

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

John C. Depp, II,

Plaintiff,

v.

Amber Laura Heard,

Defendant.

Case No. CL2019-02911

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**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S DEMURRER AND PLEA IN BAR
SEEKING DISMISSAL OF ALL CLAIMS**

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There is a stark irony at the heart of this case. In December 2018, Defendant Amber Laura Heard published an op-ed calling for “changes to laws and rules and social norms” so that “women who come forward to talk about violence receive more support.” She warned that such reform is necessary because powerful men who have been accused of violence will spare nothing to punish and harass their accusers. Months later, Plaintiff John C. Depp, II proved Ms. Heard’s point by filing this defamation lawsuit. He did so even though Ms. Heard’s op-ed did not mention him at all. It said nothing about their relationship and made no claims about his conduct. Fundamentally—and contrary to the premise of Mr. Depp’s case—it was not about *him* or what he did to Ms. Heard *during* their marriage. It was about *her* and what happened to her *after* she came forward. Based on her experiences as a woman who had reported a man for violence, the op-ed described how “institutions protect men accused of abuse”—and how society reacts wrathfully to “women who speak out.”

It would turn the law of defamation on its head to treat any of her statements in this op-ed as actionable. When read in context and given their normal meaning, none of them defames Mr. Depp. While Ms. Heard can and will prove the truth of her 2016 statements if required to do so, the op-ed is focused on an entirely different and independently significant point: how society reacts (and should react) to accusations of violence. It does not incorporate by reference everything that Ms. Heard has ever said about Mr. Depp and somehow re-publish those statements afresh in invisible ink. Dismissal is warranted on that basis alone. But there is more: Ms. Heard did not actually write the first allegedly defamatory statement (the title of her op-ed); and the first, second, and third statements are protected opinions.

It appears that Mr. Depp desperately hopes to put his whole marriage on trial, or to wage legal warfare over Ms. Heard’s decision to report his abuse in 2016. If permitted, that would be an

abuse of the legal system and an improper means of dodging the limitations period for defamation claims. But Mr. Depp's case cannot proceed because it fails to satisfy core requirements of defamation law—and because it imputes to Ms. Heard's op-ed a series of hidden factual representations that simply are not there. The Complaint should therefore be dismissed in its entirety and with prejudice, whether pursuant to Ms. Heard's demurrer or pursuant to her plea in bar.

BACKGROUND

Ms. Heard and Mr. Depp are both actors. Compl. ¶¶ 8-9. They got married in February 2015. *Id.* ¶ 13. In May 2016, Ms. Heard publicly accused Mr. Depp of domestic violence. *Id.* ¶ 16. Mr. Depp alleges that those accusations were false. *Id.* ¶¶ 24-61. Ms. Heard and Mr. Depp finalized a divorce in January 2017. *Id.* ¶ 18.

Starting in late 2017, the nation witnessed a series of accusations that famous, powerful men had abused women. These statements triggered an intense, ongoing debate about the prevalence of abuse and the nature of the societal forces that have long caused victims—mainly women—to remain silent. *See, e.g.,* Jeannie Suk Gersen, *Bill Cosby's Crimes and the Impact of #MeToo on the American Legal System*, NEW YORKER (Apr. 27, 2018); Amy Kaufman & Daniel Miller, *Six Women Accuse Filmmaker Brett Ratner of Sexual Harassment or Misconduct*, L.A. TIMES (Nov. 1, 2017); Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017).

On December 18, 2018, Ms. Heard joined that conversation by publishing an op-ed online in *The Washington Post*. *See* Compl. Ex. A. She is described in the op-ed as “an actress and ambassador on women's rights at the American Civil Liberties Union.” *Id.* The editors at *The Post* (not Ms. Heard) gave this piece the title, “Amber Heard: I spoke up against sexual violence – and

faced our culture's wrath. That has to change." See Decl. of Amber Laura Heard, dated September 4, 2019 ("Heard Decl.") ¶ 7. When the same op-ed appeared in *The Post's* print edition one day later, the editors changed the title to "A Transformative Moment for Women." Compl. Ex. B. When Ms. Heard tweeted the online edition from her personal Twitter account on December 19, she accompanied it with the following description: "Today I published this op-ed in the Washington Post about the women who are channeling their rage about violence and inequality into political strength despite the price of coming forward. From college campuses to Congress, we're balancing the scales." Compl. Ex. C.

