, I think there is 9 actually authority, Your Honor, for -- 10 THE COURT: There is no evidence of that 11 in this case. And it will not be given as an 12 instruction. 13 MR. MONIZ: Okay. Well, the other -- 14 the other point that then we would make is on 15 number five. It -- it says, the statement was 16 made with actual malice. 17 I -- I guess I'm fine with that here, 18 but at some point we do have to clarify whose 19 malice that is. Whether we clarify that in this 20 instruction or a different instruction -- 21 THE COURT: Well, it would have to be 22 Mr. Waldman's malice, right, because the agent?</p>	<p>39</p> <p>1 So if Mr. Depp knew that he had abused 2 Ms. Heard, he knew he had abused Ms. Heard and he 3 told Mr. Waldman, I didn't abuse Ms. Heard, go 4 make these statements about me, which the 5 evidence -- we don't believe the evidence is that 6 simple or shows that. But I'm just using it as a 7 hypothetical. 8 And Mr. Waldman went and made those 9 statements about Ms. Heard. It -- it does not 10 follow and there's no case law that they've cited 11 that supports the notion that if Mr. Waldman 12 lacked malice, Mr. Depp can't be held liable. Mr. 13 Depp can have a state of mind. A corporation 14 that's an employer can't have a state of mind. 15 THE COURT: But you're doing vicarious 16 liability. You're doing -- and so you have a 17 principal and an agent. You -- I don't think you 18 could show me any case law where a principal and 19 an agent has -- you know, you have to show actual 20 malice of -- of the principal. I mean, the agent 21 is stepping in the shoes -- in the shoes of the 22 principal.</p>
<p>38</p> <p>1 MR. ROTTENBORN: I disagree, Your Honor. 2 There's -- it -- it could be Mr. Waldman's malice. 3 It could be Mr. Depp's malice. And here's why. 4 The case law that they cited only talks 5 about an employee and employer context. So it 6 makes sense in the context that if you have an 7 employee of a business, a business can't have a 8 state of mind. 9 So when a business -- when The New York 10 Times is sued or when The Sun is sued for 11 statements made by Dan Wootton it makes sense 12 that -- that Mr. Wootton must have had actual 13 malice. 14 It's different here. If -- if you apply 15 the law that they want you to apply, it creates a 16 huge loophole where a principal could get someone 17 unwittingly to go be an attack dog for them, to 18 make defamatory statements for them. And that 19 person who's making the statements doesn't have 20 malice because they're being -- you know, hey, 21 here's \$20, go make this statement. And then the 22 principal could never be held liable.</p>	<p>40</p> <p>1 MR. ROTTENBORN: Understood. But -- 2 THE COURT: It's -- 3 MR. ROTTENBORN: -- but I haven't seen 4 any case law that -- from the other standpoint 5 that addresses this situation. And you understand 6 the loophole -- 7 THE COURT: I don't have any case law. 8 And they don't have any case law. So -- 9 MR. ROTTENBORN: I understand. But you 10 understand the loophole that I'm talking about; is 11 it -- it can't be the case that an individual can 12 shield themselves from defamation liability just 13 by having someone else be their mouthpiece. 14 THE COURT: But I think in this case you 15 have principal and agency which you do define 16 later on. You're -- 17 MR. ROTTENBORN: Correct. 18 THE COURT: He's stepping into his 19 shoes. So he is Mr. Depp. 20 MR. ROTTENBORN: Right. So Mr. -- 21 THE COURT: So if you find that he has 22 actual malice -- and you can argue that. If you</p>

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<p style="text-align: right;">41</p> <p>1 find that he, you know, Mr. Depp actually -- I 2 don't know. He is Mr. Depp. So Mr. Waldman has 3 to have the actual malice; but, I mean, he is the 4 agent. So he is Mr. Depp. So -- 5 MR. ROTTENBORN: Right. So -- 6 THE COURT: -- therefore, Mr. Depp has 7 actual malice. I mean -- but I think the law is 8 pretty clear that it's the -- the agent that you 9 have to show actual malice. 10 MR. ROTTENBORN: But if he is stepping 11 into the shoes of Mr. Depp and we can show actual 12 malice on the part of Mr. Depp -- 13 THE COURT: But they're one person. The 14 whole thing with principal and agent is they're 15 one person. 16 MR. ROTTENBORN: Correct. So showing 17 actual malice on the part of Mr. Depp is showing 18 actual malice on the part of Mr. Waldman if 19 they're -- if they're one person. 20 THE COURT: Well, and that's your 21 argument. But, I mean, I think it's -- 22 MR. ROTTENBORN: And I -- and that's</p>	<p style="text-align: right;">43</p> <p>1 Ms. -- then -- then Mr. Waldman -- 2 THE COURT: Then Mr. Waldman as an agent 3 will have actual malice. 4 MR. ROTTENBORN: Correct. 5 THE COURT: Correct. But it's 6 Mr. Waldman's actual malice because he's the 7 agent. 8 MR. ROTTENBORN: Correct. As long as -- 9 as long as we're clear that we can argue Mr. Depp 10 knew that what he was saying -- 11 THE COURT: Right. 12 MR. ROTTENBORN: -- was false and he -- 13 THE COURT: And he -- and he -- and he 14 sent his agent. And they're -- 15 MR. ROTTENBORN: Right. 16 THE COURT: -- the same person. You 17 can -- 18 MR. ROTTENBORN: Correct. 19 THE COURT: -- clearly argue that. But 20 I think the law is clear that's Mr. Waldman's 21 actual malice only because he's the agent. Let me 22 know if you think something different.</p>
<p style="text-align: right;">42</p> <p>1 all -- 2 THE COURT: But when it comes to -- 3 MR. ROTTENBORN: -- I'm saying. 4 THE COURT: -- actual malice it's 5 Mr. Waldman's because he's the one that made the 6 statements, but he is working as an agent. So, 7 therefore, it would be Mr. Depp's; but the 8 instruction is Mr. Waldman's. 9 MR. ROTTENBORN: Correct. But what I'm 10 saying is I don't think -- I think that if you say 11 it doesn't matter what Mr. Depp's state of mind is 12 as the principal, it only matters what 13 Mr. Waldman's state of mind is, then it creates -- 14 that's illogical. It creates -- 15 THE COURT: But his state of mind is the 16 state of mind of the principal. 17 MR. ROTTENBORN: Right. But -- 18 THE COURT: They're one person. 19 MR. ROTTENBORN: Correct. So -- so it 20 goes both ways then. If Mr. -- if Mr. -- if Mr. 21 Depp knows that he's abused Ms. Heard and he sends 22 Mr. Waldman out there to be an attack dog, then</p>	<p style="text-align: right;">44</p> <p>1 MR. MONIZ: Well, by -- by definition, 2 Your Honor, if they're arguing vicarious 3 liability, literally by definition that's 4 liability for the tort of another. So Mr. Waldman 5 has to have committed the tort. 6 Holding Mr. Depp accountable for his own 7 conduct is a completely different concept. It's 8 not vicarious liability anymore. And that's the 9 whole other set of issues. If -- if the theory is 10 vicarious liability, they have to show that the 11 tort was committed by the agent and it's then 12 imputed to the principal. 13 THE COURT: Which is what you were 14 saying too. 15 MR. ROTTENBORN: Right. 16 THE COURT: Okay. 17 MR. ROTTENBORN: I mean, I think -- 18 yeah. I mean, I think we're kind of saying the 19 same thing. But I think we just -- 20 THE COURT: And you can argue. I mean, 21 you both can argue different -- 22 MR. ROTTENBORN: Right.</p>

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<p>45</p> <p>1 THE COURT: -- but when it comes to the 2 law I think it -- it would say for number five Ms. 3 Heard further proved by clear and convincing 4 evidence that Mr. Waldman's -- made the statement 5 with actual malice. 6 MR. ROTTENBORN: Can we say proved by 7 clear and convincing evidence that the statements 8 by Mr. Waldman were made with actual malice? 9 THE COURT: That's fine. 10 MR. MONIZ: I think -- 11 THE COURT: No? 12 MR. MONIZ: -- because -- well, 13 that's -- that's muddying the waters about 14 whose -- 15 THE COURT: His statement? 16 MR. ROTTENBORN: No, it's not muddying 17 the waters. It's -- 18 THE COURT: The statement made by 19 Mr. Waldman was -- what did you say? The 20 statement -- 21 MR. ROTTENBORN: The statement -- the 22 statement made by Mr. Waldman -- the statement by</p>	<p>47</p> <p>1 MR. CHEW: Excuse me, Your Honor. This 2 is an important point. I do think we -- we have 3 case law and we will argue it on the motion to 4 strike that it's Mr. Waldman's mens rea, that is, 5 his actual malice. 6 THE COURT: For principal and agent? 7 MR. CHEW: For principal and agent. 8 Because, I mean, they're the ones trying 9 to have it both ways. They chose not to sue 10 Mr. Waldman. And we -- we would just respectfully 11 submit we -- we do have case law that makes it 12 clear that they have to show Mr. Waldman's mens 13 rea. 14 And they clearly can't do that because 15 Mr. Waldman testified very clearly that he 16 subjectively believed that Ms. Heard was lying. 17 And he also set forth a lot of objective reasons 18 why she was lying. She cited -- he cited -- 19 THE COURT: And I don't want to get into 20 the motion to strike. 21 MR. CHEW: No, I understand. But -- but 22 it's --</p>
<p>46</p> <p>1 Mr. Waldman was made -- 2 THE COURT: Was made -- 3 MR. ROTTENBORN: -- with actual malice. 4 THE COURT: -- with actual malice. 5 MR. MONIZ: But as -- as long -- I mean, 6 are we clear that that means it's still 7 Mr. Waldman's malice, actual malice? Right? 8 THE COURT: But which will be imputed to 9 Mr. Depp. 10 MR. ROTTENBORN: Correct. 11 MR. MONIZ: Assuming it's established as 12 to Mr. Waldman, yes. 13 THE COURT: Yeah. But if he's acting 14 within his scope of principal and agent, he's 15 going to be Mr. Depp. 16 MR. MONIZ: Right. I just think the 17 jury instruction needs to be -- needs to be clear 18 that -- that the tort has to be complete with all 19 that. I think I'm okay, I think, with -- with 20 that as long as we're -- 21 MR. CHEW: Excuse me. 22 MR. MONIZ: -- as long --</p>	<p>48</p> <p>1 THE COURT: And there's going to be 2 evidence. But -- but it's -- when you're 3 principal and agent -- you're saying you have a 4 case that says, principal and agent, it's the mens 5 rea of the agent for actual malice. 6 MR. CHEW: We -- we have cases we'd like 7 to show Your Honor. 8 MR. MONIZ: Well -- 9 MR. ROTTENBORN: They're not in here. 10 MR. MONIZ: -- I think, Your Honor -- I 11 think, Your Honor, the point is they have -- 12 THE COURT: I understand that, but 13 that's -- all right. We'll -- we'll go with this, 14 but I just don't agree with you with the mens rea 15 argument at all. Okay. When you're principal and 16 agent you're stepping into the shoes of -- of your 17 principal. So -- and I think that's -- it's clear 18 in the law. 19 MR. ROTTENBORN: Thank you, Your Honor. 20 THE COURT: Okay. 21 MR. MONIZ: So -- so the jury 22 instruction then, Your Honor, is going to read --</p>

<p>49</p> <p>1 THE COURT: Evidence that --</p> <p>2 MR. MONIZ: That the statement by --</p> <p>3 THE COURT: -- Mr. Waldman's statement</p> <p>4 was made with actual malice.</p> <p>5 MR. ROTTENBORN: Yeah, that's fine. I</p> <p>6 said evidence that the statement by Mr. Waldman,</p> <p>7 but you just --</p> <p>8 THE COURT: Whichever.</p> <p>9 MR. ROTTENBORN: -- yours -- yours --</p> <p>10 THE COURT: Statement by Mr. Waldman.</p> <p>11 MR. ROTTENBORN: -- sounds better.</p> <p>12 MR. MONIZ: By Mr. Waldman. I mean,</p> <p>13 I -- we would -- I mean, our position, which I</p> <p>14 understand is not Your Honor's position, is that</p> <p>15 it should say that Mr. Waldman made the statement</p> <p>16 with actual malice.</p> <p>17 THE COURT: Well, you can say the</p> <p>18 statement by Mr. Waldman was made with actual</p> <p>19 malice.</p> <p>20 MR. ROTTENBORN: The statement by</p> <p>21 Mr. Waldman. Because that --</p> <p>22 THE COURT: Okay. That's fine.</p>	<p>51</p> <p>1 MR. MONIZ: But in terms of principal</p> <p>2 and agent I think the case law is -- is clear that</p> <p>3 the agent commits the tort. And then because the</p> <p>4 agent is an agent then it's imputed to the</p> <p>5 principal.</p> <p>6 If the agent doesn't commit the tort,</p> <p>7 you don't get to the principal. And so that's why</p> <p>8 it needs to be Mr. Waldman's actual malice in</p> <p>9 order to impute the entire tort to Mr. Depp.</p> <p>10 And that's a completely separate</p> <p>11 question than whether -- if Mr. Depp was</p> <p>12 wrongfully sending Mr. Waldman out to be his</p> <p>13 mouthpiece, then you're holding Mr. Depp liable</p> <p>14 for -- for direct conduct by Mr. Depp. And it's</p> <p>15 no longer agency.</p> <p>16 But if -- but if the theory is vicarious</p> <p>17 liability, then the tort needs to be complete on</p> <p>18 its own by the agent.</p> <p>19 MR. ROTTENBORN: I think you understand</p> <p>20 our position. And I think Your Honor --</p> <p>21 THE COURT: All right. We're going to</p> <p>22 keep it the way it is there. So we'll do that</p>
<p>50</p> <p>1 MR. ROTTENBORN: It's Mr. Depp's</p> <p>2 statement. So saying that Mr. --</p> <p>3 MR. MONIZ: Well, that -- I mean, that</p> <p>4 presumes --</p> <p>5 MR. ROTTENBORN: And -- and up at the</p> <p>6 top it says, Adam Waldman while acting as an agent</p> <p>7 for Mr. Depp. So there's -- number one. So</p> <p>8 there's nothing confusing about the instruction.</p> <p>9 But I think if we say that the statement by</p> <p>10 Mr. Waldman was made with actual malice --</p> <p>11 MR. MONIZ: The -- the only additional</p> <p>12 point I would make here, Your Honor, is that there</p> <p>13 are two pathways they have to -- potential</p> <p>14 pathways to liability.</p> <p>15 I mean, Mr. Rottenborn's argument that</p> <p>16 the -- that there's this huge loophole is -- is</p> <p>17 not correct because if Mr. Depp sends somebody out</p> <p>18 to be his mouthpiece, then that's an independently</p> <p>19 tortious act and you don't even need vicarious</p> <p>20 liability to get to liability.</p> <p>21 THE COURT: But we're talking principal</p> <p>22 and agent here.</p>	<p>52</p> <p>1 finding instructions for F, G and H.</p> <p>2 MR. ROTTENBORN: So that we'll say the</p> <p>3 statement by Mr. Waldman?</p> <p>4 THE COURT: Yes.</p> <p>5 MR. ROTTENBORN: Okay.</p> <p>6 THE COURT: All right. We're giving</p> <p>7 those. All right. Moving on. All right. So</p> <p>8 defamation by implication. I think we have Number</p> <p>9 15 by the plaintiffs and Number Y which was</p> <p>10 formerly 25 for the defendants. All right.</p> <p>11 And what I propose is on -- we don't</p> <p>12 really need the facts of the case in this. If</p> <p>13 you're just explaining what defamation by</p> <p>14 implication is, I think it should be the</p> <p>15 definition of defamation by implication. And if</p> <p>16 you look at Instruction Y, I think that's the</p> <p>17 second paragraph, it tells you what defamation by</p> <p>18 implication is.</p> <p>19 MS. MCCAFFERTY: It's -- it's important</p> <p>20 to us that the "designed and intended" language</p> <p>21 from Pendleton be included in the instruction.</p> <p>22 THE COURT: But that's just a case or --</p>

