

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

B E T W E E N

JOHN CHRISTOPHER DEPP II

Claimant

and

(1) NEWS GROUP NEWSPAPERS LTD

(2) DAN WOOTTON

Defendants

CLAIMANT'S SKELETON ARGUMENT FOR TRIAL

7 JULY – 27 JULY 2020

This is the trial of the Claimant's libel action against the publisher of *The Sun* newspaper and www.thesun.co.uk and its Executive Editor, Dan Wootton, in respect of two related articles which make seriously defamatory allegations that the Claimant is a 'wife beater', guilty of serious domestic violence against his former wife Amber Heard.

This Skeleton Argument is divided into the following sections:

- A. Trial bundles and reading list
- B. Introduction
- C. Issues to be determined at trial
- D. Meaning
- E. Serious harm
- F. Truth defence
- G. Damages and other remedies

SECTION A: TRIAL BUNDLES AND READING LIST

There are 9 trial bundles. References in square brackets throughout this Skeleton are to **[Bundle/ Tab / Page]**. **[xxx]** refers to documents which are being added.

The Proposed Trial Timetable is to be found at **[1/7/B1]**.

An agreed Chronology is to be found at **[1/8/B2]**.

Recommended pre-reading:

It is suggested that the Court reads in advance the Statements of Case and the Witness Statements. Together with these Skeletons, it is believed that this will take approximately 1 to 1 ½ days.

- The Articles complained of are at **[1/A3/A24-A27]** (website) & **[1/A5/A47]** (newspaper)
- Particulars of Claim (“P/C”) **[1/C13/C4-C14]**
- Re-Amended Defence (“ReAmDef”) **[1/C14/C16-C29]**
- Re-Amended Reply (“Reply”) **[1/C15/C30-C46]**

Listed below are the statements served by the Claimant and by the Defendants of those witnesses who are scheduled to give oral evidence.

Witness Statements served on behalf of the Claimant

- i. Claimant’s 2nd WS **[2/D38/D22-D66]**
- ii. Claimant’s 3rd WS **[2/D54/D173-D185]**
- iii. Stephen Deuters **[2/D44/D104-D112]**
- iv. Malcolm Connolly **[2/D53/D168-D172]**
- v. Ben King **[2/D46/D117-D122]**
- vi. Travis McGivern **[2/D52/D163-D167]**
- vii. Samantha McMillen **[2/D41/D77-D80]**
- viii. Sean Bett **[2/D40/D70-D76]**
- ix. Isaac Baruch **[2/D48/D129-D138]**

- x. Cornelius Harrell [2/D49/D140-D146]
- xi. Trinity Esparza [2/D43/D94-D103]
- xii. Alejandro Romero [2/D47/D123-D128]
- xiii. Brandon Patterson [2/D50/D147-D153]
- xiv. Hilda Vargas [2/D51/D154-D162]
- xv. Kevin Murphy 1st WS [2/D42/D81-D93]
- xvi. Kevin Murphy 2nd WS [2/xxx]
- xvii. Edward White [2/D45/D113-D116]
- xviii. Katherine Kendall [2/D39/D67-D69]
- xix. Kate James [2/D56/D188-209]
- xx. Vanessa Paradis [2/D58/D218-221]
- xxi. Winona Ryder [2/D59/D222-224]

Witness Statements served on behalf of the Defendants:

- xxii. Amber Heard, 1st WS [2/E60/E1-E42]
- xxiii. Ms Heard, 3rd WS [2/E71/E597-E606]
- xxiv. Ms Heard, 5th WS [2/xxx]
- xxv. Whitney Henriquez [2/E61/E97-E116]
- xxvi. Kristina Sexton [2/E63/E147-E164]
- xxvii. Joshua Drew [2/E64/E165-E170]
- xxviii. iO Tillet Wright [2/E62/E124-E138]
- xxix. Raquel Pennington [2/xxx]
- xxx. In addition, the Defendants are calling Melanie Inglessis, based upon a witness summary served without speaking to her, L Charalambous 2nd WS at 22 [2/71/E612]

B. INTRODUCTION

1. The Claimant is the world-famous actor and musician, Johnny Depp. He has appeared in numerous Hollywood films throughout his career, won a number of Awards and has now become a household name in the UK and the US, as well as around the world.

2. The First Defendant is the publisher of *The Sun* newspaper and the news website, www.thesun.co.uk. The Second Defendant, Mr Wootton, is currently *The Sun's* Executive Editor and the author of the articles complained of.
3. The Claimant brings this libel action in respect of an article written by the Second Defendant and first published online on 27 April 2018 under the headline "***GONE POTTY How can JK Rowling be 'genuinely happy' casting wife beater Johnny Depp in the new Fantastic Beasts film?***" [1/2/A21]. A very similar article was published in the newspaper the following morning, 28 April 2018, under the headline "***How can JK Rowling be 'genuinely happy' to cast Depp after assault claim***" [1/5/A47]. The headline of the online article was amended at around the same time to "***GONE POTTY How can JK Rowling be 'genuinely happy' casting Johnny Depp in the new Fantastic Beasts film after assault claim***" [1/3/A24-A27].
4. The articles make defamatory allegations of the utmost seriousness against the Claimant. They accuse him of being a 'wife beater' who has committed serious assaults on Amber Heard during their relationship, inflicting such serious injuries that she feared for her life.
5. The articles amount to a full-scale attack on the Claimant as a 'wife beater', guilty of the most horrendous physical abuse. The author deploys a panoply of cultural and topical references (namely the #MeToo movement, the Time's Up movement and the disgraced film mogul and serial abuser of women Harvey Weinstein), in order to convey the seriousness of what the Claimant is alleged to have done.
6. They are allegations which the Claimant absolutely denies, and which, at the time of publication, he had already publicly denied. Despite that, the Defendants published the allegations, without any reference to the Claimant's position, to launch the Second Defendant's "*brand new column*" with a fanfare. They even deliberately misused and misquoted #MeToo/Time's Up victim, Katherine Kendall, to present the false impression that she (and by obvious implication the #MeToo movement as well) endorsed these allegations, something which Ms Kendall complained about in writing to The Sun but to no avail.

7. The principal issue at trial will be the defence of Truth. In advancing that defence, the Defendants rely upon 14 alleged incidents when they contend that the Claimant was guilty of domestic violence against Ms Heard. They claim that on five of those occasions, the Claimant inflicted some sort of injury on Ms Heard. The Claimant's position is clear; Ms Heard's allegations are complete lies. The Claimant was not violent towards Ms Heard, it was she who was violent to him.
8. Much of the evidence served by the parties as to those 14 incidents alleged by Ms Heard boils down to conflicting testimony between her and the Claimant as no-one else is said to have been present. But there are exceptions to that; for example, Stephen Deuters (the Claimant's personal assistant) was on the private plane in May 2014 (the 4th alleged incident) and will give evidence refuting Ms Heard's version of events.
9. In particular, in relation to the last two alleged incidents (on 21 April and 21 May 2016), there is documentary evidence (including images from CCTV) and testimony from a number of third parties (including two LAPD officers) which shows that Ms Heard had no visible injuries – and therefore that her account is clearly false.
10. In the circumstances of this case, if Ms Heard is being untruthful in her claims about these two incidents (which, critically, were the ones she chose to submit to obtain a temporary restraining order against the Claimant in a US Court), then the credibility of her accounts about the earlier incidents she alleges must be fatally undermined.