The dominant message of the op-ed is that "[w]e are in a transformative political moment" and "have an opening now to bolster and build institutions protective of women." Ms. Heard described the lessons of the #MeToo movement, surveyed the dramatic rise of women in electoral politics, and declared that "[w]omen's rage and determination to end sexual violence are turning into a political force." She therefore called on Congress to "reauthorize and strengthen the Violence Against Women Act," and criticized "proposed changes to Title IX rules governing the treatment of sexual harassment and assault in schools." More broadly, she advocated the election of "representatives who know how deeply we care about these issues," as well as the adoption of cultural and political reforms to "right the imbalances that have shaped our lives."

Ms. Heard drew on a lifetime of experience to support this call to action. "I was exposed to abuse at a very young age," she revealed. As a result, she "knew certain things early on, without ever having to be told," including that "men have the power – physically, socially and financially – and that a lot of institutions support that arrangement." "Like many women," Ms. Heard added, "I had been harassed and sexually assaulted by the time I was of college age. But I kept quiet – I

did not expect filing complaints to bring justice. And I didn't see myself as a victim." Ms. Heard was thus intimately familiar with the forces that often cause women to remain silent.

She was also familiar with the fierce backlash that awaits women who come forward: "Two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out." While her op-ed briefly addressed the backlash that followed her accusations against Mr. Depp, it did so only to describe how she perceived her public role in its aftermath and how she experienced society's reaction: "I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse." She was bluntly warned that she would "never again work as an actress." She also endured relentless harassment:

I write this as a woman who had to change my phone number weekly because I was getting death threats. For months, I rarely left my apartment, and when I did, I was pursued by camera drones and photographers on foot, on motorcycles and in cars. Tabloid outlets that posted pictures of me spun them in a negative light.

Throughout these experiences, Ms. Heard confessed, "I felt as though I was on trial in the court of public opinion — and my life and livelihood depended on myriad judgments far beyond my control." She therefore supported changes "to ensure that women who come forward to talk about violence receive more support."

Mr. Depp alleges that the publication of this op-ed harmed his reputation and damaged his career by "reviv[ing]" Ms. Heard's allegations of domestic abuse from 2016. Compl. ¶ 72. For instance, he alleges that two days after the op-ed appeared, Disney announced that he would no longer be part of the *Pirates of the Caribbean* franchise. *Id.* ¶ 73. He also alleges that he lost other unspecified movie roles. *Id.* ¶ 71. Mr. Depp seeks "compensatory damages of not less than \$50,000,000"—as well as other remedies—on the theory that Ms. Heard's op-ed reiterated, by implication, her earlier, time-barred statements in May 2016 that he had engaged in domestic abuse during their marriage. Compl. at 29.

STANDARD OF REVIEW

“A demurrer tests the legal sufficiency of facts alleged in pleadings, not the strength of proof.” *Glazebrook v. Bd. of Supervisors of Spotsylvania Cty.*, 266 Va. 550, 554 (2003) (citations omitted). Accordingly, in deciding a demurrer, the Court “accept[s] as true all facts properly pleaded in the bill of complaint and all reasonable and fair inferences that may be drawn from those facts.” *Id.*

“A plea in bar asserts a single issue, which, if proved, creates a bar to a plaintiff’s recovery.” *Hawthorne v. VanMarter*, 279 Va. 566, 577 (2010) (citations omitted). “The party asserting a plea in bar bears the burden of proof on the issue presented,” and may submit its issue for decision “based on a discrete body of facts identified by the parties through their pleadings.” *Id.* (citations omitted).