<p>53</p> <p>1 I think it's much clearer if you just have the 2 definition of what defamation by implication is. 3 And that second paragraph is the definition of 4 defamation by implication. 5 And we already have finding 6 instructions. So I'm not putting more finding 7 instructions in this definition of defamation by 8 implication. 9 MR. ROTTENBORN: Okay. I think our 10 position is simply that in -- in defining 11 defamation by implication the Pendleton case says 12 that the statement must be -- the implication must 13 be designed and intended. 14 So if -- if Ms. Heard said words that 15 are literally true and they're going to argue a 16 theory of implication, she must have designed and 17 intended that implication. 18 And that comes straight out of Pendleton 19 saying at the trial the plaintiff there must prove 20 that the words were designed and -- the 21 implication was designed and intended. I think 22 those are two critical verbs that come straight --</p>	<p>55</p> <p>1 THE COURT: Okay. 2 MR. MONIZ: On the finding instruction 3 paragraph five that we just looked at, I mean, I 4 do think that's a little bit of an overstatement 5 because I think it's sufficient if Ms. Heard or -- 6 or if either party -- for defamatory implication I 7 think the actual malice, mens rea standard 8 indicates that knowledge of the defamatory 9 implication is sufficient. 10 I don't think it needs to be designed 11 and intended. I mean, I know that language pops 12 up in a case; but I think -- I think knowledge is 13 sufficient for actual malice. And actual malice 14 is the standard. 15 MR. ROTTENBORN: It pops up in the -- in 16 the seminal case on it. 17 THE COURT: I'm -- I'm going to keep 18 that in the finding instruction, but I am going to 19 take it out of defamation by implication. We'll 20 just use that second paragraph of Y. And then 21 we'll withdraw 15. Okay. 22 MR. ROTTENBORN: Okay. So we take out</p>
<p>54</p> <p>1 THE COURT: Right. But this is not a 2 finding instruction. 3 MS. MCCAFFERTY: Did it come into the 4 finding instruction? 5 MR. ROTTENBORN: Yeah. Can we look? 6 Did it -- 7 MS. MCCAFFERTY: Can we go back to the 8 finding instruction? 9 MR. ROTTENBORN: I'm sorry. I'm just 10 looking to see if that came into number six or 11 number five, I guess. 12 MS. MCCAFFERTY: Three, four and five. 13 MR. ROTTENBORN: Yes, it did. Okay. In 14 light of that I think we're fine then, Your Honor. 15 THE COURT: All right. 16 MR. ROTTENBORN: We're -- we're good 17 with just using the second paragraph. 18 THE COURT: Any objection, just -- with 19 Instruction Y, just that second paragraph, nothing 20 else? 21 MR. MONIZ: I -- I think the second 22 paragraph looks fine.</p>	<p>56</p> <p>1 the first paragraph as well? 2 THE COURT: Yes. 3 MR. ROTTENBORN: Okay. 4 THE COURT: All right. Then on Number 5 16 of plaintiff's which I think is 37.10 -- 6 37.105, the presumed damages. Did you have a 7 corresponding presumed damages? 8 MR. ROTTENBORN: That's -- we were 9 just -- just looking. 10 THE COURT: You have a punitive damages, 11 but I don't think you've got a presumed damages. 12 MR. ROTTENBORN: I don't -- I don't 13 believe we did, Your Honor -- 14 THE COURT: Okay. 15 MR. ROTTENBORN: -- because we 16 weren't -- we weren't arguing that per se. So... 17 THE COURT: Okay. So let's -- so this 18 needs to be done for both sides -- 19 MR. ROTTENBORN: Yes. 20 THE COURT: -- then. Okay. Let's see. 21 I have on the side note here, so -- just to let 22 you know when I went through it. It just says,</p>

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15 (57 to 60)

<p>57</p> <p>1 needs to be revised to remove alleged implication 2 from the instruction; should be for both parties. 3 That's what I have on the side. So let me see. 4 MR. ROTTENBORN: I think there's a model 5 instruction on this too, Your Honor. 37 -- 6 THE COURT: .105. 7 MR. ROTTENBORN: -- .105. 8 MR. MONIZ: Your Honor, would it make 9 sense to just go back to the model instruction on 10 this one? 11 THE COURT: That's what I'm looking at. 12 I'm looking at the model. Is that -- 13 MR. MONIZ: I think it's -- 14 THE COURT: Are you making an objection? 15 MR. MONIZ: -- 37.105. 16 THE COURT: Yeah, that's what we just 17 said. But that's okay. 18 MR. MONIZ: Sorry. Sorry. Trying to do 19 too many things at once, Your Honor. 20 THE COURT: I know. I understand. 21 MR. MONIZ: I apologize. 22 THE COURT: I understand. I mean, if</p>	<p>59</p> <p>1 just take that first sentence. 2 THE COURT: If you find your verdict for 3 the plaintiff, the plaintiff is entitled to 4 recover compensatory damages without any proof of 5 actual or pecuniary injury. 6 MR. ROTTENBORN: And then the -- 7 THE COURT: Just leave it at that? 8 MR. ROTTENBORN: -- just the bolded 9 language. I think the -- and then the last 10 sentence I think is fine too. 11 THE COURT: The statement alleged in 12 this case is understood to mean that -- 13 MR. ROTTENBORN: No. No. 14 THE COURT: No? 15 MR. ROTTENBORN: The "as a result." 16 THE COURT: As a result, injury to the 17 plaintiff's personal and business reputation, 18 humiliation and embarrassment is presumed. All 19 right. Any objection to that, just having that? 20 MR. MONIZ: I think that's okay, Your 21 Honor. 22 THE COURT: Okay. If we can get then --</p>
<p>58</p> <p>1 both of you agree that we can just work the model 2 instruction for both sides... 3 MR. ROTTENBORN: I do except it's a 4 little bit unclear. It says for use where the 5 statement is defamatory per se and plaintiff has 6 established liability. 7 And so it's -- it's kind of unclear to 8 me where -- where this should be given or when it 9 should be given because I think if you -- I think 10 it's -- it's prejudicial potentially to both sides 11 to say the statement alleged in this case is 12 understood to mean. 13 That's the jury's job to decide -- 14 THE COURT: Well, I mean -- 15 MR. ROTTENBORN: -- if the statement is 16 understood to mean. So obviously we'd have to 17 craft language that the Court agrees with that 18 works for both sides. We certainly don't agree 19 with theirs, but I think... 20 THE COURT: I mean -- I mean, you can 21 start with, if you find your verdict for. 22 MR. ROTTENBORN: Correct. Like I would</p>	<p>60</p> <p>1 I'd need two instructions for that for both sides 2 or we just have both sides in this one? Okay. 3 All right. So if we can reconstruct 16 to just be 4 off the model for both sides. 5 MR. ROTTENBORN: And so just to be 6 clear -- 7 THE COURT: Or just presumed damages. 8 MR. ROTTENBORN: -- we would say, if you 9 find your verdict for the plaintiff, the plaintiff 10 is entitled to recover compensatory -- for the 11 plaintiff or the -- we -- we would make that 12 language -- 13 THE COURT: Plaintiff or -- 14 MR. ROTTENBORN: -- to have it -- 15 THE COURT: -- counterplaintiff, yeah. 16 MR. ROTTENBORN: Right. 17 THE COURT: Or for both, yeah. 18 MR. ROTTENBORN: The plaintiff is 19 entitled to recover compensatory damages without 20 any proof of actual or pecuniary injury. As a 21 result -- or maybe we strike "as a result" and 22 just say injury to the plaintiff's --</p>

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16 (61 to 64)

<p>61</p> <p>1 THE COURT: Okay.</p> <p>2 MR. ROTTENBORN: If you find --</p> <p>3 THE COURT: Well, you already said that</p> <p>4 up there, if you find your verdict. So then --</p> <p>5 MR. ROTTENBORN: Right. So --</p> <p>6 THE COURT: And you can say, as a</p> <p>7 result, injury to the plaintiffs --</p> <p>8 MR. ROTTENBORN: As a result, injury to</p> <p>9 the plaintiff's personal --</p> <p>10 THE COURT: Right.</p> <p>11 MR. ROTTENBORN: -- is presumed.</p> <p>12 THE COURT: Yeah.</p> <p>13 MR. ROTTENBORN: Okay. Thank you.</p> <p>14 THE COURT: All right. We'll get that</p> <p>15 one fixed. Owed. And that will take care of</p> <p>16 presumed damages. Okay. And then 17 is actual</p> <p>17 damages. I think this is the same as Defendant's</p> <p>18 II, if I -- which was --</p> <p>19 MS. MCCAFFERTY: The -- the issue here</p> <p>20 is how Mr. Depp's limitation on --</p> <p>21 THE COURT: Right.</p> <p>22 MS. MCCAFFERTY: -- damages will be</p>	<p>63</p> <p>1 of the finding instructions already. All right.</p> <p>2 Number 20 is -- oh, this is -- they had</p> <p>3 an objection because you're using employee instead</p> <p>4 of agent and principal. Do you have any objection</p> <p>5 to using agent and principal?</p> <p>6 And somewhere in here you put that, oh,</p> <p>7 the next one, 21, for purposes of the instructions</p> <p>8 the terms "employer" and "principal" mean the same</p> <p>9 thing and "employee" and "agent" mean the same</p> <p>10 thing.</p> <p>11 MR. MONIZ: Yeah. I don't think it's --</p> <p>12 I don't think there's any -- I mean, I think</p> <p>13 there's even in the -- in the jury instruction</p> <p>14 somewhere it says it's -- they can be used</p> <p>15 interchangeably.</p> <p>16 THE COURT: All right. So can we put</p> <p>17 principal and agent since that's what this case is</p> <p>18 about?</p> <p>19 MR. MONIZ: I'm -- I'm fine with --</p> <p>20 THE COURT: Okay.</p> <p>21 MR. MONIZ: -- I'm fine with principal</p> <p>22 and agent.</p>
<p>62</p> <p>1 conveyed to the jury.</p> <p>2 THE COURT: Right.</p> <p>3 MS. MCCAFFERTY: But other than -- they</p> <p>4 do match other than --</p> <p>5 THE COURT: Right. The date.</p> <p>6 MS. MCCAFFERTY: -- we have the</p> <p>7 limitation in there.</p> <p>8 THE COURT: All right. What's the</p> <p>9 objection to putting the date? That is what was</p> <p>10 agreed upon, November 2nd, 2020.</p> <p>11 MR. MONIZ: It's agreed on, Your Honor.</p> <p>12 I don't have a strong objection to it.</p> <p>13 THE COURT: Okay.</p> <p>14 MR. MONIZ: I mean, it does -- I don't</p> <p>15 know that it's necessary because there's no</p> <p>16 evidence of it. But if -- if you want that in the</p> <p>17 instruction, that's fine.</p> <p>18 THE COURT: I think it -- I think it</p> <p>19 follows the ruling. So we'll use II. And we'll</p> <p>20 withdraw 17. Okay.</p> <p>21 I think 19 was your finding instruction.</p> <p>22 So we'll just withdraw that because we took care</p>	<p>64</p> <p>1 THE COURT: All right. So we can change</p> <p>2 that to principal and agent in 18 and use that</p> <p>3 one, is that fine, or did you have one similar?</p> <p>4 MR. ROTTENBORN: I think we have 45, TT.</p> <p>5 THE COURT: TT?</p> <p>6 MR. ROTTENBORN: Yes, Your Honor.</p> <p>7 THE COURT: Okay. It already says --</p> <p>8 MR. ROTTENBORN: These come --</p> <p>9 THE COURT: -- the same thing?</p> <p>10 MR. ROTTENBORN: -- straight from the</p> <p>11 models. I think it would be better.</p> <p>12 THE COURT: All right. Let me find TT</p> <p>13 which was formerly 45. Right? Okay. Well,</p> <p>14 definition -- I think -- well, that's their 21.</p> <p>15 MR. ROTTENBORN: Oh. Oh, you're saying</p> <p>16 for 20 just --</p> <p>17 THE COURT: 20.</p> <p>18 MR. ROTTENBORN: -- Ms. Heard has the</p> <p>19 burden of proving --</p> <p>20 THE COURT: Just change agent and</p> <p>21 principal.</p> <p>22 MR. ROTTENBORN: Got it. That Mr.</p>

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17 (65 to 68)

<p>65</p> <p>1 Depp -- Ms. Heard has the burden of proving by the 2 greater weight of the evidence that Mr. -- 3 THE COURT: Right. 4 MR. ROTTENBORN: -- Waldman was the 5 agent. 6 THE COURT: Right. 7 MR. ROTTENBORN: Yes. That's fine. 8 THE COURT: We're just going to change 9 agent and principal. 10 MR. ROTTENBORN: Sorry. 11 THE COURT: Acting in the scope of his 12 agency -- 13 MR. ROTTENBORN: Yeah. 14 THE COURT: -- instead of employment. 15 So if we can change that to 20, I'll give 20. Now 16 we'll go to 21. 17 MR. ROTTENBORN: Yeah. Sorry about 18 that. 19 THE COURT: All right. And 21 -- 20 MR. ROTTENBORN: This is where our 45 -- 21 THE COURT: That's where TT is the 22 straight model. Any objection to the model then?</p>	<p>67</p> <p>1 your objection. I'll deny the instruction over 2 your objection. Okay. 3 Number 25, I think we just -- agent 4 while acting in the scope of his agency. Just 5 change them. Just take out employee and 6 employment and put agent and agency. Is there any 7 objection to that? 8 MR. ROTTENBORN: Doesn't -- doesn't 20 9 that we just addressed with changes cover -- isn't 10 it -- 11 THE COURT: 25 is the same thing? 12 MR. ROTTENBORN: -- fairly duplicative? 13 MR. MONIZ: That actually might be 14 redundant. 15 THE COURT: Okay. Do you want to 16 withdraw 25 then? 17 MR. MONIZ: Yeah. I think that's -- 18 just let me very quickly double-check the -- 19 THE COURT: Sure. 20 MR. MONIZ: Yeah, I think it looks 21 like -- it looks like -- 22 THE COURT: Okay.</p>
<p>66</p> <p>1 TT. 2 MR. MONIZ: I think it tracks ours 3 exactly except -- 4 THE COURT: Okay. 5 MR. MONIZ: -- we have the definitions. 6 So, yeah, that's fine. 7 THE COURT: All right. So we'll 8 withdraw 21. All right. Then 22 is the 9 definition of an independent contractor. Based on 10 my rulings do you have any -- 11 MR. MONIZ: Well, I mean, we -- we think 12 that the instruction should be given; but I 13 understand that Your Honor -- 14 THE COURT: All right. 15 MR. MONIZ: -- is going to -- 16 THE COURT: I'll just -- 17 MR. MONIZ: -- disagree with us. 18 THE COURT: -- I'll just deny it over 19 objection. Denied stack. Okay. 20 Number 23, independent contractor. I'll 21 just do the same; denied over objection. Denied. 22 And Number 24, I'll do the same also. I'll note</p>	<p>68</p> <p>1 MR. MONIZ: -- 20 covers 25. 2 THE COURT: I will withdraw 25 then. 3 Number 26, actual malice. So why don't we just 4 have the definition of what actual malice is? Do 5 you have -- do you have one? Does the defendant 6 have an actual malice? 7 MS. MCCAFFERTY: We have AA or 27. 8 THE COURT: Oh, AA, formerly 27? 9 MR. ROTTENBORN: Yeah. 10 THE COURT: Okay. Again, I guess the 11 question is why aren't we just having -- we 12 already have finding instructions. Why aren't we 13 just defining what actual malice is, the legal 14 definition of actual malice? 15 MR. ROTTENBORN: I think that makes 16 sense. 17 THE COURT: The reason we don't have a 18 model jury instruction on it is because of the 19 finding instructions in defamation. They -- they 20 lay out what actual malice is in the finding 21 instruction. But you -- you agreed just to put 22 actual malice in the finding instruction which is</p>