History

11. The Claimant met Ms Heard, an actress, whilst filming a movie called *The Rum Diary*. They started a relationship in late 2011, having worked together promoting the film during that year.
12. The relationship carried on through 2012, although Ms Heard describes communications between them as “sporadic”, with long periods when they did not see each other, and they did not spend the major holidays with each other (A Heard 1st at 37 [2/60/E10]). In early 2013, the couple spent some time together at the

Claimant's private island in the Bahamas, with Ms Heard leaving the island before the Claimant.

13. Against that backdrop, namely a relationship which was still in a relatively early phase, the Defendants allege that the first incident of domestic violence took place in early 2013 at the Claimant's home in Los Angeles (ReAmDef ¶8a.1). But, after allegedly being slapped three times by Mr Depp with such force that he knocked her to the floor, Ms Heard chose not to walk away from the relationship.
14. The incident itself is implausible. Sitting on a sofa next to Mr Depp, Ms Heard was hardly going to be knocked "*off balance*" and, as all the recordings of later conversations between the couple will critically show, Ms Heard deliberately provokes arguments with the Claimant; she seems to thrive on them. Her alleged silence in the face of being slapped three times with such force is wholly inconsistent with her general disposition.
15. The Claimant will also call witnesses who were frequently around him and Ms Heard throughout their relationship, such as security staff Sean Bett and Travis McGivern, estate manager Kevin Murphy, and house manager, Ben King, who will give evidence that Ms Heard was regularly verbally abusive to Mr Depp: S Bett at 5-6 [2/40/D71]; T McGivern [2/52/D164-D165]; K Murphy at 6 [2/42/D82]; B King at 6 [2/46/D119]. Her violent behaviour towards the Claimant, as outlined in section G below, is clear from her own taped confessions.
16. The Defendants then claim that two other incidents of domestic violence occurred shortly after the 1st alleged incident: first, on 8 March 2013 at Ms Heard's home in Los Angeles, which she still maintained at the time (ReAmDef ¶8a.2), and then secondly, in June 2013, while she and the Claimant were staying with a group of her friends in a camp in Hicksville (ReAmDef ¶8a.2A). According to Ms Heard, these incidents were extremely serious; the first involved – so she says – sustained violence and multiple different acts of violence by Mr Depp resulting in an injury to her lip, and the second involved extreme violence as set out in ReAmDef Confidential Schedule. (See Confidential Annex to this skeleton argument). However, despite the serious physical injuries she claims she sustained, there is no record that she sought any medical attention.

17. In September 2013, Ms Heard agreed to get engaged to the Claimant. She had moved in with the Claimant, although kept her own apartment for a while. Subsequently, in 2014, she moved into one of the penthouses at the Eastern Columbia Building (“the Eastern”) which the Claimant owned.
18. The 4th alleged incident is said – by the Defendants – to have occurred in May 2014 on a flight from Boston to Los Angeles. The evidence of the parties is diametrically opposed. Both the Claimant and Ms Heard are due to give evidence about the flight. In addition, the Claimant will call evidence from Stephen Deuters (the Claimant’s PA) [2/44/D105-D107] who was also on the flight, along with one of his professional security team who has since sadly passed away, Jerry Judge (whose evidence is the subject of a hearsay notice [3/83/F34-35]).
19. Ms Heard’s friend, iO Tillet Wright, who was not on the flight, says in his statement served in these proceedings that Ms Heard had lost all trust in Mr Depp after the plane journey (“*she was horrified that he did this in front of other people, and it really broke her trust in him*”: iO TW WS at 16). The Claimant will contend that was not her position, and the plane journey did not mark any seminal change in their relationship. In fact, thereafter, Ms Heard gave up her own separate home in Los Angeles which she had previously maintained despite living principally at the Eastern.
20. The 5th and 6th incidents (ReAmDef ¶¶8a.5-¶8a.6), are alleged to have occurred between August 2014 and January 2015. The Claimant would not dispute that his detoxing in the summer of 2014 was a difficult process, but this did not make him violent as Ms Heard alleges.
21. In or around early 2015, the Claimant asked Ms Heard to sign a pre-nuptial agreement ahead of their impending marriage. She was angry about this, and continuously berated the Claimant for it. They argued about it. She refused to sign. Their private doctor reported in an email on 27.1.15 to Ms Heard’s therapist (Mr Cowan) that there had been a difficult flight to Tokyo, including Ms Heard attempting to “*leave the plane while they were over the fuckin ocean*” [4/130/F755].

This aside provides something of an insight into Ms Heard's erratic behaviour, a type of behaviour which she is silent on in her witness statements.

22. Ms Heard's account of Mr Depp suddenly attacking her out of the blue in a Tokyo hotel room (the 7th alleged incident) is fanciful, and completely denied by the Claimant; they were there to attend a film premiere on 27 January 2015 on a trip in which they were accompanied by the Claimant's two children. Mr Deuters will give evidence that Ms Heard had no visible injuries during that trip [2/44/D107].
23. At the beginning of February 2015, the Claimant and Ms Heard got married. Shortly afterwards there was a further ceremony/ celebration in the Bahamas. The only violence at the wedding party was from Ms Heard's friend and witness, iO Tillet Wright, hitting one of Ms Heard's other friends Raquel 'Rocky' Pennington, as one of Ms. Heard's other witnesses (Joshua Drew) states in his evidence [2/64/E176].
24. In early March 2015, the couple were in Australia. The Claimant's evidence is that his lawyers had been in contact with Ms Heard about a post-nuptial marital agreement and she was angry (C's 2nd at 56 [2/38/D37]).
25. There is no dispute that Ms. Heard berated the Claimant continuously in Australia. Ms Heard describes the couple's confrontation as "*like a three-day hostage situation*" (the 8th alleged incident) (A Heard 1st WS at 102 [2/60/E23]). Bearing in mind the presence of security personnel at their property, her version of events is inherently implausible.
26. Ms. Heard's account is that they argued and the Claimant "cut" or "broke" his own finger. The Claimant states that Ms Heard threw two vodka bottles at him, one of which smashed onto his finger as it rested on a marble bartop, severing part of it entirely (although he was keen to cover for her behaviour). This act of violence by Ms Heard required hospitalization and multiple surgery.
27. Further, the Claimant's evidence is that it was only him that suffered any injury. Despite Ms Heard's account of prolonged violence towards her over "*like a three-day hostage situation*", she did not seek or require any medical attention, and the Claimant will lead evidence from witnesses who were present and saw her at the

time and will say that she did not have injuries as one would expect from someone who had been through the “three day hostage” situation which Ms Heard describes. This includes Ben King, the house manager, who travelled back from Australia with her. See B King at 9-10 [2/46/D119-D120]; M Connolly at 13 [2/53/D170].

