

TRANSCRIPT OF THE POOL TV FEED FROM DEPP v HEARD

FAIRFAX COUNTY COURT Tuesday 24 May 2022

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GUIDANCE.**

Judge Azcarate: All right. Good morning.

Everyone: Good morning, Your Honor.

Judge Azcarate: All right, it's my understanding that defense is resting. Is that correct? All right, I'm not going to bring the jury out just to take them back in. So after we finish our motions and they come out, I'll let you say that...yeah, okay, let's just do it that way. All right. So based on them resting, you have a motion?

Mr. Chew: Yes, Your Honor.

Judge Azcarate: And I did receive your memo ahead of time, so I have reviewed that.

Mr. Chew: [inaudible 00:00:23]

Judge Azcarate: Okay. I have that. Okay. Yes, sir.

Mr. Chew: I haven't received anything from them [inaudible 00:00:33]

Judge Azcarate: I think it's just gonna be oral arguments. Thank you. Yes, sir.

Mr. Chew: Good morning. Your Honor, may it please the court, Ben Chew, for plaintiff Johnny Depp. Mr. Depp hereby moves to strike defendant Amber Heard's counterclaims, because Ms. Heard has not proven by clear and convincing evidence that Mr. Waldman made the three allegedly defamatory statements with actual malice.

Judge Azcarate: Right. But clear and convincing is not my motion to strike, standard.

Mr. Chew: I understood, Your Honor, and we have cited the standard in our brief.

Judge Azcarate: Okay. Thank you.

Mr. Chew: Moreover, Your Honor, the court should also strike defendant's claim for immunity and attorneys based on Virginia's anti-SLAPP statute as she is not entitled to immunity under the statute. Because we know that the court has carefully reviewed our motion papers. I will just hit some of the salient points.

Judge Azcarate: Thank you, sir.

Mr. Chew: Thank you, Your Honor. I would mention, however, Your Honor, that because this is not included in our brief, that there is no record evidence whatsoever that Mr. Depp even saw any of the three statements that Mr. Waldman made prior to being served with the counterclaims in this action, which we believe is relevant to many of the legal standards. And as Your Honor is aware, Ms. Heard had signaled for the past week that she was planning to call Mr. Depp in her case-in-chief, and it was our anticipation that she would try to fill what we believe is a gaping hole in with respect to the elements of her proof. Again, there's no record evidence whatsoever that Mr. Depp ever saw any of the three statements about which Ms. Heard is purportedly suing him for \$100 million.

As Your Honor is aware, the elements of defamation are as follows: one, publication of, two, an actionable statement with, three, the requisite intent. See *Tharpe v. Saunders*, 285 Virginia 476 at 2013. The requisite intent for defamation against a public figure is actual malice, that is, the statement must be made with knowledge that it was false or with reckless disregard of whether it was false or not. See *Sanders v. Harris* 213 Virginia, 369 at 372, a 1972 case, see also *Jackson v. Hartig*, 274 Virginia at 2019. Reckless disregard, as Your Honor is aware, "is not measured by whether a reasonably prudent person would have published or would have investigated before publishing ellipses. There must be sufficient evidence to permit the conclusion that the defendant, in fact, entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. Supreme Court 727 at 731.

Your Honor, the evidence shows that Ms. Heard cannot prevail on her claim because she cannot and did not establish that Mr. Waldman made the statements with actual malice. Mr. Waldman testified that he conducted extensive investigation and reasonably believed that the three statements he made were true. Ms. Heard presented nothing, nothing to contradict that undisputed fact. Ms. Heard has no evidence of direct liability because, obviously, Your Honor, we need to talk about direct and vicarious liability, but it bears noting that she has no evidence of direct liability and cannot prove actual malice by Mr. Waldman when

making the three statements at issue. It is undisputed that Mr. Depp did not make any of the three statements at issue in Ms. Heard's counterclaim.

Moreover, in order for Mr. Depp to be liable for the conduct of one of his attorneys, there must be some showing that he directed, participated, or otherwise authorized Mr. Waldman to make the statements at issue. There is no such evidence on the record that Mr. Depp directed or otherwise authorized Mr. Waldman to make the three allegedly defamatory statements at issue in the counterclaims. Indeed, there is no evidence of any communication or coordination between Mr. Depp and Mr. Waldman regarding the counterclaim statements or anything else. For this reason as well, Your Honor, Ms. Heard cannot meet her burden of proving that Mr. Waldman was acting within the scope of his employment or agency on behalf of Mr. Depp. Again, it bears noting that there's no evidence that Mr. Depp even saw the statements by Mr. Waldman until he was sued, served with the counterclaims, well into this case. It was more than a year after Mr. Depp filed his complaint and Ms. Heard lost a series of motions to dismiss that she finally asserted her counterclaims, most of which have already been dismissed by opinion letter of this court.

Whereas here, there is no evidence of direct liability, Ms. Heard must rely on a theory of vicarious liability to hold Mr. Depp liable for the actions or statements rather of his purported agent, Mr. Waldman. Vicarious liability is, by definition, "liability for the tort of another person." So to hold Mr. Depp liable for Mr. Waldman's statements, Ms. Heard must establish that Mr. Waldman, himself, committed all the elements of defamation. I know the court is familiar with this, so I'll try to run through it quickly. See Parker v. Carilion Clinic, 296 Virginia 319 and 332, a 2018 case, "Vicarious liability is liability for the tort of another person. It necessarily follows that a claimant cannot make out a case for vicarious liability against an employer without first proving that the employee committed a tort within the scope of his employment." See also Roughton Pontiac Corp. v. Alston, 236 Virginia 152, at page 156, which standard Ms. Heard has not met. And, Your Honor, we cite a string citation to cases from other jurisdictions, which obviously are not binding on the court but we believe are influential. We presented those to the court for its review.

It is Ms. Heard's burden to prove by clear and convincing evidence, or ultimately, to prove actual malice by Mr. Waldman, not Mr. Depp. And while it is well-settled law in Virginia, as Your Honor has pointed out last week, that an agent's knowledge can be imputed to a principal, and this

is the Allen Realty Corp. v. Holbert, case 227 Virginia 441 at 446. Ms. Heard's counsel cannot cite any case law stating that a principal's knowledge is imputed to an agent. In other words, Mr. Waldman must have made the statements knowing that they were false or with reckless disregard as to whether they were false, and Mr. Depp's knowledge cannot be imputed to him. There is no evidence in the record that Mr. Waldman knew the counterclaim statements were false.

Indeed, Mr. Waldman did not even know Mr. Depp or Ms. Heard at the time of any of the alleged incidents at issue and, thus, had no personal knowledge of what transpired. And this is reflected in the trial transcript that Mr. Waldman met Mr. Depp first in October of 2016, long after the fact, nor is there any evidence in the record that Mr. Waldman subjectively entertained any serious doubts about the falsity of the counterclaim statements. Quite the opposite, the evidence shows, and it's unrebutted, that Mr. Waldman had very reasonable grounds to believe, and he did believe, and will to his dying day, that Ms. Heard's claim of abuse were patently false. Mr. Waldman testified at length about 29 witnesses he believed disproved Ms. Heard's false claims of abuse.

See the transcript at page 6,008 through 6,012, and I won't run through all of that, but his testimony, the two trained police officers, Officers Saenz and Hadden, were called to the penthouse on May 21, 2016 and saw no signs of injury on Ms. Heard's face, as well as, "Ms. Heard's own witnesses who have testified in various forms at various times that there were no injuries to her face whatsoever between May 21st and May 27th, 2016 when she walked in to court with her publicist, her lawyer, her former best friend, who no longer speaks with her, for a no-notice ex parte TRO." Some of the witnesses who Mr. Waldman has cited, they include Laura Divenere, Melanie Inglessis, who, as Your Honor recalls, was Ms. Heard's makeup artist who decided to end any professional or personal association with Ms. Heard, Samantha McMillen, Hilda Vargas, Isaac Baruch, Trinity Esparza, Cornelius Harrell, Alejandro Romero, and Brandon Patterson, just to name a few.