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18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 fine, but then I think we just use what actual 2 malice is. 3 MR. ROTTENBORN: Agreed, Your Honor. 4 THE COURT: All right. 5 MR. ROTTENBORN: So -- which I think 6 is -- 7 THE COURT: It's -- 8 MR. ROTTENBORN: I think our -- I think 9 our AA is closer to that than 26, but... 10 THE COURT: Okay. Let's see. Let's 11 take a look at AA. Actual malice. Mr. Depp must 12 prove by clear and convincing evidence that at the 13 time the complaint statements were published Ms. 14 Heard made each statement either with knowledge -- 15 or, again, made or published; right? 16 MR. MONIZ: Yes, Your Honor. 17 THE COURT: Made or published each 18 statement either with knowledge that the statement 19 was false or with serious doubt as to whether the 20 statement was true. 21 MR. MONIZ: Should we slip in the 22 language reckless disregard whether it's true?</p>	<p style="text-align: right;">71</p> <p>1 MS. MCCAFFERTY: We can make number two 2 in both be, or with reckless disregard for the 3 truth, that is, with a high degree of awareness 4 that the statement was probably false -- 5 THE COURT: Yeah. I just read -- 6 MS. MCCAFFERTY: -- to track the model. 7 THE COURT: Okay. 8 MR. MONIZ: Yeah. 9 THE COURT: Because, yeah, serious doubt 10 is not in there. So I just wanted to make -- 11 MR. ROTTENBORN: Yeah. I think there's 12 a case that defines it, but we don't need to go 13 with -- 14 THE COURT: Okay. So if we can make 15 actual malice just making or publishing a 16 statement knowing it to be false or did the 17 defendant make it so recklessly as to amount to a 18 willful disregard for the truth, that is, with a 19 high degree of awareness that the statement was 20 probably false. Do we all agree to that? 21 MR. MONIZ: That makes sense, Your 22 Honor.</p>
<p style="text-align: right;">70</p> <p>1 Because I think that's actually the typical -- 2 THE COURT: Well, the definition of 3 actual malice is making -- making or publishing 4 the statement knowing it to be false or believing 5 it to be true. Did the defendant lack reasonable 6 grounds for such belief or act negligently in 7 failing to ascertain the facts on which the 8 statement was based? 9 I'm sorry. Did the defendant make the 10 statement knowing it to be false or did the 11 defendant make it recklessly -- there you go. 12 There's your reckless -- as to amount to a willful 13 disregard for the truth, that is, with a high 14 degree of awareness that the statement was 15 probably false? 16 MR. ROTTENBORN: I'm sorry, Your Honor. 17 THE COURT: That's okay. 18 MR. ROTTENBORN: I was just -- I was -- 19 THE COURT: I was just -- I was just 20 following the language in the -- in the 21 instruction for what actual malice is. 22 MR. ROTTENBORN: Okay.</p>	<p style="text-align: right;">72</p> <p>1 MR. ROTTENBORN: Could -- could we do it 2 so -- do we need to have a separate -- I don't 3 think we need to have separate paragraphs saying 4 Ms. Heard or Mr. Depp. Could we just say both 5 parties have the burden of proving actual malice 6 by the -- 7 THE COURT: Clear and convincing -- 8 MR. ROTTENBORN: -- clear and convincing 9 evidence -- 10 THE COURT: And actual malice is. 11 MR. ROTTENBORN: And actual -- right. 12 THE COURT: Just put that in there. 13 MR. ROTTENBORN: Yes. 14 THE COURT: Does everybody agree to 15 that? 16 MR. MONIZ: I -- I think that's fine, 17 Your Honor. 18 THE COURT: Okay. All right. So we'll 19 get one. So that's owed to me too. We'll use AA 20 as amended, though. Okay? 21 MR. ROTTENBORN: Okay. Thank you. 22 THE COURT: Then we'll withdraw 26 based</p>

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19 (73 to 76)

<p>73</p> <p>1 on that. All right. Number 27 is opinions. This 2 is just -- the Court has already ordered -- the 3 Court has already made a ruling on this issue. 4 MR. MONIZ: I think -- I think we can 5 withdraw -- 6 THE COURT: Okay. 7 MR. MONIZ: -- this instruction. 8 THE COURT: All right. Withdrawn. 9 MR. ROTTENBORN: And this is our 24. So 10 if Your Honor can just -- we can maybe withdraw 11 that too. 12 THE COURT: And what's -- what is it 13 now? I'm not -- 14 MR. ROTTENBORN: Oh. What's -- 15 MS. MCCAFFERTY: It's X or -- 16 THE COURT: I'm sorry. 17 MR. ROTTENBORN: X. 18 MS. MCCAFFERTY: -- or 24. 19 MR. ROTTENBORN: I'm -- I'm going 20 backwards in the alphabet. 21 THE COURT: So 24; which I think there 22 was no objection. So let me just take it out of</p>	<p>75</p> <p>1 opinion. 2 THE COURT: Well, I mean, that's -- 3 MR. ROTTENBORN: It's -- 4 THE COURT: -- not one of the defamation 5 statements in the finding instructions. So -- 6 MR. MONIZ: Yeah. Your Honor, that's 7 really -- I apologize. 8 MS. MCCAFFERTY: Go ahead. This 9 instruction, it -- it -- I mean, it applies to 10 both parties. So it would apply to anything with 11 the counterclaim statements too. It tells the 12 jury how to -- what to do when you're looking at 13 statements that are surrounded by statements of 14 opinion that are actionable. 15 THE COURT: No. Well, it says, when a 16 challenge statement is made up of both opinion 17 parts and also parts which evaluate -- we don't 18 have that in this case. 19 MS. MCCAFFERTY: That's true. 20 MR. ROTTENBORN: Okay. 21 THE COURT: Okay. So we can withdraw 22 that?</p>
<p>74</p> <p>1 that stack. Defendant's -- find 24. I don't know 2 where 24 is. Hold on. Okay. 3 MR. ROTTENBORN: I guess if there's -- 4 THE COURT: X. 5 MR. ROTTENBORN: -- if there's no 6 objection, we would argue to keep 24. But -- 7 MS. MCCAFFERTY: It's normally given 8 where you're comparing statements that are with -- 9 alongside statements of opinion which -- 10 THE COURT: We don't have here. So you 11 don't -- 12 MS. MCCAFFERTY: We would like to keep 13 24. 14 MR. ROTTENBORN: And I think here -- 15 here's why. I don't know what they're going to 16 argue. If you look at Ms. Heard's statements when 17 she says something like, you know, I saw firsthand 18 how institutions protect powerful men accused of 19 abuse, I don't know if the jury is going to think 20 that she has -- I mean, obviously the first half 21 of that is opinion; I saw firsthand how 22 institutions protect. Like that's -- that's her</p>	<p>76</p> <p>1 MR. ROTTENBORN: Yeah. 2 THE COURT: Okay. Moving along. All 3 right. That gets us to Number 28 which is the 4 privilege of self-defense which I was a little 5 confused about. My notes are just, can you defend 6 it as agency. I mean... 7 MR. MONIZ: Well, if -- if the theory is 8 that -- I mean, if -- if their theory is that Mr. 9 Waldman is acting on Mr. Depp's behalf, I mean, I 10 think their -- I think that cuts both ways. 11 I -- I don't see how you can argue that 12 Mr. Depp can be held liable for Mr. Depp -- for 13 Mr. Waldman's actions in supposedly attacking 14 Ms. Heard without saying -- I mean, if -- if -- if 15 the wrongful act is imputed to Mr. Depp, then... 16 THE COURT: Okay. 17 MR. ROTTENBORN: Your Honor, I agree 18 with you. There's no case law that says -- 19 suggesting that this applies in an agency. Second 20 of all, the -- the case law suggests -- and I 21 don't have the language in front of me, but 22 essentially that the -- that the self-defense must</p>

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20 (77 to 80)

<p>77</p> <p>1 be proportional to whatever's said. 2 So here there's a defamatory implication 3 by Ms. Heard in an op-ed. And for -- you know, 4 years later Mr. Waldman is attacking her on 5 Twitter. The -- the self-defense privilege is 6 extremely limited. And it's -- it's like if 7 you're -- someone accuses you of doing something 8 and you can say, no, I didn't do that, you can't 9 be sued for defamation for that. 10 Mr. Waldman going on Twitter is so far 11 beyond the case law that they cite for 12 self-defense privilege that it's -- it's going to 13 be confusing to the jury. It's not applicable. 14 And there's no suggestion or -- or support for the 15 idea that agency allows it. 16 MR. MONIZ: They can argue that, Your 17 Honor, but that doesn't mean the jury instruction 18 is not proper. I mean, if the question is 19 whether -- if the question is whether Mr. Waldman 20 is acting in defense of Mr. Depp -- I mean, it's 21 kind of the same conversation we were just having. 22 If -- if Mr. Waldman and Mr. Depp are</p>	<p>79</p> <p>1 There's -- there's -- this is so far 2 afield from any of the case law supporting this 3 that it's -- there's no support for it. There's 4 no support for it on an agency ground. 5 THE COURT: All right. 6 MR. ROTTENBORN: There's no support for 7 it. This would take the self-defense privilege 8 far beyond where it's ever been applied, Your 9 Honor. 10 MR. MONIZ: That's not an accurate 11 statement, first of all. It's not on Twitter. It 12 was made in an article. 13 MR. ROTTENBORN: Well, in the Daily 14 Mail. 15 MR. MONIZ: And, secondly, the -- the 16 basic principle here, it's -- it's really, I 17 think, common sense. If Mr. Depp and Mr. Waldman 18 are the same person for purposes of this analysis, 19 then Mr. Waldman's actions responding on behalf of 20 Mr. Depp bring this defense into play. 21 MR. ROTTENBORN: It's not -- he wasn't 22 responding on behalf of Mr. Depp. He's going out</p>
<p>78</p> <p>1 the same person for purposes of this analysis, 2 then I think that cuts both ways. I think that's 3 basic fairness. And also -- and also, I mean, I 4 think it's clear that, I mean, the case law 5 authorizes self-defense. The case law doesn't -- 6 doesn't -- 7 MR. ROTTENBORN: There's -- there's no 8 case law -- 9 MR. MONIZ: And also -- and also, Your 10 Honor -- and we haven't put in our defensive case 11 on the counterclaim yet. But, you know, this 12 is -- this is not in response to the article. 13 This is in the context of litigation where Ms. 14 Heard is making allegations. And so -- and so the 15 defensive -- it is a defense of Mr. Depp. 16 MR. ROTTENBORN: No, Your Honor. 17 There's no case law that supports the idea -- 18 MR. MONIZ: And it's an article. 19 MR. ROTTENBORN: -- that you make -- you 20 file legal documents responding to a lawsuit and 21 someone gets to go out on Twitter and say whatever 22 they want.</p>	<p>80</p> <p>1 and leaking stuff to the Daily Mail and ginning up 2 press articles about this. This is not -- this is 3 not someone standing on a courthouse step saying 4 my client is innocent and the facts will prove it. 5 If that's the scenario, then maybe it's 6 a different conversation. But there's absolutely 7 no case law to suggest -- 8 THE COURT: Well -- 9 MR. ROTTENBORN: -- that this should 10 apply in this area. 11 THE COURT: -- what I'm going to do 12 since I haven't heard the defense yet which we're 13 going to get to next week, I assume, I'm going to 14 take this one under advisement. And we'll see 15 where we are. And I'll make a ruling on it before 16 next Friday. I'll give you enough time, but I'll 17 hear the evidence first. Okay? 18 MR. ROTTENBORN: Thank you. 19 THE COURT: So that one will be a new 20 stack. Thank you for that. All right. Number 29 21 is protected speech. 22 MS. MCCAFFERTY: The same. Yeah. This</p>

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21 (81 to 84)

<p>81</p> <p>1 should be taken under advisement too.</p> <p>2 THE COURT: Okay. It's the same issue.</p> <p>3 All right. We'll put that under advisement. And</p> <p>4 let's see. Duty to mitigate. The only question I</p> <p>5 had here is how do you mitigate in a defamation</p> <p>6 case.</p> <p>7 MR. ROTTENBORN: Right.</p> <p>8 THE COURT: I'm not sure how that --</p> <p>9 MR. ROTTENBORN: Right. That's what</p> <p>10 we --</p> <p>11 THE COURT: I'm not sure how you do that</p> <p>12 other than saying -- getting up somewhere and</p> <p>13 saying I -- the statements I made were false.</p> <p>14 MR. ROTTENBORN: Particularly when we're</p> <p>15 in a per se scenario.</p> <p>16 THE COURT: I don't --</p> <p>17 MR. MONIZ: Yeah. I -- I don't know</p> <p>18 that we --</p> <p>19 THE COURT: Okay. So we'll withdraw</p> <p>20 that one?</p> <p>21 MR. MONIZ: Yeah.</p> <p>22 THE COURT: Okay. So that takes care of</p>	<p>83</p> <p>1 read --</p> <p>2 THE COURT: Okay.</p> <p>3 MR. ROTTENBORN: -- I read that brief</p> <p>4 snippet of Kate James for a few seconds, but I --</p> <p>5 I think that's --</p> <p>6 THE COURT: Right.</p> <p>7 MR. ROTTENBORN: We're -- we're okay.</p> <p>8 THE COURT: Okay. That's good. All</p> <p>9 right. Next one is W, formerly 23, which was the</p> <p>10 defamation which I think we already -- did we</p> <p>11 cover this? So why in a defamation case do we</p> <p>12 need --</p> <p>13 MR. ROTTENBORN: I think given what</p> <p>14 we've already --</p> <p>15 THE COURT: Okay.</p> <p>16 MR. ROTTENBORN: -- ruled -- I think</p> <p>17 we're okay.</p> <p>18 THE COURT: Withdraw that. All right.</p> <p>19 And Z, formerly 26, is -- it says falsity; but I</p> <p>20 think most of this is covered in the finding</p> <p>21 instruction.</p> <p>22 I -- I didn't have a problem with just</p>
<p>82</p> <p>1 the objected ones for plaintiff. Let's see what</p> <p>2 ones we have left for defendant. I have</p> <p>3 Instruction K with depositions which was formerly</p> <p>4 11 for you, Mr. Moniz.</p> <p>5 MR. MONIZ: Thank you, Your Honor.</p> <p>6 THE COURT: You're welcome.</p> <p>7 In this one it's just talking about</p> <p>8 depositions. I think the plaintiff's objection as</p> <p>9 to read to you -- I think is correct. I think</p> <p>10 that should be taken out of there.</p> <p>11 I don't have a problem with it if it</p> <p>12 just said any testimony merely -- do not discount</p> <p>13 any testimony merely because it was shown to you</p> <p>14 by a video recording.</p> <p>15 MR. ROTTENBORN: Yeah. That -- that's</p> <p>16 fine. We're fine with that.</p> <p>17 THE COURT: Okay. Is that okay?</p> <p>18 MR. MONIZ: That's fine, Your Honor.</p> <p>19 THE COURT: Okay. Then with that</p> <p>20 amendment we'll go ahead and give that one.</p> <p>21 MR. ROTTENBORN: Yeah. I think -- can</p> <p>22 we -- I think it -- I think it's okay. I -- I</p>	<p>84</p> <p>1 the third paragraph saying there is no burden on</p> <p>2 Ms. Heard to prove the truth of any of the</p> <p>3 complaint statements and there is no burden on Mr.</p> <p>4 Depp to prove the truth of any of the counterclaim</p> <p>5 statements. Both parties were free to offer proof</p> <p>6 of truth, but by doing so they did not assume the</p> <p>7 burden of convincing you of the truth of these</p> <p>8 statements.</p> <p>9 The burden remains on Mr. Depp to prove</p> <p>10 any implication he complains of in the complaint</p> <p>11 statement is false. And the burden remains -- the</p> <p>12 next page. And the burden remains on Ms. Heard to</p> <p>13 prove that the counterclaim statements are false.</p> <p>14 MR. ROTTENBORN: We're fine with that</p> <p>15 with the limitation.</p> <p>16 THE COURT: Any objection to that, just</p> <p>17 making that --</p> <p>18 MR. MONIZ: I think -- I think that's</p> <p>19 fine, Your Honor. Just -- just what Your Honor</p> <p>20 just said is the instruction?</p> <p>21 THE COURT: That's it.</p> <p>22 MR. MONIZ: That's fine.</p>