DEMURRER ARGUMENT

Mr. Depp’s complaint should be dismissed because the specific statements for which it seeks to impose defamation liability are not actionable as a matter of law.

A. Legal Standard

“In Virginia, when a plaintiff alleges defamation by publication, the elements are ‘(1) publication of (2) an actionable statement with (3) the requisite intent.’” *Schaecher v. Bouffault*, 290 Va. 83, 91 (2015) (citation omitted). “On demurrer in a defamation suit, the trial judge is responsible for determining whether, as a matter of law, the allegedly defamatory statements are actionable.” *Taylor v. Southside Voice, Inc.*, 83 Va. Cir. 190 (2011). To be “actionable,” a statement must be both “false and defamatory.” *Schaecher*, 290 Va. at 91. Because statements of opinion cannot be “false,” they are never actionable. *See Fuste v. Riverside Healthcare Ass’n*, 265 Va. 127, 132 (2003) (“Statements that are relative in nature and depend largely upon the speaker’s

viewpoint are expressions of opinion.” (citation omitted)). A statement ranks as “defamatory” only if “tends to injure one’s reputation in the common estimation of mankind” *Schaecher*, 290 Va. at 92.

In assessing both elements of an allegedly actionable statement, context is key. *See id.* at 93. “Potentially defamatory statements” that are “made during the course of an ongoing public controversy” are “likely to be understood to be rhetorical opinion” rather than “assertions of fact.” Judge Robert D. Sack, 1 *Sack on Defamation: Libel, Slander, and Related Problems* § 4:3.1 (5th ed. 2017). Further, “an editorial or op-ed column” is “ordinarily not actionable” because it appears “in a place usually devoted to, or in a manner usually thought of as representing, personal viewpoints.” *Id.*

Virginia recognizes that facially non-defamatory statements may possess a prohibited defamatory implication. *See Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 8 (1954). But this doctrine is a narrow one. Plaintiffs cannot manufacture defamation by extending the meaning of language “beyond its ordinary and common acceptance,” *id.* at 8, or by disregarding “the context in which [the] statements were made,” *Richmond Newspapers, Inc. v. Lipscomb*, 234 Va. 277, 298 (1987). Put differently, “[a] defamatory implication must be present in the plain and natural meaning of the words used.” *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092 (4th Cir. 1993) (citation omitted); *see Yeagle v. Collegiate Times*, 255 Va. 293, 297-98 (1998); *Perk v. Vector Resources Group, Ltd.*, 253 Va. 310, 316-17 (1997).

B. Mr. Depp Fails to Allege an Actionable Statement

Here, Mr. Depp has sued Ms. Heard for publishing an editorial on a matter of intense public controversy—namely, the need for cultural and political reforms to how society responds when women report abuse. The op-ed makes no mention of Mr. Depp and says nothing about his

conduct. It is focused solely on Ms. Heard’s experiences and the lessons that she believes should be drawn from them. Mr. Depp therefore resorts to asserting that the op-ed contained a defamatory implication. But this argument collapses upon contact with the rule that “the alleged implication must be reasonably drawn from the words actually used.” *Webb v. Virginian-Pilot Media Companies, LLC*, 287 Va. 84, 89 (2014). It also offends the settled constitutional prohibition on imposing liability for statements of opinion. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *Chaves v. Johnson*, 230 Va. 112, 119 (1985). This is confirmed by a review of the four specific statements alleged to be actionable.

1. The Title of the Online Edition of the Op-Ed

The first alleged defamatory statement is the title of the online version of Ms. Heard’s op-ed: “Amber Heard: I spoke up against sexual violence – and faced our culture’s wrath. That has to change.”¹ As explained below in relation to the plea in bar, this statement was not written by Ms. Heard and cannot support defamation liability for that reason alone. In any event, even if Ms. Heard did write it, most of this statement consists of pure opinion: whether Ms. Heard “faced our culture’s wrath,” and whether “that has to change,” are statements that reflect Ms. Heard’s own viewpoint and are not amenable to a finding of truth or falsity. *See Fuste*, 265 Va. at 132. Mr. Depp must therefore seek to wring a defamatory implication from the first clause: “I spoke up against sexual violence.” But given its natural meaning and set in context, it does not support that implication.