No reasonable jury could find that Mr. Waldman acted with actual malice in making the allegedly defamatory statement. He was not present for the alleged incidents. He has no personal knowledge of any of the alleged incidents. What Mr. Waldman knows is a product of the legal work he did, the sleuthing he did on behalf of Mr. Depp. Ms. Heard cannot possibly show that Mr. Waldman acted with actual malice, and her defamation claim must fail.

Two, Mr. Waldman is an independent contractor, not an employee. It is axiomatic, Your Honor, that a person who hires an independent contractor is not liable for the independent contractor's actions. See Sanchez v. Medicorp Health System, 270 Virginia 299 at 344. An independent contractor is a person who is engaged to produce a specific result but who is not subject to the control of the employer or principal as to the way to bring about that result. See Atkison v. Sachno, 261 Virginia 378 at 284, that's a 2001 case. An outside lawyer retained by a client in connection with litigation is an independent contractor. See King v. Dalton, 895 F. Supp. 831 Eastern District of Virginia, 1995, where Judge Ellis, a legendary jurist known by all Virginia practitioners, held that, "A law firm attorney working with a client is nonetheless an independent contractor and is not an employee of the client corporation," in that case, the employer was a corporation, but the same logic applies when it's an individual, like Mr. Depp. That was Mr. Waldman's role.

Indeed, clients hire lawyers to obtain specific results or to try to obtain specific results, but they do not control the means by which the results are accomplished. Lawyers, as Your Honor has reminded us, are subject to professional obligations to exercise independent professional judgment. We are not at the whim of our clients as much as we want to serve them. See Virginia State Bar Professional Guidelines rule 1:2 and 2.1. And just to quote 2.1, "In representing a client, a lawyer shall exercise independent professional judgment." Mr. Waldman is, as a matter of law, an independent contractor, and Mr. Depp cannot be held responsible for any alleged tort by his attorney, particularly for statements about which he was unaware until he was sued for them. Mr. Waldman testified, and it's unrebutted, that he has his own law firm, he's not an employee of Mr. Depp, Mr. Depp and/or none of his loan out companies have issued him a W-2, and Mr. Waldman provides legal services to clients other than and in addition to Mr. Depp. And that's found at the transcript, page 6,020 through 6,021. All of that is unrebutted by Ms. Heard.

Mr. Waldman's statements...the third reason for which we respectfully submit the counterclaims should be stricken is that Mr. Waldman's statements were protected opinion. And I won't run through all of that but very briefly, taken in their proper context, the counterclaim statements are non-actionable expressions of opinion, entitled to protection under the First Amendment. See Gertz v. Robert Welch, Inc., 418 U.S. 323 at 339, that's a 1974 case from the United States Supreme Court. See also Schaecher v. Bouffault, Virginia Supreme Court case founded 290 Virginia 83, a 2015 case, noting that where "all sides of the issue, as well as the rationale for the speaker's view, were exposed, the assertion

of deceit reasonably could be understood only as a speaker's personal conclusion," and finding an accusation of deceit to be opinion.

In context, Your Honor, any reporter or any reasonable reader would understand and expect a lawyer associated with Mr. Depp, as Mr. Waldman was, to challenge Ms. Heard's version of the inherently controversial events of the party's marriage, just as Ms. Heard's lawyers were quoted challenging Mr. Depp. And Your Honor will remember the context of these quotes that were in a British tabloid where Mr. Waldman's statements were buried well into article in which both points of view were clearly expressed, and Mr. Waldman was clearly identified not as an independent expert on the U.S. Constitution but as one of Mr. Depp's attorneys. See Chaves, 230 Virginia 112 at page 119, "The most unsophisticated recipient of such a claim¹," i.e. any reader of the British tabloid, "made by a competitor against another could only regard it as a relative statement of opinion grounded upon the speaker's obvious bias." Mr. Waldman has never done, never did anything to hide his support of and belief in Mr. Depp.

Finally, Your Honor, and for the rest, ultimately, Mr. Waldman's statements reflect the existence of two competing narratives and are merely his subjective view about events that he never claims to have witnessed, and there was no doubt about that. Turning to the second part of the argument, which will be more abridged, Ms. Heard is not entitled to anti-SLAPP immunity. As a threshold matter, Virginia Code section 8.01-223.2, which is, as Your Honor well knows, is the Virginia anti-SLAPP statute, amended most recently, in 2019, provides in relevant part, "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."

Here, in addition to Mr. Depp's testimony, several witnesses have testified that, A, they never witnessed Mr. Depp abuse Ms. Heard, and B, that they observed Ms. Heard without any injuries, marks, bruising, swelling, etc., during periods when Ms. Heard claimed to have injuries, marks, bruises, etc. Such witnesses include but are not limited to Isaac Baruch, Kate James, Dr. David Kipper, Nurse Debbie Lloyd, Officers Saenz and Hadden, Officer William Gatlin, and former U.S Marine Starling Jenkins. Ms. Heard's request for anti-SLAPP immunity should be stricken, and even if there were disputed facts as to that, the anti-SLAPP immunity does not apply because the defamatory implication of Ms. Heard's statements are not solely relating to a matter of public concern, as is required under the statute.

As has become quite clear, Your Honor, Mr. Depp is not suing about any of the public policy commentary made by the ACLU when it drafted the op-ed and Ms. Heard put her name to it. What he is suing about here are the three statements that were directed at him. He has no issue with women's rights. He supports women's rights. In fact, he was the one, Your Honor, as Your Honor knows, who made that first \$100,000 contribution to the ACLU, and he made it also to the CHLA.

Mr. Rottenborn: Your Honor, at this point, I'm going to object. Mr. Chew has largely just read his brief and can find his arguments to those directed in the motion. But like we saw with the last motion to strike, he's now directing his arguments to something other than what's at issue here. And I would object, because, I think, making an argument not to you but to the cameras, it threatens...it's disrespectful to the court and everyone's time, and it also threatens to undermine the integrity of this process and risk the jury being influenced by outside factors.

Judge Azcarate: Well, it's his argument. I'll allow him to do this.

Mr. Rottenborn: Thank you.

Judge Azcarate: Thank you.

Mr. Chew: Thank you, Your Honor. As I was trying to say, what Mr. Depp is suing about are the three statements, and it's very clear, despite the pious opening statement about the First Amendment, that, with the testimony of Terence Dougherty and the emails that were admitted as exhibits, that the ACLU and Ms. Heard were conspiring to make it very clear that those three statements were related to Mr. Depp, because, otherwise, nobody had any interest in the article. It's crystal clear from that, they wanted to time this thing with the release of "Aquaman," which was her first film of any significance in terms of popularity, and to do that, that's very clear. So the charade that this had something to do with public policy is risible, and that is not why the anti-SLAPP protections were enacted. They were enacted to protect the rest of the article, not what Mr. Depp is suing about.

As generally analyzed by the courts, a matter of public concern is one which relates to "a matter of political, social, or other concern to the community," as opposed to a matter of only "personal interest." That's Connick v. Myers, 461 U.S. 138 at page 146. Instead, the defamatory implication at issue in each of the three statements at bar relate to the personal grievances between Mr. Depp and Ms. Heard, which does not rise to the level of a matter of public concern with broader implications for society beyond the two litigants in this action any more than Mr.

Waldman's statements. I mean, adding the gloss of public policy might immunize the statements that relate to public policy, but those are not at issue here. Mr. Depp agrees with those statements. We're talking about the three statements that they very intentionally and very cleverly put in to make it clear the implication that it was about Mr. Depp. They had lawyers from the ACLU working around the clock with Eric George to be as clever about this as possible.