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22 (85 to 88)

<p>85</p> <p>1 THE COURT: Okay.</p> <p>2 MR. MONIZ: I think that's fine, Your</p> <p>3 Honor.</p> <p>4 THE COURT: Okay. I don't know if you</p> <p>5 want to title that falsity. That's more of a</p> <p>6 burden of proof or something.</p> <p>7 MR. ROTTENBORN: Okay.</p> <p>8 MS. MCCAFFERTY: We'll -- we'll confer</p> <p>9 if we --</p> <p>10 THE COURT: Okay. Perfect. All right.</p> <p>11 That will be given with the -- that's owed to me</p> <p>12 then. Owed. Well, all of them are owed to me;</p> <p>13 but I've got to make sure it looks good. All</p> <p>14 right. Instruction CC, formerly 29, implication</p> <p>15 and actual malice.</p> <p>16 MR. ROTTENBORN: I think --</p> <p>17 THE COURT: Can you withdraw this?</p> <p>18 MR. ROTTENBORN: Oh, yes. No, we</p> <p>19 actually -- sorry.</p> <p>20 THE COURT: Go ahead.</p> <p>21 MR. ROTTENBORN: Go ahead, Elaine.</p> <p>22 MS. MCCAFFERTY: Yeah. This instruction</p>	<p>87</p> <p>1 So we've been through this in the finding</p> <p>2 instruction. And I think the finding instruction</p> <p>3 covers this. And the definition of actual malice</p> <p>4 covers this.</p> <p>5 MR. ROTTENBORN: Okay. We -- well,</p> <p>6 we -- we just wanted to make a record on it.</p> <p>7 THE COURT: Okay.</p> <p>8 MR. ROTTENBORN: And --</p> <p>9 THE COURT: Sure.</p> <p>10 MR. ROTTENBORN: -- I think -- I do</p> <p>11 think that there's a -- there's sort of a gap in</p> <p>12 Virginia law in this which is why we've proposed</p> <p>13 the Third Circuit, that we follow that. And --</p> <p>14 THE COURT: Okay. All right. Well, so</p> <p>15 I can either --</p> <p>16 MS. MCCAFFERTY: Refused over objection.</p> <p>17 THE COURT: Denied? Okay. Denied over</p> <p>18 objection. Got it. Did you want to be heard on</p> <p>19 that one?</p> <p>20 MR. MONIZ: We're -- we're fine with</p> <p>21 that, Your Honor.</p> <p>22 THE COURT: Okay. All right. And then</p>
<p>86</p> <p>1 is supported by the weight of authority. Courts</p> <p>2 that have considered how the actual malice</p> <p>3 standard applies in a defamation by implication</p> <p>4 case have held that it applies to two things.</p> <p>5 There's actual malice to the falsity and actual</p> <p>6 malice to the intent to make the implication.</p> <p>7 And that gives meaning -- this is in the</p> <p>8 Kendall case from the Third Circuit. And that</p> <p>9 gives meaning to the fact that actual malice is a</p> <p>10 subjective component. So this -- the Third</p> <p>11 Circuit calls this the communicative intent</p> <p>12 element.</p> <p>13 THE COURT: Well, if we were in the</p> <p>14 Third Circuit, maybe I'd -- I'd be interested in</p> <p>15 that.</p> <p>16 MS. MCCAFFERTY: I think it's important</p> <p>17 to know that we've already moved past the way</p> <p>18 actual malice ordinarily applies. Normally you</p> <p>19 just ask if the statement on its face is false.</p> <p>20 Well, here the plaintiffs are saying, I want the</p> <p>21 jury to consider whether the implication is false.</p> <p>22 THE COURT: The implication is Mr. Depp.</p>	<p>88</p> <p>1 DD is republication. This one is going to need</p> <p>2 some work. All right.</p> <p>3 In order to find -- I understand the</p> <p>4 republication. The original online opinion</p> <p>5 article including the headline through a tweet.</p> <p>6 You must find that she edited -- which is not</p> <p>7 correct. She retransmitted -- the defamatory</p> <p>8 material with a goal of reaching a new audience.</p> <p>9 Stated differently, republication occurs when the</p> <p>10 speaker has affirmatively reiterated the</p> <p>11 statement.</p> <p>12 A hyperlink directing readers to a</p> <p>13 previous article in the same Web site does not</p> <p>14 direct the previous article to a new audience.</p> <p>15 Merely linking to an article does not amount to</p> <p>16 republication. However, adding content could.</p> <p>17 So if you're going to have this</p> <p>18 instruction, you're going to have to put in there</p> <p>19 that adding content -- we've got to find some</p> <p>20 language that adding content to the -- to the</p> <p>21 tweet with the hyperlink could be republication.</p> <p>22 MR. ROTTENBORN: I think -- well, I</p>

<p style="text-align: right;">89</p> <p>1 think a hyperlink directing readers to a previous 2 article on the same Web site would not -- I mean, 3 we want to be careful that we're not instructing 4 the jury that because she added a few words at the 5 top that that constituted -- 6 THE COURT: But that's evidence that 7 they could find that that was republication. So 8 I'm just saying that a hyperlink alone isn't the 9 evidence we have in this case. 10 MR. ROTTENBORN: Correct. But to the 11 extent that -- I don't know what they're going to 12 argue. But to the extent that they say, look, 13 she -- she attached it, that's republication, 14 it's -- it's not. And so the jury has to 15 determine -- 16 THE COURT: Well, that's why I can 17 say -- and -- and you're right. Just a mere link 18 to an article is not republication. I agree that 19 can stay. But you also have to say, but adding 20 content to it may -- 21 MR. ROTTENBORN: Okay. Understood. 22 THE COURT: -- may establish</p>	<p style="text-align: right;">91</p> <p>1 MR. ROTTENBORN: Right. 2 THE COURT: -- they -- 3 MR. ROTTENBORN: I mean, I think we'd be 4 okay. I think it's important to have -- 5 THE COURT: And then -- then it's just 6 the sufficiency of the evidence, how they -- 7 MR. ROTTENBORN: Correct. 8 THE COURT: -- weigh the evidence. When 9 she says -- and it could be either way. 10 MR. ROTTENBORN: Right. 11 THE COURT: When she says, I just wrote 12 this article, they might find that, okay, that's a 13 republication because she's saying she wrote this 14 article and she's sending it out to everybody. 15 MR. ROTTENBORN: Correct. 16 THE COURT: So I think you have to -- if 17 you want this instruction, you're going to have to 18 add that content to it. 19 MR. ROTTENBORN: I -- I think we'd like 20 the instruction. If you -- if Your Honor would 21 like, we're happy to propose some language to the 22 other side and --</p>
<p style="text-align: right;">90</p> <p>1 republication. 2 MR. MONIZ: Yeah. If this instruction 3 is given, Your Honor -- and I -- I don't think it 4 should be. But if it is given, that should be -- 5 that should be clarified; that -- 6 THE COURT: Well, in the finding 7 instruction we do have, she made or published. 8 MR. ROTTENBORN: Right. 9 THE COURT: So -- 10 MR. ROTTENBORN: I think we'd be okay if 11 we say a hyperlink -- you know, something to the 12 effect of a hyperlink directing readers to a 13 previous article on the same Web site does not 14 direct the previous article to -- or merely 15 linking to an article does not amount to 16 republication but adding new content may, it is up 17 to you to decide; or something like that as long 18 as it's clear that -- 19 THE COURT: Well, if you say "may." I 20 mean -- 21 MR. ROTTENBORN: Right. 22 THE COURT: And you can argue that --</p>	<p style="text-align: right;">92</p> <p>1 MR. MONIZ: If Your Honor has already 2 taken things under -- under submission, I guess if 3 they want to propose additional language, we 4 can -- 5 THE COURT: Okay. Do you want me to -- 6 MR. MONIZ: -- confer about that. 7 THE COURT: -- take it under advisement 8 so you can work on it? 9 MR. MONIZ: Sure. Would that work? 10 THE COURT: Okay. Yeah. That's fine. 11 Why don't we do that. But, I mean, I don't -- I 12 don't -- since we are saying made or published, 13 I -- I don't have a problem with the republished 14 jury instruction. I just think it has to be 15 accurate with adding the language. 16 MR. ROTTENBORN: Understood. Thank you. 17 THE COURT: Okay. All right. 18 Instruction EE, defamatory meaning. I think this, 19 again, is covered by other instructions. 20 MR. ROTTENBORN: We withdraw. 21 THE COURT: Okay. Withdrawn. All 22 right. FF, again defamatory meaning.</p>

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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 MR. ROTTENBORN: Well, I think this -- I</p> <p>2 think this is important and for both -- both</p> <p>3 sides.</p> <p>4 THE COURT: Okay. Well, not really both</p> <p>5 sides --</p> <p>6 MR. ROTTENBORN: Well --</p> <p>7 THE COURT: -- because --</p> <p>8 MR. ROTTENBORN: -- yeah, not really</p> <p>9 both sides. For -- I think it's important for our</p> <p>10 side.</p> <p>11 THE COURT: If you want it to be</p> <p>12 important for both sides, I'm sure they would have</p> <p>13 no problem --</p> <p>14 MR. ROTTENBORN: Yeah. After I said</p> <p>15 that I was thinking wait a second, it's -- it's</p> <p>16 not. But I think it is important in our -- in Mr.</p> <p>17 Depp's claim against Ms. Heard.</p> <p>18 THE COURT: So the first paragraph only?</p> <p>19 MR. ROTTENBORN: Yeah.</p> <p>20 THE COURT: Any objection to that?</p> <p>21 MR. MONIZ: I have a little bit --</p> <p>22 little bit of a problem with opinion editorial.</p>	<p style="text-align: right;">95</p> <p>1 this out.</p> <p>2 THE COURT: Take it out?</p> <p>3 MR. ROTTENBORN: Yeah.</p> <p>4 THE COURT: Okay. Withdrawn. All</p> <p>5 right. And then the next two, JJ which is</p> <p>6 formerly 36 and KK, formerly 37, are both on</p> <p>7 punitive damages.</p> <p>8 And I -- I -- I guess hope springs</p> <p>9 eternal. But for -- I see that on yours on JJ you</p> <p>10 put, once you have found; which I'm sure you agree</p> <p>11 with me is incorrect. It should be, if you find.</p> <p>12 MR. ROTTENBORN: Yeah. No, that's --</p> <p>13 that's --</p> <p>14 THE COURT: Yeah.</p> <p>15 MR. MONIZ: We noticed that as well,</p> <p>16 Your Honor.</p> <p>17 THE COURT: I know. It's like...</p> <p>18 MR. ROTTENBORN: I think --</p> <p>19 THE COURT: But -- but for KK you got it</p> <p>20 right for Mr. Depp's, if you find Mr. Depp.</p> <p>21 MR. ROTTENBORN: This was -- this was</p> <p>22 when -- this was when we were arguing per se and</p>
<p style="text-align: right;">94</p> <p>1 THE COURT: Let me see. Okay. All</p> <p>2 right. I understand that.</p> <p>3 MR. ROTTENBORN: Can we say op-ed?</p> <p>4 THE COURT: Do you want to say op-ed?</p> <p>5 MS. MCCAFFERTY: We can do that.</p> <p>6 THE COURT: All right. Make it op-ed.</p> <p>7 And getting rid of the second paragraph. So any</p> <p>8 objection to that?</p> <p>9 MR. MONIZ: I mean, in light of -- in</p> <p>10 light of Your Honor's rulings --</p> <p>11 THE COURT: Okay.</p> <p>12 MR. MONIZ: -- on that, that's --</p> <p>13 THE COURT: All right.</p> <p>14 MR. MONIZ: Yeah.</p> <p>15 THE COURT: It will be given with the</p> <p>16 changes on it. All right. Instruction GG,</p> <p>17 definition of of and concerning.</p> <p>18 MR. ROTTENBORN: I'm not sure that</p> <p>19 that -- is that phrase in the finding</p> <p>20 instructions? I'm not sure. I know it's --</p> <p>21 THE COURT: I don't think so.</p> <p>22 MR. ROTTENBORN: I think we can take</p>	<p style="text-align: right;">96</p> <p>1 not per se. So --</p> <p>2 THE COURT: Oh, okay. I gotcha. So --</p> <p>3 MR. ROTTENBORN: So --</p> <p>4 THE COURT: -- if --</p> <p>5 MR. ROTTENBORN: Yeah.</p> <p>6 THE COURT: So if you found -- so if we</p> <p>7 could make them both the same --</p> <p>8 MR. ROTTENBORN: Yeah. And we would</p> <p>9 use -- we would use 36 or J -- whatever that is,</p> <p>10 JJ.</p> <p>11 THE COURT: Okay.</p> <p>12 MR. ROTTENBORN: That cites 37.110.</p> <p>13 THE COURT: Okay. So you can just do</p> <p>14 one for everybody.</p> <p>15 MR. ROTTENBORN: Yeah. We'll make</p> <p>16 that --</p> <p>17 THE COURT: As long as they're both the</p> <p>18 same --</p> <p>19 MR. ROTTENBORN: That was just why we</p> <p>20 have two.</p> <p>21 THE COURT: -- is there any objection to</p> <p>22 that --</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 MR. MONIZ: No objection as long as 2 they're both the same, Your Honor. 3 MR. ROTTENBORN: Of course. 4 THE COURT: Okay. So JJ and KK, just 5 make sure they're the same. And we will go from 6 there. All right. And then we have Jury 7 Instruction NN, formerly 39. Okay. You want to 8 define domestic abuse. Okay. 9 MR. MONIZ: Significant objection to 10 this one, Your Honor. 11 THE COURT: I understand. I understand. 12 I mean, it's not an abuse case. I understand 13 there's evidence of defamation of abuse. Your 14 experts have testified to that, of what abuse is. 15 I don't think we're codifying any expert opinions 16 by making an abuse instruction. 17 I mean, if that was the case, in all 18 defamation cases I'd have to give an instruction 19 for hoax, an instruction for sexual violence. But 20 that's not -- that's not what a defamation case 21 is. 22 So I understand why you'd want this, but</p>	<p style="text-align: right;">99</p> <p>1 find libel, the finding instructions already say 2 you have to base it on those three statements. 3 MR. ROTTENBORN: Right. The -- the 4 reason that we argue this, Your Honor, is in light 5 of Mr. Depp's testimony on the stand where he 6 basically said he couldn't identify that he was 7 suing over the three statements. He kind of 8 said -- 9 THE COURT: Well, I -- 10 MR. ROTTENBORN: -- well, I'm suing for 11 everything that's happened since 2016 and she 12 ruined my life. 13 THE COURT: I understand. But the jury 14 is going to be instructed very clearly that it's 15 only those three statements. So I'll deny it over 16 objection if you wish or I'll withdraw it; either 17 way. 18 MR. ROTTENBORN: Over objection. Thank 19 you. 20 THE COURT: Over objection. Got it. 21 PP, absolute judicial immunity. I'm not -- I'm 22 not sure what this is about.</p>
<p style="text-align: right;">98</p> <p>1 you had -- you can argue it to the jury. You had 2 your expert testimonies; both of you do. You can 3 argue it to the jury. I just don't think it's 4 appropriate for an instruction. But I'll deny it 5 over objection if you want me to. 6 MR. ROTTENBORN: Thank you. 7 THE COURT: Okay. Denied over 8 objection. OO, statute of limitations. Again, 9 the finding instructions just have the three 10 statements. So I -- I don't -- I guess you're 11 trying to get at that no other statement -- you 12 may not consider any other statement as a basis 13 for your verdict, but -- 14 MR. ROTTENBORN: Here's the reason that 15 we wanted this. Sorry. I -- 16 THE COURT: Go ahead. But, I mean, the 17 finding instructions are clear that it's just 18 those three are to find libel. 19 But to say you can't do any other 20 statement, other statements came in for damages 21 reasons. Other statements might come in for 22 intent or something like that. But I -- but to</p>	<p style="text-align: right;">100</p> <p>1 MR. ROTTENBORN: I guess that would 2 be just -- if you're not inclined to give it, we'd 3 just ask for it over objection -- 4 THE COURT: Okay. 5 MR. ROTTENBORN: -- just in light of Mr. 6 Depp's testimony that -- 7 THE COURT: I understand. 8 MR. ROTTENBORN: Okay. 9 THE COURT: Okay. Is -- okay. QQ. I 10 think -- we're back to of and concerning. I mean, 11 doesn't the finding instructions take care of 12 this, that they're public figures and we have to 13 do actual malice? I'm not sure what the basis of 14 this instruction would be. 15 MR. ROTTENBORN: I -- I think so, Your 16 Honor. 17 THE COURT: Okay. 18 MR. ROTTENBORN: I think that the -- 19 yes, I think -- I think it does. 20 THE COURT: Okay. We'll withdraw it 21 then. 22 MR. ROTTENBORN: Yeah.</p>