28. The subsequent (9th) incident is said to have happened later that month when the Claimant was back in Los Angeles recuperating from his injury. The version of events suggested by Ms Heard and her sister, which involves the Claimant allegedly grabbing Ms Heard by the hair with one hand and punching her in the head with the other several times, simply does not fit with the fact that, at the time, the Claimant had a serious injury to his finger, for which he was still receiving medical attention in May. The Claimant will also call Travis McGivern [2/52/D164-D165], who rebuts the account put forward by Ms Heard and her sister. Mr McGivern, who worked as part of his security team, will give evidence that it was actually Mr Heard who threw objects at the Claimant and punched him in the face, to which he did not retaliate but simply departed.

29. It is also relevant to note that as early as 2015, shortly after their wedding, Ms Heard began conducting an extra-marital relationship with Elon Musk, a well-known businessman: see Deposition of Alejandro Romero, who worked at Eastern, [3/92/F139].

30. On 26 September 2015, the Claimant and Ms Heard had a long exchange of text messages [Text msg schedule #6077 - #7492, pages 76-85] [6/119/F697.76ff]. These messages give an insight into the relationship:

(a) The Claimant messaged his security because he wanted to “*split*” and “*avoid confrontation with Amber*”.

(b) In the ensuing texts between the Claimant and his wife, Ms Heard’s complaint is that he left at the first sign of trouble (#7415).

(c) She repeatedly pleads with him to call her while at the same time using the term “*monster*”; tellingly, there is no connection or association in these texts between

the 'monster' label and any alleged violence on the part of the Claimant. Quite the opposite.

(d) When the Claimant replies (#7446) he refers to what prompted him to 'split'. In this long text he says *"You're mood swings and temper are going to fuck us over, if you don't calm down and think about what you're doing!!!! ... Wouldn't even admit to clocking me in the jaw to Travis... Who, by the way, I asked to be ready to come up, because I knew that you'd get fuckin' violent AGAIN!!!!..."*

(e) Ms Heard's ensuing messages do not dispute or take issue with what the Claimant had said.

(f) The exchange continues and the pair refer to Mr Depp leaving the marriage. Ms Heard says *"I don't think I can make you happy..."* (#7479) to which the Claimant replies (#7483), *"I have also summarized [sic] that from the last 5 or 6 sucker punches to my face and head, that you aren't all that happy..."*

(g) Again, tellingly, Ms Heard does not dispute that characterisation of their relationship, instead she apologises for *"having issues"* (#7484).

31. The Court is asked to read the full exchange. This unguarded text exchange gives a real insight into the couple's relationship in a period before it was over, and before Ms Heard knew it was over, but also after a time in which Ms Heard now alleges to have been the victim of years of domestic violence.

32. The 10th, 11th and 12th incidents (ReAmDef ¶8a.13-¶8a.20) are alleged to have occurred in 2015. Ms Heard alleges that Mr Depp caused her injury in an incident which apparently came out of nowhere during their Thanksgiving celebration (A Heard 1st at 136 [2/60/E31]). Ms Heard's personal nurse who attended the Thanksgiving dinner had noted that both Ms Heard and the Claimant seemed well; the Claimant was *"calm and coherent"*. See nurse's notes at [9/132/K207].

33. Ms Heard's 1st WS describes the night of 15 December 2015 as *"one of the worst and most violent nights"* of her relationship with the Claimant (at 137) and claims she *"resolved to leave"* him (at 140) [2/60/E31-E32].

34. Despite this, text exchanges show that the following day (at 6:03pm) Ms Heard was sending upbeat texts to Mr Depp's daughter about them all spending "*Family time!!*" "*Yay*" over Christmas together in the Bahamas [4/121/F718]. Even though it became clear that she was not going to the island, she still suggested meeting up with Mr Depp's daughter that day or the next [4/121/F720-F721]. If Mr Depp had actually inflicted serious facial injuries on Ms Heard by beating her up, why, it can be asked rhetorically, was she even considering meeting his daughter who, it must be assumed, would have asked about any such injuries.
35. That evening, Ms Heard appeared on the *Late Late Show*. With James Corden. The clip is on the multi-media and stills of her can be seen at [4/151/F897]. Her appearance is inconsistent with her alleged injuries (a broken nose, two black eyes, a busted lip and torn out hair). The Claimant will call Samantha McMillen, Ms Heard's stylist, who was also responsible for making her ready for the *Late Late Show*. She will give evidence that she worked with Ms. Heard that day, saw her without make-up, and observed no visible injuries, bruises, cuts or marks [2/41/D77-78].
36. A couple of days later, on 18 December, a real insight into the couple's recent argument can be obtained from the Claimant's text to his friend, Isaac Baruch: "*...I'm staying up at Sweetzer, for the moment...The PH3 marriage has gone sideways...We've been amazing for like 4 months!!! And then her fuckin' temperCan't live like that, man... She's gonna fuckin' kill me one day!!!....*" [7/59/H672].
37. It appeared in the immediate run up to Christmas 2015 that the couple were separating, but they attempted to reconcile in early 2016. On 30 March 2016 Ms Heard wrote a letter to the Claimant, thanking him for taking care of her, and described herself as "*the luckiest woman on Earth*" to be with him [xxx] .
38. In early April 2016, Ms Heard noted in a shared journal which the couple maintained "*I am sorry I can get crazy. I am sorry I hurt you*" in a note following an argument in which it is apparent that Mr Depp did not come home [5/197/F1208.5].