For starters, the focus of the title—and of the op-ed itself—is entirely on how society responds to reports of domestic abuse and what that says about the need for reform. The first two

¹ Mr. Depp includes this statement in Count Two, which targets the print version of Ms. Heard’s op-ed. *See* Compl. ¶ 87. The print version, however, had a different title. This statement should therefore be dismissed from Count 2.

paragraphs are about abuse that Ms. Heard endured earlier in life and the societal forces that scared her into silence and powerlessness. Most of the remaining paragraphs in the op-ed are about the #MeToo movement and ongoing political-policy disputes. Even when the op-ed briefly turns to the moment that Ms. Heard “spoke up against sexual violence,” neither the title nor the op-ed refers to Mr. Depp, includes any descriptions of his conduct, or repeats (or includes links to) any of her statements from 2016 about domestic strife. Ms. Heard does not relitigate the controversy or argue that Mr. Depp did, in fact, abuse her. At most, for readers who happen to be familiar with the history of their relationship, the online title could be read as gesturing at the *existence* of her 2016 statements about Mr. Depp. It then immediately proceeds to describe the backlash she endured for those statements and the need for societal transformation, without stating to readers that she was right and Mr. Depp was wrong about what happened in 2016.

This commonsense distinction—between referring to the existence of an earlier statement and affirmatively making the statement again—is familiar from the law of re-publication. Although Virginia courts have generally adhered to a single publication rule, *see Armstrong v. Bank of Am.*, 61 Va. Cir. 131, 132 (2003), cases addressing re-publication are useful because Mr. Depp is effectively seeking to hold Ms. Heard liable for “reviv[ing]” statements made in 2016, as to which defamation liability is now time-barred. *See* Compl. ¶ 72; Va. Code § 8.01-247.1 (1-year statute of limitations). And in re-publication cases, courts have prudently affirmed that a person re-publishes an article when she “present[s] the defamatory contents” to a new audience, but *not* when she merely “call[s] the existence of the article to the attention of a new audience.” *Salyer v. Southern Poverty Law Center, Inc.*, 701 F. Supp. 2d 912, 916 (W.D. Ky. 2009); *accord In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 175 (3d Cir. 2012) (emphasizing that even a

“favorable” reference to an earlier article does not re-publish it unless the defamatory material is restated).

So too here. If required to prove the truth of her statements, Ms. Heard will do so, but her op-ed was not about whether Mr. Depp assaulted her. Her message is that society as a whole—and many of its leading institutions—are far too quick and far too hostile in responding to women who say they were assaulted. Ms. Heard references the fury and personal attacks that she experienced following her domestic violence report in 2016 only to strengthen her political argument. If the op-ed had professional consequences for Mr. Depp because it reminded people of the existence of Ms. Heard’s earlier allegations of abuse, or caused powerful institutions to rethink their original reactions to her statements, that does not mean she can be held liable for defaming him by implication. It is not defamatory to make statements about what happened as a result of earlier statements—particularly when the earlier statements are not discussed, described, detailed, or defended in any manner.

In Mr. Depp’s view, however, Ms. Heard can never speak about the backlash she endured after reporting him, or about the death threats leveled against her, without impliedly re-accusing him of abuse. That is a patently unreasonable position. It imputes an artificial implication to her statements—and, if adopted broadly, would create a credible threat of defamation liability every time a person speaks publicly about how society responded to their report of assault, even if the report occurred years earlier and even if all details are excluded from their statement. *See Carwile*, 196 Va. at 8 (“[Innuendo] can not introduce new matter, nor extend the meaning of the words used, or make that certain which is in fact uncertain.”).