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26 (101 to 104)

<p>101</p> <p>1 THE COURT: All right. RR, action on 2 the advice of counsel. 3 MR. MONIZ: Significant objection to 4 this one as well, Your Honor. 5 THE COURT: Right. How is the action on 6 the advice of counsel a defense to defamation? 7 MR. ROTTENBORN: Well, it's something 8 that the jury can consider; that she sought her 9 counsel's advice and -- 10 THE COURT: Well, you can -- I guess you 11 can argue that; but it's not a defense. So if you 12 want me to over -- denied over objection or 13 withdrawn? 14 MR. ROTTENBORN: Yes, please. 15 THE COURT: Denied over objection. 16 Okay. Jury Instruction SS. This is where we get 17 back to the immunity. 18 MR. ROTTENBORN: I suppose in light of 19 Your Honor's rulings -- 20 THE COURT: Okay. 21 MR. ROTTENBORN: -- we can take this 22 away from -- we can -- we can withdraw, right --</p>	<p>103</p> <p>1 MR. ROTTENBORN: Yeah. I agree. 2 THE COURT: Okay. All right. 3 Instruction CCC, express and implied authority. 4 All I have in notes here is this a reliance 5 argument, question mark. So... 6 MR. ROTTENBORN: I'm sorry. Is -- are 7 you -- 8 THE COURT: I just wondered -- 9 MR. ROTTENBORN: I didn't know if you 10 were waiting for Mr. Moniz. 11 THE COURT: Instruction CCC. 12 MR. MONIZ: Yeah. 13 THE COURT: I just have is this a 14 reliance argument, question mark. Yes. Go ahead. 15 MR. MONIZ: Well, I -- first of all, I 16 don't -- I don't think this really applies. And 17 it's -- I mean, it's a generic instruction on -- I 18 mean, whether -- whether Mr. Waldman had express 19 or implied authority is a factual question that 20 the jury has to -- has to resolve. I mean, I -- I 21 don't think this adds anything. 22 MR. ROTTENBORN: Well, I mean, it's in</p>
<p>102</p> <p>1 THE COURT: Okay. 2 MR. ROTTENBORN: -- because -- 3 MS. MCCAFFERTY: Well, no; refused over 4 objection because then -- 5 THE COURT: Okay. 6 MS. MCCAFFERTY: In light of the other 7 rulings I think you have to refuse this too. 8 Otherwise, I mean, if we say we don't want this, 9 then why would we have had the -- had it in the 10 liability issues in the first place? 11 MR. ROTTENBORN: Let's do -- let's 12 just -- let's do refused over objection. But I 13 understand. And we don't -- 14 THE COURT: Okay. 15 MR. ROTTENBORN: -- need to spend time 16 on it in light of -- 17 THE COURT: All right. I just -- I -- 18 it seems to be a moot point, I think, if you -- 19 MR. ROTTENBORN: I understand. 20 THE COURT: -- walk down the legal road. 21 MR. ROTTENBORN: Yeah. Yeah. 22 THE COURT: It seems like it.</p>	<p>104</p> <p>1 the -- it's in the model instructions about the 2 scope of an attorney's authority. 3 THE COURT: I'll -- I'll give it. 4 MR. ROTTENBORN: Thank you. 5 THE COURT: That's fine. And then 6 Instruction DDD, I -- this one I just didn't 7 understand who is the third party so far as third 8 parties are concerned. I'm -- 9 MR. ROTTENBORN: I think we can -- we 10 can get rid of it. 11 THE COURT: Okay. Withdraw that. All 12 right. Those are all the ones that are objected 13 to. Let me go to the no objections, because I 14 think there's many that are very similar. So 15 let's just go through the plaintiff's. 16 The credibility of witnesses. Any 17 objection to giving Number 3 as the credibility of 18 witnesses? I think they're both the same. 19 MR. ROTTENBORN: No. 20 THE COURT: Okay. We'll give 3. 5 was 21 the circumstantial evidence. 22 MR. ROTTENBORN: Fine.</p>

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27 (105 to 108)

<p>105</p> <p>1 THE COURT: Okay. 6 was prior 2 inconsistent statements by a nonparty witness. 3 MR. ROTTENBORN: Fine. 4 THE COURT: 7 was prior inconsistent 5 statements by a witness. Number 8 was rejected or 6 stricken evidence. 7 MR. ROTTENBORN: I'm sorry. It was? 8 THE COURT: Rejected or -- and stricken 9 evidence. 10 MR. ROTTENBORN: Oh, right. Yeah. 11 That's fine. 12 THE COURT: Okay. Number 9, amount sued 13 is not evidence. 14 MR. ROTTENBORN: I think we already have 15 that. 16 THE COURT: You do too. I'm just going 17 through theirs. 18 MR. ROTTENBORN: Oh, yeah. 19 MS. MCCAFFERTY: We do. 20 MR. ROTTENBORN: That's right. 21 That's -- 22 THE COURT: Okay. So then we can --</p>	<p>107</p> <p>1 MR. ROTTENBORN: Yeah. 2 THE COURT: -- and verdict not to be 3 based on bias, guesswork or speculation. 4 MR. ROTTENBORN: And we thought that -- 5 I mean, I guess you could -- you could give both. 6 There's at least a part of 9 that we'd like to 7 give even if -- 8 THE COURT: Well, I mean, you can -- we 9 can give both of them if you don't have any 10 objection to that, Mr. Moniz. I mean, you do 11 have -- your Q is sympathy, bias, guesswork or 12 speculation. 13 MR. ROTTENBORN: So we can take Q out, 14 but then we also have the concept of sympathy in 15 9. But we'd -- 16 THE COURT: I mean, you -- 17 MR. ROTTENBORN: -- we'd like to give -- 18 THE COURT: -- you didn't object to 9. 19 So do you have any objection to 9? 20 MR. MONIZ: I mean, I don't have a 21 powerful objection to it, Your Honor. 22 THE COURT: Okay.</p>
<p>106</p> <p>1 Number 10, verdict not to be based on sympathy, 2 bias, guesswork or speculation. 3 MR. ROTTENBORN: That was -- that was 4 one where we had a -- 5 THE COURT: A little difference? 6 MR. ROTTENBORN: -- competing, a 7 difference. 8 THE COURT: You didn't object to it, 9 but -- 10 MR. ROTTENBORN: Oh, yeah. This is 11 where they -- they didn't object to our 9 which 12 is -- 13 THE COURT: The same? 14 MS. MCCAFFERTY: No. 15 MR. ROTTENBORN: -- I, I think. It's 16 slightly different. 17 THE COURT: Okay. So we don't want to 18 give both is what you're saying. 19 MR. ROTTENBORN: I don't think there's a 20 need to give both. 21 THE COURT: Okay. So Instruction I 22 which was formerly 9 was impartiality --</p>	<p>108</p> <p>1 MR. MONIZ: It's a little bit -- I'm not 2 sure it's necessary, but -- 3 THE COURT: Okay. 4 MR. MONIZ: -- we don't have an 5 objection. 6 THE COURT: I'll give Instruction I, 7 Defendant's Instruction I. And I'll also give 8 Defendant's -- Plaintiff's Number 10. 9 MR. ROTTENBORN: Thank you. 10 THE COURT: Okay. Then we've got 11 Plaintiff's Number 12, definition of 12 preponderance -- preponderance of the evidence. 13 Any objection to that? Well, you didn't object to 14 it, but I don't know if you have a similar one 15 that you'd rather... 16 MR. ROTTENBORN: Yeah. If it's just the 17 model, that's fine. 18 THE COURT: Okay. And then definition 19 of clear and convincing evidence, Number 13. 20 MR. ROTTENBORN: Fine. 21 THE COURT: That's fine. Number 18, 22 punitive damages. I think we've already done</p>

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28 (109 to 112)

<p>109</p> <p>1 punitive damages. So do you want to withdraw 2 that? 3 MR. MONIZ: Yes, Your Honor -- 4 THE COURT: We've already got punitive 5 damages -- 6 MR. MONIZ: -- understanding that 7 we're -- 8 THE COURT: Okay. 9 MR. MONIZ: -- going to work out that -- 10 yeah. 11 THE COURT: And then reasonable proof. 12 You don't have to prove the exact amount of 13 damages. Any objection to that? Okay. 14 So those are all -- so the other ones 15 for defendant's, J is the same credibility of 16 witnesses. So we'll withdraw that. 17 MR. ROTTENBORN: Okay. 18 THE COURT: L is a party bound by his or 19 her own testimony. No objection to that one; 20 right? We'll give that. 21 MR. ROTTENBORN: Okay. 22 THE COURT: That's Instruction L,</p>	<p>111</p> <p>1 give Instruction T. 2 MR. ROTTENBORN: Thank you, Your Honor. 3 THE COURT: Instruction U where there is 4 no objection, I'll give that. Instruction V, I'll 5 give that. Instruction BB, there was no objection 6 to that. Actual malice is not ill will, hatred or 7 bias. So I'll give that. Correct? There's no 8 objection. Jury Instruction HH, reasonable proof. 9 I think we already gave that. 10 MR. ROTTENBORN: Yeah, I don't think we 11 need that. 12 THE COURT: So we can withdraw that. 13 And LL is amount sued is not evidence. So we can 14 withdraw that because I'm going to give that. All 15 right. So I've got the withdrawn stack. 16 We'll go over verdict forms here in a 17 second. I will go over -- just so everybody is on 18 the same sheet of music I'll go over the ones -- 19 do you want me to go over the ones that have been 20 withdrawn and denied? 21 MR. ROTTENBORN: I think we've made a 22 record as you've gone along, but --</p>
<p>110</p> <p>1 formerly 12. Instruction M is circumstantial 2 evidence which we already have. So I'll withdraw 3 that. 4 MR. ROTTENBORN: Okay. 5 THE COURT: Instruction N is prior 6 inconsistent statement by a witness; already have 7 that. So -- 8 MR. ROTTENBORN: Okay. 9 THE COURT: -- withdraw that. Prior 10 inconsistent -- inconsistent statement by a party. 11 Did I already do that one? 12 MR. ROTTENBORN: I believe we already -- 13 already have that. 14 THE COURT: We did that one? Okay. 15 MR. MONIZ: I think we do. 16 THE COURT: All right. Withdraw that. 17 Rejected and stricken evidence, Jury Instruction 18 P, I'll withdraw that. Instruction R is greater 19 weight of the evidence. We already have that one. 20 Instruction S, clear and convincing. We already 21 have that. So I'll withdraw. Instruction T, 22 expert witnesses. There is no objection. So I'll</p>	<p>112</p> <p>1 THE COURT: You've got them? You've got 2 them okay? All right. 3 MR. MONIZ: It sounds like we're okay, 4 Your Honor. 5 THE COURT: All right. So let me just 6 go over for the record the ones that I will be 7 giving not in this order, but I will tell you the 8 order prior to Friday. 9 MR. ROTTENBORN: The -- can I -- the 10 only other instruction or -- I don't know if it's 11 an instruction or not -- 12 THE COURT: Okay. 13 MR. ROTTENBORN: -- is the -- the 14 jury -- 15 THE COURT: The jury -- sealing the -- 16 the names? 17 MR. ROTTENBORN: Sealing the names. 18 THE COURT: Right. I will -- I will -- 19 MR. ROTTENBORN: Would you like us to 20 propose language? 21 THE COURT: No. I will -- I'll take 22 care of that. And I don't think it's going to be</p>

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29 (113 to 116)