39. However, the picture was not straightforward. Ms Heard has characterised Mr Depp's behaviour towards her as controlling, paranoid and jealous of male co-stars, without any foundation. Furthermore, she has claimed that she tolerated his (alleged) extremely violent behaviour because she was so in love with him. These assertions about him are completely undermined by the fact that Ms Heard engaged in relationships with both Mr Musk (as referred to above) and at least one co-star (James Franco) during the course of her relationship with Mr Depp. CCTV footage from the lift at the Eastern shows her interacting intimately with James Franco [CCTV Footage, 'Clip 55' or labelled AH_TPD_00017244.avi (02mins 55secs onwards) **[Multimedia USB: F159]**]. As already explained above, from the evidence of employees at the Eastern it is clear that Ms Heard was seeing other men, including Mr Musk, during this time: A Romero at 7 **[2/47/D124]**.
40. Ms Heard's birthday party on 21 April 2016 is the occasion of the 13th alleged incident (ReAmDef ¶8b-c). Ms Heard says she was upset when the Claimant arrived late and they argued that evening, after other guests had left. While the Defendants allege that the Claimant was extremely violent; his evidence will be that Ms Heard punched him as he lay in bed reading, resulting in him suffering from a black eye: see S Bett at 8 and photograph of Mr Depp with black eye **[2/40/D71 & D/76]**.
41. Ms Heard then went to the Coachella music festival for a few days. The Court is invited to watch the short video from that trip at **[Multimedia USB: F152]** in which it can clearly be seen that Ms Heard exhibits not a care in the world.
42. In the recording made by Ms Heard of the one-on-one meeting she sought with Mr Depp in July 2016 (despite her domestic violence restraining order recently obtained against him), Mr Depp refers to this April incident. He says to her "*I didn't want you to fuckin' go to Coachella without fuckin' talking to me because I left you because you were fuckin'... you fuckin' hang-maked me, man. You came around the bed to start fuckin' start punching on me*", a statement which Ms Heard does not deny **[xxx]**.
43. The Claimant will give evidence that he finally decided to leave Ms Heard for good following her birthday party and its immediate aftermath (C's 2nd WS at 85 **[2/38/D47]**, C's 3rd WS at 33 **[2/54/D180]**). The incident in which human faeces

(alleged by Ms Heard to have been left by a dog instead but which she confessed to Mr Murphy was 'just a harmless prank' by her and her friends) was left in his bed at the penthouse on the morning Ms Heard left for Coachella was one reason. The Claimant told Ms Heard that their relationship was over during May 2016.

44. The final (14th) incident allegedly occurred on 21 May 2016. Ms Heard's allegations against the Claimant concerning that evening were the basis on which she went down to Court to get a Temporary Restraining Order against the Claimant a few days later.

45. This alleged incident on 21 May 2016 is the one where evidence is given from the largest number of other individuals, i.e. other than the Claimant and Ms Heard. The Claimant will call evidence from witnesses who lived or worked in the Eastern, will rely on hearsay evidence in depositions given by officers from the Los Angeles Police Department ("LAPD") who attended upon Ms Heard at her home a few hours after the alleged incident on 21 May 2016, and whose deposition evidence utterly refutes that of Ms Heard and her friends, and also rely upon images of her captured on CCTV footage from the Eastern in the following days (B Patterson WS 5-35 [2/50/D148-D151]) to show that Ms Heard's allegations are false. (See in particular the start of 'Clip 42' also labelled **AH_TPD_00017231.avi** which plainly shows Ms Heard without any sign of facial injury [**Multimedia USB: F159**]).

46. The following day Ms Heard went to a friend's birthday party (Amanda de Cadenet) and a photograph taken at the party shows a smiling and flawless looking Ms Heard [**9/148/F894.234**].

47. The Claimant challenges the entire account of 21 May advanced by the Defendants, and this will be examined in detail at trial. It is obviously critical to Ms Heard's credibility, including in relation to the earlier incidents where there are no such witnesses, as already stated above,

48. Despite filing for a restraining order, on 24 May 2016, Ms Heard sent a text message to the Claimant's head of security "*I'm desperately trying to reach Johnny - it's extremely important. Please tell him.*" and spoke with the Claimant, as well as texted him a number of times: including "*Please call me when you can speak, okay? With all*

the love in my heart". See [3/99/F206-F209] and text msgs at [6/119/F697.173 & 172] respectively.

49. As is demonstrated by the latest recording disclosed by Ms Heard to the Defendants last week, Ms Heard even sought a one-on-one meeting with Mr Depp in July 2016 shortly after she had originally extended her restraining order against him (in which she said she feared for her life). The tape recording of their meeting in a hotel room in San Francisco even has Ms Heard repeatedly ask Mr Depp to "hug" her, which he refused to do saying with incredulity (as is clear from the audio) "after all the shit you fuckin' accused me of, now you want to touch me"; she persists in wanting physical contact, despite him calling her "*fuckin' nuts*" as a result. The recording was done without his knowledge or consent, which was in itself a criminal offence.
50. The documentary evidence shows that Ms Heard is a complex individual who suffered extreme mood swings, would provoke endless circular arguments, and fly into violent rages. During her relationship with the Claimant, she was taking a wide range of prescribed medication and other drugs, and her behaviour was extremely unpredictable: at times she was controlling and "mothering", at other times hostile and angry if she did not get the Claimant's full attention, and at other times the opposite towards him, having affairs or seeking attention from elsewhere.
51. The evidence will also show that the Claimant was in love with her, and that he found it very difficult to understand or deal with her often bewildering behaviour. The marriage was at times physical, at her instigation, and on occasions he found it necessary to defend himself from her violence. He is not a wife beater and never has been.
52. Ms Heard has concocted a catalogue of ever more extreme and shocking lies about him. From Mr Depp's knowledge of her and her ability to tell convincing lies, and from material which has emerged in the aftermath of their marriage, it is clear that Ms Heard is someone who was prepared to go to extreme lengths when she was not getting her own way and to characterise herself as a spokesperson for domestic violence, exploiting the rising popular movement for speaking out against violence against women for her own ends.

D. ISSUES TO BE DETERMINED AT TRIAL

53. There are four issues which fall to be determined by the Court at trial. They are as follows:

53.1. The natural and ordinary meaning of the articles (P/C ¶10, ReAmDef ¶8). Neither the Claimant nor the Defendants advance different meanings for the online and newspaper articles.

53.2. Whether the claim satisfies the 'serious harm' requirement in s.1 of the Defamation Act 2013 (P/C ¶11; ReAmDef ¶9).

53.3. Whether the articles are true, within s.2 of the 2013 Act? (ReAmDef ¶8; Reply ¶2).

53.4. Finally, if that defence fails, the size of the award of damages which is necessary to compensate and vindicate the Claimant for the serious allegations and whether the court should exercise its discretion to order a permanent injunction.

54. The Claimant bears the burden of satisfying the Court on the issue of serious harm to reputation. Whilst the Defendants bear the burden of proof in respect of the Truth Defence.

E. MEANING

55. Although there are some differences between the online article and the article as it appeared in hard copy version of *The Sun* newspaper, the Claimant's case is that both bore the same natural and ordinary meaning. The Defendants do not seek to argue otherwise.

56. The principles to be applied to the determination of meaning are summarised in *Koutsogiannis v The Random House Group Limited* [2019] EWHC 48 (QB) at [12].