2. “I Became A Public Figure Representing Domestic Abuse”

The second alleged defamatory statement is the third paragraph of the op-ed: “Then two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture’s wrath for women who speak out.” Mr. Depp’s efforts to impose liability here fail for many of the same reasons already given.

But before turning to that point, liability is barred for a more fundamental reason: this entire statement is a non-actionable opinion. That is clear from the context and from the language used. Starting with context, the statement appears in an op-ed on a matter of intense public controversy. *See 1 Sack on Defamation* at § 4:3.1. The conventions of the genre include “rhetorical hyperbole,” which is held to be non-actionable as a matter of law. *See Yeagle*, 255 Va. at 296. And in describing herself as a “a public figure representing domestic abuse,” Ms. Heard invoked that convention. There is no objective basis on which to assess the truth or falsity of whether a person is a “public figure representing domestic abuse,” or whether they “felt the full force of our culture’s wrath for women who speak out.” In the language of the Virginia Supreme Court, “the relative nature of such opinions is obvious to anyone who hears them.” *Chaves*, 230 Va. at 119.

Pointing to the first clause of this alleged defamatory statement, Mr. Depp may assert that it contains a “factual kernel . . . which can be objectively proven to be true or false.” *Lamb v. Weiss*, 62 Va. Cir. 259 (2003). But where a statement with even some apparent basis in fact turns on a subjective judgment, it still qualifies as an opinion. *See Raytheon Tech. Servs. Co. v. Hyland*, 273 Va. 292, 305 (2007) (holding that it is a statement of opinion—not a statement of fact—to criticize an employee for being “frequently verbose and vocal in her opinions,” since “the negative conduct, and whether and how often it occurred, is a matter of the speaker’s perspective”). Moreover, “in determining whether a statement is one of fact or opinion, a court may not isolate

one portion of the statement at issue from another portion of the statement.” *Lewis v. Kei*, 281 Va. 715, 725 (2011). “Rather, a court must consider the statement as a whole” in the full context of its utterance. *Id.*

The whole relevant statement here is that Ms. Heard believed she had become a “public figure representing domestic abuse.” Whether Ms. Heard “represent[ed]” the issue of “domestic abuse” is a matter of opinion, not fact. *See Chaves*, 230 Va. at 119. So, too, is any speculation regarding what it means to “represent[.]” this issue or why she may have assumed such “public figure” status. *See Yeagle*, 255 Va. at 295 (“[S]tatements which cannot reasonably be interpreted as stating actual facts about a person cannot form the basis of a common law defamation action.”). In the fuller context of the op-ed, Ms. Heard suggests that her public statements in 2016 regarding Mr. Depp thrust her into the position of “representing domestic abuse” and thus sparked a vitriolic response. But that causal claim, too, is an opinion. Because every part of this statement depends on perspective, no part of it is actionable.²

Regardless, this statement lacks any defamatory implication. Mr. Depp reads it as stating *sub silentio* that he abused her in 2016. That is incorrect. This is an op-ed about what happens to women who report men for domestic abuse and why society should react differently. Given that context, her claim about becoming a “public figure representing domestic abuse”—and suffering “the full force of our culture’s wrath for women who speak out”—is a statement about what she believes happened *after* she accused Mr. Depp of violence. It describes her opinions about the personal consequences, not the underlying merits, of her decision to report Mr. Depp. As is true

²As Judge Sack observes, “That a defendant considered facts in forming its opinions does not mean that the opinions are objectively verifiable and therefore factual for these purposes. Based upon the relative value that the defendant assigns to different criteria, it weighs the importance of certain facts differently. The weight it applies to these facts is not verifiable.” *Sack on Defamation* § 4:3.2.

of the first alleged defamatory statement, a reader familiar with her relationship with Mr. Depp might conclude that this statement tacitly acknowledges the *existence* of her statements in 2016. But that reader would not understand her to be reiterating accusations of domestic abuse or to be refighting that years-old battle. Rather, he would understand that she is describing her experience of the events set in motion by her decision to speak up—and seeking structural reforms meant to benefit all women who come forward with claims of violence or abuse. The statement therefore lacks any defamatory implication about Mr. Depp and is non-actionable as a matter of law.