And Your Honor remembers the testimony of Mr. Dougherty about the consternation of the ACLU when they realized that "USA Today" and everybody else who read the article knew darn well that this was about Mr. Depp. This cannot be protected by the anti-SLAPP statute. It is a cynical runaround, and I think, now that we have the undisputed evidence from the ACLU in the form of the testimony of Terence Dougherty, who is not only their corporate representative, he was their general counsel, he is a brainiac lawyer, they knew exactly what they were doing, Your Honor. And one of the...he referred to testimony of a woman at the ACLU who said she had nightmares about Ms. Heard, and he's expressed no concern about that. Now, that was either because they knew about...that was either a reference to this game they were playing with the op-ed or the conspiracy they had to cover up her failure to make the donations. The donations became pledges, but we have evidence that she refused to sign the pledge card. So she's caught either way.

Simply stated, Your Honor, Mr. Depp is not suing Ms. Heard for making statements about society in general. I think that's very clear from the record evidence. Mr. Depp is suing her for publicly naming him as an abuser, by implication, and forever tarnishing his good name, an act that, coming from an ex-spouse, is fundamentally personal in nature. For that reason as well, Your Honor, Virginia's anti-SLAPP statute is not applicable, and based on the foregoing, Your Honor, Mr. Depp respectfully submits that this court should grant plaintiff's motion to strike the counterclaims and also strike her claim that she is immune under the anti-SLAPP statute. Thank you very much, Your Honor.

Judge Azcarate: Thank you. Thank you, sir. Yes, sir.

Mr. Rottenborn: Thank you, Your Honor. As Your Honor knows, the trial court is required to accept as true all the evidence favorable to Amber at this point, as well as any reasonable inference a jury might draw therefrom, which would sustain the counterclaim. That's the correct standard here. I'll address the actual malice argument first, the agency argument.

Your Honor, there's plenty of evidence in the record from which the jury could determine that Mr. Waldman was Mr. Depp's agent. He made those statements, the statements referred to him as Mr. Depp's attorney. As Your Honor ruled on Friday, with respect to the jury instruction conference, an attorney is an agent of his client. Mr. Waldman testified that he's been Mr. Depp's attorney since 2016. He freely admitted speaking to the press on Mr. Depp's behalf, and he refused to answer question after question about that agency. So we can't use that as a sword now.

Mr. Chew puts a lot of emphasis on the fact that Mr. Depp allegedly didn't see the comments that were made that are the subject of the counterclaim, but as Your Honor well knows, whether he saw them or not is not the standard for agency. There's also evidence that Mr. Depp met with the "Daily Mail" with Mr. Waldman prior to the defamatory statements being made and released. I believe that was in February of 2020, just two months prior. Mr. Waldman also concocted a story that Amber was being investigated for perjury by filing a perjury complaint against her with the LAPD. He disregarded any evidence that he didn't believe would fit in his narrative that would fit in the story that he was speaking about on behalf of Mr. Depp.

And after Mr. Depp lost the UK proceeding, after Mr. Depp was ruled to be a wife beater by the court in the UK proceeding, the court there found him to be a wife beater, Mr. Waldman then got an overseas tabloid to run a story claiming that Amber was being investigated for perjury, which simply wasn't true. He walked into the LAPD, filed a complaint for perjury against Ms. Heard, found a media outlet that doesn't follow the two-source rule, and then he had the world believe that the LAPD was investigating Ms. Heard for perjury. That's a shameful and a sickening example, Your Honor, of the lengths that Mr. Depp, through his agent, Mr. Waldman, would go to to smear and to defame Amber Heard, and that continued in the three statements in the counterclaim.

Your Honor has heard evidence. I won't go through all the evidence, but Your Honor has heard evidence from Ron Schnell who's traced the negative hashtags toward Amber Heard online associated with those defamatory statements and noted the staggeringly high number of them that were associated with Mr. Waldman. Under the principles of the agent-principal relationship in Virginia, Your Honor, when Mr. Waldman made those statements, he was standing in the shoes of Mr. Depp. They are one and the same for the purposes of those statements, as Your Honor discussed at length on Friday. Mr. Waldman made these statements with actual malice. There's plenty of evidence from which the

jury could infer that and his own, both from the actual malice from Mr. Depp and Mr. Waldman's own reckless disregard of facts that didn't support Mr. Depp and his attempts to manufacture false evidence that did.

As Your Honor found in the hearing, I believe it was on March 24th, after Your Honor denied Mr. Depp's motion for summary judgment, Your Honor said, "As to malice, a fact finder could reasonably conclude that Mr. Waldman made the statements with malice because Mr. Waldman has no personal knowledge of the party's marriage and still made the statements at issue." Nothing in this case has changed that. If anything, the evidence has only made it more clear that that is an inference that the jury can and, we believe, will find.

So, Your Honor, there's no basis to grant a motion to strike on this agency argument, on the actual malice argument. The evidence shows that not only was Mr. Waldman Mr. Depp's agent but that the two of them conspired to falsely accuse Amber of creating a hoax and falsify evidence that they believed supported their theory and what they wanted to achieve. As Your Honor well knows too, I won't go through all the law, but both agency and malice can be inferred through circumstantial evidence. There's plenty of evidence in the record from which the jury could infer those.

Moving on, Your Honor, to the independent contractor, the court's already rejected this argument, ruled that an attorney and client have a principal-agent relationship, and as Your Honor said on Friday, there's no evidence in this case of anything otherwise. As to this argument that the counterclaim statements are statements of opinion, the court has already found twice that they are not statements of opinion, both on January 4th, 2021, in its opinion letter denying Mr. Depp's demur as to the counterclaim statements, and at the motion for summary judgment hearing in March of this year. As to the anti-SLAPP argument, the court again has already ruled at the March 24th, 2021 opinion that the statements are, as a matter of law, regarding matters of public opinion. The court has already ruled that.

Therefore, the only remaining issue for anti-SLAPP is whether the intent element of immunity is met. As we discussed on Friday, the intent element of immunity is substantially the same as the actual malice standard, which the evidence in this case easily allows the jury to find in favor of Ms. Heard on that. I won't go through the litany of evidence that supports that Mr. Depp is an abuser here, but I'll touch on a few things that relate to Mr. Chew's argument.

One, Mr. Chew was totally misrepresenting Mr. Dougherty's testimony. There's not a single piece of evidence, Your Honor, in this case suggesting that Ms. Heard and the ACLU were somehow conspiring to achieve a defamatory implication to Mr. Depp. That's simply not what Mr. Dougherty said. Mr. Chew, feel free to argue that to the jury, but that's not what his testimony reflects. Your Honor, there's also plenty of evidence that's been adduced both in Mr. Depp's claim and in Ms. Heard's counterclaim that show that, absolutely, the counterclaims statements are 100% false. There was no hoax perpetrated. Mr. Depp is an abuser who abused Ms. Heard. She did not conspire with her friends to create a hoax. She did not create a hoax herself.

And just very briefly, some of the evidence that's come up since the last motion to strike, Your Honor, that Mr. Chew conveniently disregards in this brief are the testimony of Rocky Pennington, the testimony of Josh Drew, the testimony of Elizabeth Marz, all of whom completely corroborate Ms. Heard's account of the events of May 21st, 2016. The testimony of Melanie Inglessis, who testified that she covered Ms. Heard's bruises with makeup right after the December 15th incident, that provided ample testimony to support that Ms. Heard often would cover her bruises that were caused by the plaintiff in this case, by Mr. Depp, with makeup. He ignores the evidence of Kristy Sexton. He ignores the evidence of iO Tillett Wright. He ignores the evidence of Whitney Henriquez. All of these witnesses and others have testified extensively about Mr. Depp's abusive behavior toward Ms. Heard, physical abuse, emotional abuse, psychological abuse, verbal abuse, Your Honor. Mr. Depp's own writings, recordings, pictures, and videos confirm that. The list goes on.

There's abundant evidence in the record, Your Honor, from which the jury could and again, we believe, will find that Ms. Heard is not liable for defamation to Mr. Depp, and therefore, by definition, she has not acted with actual malice. And based on the court's rulings on March 24th, 2021, she would be entitled to anti-SLAPP immunity, which would permit her to ask the court to award attorney's fees against Mr. Depp. So with that, Your Honor, I'm happy to answer any questions the court has, but [inaudible 00:33:28].

Judge Azcarate: That's fine. Thank you, sir.

Mr. Rottenborn: Thank you.