57. The Defendants accept – as they must – that their articles assert that Mr Depp is guilty of serious physical domestic abuse. i.e. in terms of levels of gravity, they clearly convey a *Chase* level 1 meaning (see *Lucas Box* meaning, Re-AmDef ¶8), namely one of *guilt*.
58. The parties agree that the articles allege not only physical violence by the Claimant towards Ms Heard but also that he ‘caused her significant injury’ and that he was so violent and dangerous that he put her in fear for her life. The meanings put forward by both parties acknowledge that the articles accuse Mr Depp of extreme violence.
59. However, the Defendants’ *Lucas-Box* meaning ignores that the ‘hook’ – or excuse – for the articles was a decision by JK Rowling (whom they accuse of being a “Hollywood Hypocrite”), to stand by her decision to cast the Claimant in a forthcoming film of one of her popular books and fails to capture fully the force of the articles’ allegations which arises from embedding the allegations in references to legal proceedings and legal terminology.
60. The casting decision is in the headlines, standfirst and para [2]. Ms Rowling’s decision to “back” the Claimant is also in a photo caption in the newspaper article. The outrage professed by Mr Wootton (the journalist who wrote them) at the decision to give the Claimant a leading role in this major film is an essential and damning element of the meaning which the articles convey. The Claimant’s unsuitability to work in the industry is an additional element, and comes through, again, towards the end of the articles, in the fourth of the ‘five questions’ which Mr Wootton demands that Ms Rowling answer.
61. Further support is given to this by the seemingly gratuitous reference Mr Wootton makes not only to the #MeToo and Time’s Up movements but also to the disgraced movie mogul, Harvey Weinstein. The fact that he deliberately misquotes a highly-respected #MeToo campaigner in order to lend a (false) patina of credibility to his allegations is a factor relevant to damages. However, the inclusion of these references was deliberately intended to suggest to the readers that the Claimant was unfit to continue in this industry.

62. The articles not only make the serious allegations of domestic violence but seek to reinforce them and give them validity by reference to legal proceedings and use of quasi-legal language. By using phrases such as the “*Overwhelming*” or “*huge amount of*”, evidence of domestic violence, and by referring to a restraining order against the Claimant, the articles reinforce the seriousness of these allegations, suggesting that the Claimant was a serious threat to Ms Heard’s physical safety. The references to the £5million settlement are, in context, presented as an admission by the Claimant of everything which goes before it in the articles.

F. SERIOUS HARM

63. A libel claimant must satisfy the court that s/he has suffered ‘serious harm’ to his/her reputation or is likely to do so as a result of the publication of the statement, s.1 of the 2013 Act.

64. This is “*to be determined by reference to the actual facts about its impact and not just to the meaning of the words.*” *Lachaux v Independent Print Ltd* [2019] UKSC 27; [2019] 3 WLR 18 at [12]. Section 1 is therefore an evidential question and the defamatory tendency of the words is not, by itself, sufficient to maintain the cause of action.

“The reference to a situation where the statement “has caused” serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is “likely” to be caused. In this context, the phrase naturally refers to probable future harm” (at [14]).

65. Serious harm, like other matters of fact, may be proved by drawing inferences. The evidence which led to a finding that serious harm had been caused in *Lachaux* (summarised at [21]) is a useful indication of potentially relevant considerations where inferences are relevant to the determination of this issue.

66. The Defendants’ non-admission of serious harm (ReAmDef ¶9) may be simply a tactical decision, but whether it is or not, the position still has no merit. In particular:

- 66.1. The articles were heavily focused on the Claimant's wrongdoing.
- 66.2. They convey serious defamatory meanings about him (even if the meanings conveyed were the Defendants' *Lucas-Box* meaning). Domestic violence is the most heinous conduct, being not only violent, but being violence towards an individual whom the perpetrator is meant to love and cherish.
- 66.3. The allegations amount to criminal conduct.
- 66.4. The Court is invited to find that the extent of publication was enormous, taking account of the reach of *The Sun's* website and newspaper readership (P/C ¶1). The non-admissions by the Defendants may, again, be tactical, albeit unattractive in circumstances where the First Defendant knows website traffic data and newspaper circulation figures and sells advertising on the back of an extensive readership.
- 66.5. The articles are expressly directed at securing the Claimant's removal from his role in a major film franchise. This action is said to be necessary whatever the consequences might be for the producers [See [23] & [24]].
- 66.6. As noted above, the articles are a no-holes barred attack on the decision to cast the Claimant.
- 66.7. The Claimant is included in the rogues' gallery of abusers that the #MeToo and Time's Up movements are campaigning against, cited in the same breath as Harvey Weinstein who had become notorious by then for having committed numerous heinous assaults on women.
67. It is submitted that the only inference to be drawn is that the publication of each of the articles caused serious harm to the Claimant's reputation. If these articles do not satisfy the s.1 threshold then almost nothing which *The Sun* publishes would do so – it would be a licence to defame.

G. TRUTH DEFENCE

68. Section 2(1) of the 2013 Act provides: “*It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.*”

69. Although the question of meaning is to be determined at trial, both parties agree that the imputation conveyed is a ‘Chase’ level 1 meaning, namely that the Claimant is ‘guilty’ of the wrongdoing alleged. The matters alleged amount to criminal conduct, being in broad terms, assaults sometimes causing injury.

Standard of proof and allegations of criminality in civil proceedings

70. Because the Defendants are seeking to prove true an allegation of guilt of criminal conduct, the standard of proof and the evidence capable of proving the allegation take on particular importance. This is because they are seeking to prove true a very serious allegation and a finding to that effect is one with potentially serious consequences. The evidence required therefore to prove their case needs to be compelling.

71. In principle, the standard of proof is the civil standard, namely the balance of probabilities. However, this does not mean that the approach is a uniform one in all cases. This is especially so where the allegation is a serious one. The correct approach to applying the standard is explained for example in *Re D (Secretary of State for Northern Ireland intervening)* [2008] UKHL 33; [2008] 1 WLR 1499 in the speech of Lord Carswell at [27]-[28], in which he approved the following summary of Richards LJ in *R(N) v Mental Health Review Tribunal (Northern Region)* [2006] QB 468 at [62].

“Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a high degree of probability), but in the strength or quality of the

evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”¹

72. The above was applied in the libel action *Hunt v Times Newspapers Ltd* [2013] EWHC 1868 (QB), where Simon J noted that (as in the present case), the allegations were “of serious criminality” and held that “clear evidence is required” (at [76]).

73. The approach to proof to be adopted in civil proceedings where the allegation is of criminal conduct was considered at length by Eady J in *Lillie and Reed v Newcastle City Council* [2002] EWHC 1600 (QB) – a case concerned with child abuse allegations where there were multiple complainants.

74. Having cited authorities on the standard of proof, Eady J recognised the particular challenge where a litigant in civil proceedings is faced with being accused of having committed a crime and observed (at [359]):

“In the light of Hornal v. Neuberger Products (cited above) and other cases, Professor Cross has commented (see now Cross and Tapper on Evidence, 9th Edition, at p.152): “When the commission of a crime is alleged in civil proceedings, the stigma attaching to an affirmative finding might be thought to justify the imposition of a strict standard of proof; but the person against whom criminal conduct is alleged is adequately protected by the consideration that the antecedent improbability of his guilt is ‘a part of a whole range of circumstances which have to be weighed in the scale when deciding as to the balance of probabilities.’”