<p>113</p> <p>1 an official instruction that goes back to them. 2 It's just something I'm going to say to them in my 3 preliminary instructions to them -- 4 MR. ROTTENBORN: Okay. 5 THE COURT: -- at the -- at the 6 beginning of my jury instructions. Okay? 7 MR. ROTTENBORN: Okay. 8 THE COURT: And there's no objection to 9 that; right? Yes. 10 MR. MONIZ: No. I -- I was going to say 11 that the only other thing in light of the -- in 12 light of -- I think we had about 25 or 30 minutes 13 of testimony yesterday with -- that there were 14 just instructions not to answer and -- and 15 privilege objections. 16 Based on that, I mean, it occurs to me 17 that we may propose to the Court -- 18 THE COURT: Okay. 19 MR. MONIZ: -- an instruction just that 20 the jury can't consider that for -- for -- 21 THE COURT: Well, and I don't mind you 22 proposing more jury instructions next week as,</p>	<p>115</p> <p>1 28, 29 and DD. All right. Does everybody have 2 the same score cards then? All on the same sheet 3 of music? 4 MR. ROTTENBORN: Yes, Your Honor. 5 MR. MONIZ: Yes, Your Honor. 6 THE COURT: Okay. All right. Now let's 7 turn to verdict forms for a second. And, again, I 8 know these might change a little bit depending on 9 what the testimony is next week; but if we can get 10 the bulk of it done, I'd appreciate that. Okay. 11 Let's see. Okay. 12 Again, since -- since the plaintiff's 13 jury verdict forms don't have the statements 14 separated I'm just going to work off the 15 defendant's verdict forms and see if we can come 16 to a consensus. All right. 17 So on the defendant's verdict forms the 18 only problem I have on -- like if we look at Mr. 19 Depp's claim against Ms. Heard's verdict form, on 20 page 2 I think it -- you say, if you answered 21 question 1-A. I think you meant 2-A there. 22 MR. ROTTENBORN: Oh, sorry, Your Honor.</p>
<p>114</p> <p>1 again, trials are fluid. Things happen. I 2 understand that. 3 And so any other jury instructions we 4 will take up -- we probably won't do them until 5 maybe Wednesday afternoon or Thursday when we're 6 at the completion of the evidence so we can make 7 sure we've got everything covered. 8 I don't mind that. I'm just glad we're 9 getting the bulk of these done today. All right. 10 So these are the ones that we have so far to give 11 in no particular order. 12 I've got Instruction 1, Instruction B as 13 in boy, Instruction C, Instruction D, Instruction 14 E, Instruction F, Instruction G, Instruction H, 15 Instruction Y, Instruction 16, Instruction II, 16 Instruction 20, Instruction TT, Instruction AA, 17 Instruction K, Instruction Z as in zebra, 18 Instruction FF, Instruction JJ, Instruction KK, 19 Instruction CCC, Instruction 3, Instruction 5, 6, 20 7, 8, 9, Instruction I, 10, 12, 13, 30, L, T, U, 21 V, BB. 22 And then the ones under advisement are</p>	<p>116</p> <p>1 THE COURT: It just needs to be changed 2 to 2-A. And the next page it has to be changed to 3 3-A. 4 And then the last page as far as the 5 damages go it's -- it's a little confusing. I 6 would suggest that you say, if you answered yes 7 to not all but to question -- well, I guess, yes. 8 Answered yes to all the questions, number one or 9 number two or number three -- 10 MR. ROTTENBORN: Okay. That makes 11 sense. 12 THE COURT: -- then -- then fill out 13 seven through nine; something along those lines so 14 it's clear. 15 MR. ROTTENBORN: And I think that we 16 could -- in light of the ruling on statutory 17 immunity -- 18 THE COURT: You can take out -- 19 MR. ROTTENBORN: -- we can take out -- 20 THE COURT: -- the statutory immunity. 21 MR. ROTTENBORN: -- four -- questions 22 four, five and six on page --</p>

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30 (117 to 120)

<p>117</p> <p>1 THE COURT: Okay.</p> <p>2 MR. ROTTENBORN: -- 4 of the document.</p> <p>3 THE COURT: All right. We will take out</p> <p>4 the statutory immunity on four, five and six. All</p> <p>5 right. Do you have any other --</p> <p>6 MR. MONIZ: Well -- so, yeah, I have</p> <p>7 some issues here, Your Honor.</p> <p>8 THE COURT: Okay.</p> <p>9 MR. MONIZ: And we'd be happy to -- I</p> <p>10 mean, I -- I appreciate Your Honor is working off</p> <p>11 the defense --</p> <p>12 THE COURT: Right.</p> <p>13 MR. MONIZ: -- verdict form. We'd be</p> <p>14 happy to split these apart. I mean, I think -- I</p> <p>15 think the -- it could be applied across.</p> <p>16 For separating out the statements I</p> <p>17 think ours actually has some benefit in kind of</p> <p>18 breaking these out and -- and explaining --</p> <p>19 breaking out some of the defamatory implication</p> <p>20 issues in particular which aren't -- aren't</p> <p>21 addressed really as fully in -- in the defendant's</p> <p>22 form.</p>	<p>119</p> <p>1 MR. MONIZ: And then I think consistent,</p> <p>2 Your Honor, with the rulings on the jury</p> <p>3 instructions --</p> <p>4 THE COURT: Yes.</p> <p>5 MR. MONIZ: I think "made" should be</p> <p>6 changed to made or published.</p> <p>7 THE COURT: Okay.</p> <p>8 MR. ROTTENBORN: That's fine.</p> <p>9 THE COURT: Made or published. We'll</p> <p>10 change those. All right. Anything else on here?</p> <p>11 MR. MONIZ: The first page is probably</p> <p>12 okay.</p> <p>13 THE COURT: And then on the second page</p> <p>14 take out -- you're going to take them -- for each</p> <p>15 one of them you'll take off --</p> <p>16 MR. MONIZ: We're taking out four;</p> <p>17 right?</p> <p>18 THE COURT: False --</p> <p>19 MR. ROTTENBORN: The statutory immunity.</p> <p>20 THE COURT: Yes.</p> <p>21 MR. ROTTENBORN: Yeah. Four, five and</p> <p>22 six.</p>
<p>118</p> <p>1 THE COURT: Well, I mean, the verdict</p> <p>2 forms aren't to explain any law. The verdict</p> <p>3 forms are just --</p> <p>4 MR. MONIZ: No, I --</p> <p>5 THE COURT: -- just to get your verdict.</p> <p>6 So it would make sense that it would follow the</p> <p>7 statute.</p> <p>8 MR. MONIZ: Okay.</p> <p>9 THE COURT: Okay.</p> <p>10 MR. MONIZ: In that case, on the first</p> <p>11 page, Your Honor, there -- there's a redundant</p> <p>12 question here.</p> <p>13 THE COURT: Okay.</p> <p>14 MR. MONIZ: It says, the statement was</p> <p>15 false. And then down below that it says, any such</p> <p>16 defamatory implication is false. I think</p> <p>17 consistent with --</p> <p>18 THE COURT: Okay. The statement has --</p> <p>19 MR. ROTTENBORN: We -- we can take out,</p> <p>20 any such defamatory implication is false.</p> <p>21 THE COURT: Okay. So that -- strike</p> <p>22 that one?</p>	<p>120</p> <p>1 THE COURT: Four, five and six are gone.</p> <p>2 MR. MONIZ: Four, five and six are gone.</p> <p>3 Right.</p> <p>4 THE COURT: So on each page, made or</p> <p>5 published. And we'll take off defamatory</p> <p>6 implication is false. Okay.</p> <p>7 MR. ROTTENBORN: We'll make those</p> <p>8 changes to each one.</p> <p>9 THE COURT: All right.</p> <p>10 MR. MONIZ: Seven, eight and nine I</p> <p>11 think should be okay.</p> <p>12 THE COURT: All right.</p> <p>13 MR. MONIZ: I think that's probably</p> <p>14 fine, Your Honor. I apologize. I'm just trying</p> <p>15 to make sure --</p> <p>16 THE COURT: Okay.</p> <p>17 MR. MONIZ: -- I'm not missing anything.</p> <p>18 THE COURT: And you have the damages as</p> <p>19 per se damages here in the verdict form. I just</p> <p>20 want to make sure.</p> <p>21 MR. MONIZ: Oh, we should probably</p> <p>22 add --</p>

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31 (121 to 124)

<p>121</p> <p>1 MR. ROTTENBORN: Yes.</p> <p>2 MR. MONIZ: -- damages per se on -- for</p> <p>3 both.</p> <p>4 MR. ROTTENBORN: No. I mean, I think</p> <p>5 it -- it just says, state the amount of</p> <p>6 compensatory damages, if -- if any, you believe</p> <p>7 either party has proven.</p> <p>8 THE COURT: Is that what we're saying on</p> <p>9 the other...</p> <p>10 MR. ROTTENBORN: So we didn't --</p> <p>11 THE COURT: You didn't parse it out</p> <p>12 between the two.</p> <p>13 MR. ROTTENBORN: We made them exactly</p> <p>14 the same.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. MONIZ: They are exactly the same.</p> <p>17 But, I -- I mean, the damages per se are different</p> <p>18 than compensatory damages; right? You don't have</p> <p>19 to prove --</p> <p>20 THE COURT: Right. And they have a jury</p> <p>21 instruction saying they don't have to prove the</p> <p>22 damages.</p>	<p>123</p> <p>1 get that back to you as soon as we hear the</p> <p>2 evidence on that. And we can go from there. All</p> <p>3 right.</p> <p>4 We finished early. I want to thank you</p> <p>5 for writing your objections down. Obviously being</p> <p>6 able to look at everything ahead of time and being</p> <p>7 able to go through everything saved a lot of time</p> <p>8 today. Okay. So what else do you have for me?</p> <p>9 MR. ROTTENBORN: We have --</p> <p>10 THE COURT: Yes.</p> <p>11 MR. ROTTENBORN: -- we have one thing</p> <p>12 that we'd like to discuss, Your Honor.</p> <p>13 THE COURT: Okay.</p> <p>14 MR. ROTTENBORN: We would like to -- we</p> <p>15 have one more very, very limited -- one more</p> <p>16 deposition that we'd like to play a part of.</p> <p>17 THE COURT: What's my favorite line in</p> <p>18 this trial?</p> <p>19 MR. ROTTENBORN: I was --</p> <p>20 MR. CHEW: You don't go backwards.</p> <p>21 MR. ROTTENBORN: -- I was -- I was</p> <p>22 prepared for that. And I will explain why we're</p>
<p>122</p> <p>1 MS. MCCAFFERTY: But so the amount of</p> <p>2 damages still has to be proven. You don't have to</p> <p>3 prove --</p> <p>4 MR. MONIZ: Right.</p> <p>5 MS. MCCAFFERTY: -- damages to recover,</p> <p>6 but the amount still needs to be proven by both</p> <p>7 parties.</p> <p>8 MR. MONIZ: As -- as long as the -- as</p> <p>9 long as the instructions are consistent I think</p> <p>10 that's probably fine.</p> <p>11 MR. ROTTENBORN: Yeah.</p> <p>12 THE COURT: Okay. All right. Is that</p> <p>13 good?</p> <p>14 MR. ROTTENBORN: Yes, Your Honor.</p> <p>15 MR. MONIZ: I think so, Your Honor.</p> <p>16 MR. ROTTENBORN: So we'll -- we'll --</p> <p>17 the parties will prepare the next draft of this --</p> <p>18 THE COURT: That would be fantastic --</p> <p>19 MR. ROTTENBORN: -- Your Honor's</p> <p>20 rulings. Okay.</p> <p>21 THE COURT: -- if we can do that. And</p> <p>22 I'll have those three under advisement. And I'll</p>	<p>124</p> <p>1 not going backwards.</p> <p>2 THE COURT: Okay.</p> <p>3 MR. ROTTENBORN: This is -- this is</p> <p>4 Stephen Deuters. It's -- it's, honestly, less</p> <p>5 than -- fewer than 10 minutes or so. And the</p> <p>6 reason that it's not going backwards is because</p> <p>7 when we last did the -- the -- the long day</p> <p>8 that -- I know others had a longer day than I did.</p> <p>9 So I -- I can't complain about that.</p> <p>10 THE COURT: I was here.</p> <p>11 MR. ROTTENBORN: But you were here. And</p> <p>12 we did all of them. The plaintiffs hadn't</p> <p>13 finished their case at that point. They still had</p> <p>14 a couple days left. They had a witness on their</p> <p>15 witness list, Stephen Deuters, that they were --</p> <p>16 said that they could call live. We didn't want to</p> <p>17 take up the Court's time doing a limited</p> <p>18 deposition designation of someone that they might</p> <p>19 call.</p> <p>20 He has since -- we know they're not</p> <p>21 going to call him in rebuttal because he's all</p> <p>22 over social media about the case. So that's -- so</p>

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32 (125 to 128)

<p>125</p> <p>1 we know they're not going to call him now. 2 And it would be prejudicial -- it's -- 3 it's very short. It would be prejudicial to not 4 allow us to do that or -- or at a minimum to -- to 5 read his testimony if Your Honor admits it; 6 although we think it would be more efficient to 7 play the video. 8 It would be prejudicial because 9 essentially if -- if we're bound by what happened 10 three weeks ago, three -- I think it was three 11 Fridays ago. You know, Your Honor said many times 12 in addition to not going backwards that trials are 13 fluid. 14 And, you know, the defendant didn't have 15 to identify their witnesses three weeks in 16 advance. And that would essentially be imposing a 17 burden on the -- or, sorry, the plaintiff didn't 18 have to do that. And that would essentially be 19 imposing a burden on the defense to identify all 20 of their witnesses -- 21 THE COURT: Okay. 22 MR. ROTTENBORN: -- three weeks in</p>	<p>127</p> <p>1 MS. VASQUEZ: Well, Your Honor, if I may 2 be heard. You've already ruled on this, if you'll 3 recall, through Ms. Heard's direct examination. 4 THE COURT: About the agency -- 5 MS. VASQUEZ: Correct. And then -- and, 6 actually, you struck the testimony when 7 Ms. Heard -- you sustained the objection -- 8 THE COURT: Are these the same texts? 9 MS. VASQUEZ: Yes. 10 MR. ROTTENBORN: Yeah. But Your Honor 11 ruled on it at the time because Ms. Heard wasn't 12 competent to testify to Mr. Deuters' -- 13 MS. VASQUEZ: No. 14 MR. ROTTENBORN: -- agency as to Mr. 15 Depp. Mr. Deuters is. He testifies, Depp told me 16 to -- told me to send whatever texts I need to 17 send. So it's -- I think that's -- was the basis 18 for Your Honor's -- 19 THE COURT: Well, told me to send any 20 texts I need to send. But did he tell him -- 21 MR. ROTTENBORN: And we can look at 22 the --</p>
<p>126</p> <p>1 advance. And so -- 2 THE COURT: All right. 3 MR. ROTTENBORN: -- this would take 10 4 minutes. And it -- it turns on an evidentiary 5 ruling that I'm going to ask Your Honor to make 6 that we have prepared a short brief for. That is, 7 we're asking the Court to admit and -- based on 8 Mr. Deuters' testimony admit some of the texts 9 that he had with Ms. Heard as party-opponent 10 admissions of Mr. Depp. 11 And I'll -- I can point you to the 12 testimony where he says, Mr. Depp told me to text 13 Ms. Heard whatever she needs to hear. He -- he 14 very clearly gave Mr. Deuters the agency to do 15 that. 16 If Your Honor rules that that's not 17 coming in, then we're not going to call 18 Mr. Deuters. So it's all related to this one 19 evidentiary issue. 20 THE COURT: All right. Well, can we 21 just do that one motion then? We've got time 22 today or do -- do you want to address that today?</p>	<p>128</p> <p>1 THE COURT: -- what to send? I just 2 want to make sure -- 3 MR. ROTTENBORN: We can look at the 4 transcript. I mean, I can read it. Maybe it 5 would be -- let's see if I can pull up the -- I'm 6 sorry for not having the transcript out. 7 MS. VASQUEZ: Your Honor, Mr. Deuters 8 was Mr. Depp's employee. He's now a partner. 9 But, nevertheless, placating your employer's 10 girlfriend is very -- it's not within the scope of 11 an employment relationship. And that was Your 12 Honor's ruling. 13 THE COURT: Okay. 14 MS. VASQUEZ: So on that basis we 15 object. 16 MR. ROTTENBORN: May I approach with the 17 brief -- 18 THE COURT: Okay. 19 MR. ROTTENBORN: -- that has the 20 relevant portion? 21 THE COURT: Sure. 22 MR. ROTTENBORN: And I'll give you a</p>