Judge Azcarate: All right. Yes, sir.

Mr. Chew: Your Honor, I will be brief in deference to the court's time and the jury's time. What Mr. Rottenborn said about Mr. Waldman allegedly going to the LAPD about perjury is a complete non sequitur. If they thought that that was somehow improper conduct, they could have included it in their counterclaims. They included everything else but the kitchen sink, and most of it was thrown out. There was nothing in there about Mr. Waldman going to the LAPD. So that is a very clear non sequitur red herring distraction.

Number two, when Your Honor ruled on summary judgment on the issue of the counterclaims, Your Honor was dealing with a different standard and a different evidentiary record. At that time, Mr. Waldman had not testified, which is material. Mr. Waldman has now testified for purposes of trial. We have his trial testimony. It's very clear that he did not act with actual malice. They didn't even argue that. So that's pretty clear.

And again, this is consistent. The third point is that it's all about games. They didn't sue Mr. Waldman on the three statements. They didn't try to fill the hole. They've been telling us for a week that they're going to call Mr. Depp to try to fill the hole. In their counterclaims, they didn't do that. And it's very consistent with the gameplay. Let's go into court after the police have found no problem, and after witness after witness who had no relationship with each other said there are no visible marks, "Let's not give Mr. Depp's lawyer the required 24-hour notice before the TRO. Let's march into court with our publicist, with our lawyer, with our best friend," who no longer talks to her, "Let's get a TRO." And when the #MeToo folks say, "Why are you taking \$7 million from an abuser?" they said, "I didn't take money from the abuser. I gave it all to charity." Well, they didn't.

I don't think anybody should feel bad about them stiffing the ACLU, given what the ACLU did in this case, which is a monstrosity, but she did stiff the sick and dying children. It is gamesmanship, and that's what she's doing here today. But the law is the law, and they have not fulfilled their burden with respect to the counterclaims. There is virtually no nexus between Mr. Depp and Mr. Waldman as to these statements at issue except for the fact that he is an attorney, and that is not sufficient in a case where they have not even established that Mr. Depp was aware of these statements. And they knew that they couldn't do it, and they didn't even try.

And it's more of the gamesmanship when Ms. Heard plays word games with Mr. Depp about, "Oh, I didn't punch you, Johnny. I just hit you." Imagine, if the shoe were on the other foot and Mr. Depp, a man, was

saying to a woman, "Oh, woman up. I only hit you. I didn't punch you." And when she...it was chilling when she warned him on the tape, "You go tell a judge. You go tell a jury that you, a man, were abused. See if they're going to believe that." It is an abuse of the system, and she's done it throughout.

Finally, Your Honor, and Mr. Rottenborn makes an excellent point, with which I agree, which was that, with respect to each of the three statements, Mr. Waldman was clearly identified, even by the tabloid that printed these, well within articles that had both sides represented that he was Mr. Waldman's attorney. Even the reader of a tabloid understands that, when you're getting statements from attorneys, it's going to be forwarding their client's point of view. Mr. Waldman is not the only attorney who has spoken out. Robbie Kaplan, who was Ms. Heard's second attorney. So Ms. Heard started out with Eric George. He made comments to the press.

Mr. Rottenborn: Objection, Your Honor. Again, this is so much further beyond what Your Honor is addressing.

Mr. Chew: I'm finishing up, Your Honor.

Judge Azcarate: Okay.

Mr. Chew: I'm finishing up. My point, Your Honor, and it's on point, is that Mr. George made statements supporting Ms. Heard's position, Ms. Kaplan made very clear statements supporting her client's position on the merits, and so did Mr. Waldman. But everybody knows when reading those that those are statements bipartisan. So for the reasons that we've stated and the reasons set forth in the brief, we respectfully submit that the court should grant the motion to strike or, in light of the fact that Mr. Depp may reappear, at the very least, take these motions under advisement until the close of all evidence. Thank you, Your Honor.

Judge Azcarate: All right. Thank you, sir. All right, in this matter, I've reviewed all the defendant's evidence as to her counterclaim, and I've considered the arguments of her counsel and plaintiff's counsel. First, to address a few issues that I believe are outside the motion to strike, and that's as to the SLAPP defense. The SLAPP defense is just that it's a defense, so it's really not considered a motion to strike. Having said that, we went down that legal road on Friday, as far as the SLAPP defense goes, as far as the jury instructions, in this particular case, if the plaintiff prevails, it must be with actual malice. Therefore, if it's with actual malice, immunity does not apply under that statute. So we will deal with that with jury instructions that we have.

As to independent contractor, again, I think it's outside the motion to strike. However, Mr. Waldman was plaintiff's attorney since 2016. Before the initiation of litigation, there is evidence that Mr. Waldman had a certain role during the prior divorce proceedings in the UK case. Additionally, there is evidence that shows his legal representation was broader than just a limited litigation, as outlined in all the cases presenting an attorney as an independent contractor. So the only evidence in this case to this point is that Mr. Waldman was an agent to Mr. Depp, and that is the basis to weigh the motion to strike.

As far as the opinions argument, again, I think that is outside the motion to strike the opinions argument. The court has already ruled on this matter as to the three statements that are issued in the counterclaim, ruled that they were not opinion at the demur and at summary judgment. So that argument will not be part of the motion to strike.

So when assessing a motion to strike, the court accepts the favorable evidence adduced as true towards the non-moving party. The court cannot reject any inference from the evidence favorable to the non-moving party unless it would defy logic and common sense. When there is any doubt in question, the court should overrule a motion to strike. Agency may be inferred from the conduct of the parties and from surrounding facts and circumstances. When there is no direct evidence, circumstances may and usually are relied upon to determine whether an agency relationship exists. A principal is liable for the tortious acts of his agent if the agent was performing his principal's business and acting within the scope of his agency. If an agent's tortious act arises from their agency relationship as enacted in part to service the principal, the principal can be held liable for the tort.

Here, the alleged tort is defamation. Besides demonstrating the agency relationship, the defendant must prove Mr. Waldman published an actionable statement, meaning, a statement that is both false and defamatory, with the requisite intent. As to agency, Mr. Waldman was plaintiff's attorney at the time the alleged defamatory statements were made. Mr. Waldman does not deny this and neither does the plaintiff. Moreover, Mr. Waldman made the allegedly defamatory statements about the defendant during the proceedings of this action and interacted with the defendant once the statements were made while still representing the plaintiff. Taking the surrounding circumstances as a whole, an agency relationship can be inferred, and thus, a scintilla of evidence regarding agency must be turned over to the jury.

In addition, the jury may infer that Mr. Waldman made these specific statements to a third party to service plaintiff by betraying defendant as an opposing litigant in a negative light. It is not disputed that Mr. Waldman published statements and that there is a question as to whether the statements are false, and both parties disagree and have presented conflicting evidence as such. As to actual malice, Mr. Waldman made the counterclaim statements after he met with his client. In addition, there is evidence that plaintiff was with Mr. Waldman at a meeting in February 2020 with the Daily Mail Online. Further, defendant claimed that she met with Mr. Waldman where he threw the paper containing the counterclaim statements within them. Consequently, there is more than a scintilla of evidence that a reasonable juror may infer Mr. Waldman made the counterclaim statements while realizing they were false or with a reckless disregard for their truth.

It is not my role to measure the veracity or weight of the evidence. The Fourth Circuit and the Virginia Supreme Court have made it crystal clear that actual malice is a question for the fact-finder. So, therefore, the plaintiff's motion to strike is denied. Okay? Thank you. Is there any other preliminary matters before the jury?

Ms. Bredehoft: Yes, Your Honor. May we approach?

Judge Azcarate: Okay. All right. Are we ready for the jury, then?

Woman: Yes, Your Honor.

Judge Azcarate: Okay. All right. Good morning, ladies and gentlemen. I apologize, we had a few housekeeping matters to take care of, but thank you. You can have your seat. All right, your next witness.

Ms. Bredehoft: Your Honor, on behalf of defendant and counterclaimant, Amber Heard, we rest.