3. “I Had the Rare Vantage Point”

Ms. Heard’s third alleged defamatory statement is that “I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse.” Here, too, Mr. Depp seeks to impose liability on a pure statement of opinion that lacks any plausible defamatory implication when given its ordinary meaning.

First, it would be impossible to “objectively characterize[]” this whole statement, or even any part of it, as “true or false.” *Jarrett v. Goldman*, 67 Va. Cir. 361, 2005 WL 1323115, at *7 (2005). It is an opinion whether Ms. Heard had a “rare vantage point,” since the word “rare” depends on a relative judgment. It is an opinion that she was “seeing” anything “in real time,” since “seeing” here is not used in its ordinary empirical sense but rather in a deeply subjective manner meant to describe her perception of societal events. And it is most certainly an opinion whether she saw “how institutions protect men accused of abuse,” as that claim depends on a slew of controversial and interlocking personal, political, and cultural judgments about the proper interpretation of conduct by a wide array of persons and institutions.

Accordingly, the third statement is not actionable when read as a whole—as the law requires. *See Lewis*, 281 Va. at 725. Even if Mr. Depp insists on smashing it apart and analyzing

it word by word, the only conceivable factual kernel is the observation that “men” had been “accused of abuse.” But the use of the plural term “men” indicates a broader focus on Ms. Heard’s part than just Mr. Depp himself—and, in any event, Mr. Depp does not deny (and in fact admits) the truth of the proposition that he had been “accused . . . of domestic abuse.” *See, e.g., Compl.* ¶ 88.

For similar reasons, the statement lacks any defamatory implication. Mr. Depp seeks to hold Ms. Heard liable for a claim about her recollected perception of how “institutions” have responded to sexual abuse allegations against “men.” In making that claim in the op-ed, Ms. Heard undoubtedly accounts for how those “institutions” responded to her own allegation regarding Mr. Depp, but also makes a far more general point about how such “institutions” protect “men.” She thus pivots from this statement directly to broad observations about how a “powerful man” is protected and what “the #MeToo movement has taught us about how power like this works.” The implication of the statement is not that Mr. Depp assaulted her. It is that there are powerful institutions that protect men whenever they are accused of abuse.

The fact that Mr. Depp would even try to impose liability for this statement only confirms the startling breadth of his legal theory. It cannot be true that every time Ms. Heard speaks about her experiences and beliefs regarding the #MeToo movement, or society’s response to it, her statements will be interpreted as implying that Mr. Depp abused her. While Mr. Depp may believe that everything Ms. Heard says is actually about him, readers blessed with a grasp of English usage and context can readily discern otherwise, especially in a political opinion piece like this one.

4. “I Was Getting Death Threats”

Finally, Mr. Depp alleges that Ms. Heard defamed him with the following statement:

I write this as a woman who had to change my phone number weekly because I was getting death threats. For months, I rarely left my apartment, and when I did, I was

pursued by camera drones and photographers on foot, on motorcycles and in cars. Tabloid outlets that posted pictures of me spun them in a negative light. I felt as though I was on trial in the court of public opinion — and my life and livelihood depended on myriad judgments far beyond my control.

Mr. Depp’s claim that this statement defames him verges on frivolous. No reasonable reader of this statement, or any part of it, would believe that it says or implies anything about him. It should therefore be deemed non-actionable as a matter of law.