75. The ‘antecedent improbability of guilt’ is, as the Judge recognised (at [360]), the operation of the principle of the presumption of innocence:

“I must, therefore, start with the usual presumption of innocence (which applies in defamation as it does in crime). I must consider each of the children and the evidence that is specific to him or her. Because of the gravity of the allegations, I should look for cogent evidence to overcome that presumption.”

76. Where a defendant seeks to prove true, in libel proceedings, that the claimant is guilty of a criminal offence, there is therefore ‘a presumption of innocence’ and a need for cogent or compelling evidence before the Court can find the matter proved.

¹ The relevant authorities on standard of proof and consideration of inherent likelihoods were addressed in *Braganza v BP Shipping Ltd and another* [2015] UKSC 17; [2015] 1 WLR 1661 at [34] [112]-[113], [119].

77. Much of the central evidence in this case will be oral testimony, and the Court will have to assess the credibility of the witnesses:

“...in deciding upon the credibility of a witness the court may have regard to the contemporaneous documents, following the guidance given in cases such as [1985] 1 Lloyd’s Rep 1 at [57]. [i.e. a citation to The Ocean Frost]

There is great assistance to be obtained from extra-judicial writing of Lord Bingham in a chapter headed “The Judge as Juror: The Judicial Determination of Factual Issues” in The Business of Judging , Oxford 2000, pp.3ff; Current Legal Problems , (Stevens & Sons Ltd, 1985) Vol.38, pp.1–27. Lord Bingham cited Sir Richard Eggleston QC, Evidence, Proof and Probability (1978), 155 who set out the main tests to be used by a judge to determine whether a witness is lying or not.

(1) the consistency of the witness’s evidence with what is agreed, or clearly shown by other evidence, to have occurred;

(2) the internal consistency of the witness’s evidence;

(3) consistency with what the witness has said or deposed on other occasions;

(4) the credit of the witness in relation to matters not germane to the litigation;

(5) the demeanour of the witness.” Thornton v Telegraph Media Group Ltd [2011] EWHC 1884 (QB); [2012] E.M.L.R. 8 at [72]-[73]”.

78. Given the nature of the allegations, and the fact the claims made by Ms Heard are so diametrically opposed to the account given by the Claimant, it means that the issue of credibility is of particular importance.

Hearsay evidence

79. The Defendants and the Claimant rely upon hearsay evidence. Both parties rely on a substantial number of hearsay statements.

80. In considering the weight to be accorded to this evidence in due course, the Court will have regard to the Civil Evidence Act 1995, s.4, namely “*any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence*” and specifically the factors in s.4(2).

81. There are some material differences between the hearsay evidence which has been served. The following addresses just two categories by way of example, but this will be developed in more detail in oral submissions at the hearing.

82. The Claimant relies on depositions of two police officers who attended Ms Heard’s home on 21 May 2016, just hours after Ms Heard claimed serious violence to her face: Officer Saenz [3/ 87/ F43ff] and Officer Hadden [3/88/ F55ff]. These are

statements given by professionals, trained to respond to domestic violence calls, given under oath (albeit in another jurisdiction) and in the face of cross-examination from Ms Heard's US lawyers. Moreover, this is evidence given by individuals who could only properly be considered independent of the parties. Having served hearsay notices in respect of them, the Defendants have called them to cross-examine them on their depositions, and the Court will hear from them directly. Both officers' depositions were taken in July 2016, when events were still fresh in the minds of witnesses. The Claimant will invite the Court to accept these police officers' statements as setting out the true position as to events on 21 May at the Eastern, and accept that they saw no damage and no injuries to Ms Heard's face - because her account is fabricated.

83. In contrast, substantial portions of the witness statements served on behalf of the Defendants contain hearsay statements which amount to little more than accounts that Ms Heard gave to her friends, including in some cases after May 2016 and her separation from Mr Depp, of incidents which, by then, had allegedly taken place years before. This is addressed below, but such evidence is of negligible or no value.

The Defendants' case on truth

84. The Defendants will be relying primarily on the evidence of Ms Heard.

85. The Claimant's position is that her allegations that he violently attacked her, injured her and put her in fear of her life, have been fabricated. The history of their relationship by reference to the 14 incidents of alleged violence is summarised in Section B above, with references to some of the evidence which the Claimant will lead and why Ms Heard's version of events should be rejected.

86. There are a number of ways in which this can be demonstrated.

87. First, the contemporaneous documentary evidence shows that, contrary to her evidence, it was Ms Heard who was the aggressor, and was violent towards the Claimant. The text exchanges in September 2015 (see above), record in clear terms that it was Ms Heard who had hit the Claimant. Ms Heard did not deny that; or seek to explain it away.

88. Second, it is demonstrated in the recordings of conversations between Ms Heard and the Claimant. For example, in conversation between them in September 2015 (See recording at [4/154/F913-F963]). Ms Heard is angered by the Claimant's conduct, but what angers her is Mr Depp 'splitting' from an argument. She's angered because he leaves an argument. Ms Heard's complaint is telling; she complains that the Claimant doesn't fight for her or 'fight when there's a problem' (hardly consistent with her claims that he repeatedly subjected her to physical violence). Although she admits that she 'throws pots', she suggests "*That's different*" [F922] (i.e. it's not a reason for him to 'split'). But, this demonstrates that she is the violent one; she considers that throwing objects at the Claimant is acceptable. She does not want him to retreat from that fight. Ms Heard seems to thrive off arguments and she took a no-holds barred approach to pursuing them. She was annoyed when the Claimant responded to violence and argument by "*running away*".
89. The evidence that Ms Heard was the sole perpetrator of violence is crucial because it undermines the entire foundations of the Defence. It is inconsistent with her being the vulnerable victim. It undermines the credibility of her account of each of the 14 alleged incidents.
90. The Court is urged to listen to the entire recording of the above conversation. During it, Ms Heard admits to hitting Mr Depp and 'starting a physical fight' [F926-F928]. It can be discerned from Ms Heard's statements that she barely distinguishes fighting for something and fighting in the physical sense. She also says she does not feel 'safe', but that has nothing to do with any fear she might be beaten by the Claimant; rather she feels unsafe because she fears the Claimant may 'split' or leave her [F929]. For Ms Heard, life without being able to "*get mad*" is "*living in a mother fucking fairy tale*" [F933].
91. To confirm her being the one with the violent tendency, she goes on to admit in an exchange where they are trying to agree to force 'time-outs' in any future arguments, that she cannot promise she will not get physical again. The words "*God, I fucking sometimes get so mad I lose it*" [F950] are not those of someone repeatedly beaten by her husband to the point of fearing for her life.