Judge Azcarate: All right. Thank you. All right, rebuttal evidence.

Mr. Chew: Yes. Your Honor, Mr. Depp calls Walter Hamada of Warner Bros.

Judge Azcarate: All right, Mr. Hamada.

Mr. Chew: Your Honor, just to clarify, this is by deposition, so we may need to...

Judge Azcarate: Okay. Okay.

Mr. Chew: I apologize, I should have provided notice.

Judge Azcarate: That's all right.

Mr. Chew: Thank you, Your Honor.

Judge Azcarate: If we could get the TV up.

Mr. Chew: Mr. Hamada, do you work for on Warner Bros. Entertainment Inc.?

Mr. Hamada: Yes, I do.

Mr. Chew: In what capacity?

Mr. Hamada: My title is president of DC-based film productions for Warner Bros.

Mr. Chew: What, if anything, you did to prepare to testify for Warner Bros. as to topics 2 through 18?

Mr. Hamada: I did not do anything to prepare for this, other than my meeting that I had with the attorneys.

Mr. Chew: Did warner brothers have a contract with Amber Heard to perform in Aquaman 2?

Mr. Hamada: Yes, there was a...we had an option agreement for her for Aquaman 2.

Mr. Chew: Do you know what it is?

Mr. Hamada: It looks like a standard contract between an actor and the studio.

Mr. Chew: And which actor was involved in this? Which actor was a party to this contract?

Mr. Hamada: Amber Heard. It's a contract for Amber Heard for the role of Mera in Aquaman and its sequel.

Mr. Chew: Which studio contracted with Amber Heard?

Mr. Hamada: Warner Bros.

Mr. Chew: When did you come to be the president of DC?

Mr. Hamada: At the beginning of 2018.

Mr. Chew: Mr. Hamada, was Ms. Heard ever released by Warner Bros. from the Aquaman 2 contract or what you call the option agreement?

Mr. Hamada: No.

Mr. Chew: Was she released from her Aquaman 2 contract on or about February 22, 2021?

Mr. Hamada: No.

Mr. Chew: Was Ms. Heard ever rehired for Aquaman 2 by Warner Bros.?

Mr. Hamada: No.

[00:45:46]

[silence]

[00:46:02]

Mr. Chew: Did Ms. Heard receive a pay increase for Aquaman 2?

Mr. Hamada: No.

Mr. Chew: Why not?

Mr. Hamada: As a rule, as a company, we make these...we go through a lot of trouble when we make our deals with our actors. We get options on them for subsequent movies. And I think, traditionally, prior to me joining the company, every option was renegotiated. And one of the things that we were trying to put a rein on was not renegotiating every deal, with the understanding that people come in and make these deals, and they have an understanding that there will be options and that there is a deal in place. And it was a big part of our philosophy that we were going to hold people to their options moving forward.

Mr. Chew: But did Warner Bros., at any point in time, reduce Ms. Heard's role in Aquaman 2?

Mr. Hamada: The size of the role in the film that she has was determined in the early development of the script, which would have happened in 2018, I would say. So, and from there, beyond normal development, the role sort of...the character's involvement in the story was sort of what it was from the beginning.

Mr. Chew: Was her role ever reduced for any reason?

Mr. Hamada: No. I mean, again, from the early stages of the development of the script, the movie was built around the character of Arthur and the character of Orm, Arthur being Jason Momoa and Orm being Patrick Wilson. So they were always the two co-leads of the movie.

Mr. Chew: Did Warner Bros. ever plan to portray Ms. Heard as the co-lead in Aquaman 2?

Mr. Hamada: No, the movie was always pitched as a buddy comedy between Jason Momoa and Patrick Wilson.

Mr. Chew: Was Ms. Heard cast in Aquaman?

Mr. Hamada: Yes, she was.

Mr. Chew: Was Ms. Heard cast in Aquaman 2?

Mr. Hamada: Yes, she was.

Mr. Chew: Was Ms. Heard paid for her services in Aquaman 1?

Mr. Hamada: Yes.

Mr. Chew: Was Ms. Heard paid for her services in Aquaman 2?

Mr. Hamada: Yes.

Mr. Chew: Was her compensation for Aquaman 2 affected in any way by anything said by Johnny Depp?

Mr. Hamada: No.

Mr. Chew: Was her compensation for Aquaman 2 affected by anything said by Adam Waldman?

Mr. Hamada: No.

Mr. Chew: Was her compensation for Aquaman 2 affected by anything said by anybody representing Johnny Depp?

Mr. Hamada: No.

Mr. Chew: Was there any delay in Warner Bros. exercising the option to cast Ms. Heard in Aquaman 2?

Mr. Hamada: Yes, there was.

Mr. Chew: How long a delay was there?

Mr. Hamada: I don't know, probably weeks.

Mr. Chew: What was the cause of the delay?

Mr. Hamada: There were conversations about potentially recasting.

Mr. Chew: Who was the producer?

Mr. Hamada: Peter Safran.

Mr. Chew: Who was the director?

Mr. Hamada: James Wan.

Mr. Chew: Did Warner Bros. believe that those concerns were legitimate?

Mr. Hamada: Yeah. I mean, I had no reason not to believe the director and producer of the movie.

Mr. Chew: And you are testifying today as a representative of you, correct?

Mr. Hamada: Yes, I am.

Mr. Chew: What, if any, creative concerns did Warner Bros. have about casting Amber Heard as Mera in Aquaman 2?

Mr. Hamada: It was the concerns that were brought up at the wrap of the first movie, production of the first movie, which is the issue of chemistry. Did the two have chemistry, you know? I think, editorially, they were able to make that relationship work in the first movie, but there was a concern that it took a lot of effort to get there. And would we be better off recasting, finding someone who had better, more natural chemistry with Jason Momoa, and move forward that way?

Mr. Chew: Did Warner Bros. take any steps affirmatively to audition other actresses for the role of Mera in Aquaman 2?

Mr. Hamada: No, we did not.

Mr. Chew: Other than the creative concerns and concerns about chemistry you testified about, was there any other reason Warner Bros. delayed in picking up Ms. Heard's option for Aquaman 2?

Mr. Hamada: No, it was all concerns about whether she was the right fit of casting for the movie.

Mr. Chew: What role, if any, did Ms. Heard's dispute with Johnny Depp have in Warner Bros.'s delay in picking up Ms. Heard's option for Aquaman 2?

Mr. Hamada: There was none from our end.

Mr. Chew: At any point in time, was Warner Bros. considering paying Ms. Heard more money for Aquaman 2 than is set forth in the option contract you previously identified?

Mr. Hamada: No. As I said, we were determined to hold our actors to their option agreements.

Mr. Chew: Would Warner Bros. have paid Ms. Heard more money on Aquaman 2 if it had picked up her option earlier?

Mr. Hamada: No.

Mr. Chew: At any time, from the beginning of history through today, did Warner Bros. ever release Ms. Heard from the Aquaman 2 contract?

Mr. Hamada: No.

Mr. Chew: At any point in time, from the beginning of history to today, did Warner Bros. re-hire Ms. Heard for Aquaman 2?

Mr. Hamada: No, because we just picked up her option.

Ms. Bredehoft: And when is the last time you spoke with Rob Cowan relating in any manner to whether to exercise the option on Amber Heard for Aquaman 2?

Mr. Hamada: It would have been the same time that I was having those conversations with Peter Safran.

Ms. Bredehoft: So, in 2020.

Mr. Hamada: In 2020.

Ms. Bredehoft: Did you speak with Zack Snyder at all relating to whether to exercise the option for Amber Heard on Aquaman 2?

Mr. Hamada: No, I've not had any conversations with Zack Snyder.

Ms. Bredehoft: Did you speak it all with Jason Momoa in preparation for your deposition today?

Mr. Hamada: No.

Ms. Bredehoft: Have you ever spoken with Jason Momoa about any issues relating to chemistry between he and Amber Heard?

Mr. Hamada: Yes.

Ms. Bredehoft: When did you speak with Jason Momoa about chemistry issues between he and Amber Heard?