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33 (129 to 132)

<p>129</p> <p>1 copy of the texts as well.</p> <p>2 THE COURT: I've seen the texts, I</p> <p>3 believe.</p> <p>4 MR. ROTTENBORN: Okay. So -- and this</p> <p>5 would be -- basically we'd have him testify very</p> <p>6 shortly at the beginning what his job duties were</p> <p>7 for Mr. Depp, that he was on the Boston plane</p> <p>8 flight.</p> <p>9 And then he -- he says -- on page 3, the</p> <p>10 day after the Boston plane incident Depp told</p> <p>11 Deuters. He said, I want to smooth whatever issue</p> <p>12 exists. Depp specifically asked Deuters to write</p> <p>13 a text to Amber. And Depp said to tell her --</p> <p>14 write whatever she needs to hear.</p> <p>15 So -- and -- and I understand that they</p> <p>16 can put Mr. Depp on the stand and say, I didn't</p> <p>17 tell him that, I didn't authorize him to do that.</p> <p>18 But under -- under Rule 2.8 --</p> <p>19 THE COURT: 03.</p> <p>20 MR. ROTTENBORN: Yeah, 2.803. But I</p> <p>21 think it's -- it's -- is it paragraph --</p> <p>22 subparagraph zero -- zero, (C) and (D). Those</p>	<p>131</p> <p>1 Mr. -- if they want to designate other portions of</p> <p>2 Mr. Deuters' testimony, if they want to put Mr.</p> <p>3 Depp on the stand to say, I never did that, that's</p> <p>4 their prerogative.</p> <p>5 But we believe that that should come in.</p> <p>6 It's very, very clear. And I could pull up the</p> <p>7 transcript if Your Honor would like.</p> <p>8 THE COURT: No, that's fine. All right.</p> <p>9 Yes.</p> <p>10 MR. ROTTENBORN: But we believe those</p> <p>11 are -- and -- and Ms. Heard obviously couldn't</p> <p>12 testify as to Mr. Deuters' agency, but Mr. Deuters</p> <p>13 can.</p> <p>14 THE COURT: Okay.</p> <p>15 MS. VASQUEZ: Your Honor, he didn't</p> <p>16 direct him to make that statement. Mr.</p> <p>17 Rottenborn's characterization of the evidence is</p> <p>18 false. It wasn't about the Boston plane incident.</p> <p>19 It was about, and the evidence shows, Ms. Heard's</p> <p>20 haranguing of -- of Mr. Depp.</p> <p>21 So -- besides, it's hearsay, Your Honor,</p> <p>22 double hearsay actually on two levels. And she's</p>
<p>130</p> <p>1 very clearly say, a statement offered against a</p> <p>2 party that is, (C) a statement by a person</p> <p>3 authorized by the party to make a statement</p> <p>4 concerning the subject.</p> <p>5 So after the Boston plane flight Mr.</p> <p>6 Depp tells Mr. Deuters, tell her whatever she</p> <p>7 needs to hear about the flight; in -- under</p> <p>8 Mr. Deuters' testimony.</p> <p>9 Now, obviously we don't -- you know, I</p> <p>10 think he's -- what he texted -- texted in those</p> <p>11 texts is, you know, what happened on the flight.</p> <p>12 But he testified Mr. Depp told him, say whatever</p> <p>13 she needs to hear, smooth it over.</p> <p>14 And that very clearly in giving</p> <p>15 Mr. Deuters who is his personal assistant at the</p> <p>16 time the direction to do that, that's an admission</p> <p>17 by a party-opponent under (C) or (D), a statement</p> <p>18 by the party's employee made during the terms of</p> <p>19 the agency or employment. So we believe that</p> <p>20 comes in.</p> <p>21 If -- if -- their objections go to the</p> <p>22 weight of the evidence. If they want to put</p>	<p>132</p> <p>1 repeated -- you've repeatedly ruled, Your Honor,</p> <p>2 that hearsay doesn't come in.</p> <p>3 MR. ROTTENBORN: That's -- that's the</p> <p>4 reason why 803 exists, Your Honor. It's an</p> <p>5 exception to the hearsay --</p> <p>6 MS. VASQUEZ: But it doesn't qualify as</p> <p>7 an exception.</p> <p>8 MR. ROTTENBORN: And it's not double</p> <p>9 hearsay. It's an admission to -- it's a -- it's</p> <p>10 an admission by the party-opponent under --</p> <p>11 MS. VASQUEZ: It's not.</p> <p>12 THE COURT: All right.</p> <p>13 MR. ROTTENBORN: And it's --</p> <p>14 MS. VASQUEZ: It's Stephen Deuters'</p> <p>15 statement, Your Honor.</p> <p>16 MR. ROTTENBORN: As -- as -- we just</p> <p>17 spent time arguing about agency. This is --</p> <p>18 THE COURT: Get closer to the microphone</p> <p>19 for the --</p> <p>20 MR. ROTTENBORN: I'm sorry.</p> <p>21 THE COURT: -- court reporter.</p> <p>22 MR. ROTTENBORN: It's -- it's Mr. Depp's</p>

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34 (133 to 136)

<p>133</p> <p>1 statement through his agent that he 2 specifically -- and -- and, look, Ms. Vasquez can 3 argue to the jury that he didn't -- 4 MS. VASQUEZ: No. 5 MR. ROTTENBORN: -- he didn't mean to 6 tell him that he could speak as this. But he said 7 after the plane flight, tell her -- write whatever 8 she needs to hear. 9 THE COURT: Okay. All right. I 10 understand your argument. But the foundation of 11 it, he -- he didn't tell him what to write; just 12 tell her whatever she needs to hear. I just don't 13 find that as the exception. So I'm going to deny 14 your motion. 15 MR. ROTTENBORN: Okay. And just for the 16 record I will argue -- 17 THE COURT: Sure. 18 MR. ROTTENBORN: -- that the foundation 19 would be proven by Mr. Deuters' testimony; which I 20 understand Your Honor's ruling, but that 21 foundation would be laid by that. And under 22 Subsection (C) Mr. Depp clearly authorized Mr.</p>	<p>135</p> <p>1 THE COURT: 1246. 2 MS. VASQUEZ: And just as a reminder, it 3 is the Dr. Hughes background information intake 4 form. If you'll recall, we were moving to admit 5 the first page. Correct. And Ms. Bredehoft 6 insisted that the entire document be admitted. 7 THE COURT: Okay. 8 MS. VASQUEZ: So we agreed. 9 THE COURT: Okay. 10 MS. VASQUEZ: Nevertheless, after the 11 entire document was admitted we realized -- the 12 parties realized that on page -- I think it's 6, 13 Your Honor -- 14 THE COURT: There's something -- 15 MS. VASQUEZ: -- of the document. 16 THE COURT: And -- and I don't -- and 17 medical records we haven't been uploading. 18 MS. VASQUEZ: Correct. 19 THE COURT: So -- 20 MS. VASQUEZ: Correct. 21 THE COURT: -- any medical records or 22 any --</p>
<p>134</p> <p>1 Deuters to make a statement concerning the 2 subject. And -- 3 THE COURT: But he didn't say what the 4 statement -- okay. I deny -- deny your motion. 5 Okay. 6 MR. ROTTENBORN: Thank you. Well, in 7 light of that then we don't have a deposition -- 8 THE COURT: No deposition issue. Okay. 9 Any other matters? 10 MS. VASQUEZ: Yes, Your Honor. 11 THE COURT: Yes. 12 MS. VASQUEZ: Just one more -- 13 THE COURT: Okay. That's fine. 14 MS. VASQUEZ: -- minor matter. 15 THE COURT: We're -- we're ahead of 16 schedule by 30 minutes. You've got 30 minutes. 17 MR. ROTTENBORN: That's dangerous. 18 MS. VASQUEZ: This one is not going to 19 be 30 minutes, I hope. 20 THE COURT: Okay. 21 MS. VASQUEZ: Your Honor, this is in 22 relation to Plaintiff's Trial Exhibit 1246.</p>	<p>136</p> <p>1 MR. NADELHAFT: May I approach, Your 2 Honor? 3 THE COURT: -- tax records I haven't 4 been -- 5 MR. NADELHAFT: It might be easier for 6 you -- 7 THE COURT: Okay. 8 MR. NADELHAFT: -- if I give you copies. 9 But we have the -- our redactions are -- it's 10 going to be what's redacted. It's just -- 11 THE COURT: Okay. What's redacted. 12 MR. NADELHAFT: -- our redactions versus 13 theirs -- 14 THE COURT: Thank you. 15 MR. NADELHAFT: -- so you can see what 16 they -- 17 MS. VASQUEZ: May I approach as well, 18 Your Honor? 19 THE COURT: Sure. Sure. That's fine. 20 Okay. 21 MS. VASQUEZ: We just have competing 22 redactions.</p>

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35 (137 to 140)

<p>137</p> <p>1 THE COURT: All right. So you both 2 agree that it has to be redacted in some form. 3 MS. VASQUEZ: Yes. 4 MR. NADELHAFT: Yeah. We -- I mean, 5 we're just saying the whole page. And they're 6 saying -- 7 THE COURT: All right. But you're the 8 one that wanted everything in; right? 9 MS. VASQUEZ: Correct. 10 MR. NADELHAFT: Well -- 11 THE COURT: I just want to make sure I 12 get that correct. 13 MS. VASQUEZ: That's right. 14 MR. NADELHAFT: Well, and then, Your 15 Honor -- 16 MS. VASQUEZ: Okay. Here's -- 17 MR. NADELHAFT: And then, Your Honor, 18 this is the transcript where they go into the rest 19 of it where -- and then Ms. Bredehoft asked for 20 the whole page to be redacted. And, if you 21 recall -- 22 MS. VASQUEZ: Should we go back and</p>	<p>139</p> <p>1 MS. VASQUEZ: -- our proposed 2 redactions. So if I may go back. 3 THE COURT: Okay. Sure. 4 MS. VASQUEZ: Thank you, Your Honor. 5 MR. NADELHAFT: And, Your Honor, the 6 last page is -- I mean, it's the whole -- it's 7 legal issues -- 8 THE COURT: All right. 9 MS. VASQUEZ: So, Your Honor, if I may 10 just be heard very briefly -- 11 THE COURT: Sure. 12 MS. VASQUEZ: -- to explain what's going 13 on here. In light of Your Honor's ruling when 14 cross-examining Ms. Heard on the incident with 15 Tasya Van Ree, her ex-partner, we have -- since 16 that evidence is already in and this was a 17 self-report by Ms. Heard we have gone and redacted 18 any mentions of arrest and police. 19 But we believe that since there's 20 evidence of this incident it needs to be -- it -- 21 it should be reflected in the self-report that 22 Ms. Heard made to her psychologist who relied on</p>
<p>138</p> <p>1 argue? 2 MR. NADELHAFT: If -- if you recall, we 3 were getting it. And Ms. Bredehoft was looking 4 rather quickly and then realized that the last 5 page is all about -- is all about legal issues. 6 And, as you can see, she says the last 7 page; which then you say, if you keep going -- and 8 then you say you agree. So that's why we're 9 having the last page -- 10 MS. VASQUEZ: It's not the whole page, 11 though. 12 MR. NADELHAFT: But no one -- no one 13 says anything about, well, it's the rest of it, 14 you know, this comes in and this doesn't. 15 MS. VASQUEZ: Well, okay. So -- 16 THE COURT: Okay. So this is -- you 17 want to get rid of the whole page? 18 MR. NADELHAFT: Yeah. 19 THE COURT: And this is yours? This is 20 his or this is yours? 21 MS. VASQUEZ: That's ours -- 22 THE COURT: This is yours.</p>	<p>140</p> <p>1 this when making her evaluation and diagnoses of 2 Ms. Heard. 3 Again, consistent with Your Honor's 4 ruling, the dog issue in Australia Your Honor 5 ruled against us. We have since redacted that. 6 And those are the only redactions that we believe 7 are consistent with Your Honor's rulings and 8 should be applied to this page. 9 THE COURT: Okay. 10 MR. NADELHAFT: Your Honor, the -- 11 the -- the -- she didn't -- Dr. -- this is from 12 Dr. Hughes. She didn't testify to anything on 13 this, on the last page. Again, we were shown -- 14 THE COURT: She testified to a lot -- 15 MR. NADELHAFT: She testified to a lot, 16 but in -- in terms of the document -- in terms of 17 the document itself the only questions were about 18 the first page. There -- 19 THE COURT: Well -- well, to be fair, I 20 wouldn't let them cross-examine her -- 21 MS. VASQUEZ: Correct, Your Honor. 22 THE COURT: -- on some of these issues.</p>

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36 (141 to 144)