92. In a further recording, disclosed in the course of the US divorce proceedings (which again the Court is urged to listen to) Ms Heard admits to having kicked a door into the crouching Claimant's head, and then punched him in the aftermath of an incident which started with her coming at him in a bathroom to which he had removed himself from her, and him then accidentally opening a door onto her toes (as she accepts). She admits that she punched him in the face on purpose, but denies, strangely, that she kicked the door into his head on purpose. There is no mention that that he responded in any physical way to these acts of violence against him **[Multimedia USB: File L38 (also labelled/ referred to Exhibit P and Exhibit Q to AH's Deposition in Divorce Proceedings)]**. Her instant resort to violence, and his non-violent reaction, is in direct contradiction to the evidence which she seeks to give in her witness statements.

93. This is not the only way in which the recordings that were made of their discussions are so illuminating for the Court. The whole nature and tone of these hours of conversations at various points in their relationship is a very helpful demonstration of the dynamics of their relationship, as well as wholly inconsistent with the idea that the Claimant has been repeatedly violent towards Ms Heard, and that she was in fear of her life from him. That is why it is so important for the Court to have listened to them.

94. Another notable feature of Ms Heard's account is that the alleged severity of some incidents has increased with their re-telling.

94.1. In her 1st WS, Ms Heard states that during the 2nd alleged incident (namely the argument over the painting in her house in March 2013), Mr Depp 'grabbed [her] hard' 'shook' and 'shoved [her] into a wall' (A Heard 1st at 56 **[2/60/E13]**). Each of those is a serious allegation of itself; they are not details that might appear in a witness statement for the first time as part of fleshing out an event. It is notable that those allegations simply did not feature in earlier accounts of March 2013 which Ms Heard made for other legal proceedings: see declaration of 10 April 2019 **[3/101/F314]**.

94.2. The 4th alleged incident (on the plane in May 2014) has also acquired an additional incident of violence in the re-telling. It was always primarily an

allegation that the Claimant 'kicked' Ms Heard. But in her witness statement, she also now alleges that the Claimant had 'slapped her in the face' [2/60/E17]. Something which had not featured before, despite Ms Heard having made formal statements in other legal proceedings, see 10 April 2019 declaration in US libel proceedings [3/101/F314].

94.3. The same applies to the 9th incident (in the penthouse in March 2015). New allegations that the Claimant grabbed her by the hair with one hand and punched her repeatedly in the head with the other were only made in her statement in December 2019 [2/60/E30]. As noted above, in addition to being false this is inherently implausible bearing in mind Mr Depp's finger injury at the time.

94.4. The most startling new allegations are in the Confidential Schedule, which are addressed in the Confidential Schedule to this Skeleton.

95. The Claimant will contend that the addition of such dramatic features of the alleged violence, after so much time has passed, points towards her account being the fiction that it is.

96. In respect of her alleged injuries, it is striking that, despite (so Ms Heard says) making a conscious decision to document the Claimant's behaviour, the only photos from Australia are of the house. There are none of Ms Heard despite the 'three-day ordeal' she claims to have endured, in which she alleges she was cut by being dragged across broken glass and (in the US Libel Proceedings) claims to have suffered "a busted lip" "a swollen nose" and "cuts all over [her] body" [3/101/F317]. Bearing in mind her stated decision to document matters, her failure to do so is telling. It can only be because she had no injuries to document.

97. In relation to some of the alleged incidents in which Ms Heard says that the Claimant seriously injured her, the Claimant will call evidence from third parties who saw Ms Heard afterwards and who will state that there were no signs of the injuries one would expect from someone who had been through the "three day hostage" situation which Ms Heard describes. This will include evidence:

- 97.1. from Malcolm Connolly and Benjamin King in relation to the alleged violence on the trip to Australia in March 2015 (the 8th incident) [2/53/D170] & [2/46/D119-120];
- 97.2. from Samantha McMillen in relation to the alleged violence on 15 December 2015 before Ms Heard's appearance prior to appearing on the *Late Late Show* on 16 December (12th incident) [2/41/D78]; and
98. In relation to the alleged violence on 21 May 2015 (the 14th incident), the evidence clearly demonstrates that Ms Heard did not suffer the injuries she claims or any injuries at all:
- 98.1. the Court will hear from three people who worked at the Eastern (Ms Esparza [2/43/D95-D99], Mr Romero [2/47/D125], and Mr Harrell [2/49/D143]), a resident at the Eastern (Mr Baruch [2/48/D130-D134]) and Ms McMillen [2/41/D78] who all saw Ms Heard in the following days and saw no injuries.
- 98.2. there is a sworn declaration made by a friend and employee of Ms Heard's and Mr. Musk's, Laura Divenere, in the US Libel Proceedings in which Ms Divenere states at paras 4-5 that she was with Ms Heard serving as her de facto personal assistant between 23 and 25 May 2016 and "*On none of those days...did I observe any signs of physical abuse or injury...*" [3/86/F40-F41].
- 98.3. the contents of a deposition by a LAPD officer, Melissa Saenz, given on 18 July 2016 in the divorce proceedings, is testimony that she was close to Ms Heard and did not see any marks on her face [3/87/F47-F48].
- 98.4. the deposition by Officer Saenz's partner who also saw no sign of injury: deposition of Officer Tyler Hadden 18 July 2016 [3/88/F61].
- 98.5. the CCTV footage from the Eastern [Multimedia USB: F159].

Defendants' other witnesses

99. In addition to Ms Heard, according to the trial timetable, the Defendants are scheduled to call six of her friends to prove their case (having served statements from five).

Whitney Henriquez

100. Ms Whitney Henriquez's statement (unlike Ms Heard's) reflects that the Claimant's and Ms Heard's relationship was marked by arguments. But even so, despite knowing her sister well, she fails to give any hint or impression of her sister's anger, temper, or lack of control which come through clearly in the recorded conversations and text admissions of Ms Heard being violent towards the Claimant.

101. Despite apparently getting the nickname "marriage counsellor", she has almost nothing to say about the Claimant 'beating' Ms Heard, and what she does say does not tally with the allegations. Ms Henriquez says she saw "*burns on [Ms Heard's] arms*" which Ms Heard explained away as having burnt herself while cooking or using curling iron (WH at 16 [2/61/E101]). She continued to see "*burns*" (WH at 18). But not even Ms Heard is alleging she was burnt by the Claimant. It appears no more than a classic domestic violence trope being trotted out by a witness looking to bolster her account.

102. The idea that Ms Henriquez could be concerned about Ms Heard being "isolated" (WH at 26) is bizarre. The Claimant had allowed Ms Heard to move her close friends into the Eastern. Rocky Pennington and Joshua Drew were living in an adjoining unit.

103. However, the evidential value of her evidence is seriously limited because despite seeking to give evidence about most of the 14 alleged incidents, her statement is largely hearsay, reporting what Ms Heard told her afterwards and in some cases not until years afterwards. This applies to her evidence about the 1st incident, 3rd incident, 4th incident (plane journey, May 2014), 5th incident (Bahamas, August 2014), 8th (Australia, March 2015), 10th incident (train in Asia on the honeymoon), 12th (15 December 2015) and Ms Heard's birthday (April 2016).