Mr. Hamada: It would have been in that same time period where we're...prior to green light of the movie.

Ms. Bredehoft: Now, you were asked some questions about scripts. Did you review any of the drafts of the script for Aquaman 2?

Mr. Hamada: Yes.

Ms. Bredehoft: When?

Mr. Hamada: Part of my role, I read all the drafts of the scripts as they come in.

Ms. Bredehoft: When was the first script for Aquaman 2?

Mr. Hamada: Oh, boy. I could not tell you...probably in 2018. Latter part of 2018 would be my guess.

Ms. Bredehoft: And how many versions of the script had been written by the beginning of 2021 for Aquaman 2?

Mr. Hamada: There were probably half a dozen drafts of the script.

Ms. Bredehoft: All right. What, if anything, did Rob Cowan say to you about chemistry? What specifically about the chemistry between Amber Heard and Jason Momoa?

Mr. Hamada: Just the fact that they didn't really have a lot of chemistry together. You know, the reality is it's not uncommon on movies for two leads to not have chemistry and that it's sort of movie magic and editorial, the ability to sort of put performances together. And with the magic of, you know, a great score and how you put the pieces together, you can fabricate sort of that chemistry. And so I think, at the end of the day, I think if you watch the movie, they look like they had great chemistry. But I just know that, through the course of the post-production, that it took a lot of effort to get there. Sometimes you don't. Sometimes it's very easy. You just put the, you know, characters on the screen together, and they work. And sometimes it's harder. And so...

Ms. Bredehoft: Can you give me anything more specific about what it was with Amber Heard and Jason Momoa that was difficult for the chemistry?

Mr. Hamada: No, because it's, like, what makes a movie star a movie star? Like, you know it when you see it. And the chemistry wasn't there.

Ms. Bredehoft: Now, you've used the term fabricated a number of times. What did you do to fabricate the chemistry between Amber Heard and Jason Momoa?

Mr. Hamada: Well, those are just...it's editorial. A good editor and a good filmmaker can pick the right takes, can pick the right moments, and put scenes together. Again, score is a big...you know, the music in a scene makes a big difference. You can make a happy scene feel sadder or a sad scene feel happier. And so it was sort of the...it's just the magic of post-production, editing, sound, sound design, music, etc.

Ms. Bredehoft: What do you mean by fabricating, though? I mean, were they literally falsifying, or were they just picking the best music? Let me just finish my question. Were they picking the best music and picking the best looks because that's their job and that's what you do on every scene?

Mr. Hamada: That is what we do in post-production. That's what filmmakers do. No. Yeah. This is...on any production, you're doing that. You're putting performances together. Sometimes it's easier than others. This one was more difficult because of the lack of chemistry between the two, but they were able to...James Wan and the editor were able to get it to a place where the end result actually works, and it's great.

Ms. Bredehoft: And, in fact, that's the job of every filmmaker, right, is to put all the combinations together to make the most successful production?

Mr. Hamada: Absolutely.

Ms. Bredehoft: [inaudible 00:57:47] what has been marked as Exhibit number 5. It's ALH-18247, and this is a text message exchange between James Wan and Amber Heard. And you mentioned, James Wan was the director of Aquaman 2, is that correct? And Aquaman.

Mr. Hamada: That's correct.

Ms. Bredehoft: And Aquaman, the first one, correct?

Mr. Hamada: That's correct.

Ms. Bredehoft: All right. And James is texting to Amber on August 25, 2018, "You rated really high with the audience!!" You see that?

Mr. Hamada: Yes.

Ms. Bredehoft: This is August 25, 2018. What's going on on August 25, 2018 that would cause the director to send a text message to Amber saying...?

Mr. Hamada: It might be a test screen. So during our post-production of the movie, we test the movie with an audience, and the audience tells us what they liked and what they didn't like. And so that's what he's referring to there.

Ms. Bredehoft: And they really liked Amber Heard, correct?

Mr. Hamada: Yes, she did. She tested well.

Ms. Bredehoft: And hit billion dollars, is that correct?

Mr. Chew: Objection.

Mr. Hamada: Yes.

Ms. Bredehoft: And more specifically, did you play any role in the determination to communicate to Amber's representatives that Warner Bros. was considering not exercising her option?

Mr. Hamada: Yeah, probably in the sense of we had the conversations, and I believe, if I recall, that's where Peter Safran offered to reach out to the agent and express which direction we're leaning.

Ms. Bredehoft: Have you seen any document that says there was any chemistry issues between Amber Heard and Jason Momoa in Aquaman 1?

Mr. Hamada: Documents? No. I mean, those were all conversations.

Ms. Bredehoft: But if Jason came back and James Wan came back, you were guaranteeing that Amber Heard would play Mera, correct?

Mr. Hamada: That's correct.

Ms. Bredehoft: Okay. And Jason Momoa was able to negotiate a different compensation structure, was he not, for Aquaman 2?

Mr. Hamada: That's true. He did renegotiate.

Ms. Bredehoft: Now, Aquaman was the highest-grossing DC film ever for Warner Bros., was it not?

Mr. Hamada: Yes, it was.

Ms. Bredehoft: What, if any, issues did you have with Amber Heard in Aquaman 2?

Mr. Hamada: My understanding is, actually, the production went very smoothly.

Ms. Bredehoft: Okay. All right.

Judge Azcarate: Thank you. Your next witness.

Ms. Meyers: Your Honor, we call Dr. Kulber next, but I know we have a preliminary matter that we need to deal with [inaudible 01:00:39] if we may approach.

Judge Azcarate: Sure. All right. Ladies and gentlemen, apologize again, we have a few things to take care of. We're just gonna go ahead and take our morning recess now for 15 minutes. Do not discuss the case and do not talk to anybody, okay? Do not do any outside research. Sorry, that was the same thing. All right. And if the doctor testifies, then, is that Webex? Okay. So I'll get that set up too while we take the break as well. All right. All right. We'll go ahead and take a break. Let's make it 10:50 to give them time to look at everything, okay?

Bailiff: All rise.

Judge Azcarate: All right, yes. Are we ready for the jury?

Ms. Meyers: Yes.

Judge Azcarate: Okay. Sir, can you hear me?

Dr. Kulber: Yes. Can you hear me?

Judge Azcarate: Yes. Can you count to five for me?

Dr. Kulber: One, two, three, four, five.

Judge Azcarate: All right. I'm just trying to get you on the big screen. We're waiting for the jury. Just give us a minute, okay, sir?

Dr. Kulber: Thank you.

Judge Azcarate: Thank you. You can be seated. All right, your next witness.

Ms. Meyers: We call Dr. Kulber.

Judge Azcarate: All right. Sir, if you could raise your right hand. Do you swear or affirm to tell truth under penalty of law?

Dr. Kulber: Yes.

Mr. Rottenborn: Your Honor, I would just object that Dr. Kulber appears to have a stack of documents right in front of him.

Judge Azcarate: All right. Sir, you can put your hand down, and any documents you have, if you could put them away and just testify from your memory, okay, sir? Thank you.

Mr. Rottenborn: Thank you, Your Honor.

Judge Azcarate: All right. Your question.

Ms. Meyers: Good morning, Dr. Kulber.

Dr. Kulber: Good morning.

Ms. Meyers: Could you please state your full name for the record?

Dr. Kulber: David Alan Kulber.

Ms. Meyers: And what is your profession?

Dr. Kulber: I'm a plastic and hand surgeon.

Ms. Meyers: And how long have you been a plastic and hand surgeon?

Dr. Kulber: Been in practice for 26 years.

Ms. Meyers: Where do you currently work?

Dr. Kulber: At Cedars-Sinai Medical Center.

Ms. Meyers: How long have you worked there?

Dr. Kulber: For the past 26 years.

Ms. Meyers: Do you know the plaintiff in this action, Johnny Depp?

Dr. Kulber: I do.

Ms. Meyers: And how do you know Mr. Depp?

Dr. Kulber: I had taken care of him when he had injured his hand.

Ms. Meyers: When did Mr. Depp become your patient?