PLEA IN BAR ARGUMENT

A. Ms. Heard Did Not Entitle the Online Edition of the Op-Ed

The first alleged defamatory statement in the Complaint is the title of the op-ed as it appeared online (“Amber Heard: I spoke up against sexual violence – and faced our culture’s wrath. That has to change.”). But as she explains in a declaration supporting her plea in bar, Ms. Heard neither wrote nor selected the title for her op-ed; that was handled entirely by the editors at *The Washington Post*. See Heard Decl. ¶¶ 5, 7. That defeats liability for this statement, since Ms. Heard did not herself publish it. See *Schaecher*, 290 Va. at 91 (requiring “publication” for defamation liability); see also *Guilford Transp. Industries, Inc. v. Wilner*, 760 A.2d 580, 584 n.2 (D.C. App. 2000) (“All parties agree that Wilner did not select and is not responsible for the title of the article, which was apparently chosen by the *Journal of Commerce*, which is not a defendant in this case.”).

B. Mr. Depp’s Claims Are Barred by the Statute of Limitations

The gravamen of Mr. Depp’s case is that Ms. Heard should be held liable for “reviv[ing]”—by secret and indirect implication—statements that she made in 2016. See Compl. ¶ 72. Indeed, the Complaint is overwhelmingly about those earlier statements. But liability for statements in 2016 is precluded by the applicable 1-year statute of limitations. See Virginia Code §8.01-247.1.

Mr. Depp’s blatant attempt to end-run the limitations bar by imputing her 2016 statements to a 2018 op-ed—which neither mentioned, described, or linked to them—should not be countenanced.

C. Ms. Heard is Entitled to Anti-SLAPP Immunity

As relevant, Virginia’s anti-SLAPP statute provides as follows:

A. A person shall be immune from civil liability for . . . defamation based solely on statements (i) regarding matters of public concern that would be protected under the First Amendment to the United States Constitution made by that person that are communicated to a third party The immunity provided by this section shall not apply to any statements made with actual or constructive knowledge that they are false or with reckless disregard for whether they are false.

B. Any person who has a suit against him dismissed pursuant to the immunity provided by this section may be awarded reasonable attorney fees and costs.

Va. Code § 8.01-223.2.

Looking to the plain statutory text, there are four elements to anti-SLAPP immunity: the alleged defamatory statements were (1) on a matter of public concern; (2) protected by the First Amendment; (3) published to a third party; and (4) not made with actual or constructive knowledge that they are false or with reckless disregard for whether they are false (that is, they were not made with actual malice). Where all four elements are met, a defendant enjoys statutory immunity from defamation liability and “may” be awarded “reasonable attorney fees and costs.”

Here, all four elements are met. *First*, Ms. Heard’s statements were on a matter of public concern: how American society has responded to accusations of assault by powerful men and what cultural/political reforms are warranted in light of those reactions. *Second*, for the reasons given above, none of Ms. Heard’s statements were defamatory and thus all of them were fully protected by the First Amendment. *Third*, the statements at issue were all published to third parties. *Finally*, Mr. Depp’s allegations that Ms. Heard made these statements with actual malice depend entirely on his further assertion that the statements contain a secret defamatory implication. The only statements in the op-ed to which he imputes actual malice are the statements that Ms. Heard did

not actually make: namely, statements that Mr. Depp engaged in domestic abuse while they were married. Since none of Ms. Heard's statements can reasonably be read as possessing any such implication—and since most of them are statements of opinion—Mr. Depp's allegations of actual malice fall away. Giving the statements their natural, ordinary meaning, there is no basis for concluding that any of them was made with actual malice. The fourth and final requirement of anti-SLAPP immunity is therefore satisfied. And an award of fees and costs is amply justified by Mr. Depp's improper efforts to enlist the legal system into punishing Ms. Heard for advocating that our laws and culture protect women who come forward with accusations of abuse by powerful men.

CONCLUSION

For the foregoing reasons, Ms. Heard respectfully requests that the Court dismiss all claims against her and award her reasonable attorneys fees and costs.

Dated: September 5, 2019

Respectfully submitted,

Amber L. Heard

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CERTIFICATE OF SERVICE

I certify that on this 5th day of September, 2019, a copy of the foregoing Memorandum Of Law In Support of Defendant's Demurrer and Plea In Bar Seeking Dismissal Of All Claims shall be served by first class mail, postage prepaid, and by email, upon:

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