104. Ms Henriquez was present at an incident in late March 2015. The lack of credibility of her account of the Claimant hitting Ms Heard bearing in mind his finger injury is addressed above. It is further undermined by the fact that despite setting out in her statement an account of incredible violence committed by Mr Depp, the next day her text messages were simply about the mess at the penthouse. **[2/61/E119-E123]**.

Kristina Sexton

105. Kristina Sexton also has limited direct testimony in her statement. She acknowledges that she was only told by Ms Heard about some of the alleged violence after May 2016 (KS at 42, 45, 54 **[2/63/E157 & E159]**). Her direct knowledge of any of the alleged incidents is not evidence that the Claimant beat Ms Heard; her direct evidence is limited to overhearing a fracas at Hicksville in June 2013 (K Sexton at 29-30). Although she says she was told about an argument over a painting at the time, in March 2013, it is notable that she does not say that she was told about any violence (K Sexton at 43).

Joshua Drew

106. Joshua Drew's statement contains substantial double hearsay, some of it about events which allegedly took place before he had even met Ms Heard. His accounts of what he says his then girlfriend/ wife, Rocky Pennington, had been told by Ms Heard are of negligible value. It appears that he 'bought into' the story his wife was telling him..

107. When asked about Ms Heard's appearance on the morning of 22 April 2016 (ie after the alleged violence on her birthday), when giving a deposition on 19 November 2019, he said he could not recall seeing any injuries **[2/64/E185]**.

108. His account of May 2016 will be explored extensively at trial. Details in Mr Drew's statement differ in material ways from the note he prepared shortly afterwards at the request of Ms Heard **[8/82/I37]**; gone from his statement is the assertion that he looked through the peephole of PH3 and saw Mr Depp's security rushing to PH3.

109. His statement about injuries on Ms Heard is not consistent with other evidence. The evidence of officers Saenz and Hadden, who were the first officers to respond, refutes Mr Drew's account; the police saw no extensive damage and no injuries to Ms Heard.

iO Tillet Wright

110. Similarly, iO Tillet Wright's statement is mostly hearsay evidence. His account of what he claims to have heard over the phone on 21 May 2016 (not having been physically present at the time) and the timing of what he claims to have done will be explored in detail at trial.

Ms Pennington and Ms Inglessis

111. Ms Pennington's statement relating to most of the alleged incidents is hearsay. She will be cross-examined at trial on her version of what occurred on 21 May 2016. No statement has been served by Ms Inglessis. There is a witness summary but that is not based on conversations with her.

H. DAMAGES AND OTHER REMEDIES

112. The Claimant seeks damages and a final injunction as a result of the Defendants' publication of these libellous articles.

113. In light of the seriousness of the allegations published, only a very substantial award can compensate and vindicate Mr Depp.

114. The principles governing damages for libel are set out in *Monir v Wood* [2018] EWHC 3525 (QB) at [217], where Nicklin J adopted the summary in *Barron v Vines* [2016] EWHC 1226 (QB).

115. Damages for libel are required to serve three purposes: (1) to compensate for the damage caused to the claimant's reputation; (2) to vindicate the claimant's good name; and (3) to compensate for the distress, hurt and humiliation caused.

116. Damage to reputation must take account of the gravity of the libel and the extent of publication. It is well-recognised that publication to the world at large is likely to cause far greater reputational harm than limited publication. In respect of the gravity of the libel: "*In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be.*" John v MGN [1997] QB 586 cited in Monir v Wood at [217].
117. Other factors to take into account include the propensity of defamatory statements to spread ('go viral'), a problem which is particularly relevant for claimants in the public eye, and the impact on the particular claimant because of his or her role in society.
118. Vindication is a particularly important purpose of the damages award where a defendant has maintained a defence of truth. A claimant needs to be able to point to the size of the award to show the public that the allegation was tested and not proved.
119. The Court may not take into account that the allegations may have been published elsewhere (unless s.12 of the Defamation Act 1952 applies).
120. There is in practice a 'ceiling' on general damages which, at present, is in the region of £300,000-325,000².
121. In the present case, the allegation could hardly be more serious. The allegation of domestic violence and causing serious injury to Ms Heard goes to the heart of Mr Depp's integrity. As noted above in submissions on 'serious harm', the defamation was targeted at his role as an actor and focused on damaging him in that position.

² In March 2017, HHJ Parkes QC sitting as a Deputy High Court Judge in Lisle-Mainwaring v ANL [2017] EWHC 543 (QB) observed at [62] "*It has now become conventional to recognise a 'ceiling' for general damages in defamation, which broadly corresponds to the maximum level of damages for pain, suffering and loss of amenity in personal injury cases. That figure now appears to be of the order of £300,000 (see Cairns v Modi at [25] and Simmons v Castle (No.2) [2012] EWCA Civ 1288, [2013] EMLR 4)*"

122. Despite the Defendants' non-admission, the only conclusion to be drawn is that the extent of publication was very substantial.
123. Aggravated damages may be awarded to compensate the claimant for additional injury to feelings not falling within general damages caused by a defendant's conduct or state of mind and which impacted on the claimant's distress.
124. There are a number of distinct features of the Defendants' conduct which will impact upon the Court's assessment of the appropriate level of damages.
125. One is that Mr Wootton deliberately sought and used quotations from the highly-respected actress and public advocate for the #MeToo movement, Katherine Kendall, in order to give its attack on the Claimant further credibility and force. In fact, as Ms Kendall will give evidence [2/39/D67-D68], her quotes were deliberately misused by Mr Wootton in a way which was intended to damage the Claimant and outraged Ms Kendall who wrote to *The Sun* complaining at such conduct. Notably, despite the complaint, her quotes were not removed from the articles, nor is Mr Wootton coming to give evidence to explain this, or the contents of his articles, notwithstanding the points referred to below.
126. The Claimant and Ms Heard had been the subject of previous coverage by Mr Wootton, including matters related to the allegations in the articles.
127. *The Sun* had previously published an article in May 2016, in which it had reported on a LAPD statement, following a visit to Ms Heard's home, in which the police said that there was no evidence warranting a report of a crime.
128. On 17 August 2016, *The Sun* had reported that the *ex parte* restraining order obtained by Ms Heard had been discharged.
129. Despite that knowledge, the Defendants did not seek to contact the Claimant before publishing the articles or in any way temper the allegations by acknowledging his previous denials, or that there was evidence, such as the LAPD statement, which cast doubt on the allegations.

130. When the Claimant complained about the articles, the Defendants sent an extraordinarily dismissive response [5/209/G7-G10]. It sought to argue – incomprehensibly – that the articles were just Mr Wootton’s ‘comment’ on matters, and thereby suggested that they were free to accuse the Claimant of domestic violence.

131. In respect of other remedies, the grant of a final injunction would be an appropriate exercise of the Court’s discretion. The Defendants have retained the article on their website and maintained their allegation to the bitter end.

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17 March 2020

Updated 2 July 2020