Dr. Kulber: Sometime in March of 2015.

Ms. Meyers: And what type of treatment did you provide to Mr. Depp?

Dr. Kulber: He had a fracture of his finger with soft tissue loss, and so I reconstructed his finger.

Ms. Meyers: When did you perform the first surgery on Mr. Depp's finger?

Dr. Kulber: I believe it was around March 20th of 2015.

Ms. Meyers: And what was involved in that surgery, just briefly?

Dr. Kulber: Debriding the devitalized tissue, putting a hypothenar skin graft, restores some of the soft tissue loss that he had, and then also putting a pin in because he had a displaced distal phalanx fracture.

Ms. Meyers: What was the state of Mr. Depp's hand immediately after that surgery? I'm sorry. I think the audio cut out a little bit. Could you please repeat your answer?

Dr. Kulber: It was injured, and he had soft issue loss and a fracture of his distal phalanx.

Ms. Meyers: And what type of cast was on Mr. Depp's hand after you performed that surgery?

Dr. Kulber: It was a plaster splint.

Ms. Meyers: And can you please describe to the jury what a plaster splint would look like?

Dr. Kulber: So it's like a cast, but you don't want to put everything circumferential on it because of swelling after surgery. So, I believe, in Mr. Depp's case, it was, like, the two fingers. I think the third finger was the one that was operated onto these two fingers, the third and fourth finger together. And it's a splint with plaster on the top and on the bottom that goes around the hand to protect it.

Ms. Meyers: How mobile was Mr. Depp's hand when it was in that cast?

Dr. Kulber: Well, he couldn't move his third and fourth fingers because of the bulkiness of the splint. Typically, postoperatively, it's a more bulkier splint right after the surgery, so it's not very...it's in the way.

Ms. Meyers: Could Mr. Depp grab someone with that cast on his hand?

Dr. Kulber: He could attempt to grab someone. I don't know how successful he would be. He had his index finger free and his thumb free, but the other fingers were probably not being able to move.

Ms. Meyers: How long was the pin in Mr. Depp's finger?

Dr. Kulber: About 11 or 12 days.

Ms. Meyers: And how was the pin removed?

Dr. Kulber: It was removed under local anesthesia in my office.

Ms. Meyers: How long did you ultimately treat Mr. Depp for his hand injury?

Dr. Kulber: For several months.

Ms. Meyers: And why was that?

Dr. Kulber: It was a bad injury, and it required a few more little office procedures to clean up the tissue. He had an infection as a result of the injury, so he had to be on antibiotics for some time until it finally completely healed.

Ms. Meyers: Do you recall when the infection developed?

Dr. Kulber: It was a few weeks after the surgery, and that's when I took out the pin.

Ms. Meyers: When was the last time that you saw Mr. Depp?

Dr. Kulber: Sometime in 2015. I don't recall that.

Ms. Meyers: And when was the last time that you spoke to Mr. Depp?

Dr. Kulber: The same, around 2015.

Ms. Meyers: All right. Thank you, Dr. Kulber.

Judge Azcarate: All right, cross-examination.

Mr. Rottenborn: Good morning, Dr. Kulber. So you said that this plaster splint was put on after surgery on March 20th... And regardless of whether Mr. Depp could have grabbed someone with the hand with the cast on, he could have grabbed someone with the hand without the cast on, correct?

Dr. Kulber: Correct.

Mr. Rottenborn: Michelle, can you pull up Exhibit 400, please? This had been admitted, Your Honor.

Judge Azcarate: All right.

Mr. Rottenborn: Permission to publish.

Judge Azcarate: Yes. Yes, sir.

Mr. Rottenborn: Dr. Kulber, I'm just going to ask Michelle here to just scroll through these pictures, and I'd ask you to take a look at them.

Ms. Meyers: Your Honor, I'm going to object for lack of foundation for these photographs.

Judge Azcarate: They're already in evidence.

Ms. Meyers: With respect to the questions to the witness.

Judge Azcarate: They're already in evidence. Thank you.

Mr. Rottenborn: Michelle, if you could go back up to that. Stop right there. Is there anything about the cast that was put on Mr. Depp's hand on March 20th, 2015 that would have prevented him from doing this damage to Ms. Heard's closet on March 23rd, 2015?

Ms. Meyers: Objection, calls for speculation.

Judge Azcarate: Overruled.

Dr. Kulber: I mean, he had his other hand available, so.

Mr. Rottenborn: No further questions. Thank you.

Judge Azcarate: All right. Redirect.

Ms. Meyers: Dr. Kulber, how many fingers were in the plaster portion of Mr. Depp's cast?

Dr. Kulber: Two or three. At least two were, the third one and the fourth one.

Ms. Meyers: And why did you...?

Dr. Kulber: Because it's not fully...plaster doesn't go around the entire hand because you allow for swelling. So there's plaster to protect the fracture. So there's a little plaster on it, but it's on the top and the bottom, but it's not completely circumferential. So there's soft spots to it.

Ms. Meyers: And where are those soft spots located again?

Dr. Kulber: Usually, we put a piece of plaster underneath the fingers and on top, and then the sides of the fingers, it's soft so that the fingers can swell after the surgery.

Ms. Meyers: Could Mr. Depp have hit someone with the hand that had the cast on it?

Dr. Kulber: He could have hit someone with it. It probably would have injured, damaged the cast.

Ms. Meyers: Did you ever notice any damage to Mr. Depp's cast when you treated him after the surgery?

Dr. Kulber: I don't recall. Nothing comes to mind.

Ms. Meyers: Could Mr. Depp form a fist with the cast on?

Dr. Kulber: No.

Ms. Meyers: No further questions. Thank you, Dr. Kulber.

Judge Azcarate: All right. Thank you, sir. That completes your testimony. Thank you. All right, your next witness.

Ms. Lecaroz: Plaintiff calls Richard Marks, Your Honor.

Judge Azcarate: All right, Mr. Marks. Sir, just a reminder that you're... Just give us a second on the TV. Sir, just a reminder that you're still under oath, okay, sir?

[01:11:56]

[silence]

[01:12:45]

All right. Good morning, sir. All right. Yes, ma'am.

Ms. Lecaroz: Thank you, Your Honor. Welcome back, Mr. Marks. You've testified in this case previously, but would you just briefly remind the jury who you are?

Mr. Marks: I'm Richard Marks, and I'm a full-time entertainment transactional attorney. I make deals every day for productions and for individuals. I'm in the trenches, negotiating and then making sure the contracts reflect the deals. And I'm very much distinguished from the other side's expert, who is not an attorney, who's not in the trenches, making deals, is not in that day-to-day process.

Ms. Lecaroz: And are you familiar with the testimony of Kathryn Arnold in this matter?

Mr. Marks: Yes.

Ms. Lecaroz: Have you been asked to analyze that testimony and provide opinions in response?

Mr. Marks: Yes.

Ms. Lecaroz: And generally, what are those opinions?

Mr. Marks: Well, my opinions are that she's very slick and smooth, but she's not an expert in deal-making. Her assessment of damages is built on nothing, and it's wildly speculative.

Ms. Lecaroz: Are you familiar with Ms. Arnold's opinion that it's customary for an actor to renegotiate the fee for a subsequent picture option in a multi-picture contract when a film is successful?

Mr. Marks: Yes, I heard that opinion.

Ms. Lecaroz: And are you also familiar with her testimony that, under those circumstances, an actor will renegotiate a 50% to 100% increase in their salary for the next optional film?

Mr. Marks: Yes, I heard her say that.

Ms. Lecaroz: Do you agree with those opinions?

Mr. Marks: Absolutely not.

Ms. Lecaroz: Why not, sir?

Mr. Marks: Well, what we're dealing with in this case is a test option agreement, and that's an agreement. It's a multi-picture agreement, and it's the nightmare for people like me. The test is going to take place, let's say, for 10 actors the next morning at 9:00, and you have to fully negotiate a contract that might cover 4 movies and have it signed before they're allowed to test so that, if they're chosen for the part, we have the full contract. There's no renegotiation. So you've got a contract for a multi-picture deal, it's usually a franchise, and you negotiate the first movie. And normally, if they get the part, they're the chosen one, they're the star-is-born moment, if you will, they get the part, normally, their salary is inflated from their normal salary, because now, they're going to play a character that could go on for four movies.