<p>141</p> <p>1 MS. VASQUEZ: You -- yeah. You</p> <p>2 sustained that objection.</p> <p>3 MR. NADELHAFT: Right. But then you --</p> <p>4 and then -- but then there is no testimony because</p> <p>5 you were agreeing that the last page could be</p> <p>6 redacted. You agreed in the -- in the transcript</p> <p>7 that the last page would be redacted. So that's</p> <p>8 why we redacted the last page.</p> <p>9 THE COURT: Well, there had to be</p> <p>10 redactions. I understand that, but -- okay.</p> <p>11 Anything further on this?</p> <p>12 MS. VASQUEZ: No, Your Honor. I just</p> <p>13 believe our redactions are consistent with Your</p> <p>14 Honor's rulings.</p> <p>15 THE COURT: Okay.</p> <p>16 MS. VASQUEZ: And in light of Ms.</p> <p>17 Bredehoft's no objection to this whole document,</p> <p>18 in fact, insisting that the entire document be</p> <p>19 admitted, I -- I just think that that's --</p> <p>20 MR. NADELHAFT: The insisting, it was --</p> <p>21 it's an overstatement. But then there was a</p> <p>22 discussion. It was being shown. She was looking</p>	<p>143</p> <p>1 MS. VASQUEZ: Thank you, Your Honor.</p> <p>2 THE COURT: -- for this exhibit. And</p> <p>3 that's Plaintiff's Exhibit 1246. Is this my copy</p> <p>4 of that then?</p> <p>5 MS. VASQUEZ: Yes, Your Honor.</p> <p>6 THE COURT: Okay.</p> <p>7 MS. VASQUEZ: Sorry. Yes, Your Honor.</p> <p>8 THE COURT: All right.</p> <p>9 MR. ROTTENBORN: Your Honor, if -- if I</p> <p>10 may just raise one more possibility --</p> <p>11 THE COURT: Sure.</p> <p>12 MR. ROTTENBORN: -- of -- of something</p> <p>13 we'd like to do next week. If -- Your Honor, if</p> <p>14 we could have just a brief amount of time one day</p> <p>15 either before or after court just to make a few</p> <p>16 proffers for the record like about what, for</p> <p>17 example, Mr. Bercovici would have testified</p> <p>18 about --</p> <p>19 THE COURT: Okay.</p> <p>20 MR. ROTTENBORN: -- and just a few other</p> <p>21 things that -- I think the parties have done a</p> <p>22 pretty good job as --</p>
<p>142</p> <p>1 through it quickly. Then they -- they talked</p> <p>2 about the last page.</p> <p>3 She came up. There was a discussion at</p> <p>4 side bar about the last page in which you said, I</p> <p>5 want the last page redacted. And that -- and</p> <p>6 that's what you ruled on. So that's why we had</p> <p>7 the last page redacted.</p> <p>8 THE COURT: Well, the transcript says we</p> <p>9 need redactions for the last page; but I don't</p> <p>10 know --</p> <p>11 MS. VASQUEZ: And personal identifiers,</p> <p>12 actually, is what Ms. Bredehoft was actually</p> <p>13 arguing; that any personal identifiers --</p> <p>14 THE COURT: There are -- there were</p> <p>15 personal identifiers.</p> <p>16 MS. VASQUEZ: And also, Your Honor, not</p> <p>17 to state the obvious; but this is Dr. Hughes's</p> <p>18 documents. I mean, for Ms. Bredehoft to act like</p> <p>19 she doesn't know what's in these documents, you</p> <p>20 know, I --</p> <p>21 THE COURT: I'm going to accept the</p> <p>22 plaintiff's redactions in this matter --</p>	<p>144</p> <p>1 THE COURT: Sure.</p> <p>2 MR. ROTTENBORN: -- Your Honor has made</p> <p>3 rulings over the trial in -- in preserving issues,</p> <p>4 but there are some things --</p> <p>5 THE COURT: Yeah. You want to preserve</p> <p>6 for the record. That's fine. Absolutely. We</p> <p>7 can --</p> <p>8 MR. ROTTENBORN: Is there a certain time</p> <p>9 or -- we obviously want to be --</p> <p>10 THE COURT: I'm pretty tapped out. Are</p> <p>11 you prepared to do it now or no?</p> <p>12 MR. ROTTENBORN: No.</p> <p>13 THE COURT: No.</p> <p>14 MR. ROTTENBORN: I'm sorry.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. ROTTENBORN: We can do it after</p> <p>17 court or before court.</p> <p>18 THE COURT: Yeah. Maybe we'll figure a</p> <p>19 time to do it --</p> <p>20 MR. ROTTENBORN: Maybe like Tuesday or</p> <p>21 Wednesday or something?</p> <p>22 THE COURT: Maybe -- maybe there will be</p>

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<p>145</p> <p>1 a day when we end at 5:00 or --</p> <p>2 MR. ROTTENBORN: Sure.</p> <p>3 THE COURT: And we could do a little</p> <p>4 proffer at that time --</p> <p>5 MR. ROTTENBORN: Okay.</p> <p>6 THE COURT: -- or whatever you need to.</p> <p>7 I don't know if you have any proffers you want to</p> <p>8 have done as well. We can just set a time for</p> <p>9 that.</p> <p>10 MR. ROTTENBORN: I think we can go</p> <p>11 through them pretty quickly.</p> <p>12 THE COURT: Okay. That's fine.</p> <p>13 We'll -- we'll figure it out; whichever day we end</p> <p>14 up -- if you would be prepared to do it as early</p> <p>15 as Monday just --</p> <p>16 MR. ROTTENBORN: Sure.</p> <p>17 THE COURT: -- in case we get an</p> <p>18 extra --</p> <p>19 MR. ROTTENBORN: Sure.</p> <p>20 THE COURT: Do you think you can do it</p> <p>21 in 10 minutes or so or...</p> <p>22 MR. ROTTENBORN: It might take a little</p>	<p>147</p> <p>1 THE COURT: Well, they're going to be --</p> <p>2 the case is going to be to them by the weekend. I</p> <p>3 think we all decided that.</p> <p>4 MS. VASQUEZ: Yes, Your Honor.</p> <p>5 THE COURT: Correct?</p> <p>6 MS. VASQUEZ: That's correct. So in</p> <p>7 terms of should they not be able to reach a</p> <p>8 verdict on Friday after --</p> <p>9 THE COURT: Which I don't think they</p> <p>10 will, but yes.</p> <p>11 MS. VASQUEZ: Right. Then for Tuesday,</p> <p>12 because it's a long holiday, do you expect or do</p> <p>13 you want the parties here and the attorneys --</p> <p>14 THE COURT: What I --</p> <p>15 MS. VASQUEZ: -- in the courtroom?</p> <p>16 THE COURT: -- what I plan to do is</p> <p>17 if -- whenever the jury does come back with their</p> <p>18 verdict I'm going to make it at least a full hour.</p> <p>19 But -- so if they come back at 12:15 in the</p> <p>20 afternoon, I would say we'll announce the verdict</p> <p>21 at 2:00.</p> <p>22 MS. VASQUEZ: Okay.</p>
<p>146</p> <p>1 longer.</p> <p>2 THE COURT: Okay.</p> <p>3 MR. ROTTENBORN: But I --</p> <p>4 THE COURT: 15 minutes?</p> <p>5 MR. ROTTENBORN: Yeah.</p> <p>6 THE COURT: Okay. All right. So, yeah,</p> <p>7 we'll figure it out. We have -- I think we have</p> <p>8 an hour and 15 minute buffer for next week if we</p> <p>9 go 9:00 to 5:30 every day. So --</p> <p>10 MS. VASQUEZ: And, Your Honor --</p> <p>11 THE COURT: -- there's excitement.</p> <p>12 MS. VASQUEZ: That is exciting.</p> <p>13 Your Honor, if I -- I just have a</p> <p>14 question of logistics.</p> <p>15 THE COURT: Sure.</p> <p>16 MS. VASQUEZ: In terms of jury</p> <p>17 deliberations, I know you've promised to this jury</p> <p>18 and we all have tried really hard to say that</p> <p>19 they're going to be done --</p> <p>20 THE COURT: Yeah.</p> <p>21 MS. VASQUEZ: -- before the long</p> <p>22 weekend.</p>	<p>148</p> <p>1 THE COURT: Does that make sense?</p> <p>2 MS. VASQUEZ: Yes.</p> <p>3 THE COURT: That would give time for</p> <p>4 your clients to get from wherever they're at. I'd</p> <p>5 rather -- I'd -- I'd prefer they wouldn't be here.</p> <p>6 MS. VASQUEZ: Really? Okay.</p> <p>7 THE COURT: Well, only -- during</p> <p>8 deliberations, only because it's already a circus</p> <p>9 everywhere.</p> <p>10 MS. VASQUEZ: Right.</p> <p>11 THE COURT: So, I mean, they can be here</p> <p>12 if they want to be; but that means that the</p> <p>13 deputies have to be involved watching them all</p> <p>14 day.</p> <p>15 MS. VASQUEZ: Okay.</p> <p>16 THE COURT: I think the only way we can</p> <p>17 do it as far as the public is -- because they're</p> <p>18 going to line up because they're going to want to</p> <p>19 try to be here for the verdict and maybe just get</p> <p>20 randomly lucky. I think we're still going to do a</p> <p>21 hundred, a hundred tags a day.</p> <p>22 So those people can have access to the</p>


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<p>149</p> <p>1 courtroom. However, I'm going to be doing my 2 other dockets. So they get to watch me do really 3 exciting things. So I've got a full docket to 4 continue working. So I'll be working the whole 5 time. 6 And then if we get a verdict, I'll just 7 stop whatever I'm doing; announce when we will 8 have the verdict. And it will be at least an 9 hour, more than an hour. And I'll give everybody 10 plenty of time to get here as long as you're 11 locally in the area. 12 MR. ROTTENBORN: Okay. 13 THE COURT: I'll let them go as long as 14 they want at night. I always tell them, I don't 15 serve dinner. So it's up to them how long they 16 want to go. Okay? I -- I let them take their own 17 breaks and things. 18 I usually let them just be released at 19 the end of the day, but I'll -- since the style of 20 this case, I'll probably bring them into the 21 courtroom to release them at the end of the day. 22 Obviously your clients won't be here, but if you</p>	<p>151</p> <p>1 attorneys are present? 2 THE COURT: Yeah. I -- I think that's a 3 good idea. If they have questions, if I could 4 just have the attorneys available. 5 MS. VASQUEZ: Absolutely, Your Honor. 6 THE COURT: And we can deal with the 7 questions as they come. 8 MR. ROTTENBORN: And then for closings, 9 would those start at 9:00 on Friday? 10 THE COURT: Yeah. I would like to start 11 at 9:00 on Friday. 12 MR. ROTTENBORN: And two hours a piece? 13 THE COURT: Two hours a piece. That 14 includes your rebuttal and -- 15 MR. ROTTENBORN: So the goal would be by 16 lunch we'd go -- 17 THE COURT: Right. 18 MR. ROTTENBORN: Okay. 19 THE COURT: Right. You get two hours 20 for your whole -- 21 MR. ROTTENBORN: The whole thing. 22 THE COURT: -- your whole thing.</p>
<p>150</p> <p>1 could be available for that -- 2 MR. ROTTENBORN: Sure. 3 THE COURT: -- at the end of the day -- 4 MS. VASQUEZ: Absolutely, Your Honor. 5 THE COURT: -- just so I can make sure 6 they understand not to watch anything. 7 I'm going to release the two alternates 8 right before deliberations, but I'm going to keep 9 them on notice and stand-by just in case there's 10 an issue with any of the jurors during 11 deliberations. 12 Is there anything else I'm missing, 13 Jamie? 14 MR. ROTTENBORN: I assume they're not 15 deliberating over the weekend. 16 THE COURT: They're not deliberating 17 over the weekend. 18 MR. ROTTENBORN: Okay. 19 THE COURT: I couldn't do that to them. 20 I've disrupted their lives enough. 21 MR. ROTTENBORN: And the -- the -- could 22 the parties waive appearances for questions if the</p>	<p>152</p> <p>1 MR. ROTTENBORN: Yeah. 2 THE COURT: And remember our schedule. 3 We did that in the very beginning. Right? 4 MR. ROTTENBORN: Um-hum. 5 THE COURT: You go first for your -- for 6 your first closing. You get to go. And you 7 address their case and your case. And then you 8 get to do rebuttal for your case and their case. 9 And then they get surrebuttal only for their 10 counterclaim. 11 MR. ROTTENBORN: Correct. 12 THE COURT: And you have to limit it to 13 the counterclaim arguments. 14 MR. ROTTENBORN: Correct. 15 THE COURT: Right? That's what we had 16 said before. 17 MR. ROTTENBORN: That's right. 18 MR. CHEW: Yes, Your Honor. And, just 19 to clarify, is Your Honor okay with our -- 20 THE COURT: Two people again? 21 MR. CHEW: -- our splitting it -- 22 THE COURT: We're doing tag team?</p>

Transcript of Hearing
Conducted on May 20, 2022

39 (153 to 156)

<p>153</p> <p>1 MS. VASQUEZ: Yes.</p> <p>2 MR. CHEW: -- as we did the opening?</p> <p>3 THE COURT: I -- again, I don't care.</p> <p>4 As long as we stay within those two hours --</p> <p>5 MS. VASQUEZ: Thank you, Your Honor.</p> <p>6 THE COURT: -- that's fine.</p> <p>7 MR. CHEW: Thank you, Your Honor.</p> <p>8 THE COURT: Okay.</p> <p>9 MR. CHEW: I think it's more interesting</p> <p>10 for the jury.</p> <p>11 MS. VASQUEZ: And then finally --</p> <p>12 THE COURT: Sure, Mr. Chew. Yes.</p> <p>13 MS. VASQUEZ: Do you expect the parties</p> <p>14 to be here for the verdict?</p> <p>15 THE COURT: I don't. It doesn't matter</p> <p>16 to me. I assume they'd want to be here for the</p> <p>17 verdict, but that's up to them.</p> <p>18 MS. VASQUEZ: Okay.</p> <p>19 THE COURT: Okay?</p> <p>20 MS. VASQUEZ: Thank you, Your Honor.</p> <p>21 THE COURT: That's fine. And I will</p> <p>22 give you enough time to have them here if you wish</p>	<p>155</p> <p>1 zero --</p> <p>2 MR. NADELHAFT: Okay.</p> <p>3 THE COURT: -- evidence on it. So I</p> <p>4 think that's --</p> <p>5 MR. NADELHAFT: That's -- that's fine.</p> <p>6 THE COURT: I don't think that's --</p> <p>7 MR. NADELHAFT: Thank you, Your Honor.</p> <p>8 THE COURT: -- going to be an issue.</p> <p>9 MR. NADELHAFT: Okay.</p> <p>10 MS. VASQUEZ: That's fine, Your Honor.</p> <p>11 THE COURT: Anything further?</p> <p>12 MS. VASQUEZ: I don't believe so.</p> <p>13 THE COURT: Last chance. All right.</p> <p>14 (Off the record at 9:45 a.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p>154</p> <p>1 to have them here.</p> <p>2 MS. VASQUEZ: Understood.</p> <p>3 THE COURT: Okay?</p> <p>4 MR. NADELHAFT: Your Honor, one -- one</p> <p>5 last thing. And I don't want to -- I know you</p> <p>6 don't want to go backwards, but I -- I'm going to</p> <p>7 go in reverse for a minute.</p> <p>8 THE COURT: Okay.</p> <p>9 MR. NADELHAFT: On the -- on the --</p> <p>10 Plaintiff's 1246, the one about the -- there's the</p> <p>11 redactions about the dogs here. I think, you</p> <p>12 know, there's a point that says, Johnny had the</p> <p>13 audacity to send bill to my lawyers.</p> <p>14 I think that that -- I thought that's</p> <p>15 sort of suggesting -- they're suggesting something</p> <p>16 about an illegal issue with the dogs. So that's</p> <p>17 why I would ask for --</p> <p>18 THE COURT: I don't get that from that</p> <p>19 statement --</p> <p>20 MR. NADELHAFT: Okay.</p> <p>21 THE COURT: -- not being -- I mean, I</p> <p>22 don't think the jury would either because we had</p>	<p>156</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER</p> <p>2 I, CAROL A. LOWE, the court reporter</p> <p>3 before whom the foregoing hearing was taken, do</p> <p>4 hereby certify that the foregoing transcript is a</p> <p>5 true and correct record of the proceedings; that</p> <p>6 said proceedings were taken by me stenographically</p> <p>7 and thereafter reduced to typewriting under my</p> <p>8 supervision; and that I am neither counsel for,</p> <p>9 related to, nor employed by any of the parties to</p> <p>10 this case and have no interest, financial or</p> <p>11 otherwise, in its outcome.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 </p> <p>19 _____</p> <p>20 Carol A. Lowe, RPR</p> <p>21</p> <p>22</p>

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