In this case, Ms. Heard's first salary when she got the part was \$450,000. If Warner Bros. and DC Comics decided to make a next movie, they could recast her. They had no obligation. All they had was an option. But if they did cast her, up front, that they had agreed to more than double her salary, like, two and a quarter times to get to the million dollars. These are large bumps, if you will. If an actor is on a series, say, they go...and they have five options, they go up in increments of 5%, 10%, 20%, not these multiples that you see in a test option agreement. And that's one of the reasons that they aren't renegotiated normally. They are in some instances, but not normally.

Ms. Lecaroz: What's the significance of the test part in a test option agreement?

Mr. Marks: The test's significance is that an established actor usually wouldn't test. They'd be offered the role. Ms. Heard was in a group of actors that needed to be tested to see if the studio wanted to hire them, and then, if they hired them, they would be locked up for potentially four movies at very lucrative increases. Because after Aquaman 1, she gets to \$1 million, Aquaman 2, she gets to \$2 million, and Aquaman 3, excuse me, you get to \$4 million. These are unheard-of bumps if you're going on a normal career and trying to increase your salary by increments.

Ms. Lecaroz: In your experience, what is customary for negotiations of multi-picture deals?

Mr. Marks: Well, I think what happened in this case was customary for negotiation of multi-picture deals, and by that, I mean that you assume success. The reason you go from the first Justice League movie where Ms. Heard played Mera the first time, the reason you more than double her salary is you assume success. So you've already built in the bonus that Ms. Arnold was referring to, a renegotiation, if you will, for the third movie. Instead of doubling her salary, Ms. Arnold said it would only be fair to quadruple her salary. And that's just not the way these idiosyncratic contracts work. They're a very small portion of the contracts we deal with.

Ms. Lecaroz: Are you familiar with Ms. Arnold's opinion that Ms. Heard's salary for Aquaman 2 could have been renegotiated to around \$4 million?

Mr. Marks: I am.

Ms. Lecaroz: Do you agree with that opinion?

Mr. Marks: No.

Ms. Lecaroz: Why not?

Mr. Marks: Well, as I've said, that would now be...after a healthy first payday, it's more than doubled, and now, it would be quadrupled. That's not the way it happens. Walter Hamada, who is the president of that part of the studio, said it doesn't happen. They're not going to do it. Ms. Arnold, for some substance, says, "Well, Jason Momoa got to do it," but she doesn't give us any of the details. We know that Jason Momoa was in a movie before the "Justice League." He played Aquaman in a movie

not with Mera in that movie. So he had a history before the first movie with Amber Heard. He played Aquaman. We don't know what his contract, the state of it, was when you got to Aquaman 2, and she says, unsupported, that he renegotiated. We're not sure what he renegotiated to, but I can say that, at the end of the option period, when you've only got one option left and you want that star in more movies, you may renegotiate. But it's not a gratuity. It's, "We'll give you more for the last option if you'll give us three more options." It's a give-and-take.

And unfortunately, Ms. Arnold didn't give us any of that background or those building blocks. And then I think, yesterday, she said, "And the other actors renegotiated." And again, we don't know their salary history. We don't know their contracts. We don't know anything except she's asking you just to believe her, as what I refer to as a professional expert.

Ms. Lecaroz: Are you aware that Ms. Arnold's opined that, "But for the alleged defamatory statements by Mr. Waldman, Ms. Heard would have earned \$45 million in the last 18 months and in the next 3 to 5 years?"

Mr. Marks: Yes, I am.

Ms. Lecaroz: I'd like to address some of the components of that one by one with you, Mr. Marks. Are you familiar with her testimony that Ms. Heard would continue to make films for approximately \$4 million each following Aquaman 2?

Mr. Marks: Yes.

Ms. Lecaroz: Do you agree with that testimony?

Mr. Marks: No.

Ms. Lecaroz: Why not?

Mr. Marks: Well, again, in Aquaman 2, Amber Heard has already had this huge increase. She worked on Aquaman 2 for \$2 million. What Ms. Arnold is saying is, "Oh, she should have worked on it for \$4 million," which I disagree with, and I don't...I think there is reasons to negotiate that weren't here in this case. So the \$4 million I have a disagreement with. But even if it was at \$4 million or if it was at \$2 million, the 4 or 5 movies that Ms. Heard might get might be independent movies. They might be stand-alone studio movies. They might be passion projects. Every actor has a quiver full of quotes, and their highest quote is for the superhero, fantasy, journey. Their lowest quote might be for the independent passion project where they'll defer their salary and almost take nothing to work, just SAG minimum. And to assume that she'd get

four or five more movies at her last fantasy quote would be to assume that those are also those type of movies, playing another character.

And Ms. Arnold says that Ms. Heard's breakout moment, her star-is-born moment is Christmas 2018. If that's true, and I don't think it's true, those moments don't normally happen to supporting casts, but if it's true, as a deal maker, you would expect, if you represent producers, production companies to flock in to take advantage of this hot star and to sign them up. And we have from Christmas 2018 to spring '20 where there is none of this activity. The star-is-born phenomena didn't happen. Ms. Heard starred in one series of 8 episodes, and she earned a healthy fee, \$200,000 an episode. But that's five times less than the million Ms. Arnold is tossing out, supposedly, based on Jason Momoa's quote. She doesn't prove it or give us facts. And Jason Momoa is not a comparable actor. He's been in a series where they shot 78 episodes, 44 episodes, 21 episodes. He played Conan the Barbarian. He was in "Game of Thrones." It's not comparable.

Mr. Nadelhaft: Objection, Your Honor, non-responsive to...

Judge Azcarate: All right, I'll sustain the objection. Next question.

Ms. Lecaroz: Mr. Marks, we'll get to some of those issues in a moment, but I want to take you back for a second. I believe you testified a few minutes ago that your understanding is that the last option in a multi-picture deal might be renegotiated under some circumstances. Do you have an understanding of whether Aquaman 2 was the last option in Ms. Heard's contract with Warner Bros.?

Mr. Marks: Oh, no. No. Aquaman 2 has not even been released, and Warner Bros. has a fourth option for Aquaman 3 or another movie where Mera appears, that character. And they've agreed to double the salary, again. So it's in success, and that assumes that they recast and that they make the movie.

Ms. Lecaroz: Are you aware of Ms. Arnold's testimony that Ms. Heard would have made several million dollars on endorsement deals, such as the one she had with L'Oréal?

Mr. Marks: I'm aware of that testimony.

Ms. Lecaroz: Do you agree with that opinion?

Mr. Marks: No.

Ms. Lecaroz: Why not?

Mr. Marks: Again, this is a business of personalities. After the breakout moment that Ms. Arnold talked about, Christmas 2018, we didn't see endorsement deals flocking to Ms. Heard during that 16-month period before Adam Waldman made a few statements in the London Daily Mail, I believe it was. We didn't see those endorsements coming to her. We didn't... What Ms. Arnold shows you is these noncomparable actors. They had endorsement deals, but she doesn't show you when she describes the breakout moment and why she's comparing Amber Heard to these, what I call, uncomparable actors, but she's making the comparison. She's saying, "Well, they had all these deals. Why wouldn't she?" But for the statements that happened 16 months later, and I guess my primary question is what happened in the 16 months, even if you believe 3 statements in the Daily Mail are the stake through the heart of this star-is-born moment.

Ms. Lecaroz: Do you have an opinion about Ms. Arnold's testimony that Ms. Heard would have made \$1 million an episode in a couple of streaming series following her a star-is-born moment?

Mr. Marks: Yes, I heard it. I have an opinion.

Ms. Lecaroz: What's your opinion?

Mr. Marks: Well, after Aquaman won, this is a major coup, Amber Heard got that role. She tested for it. She could have been the other 19 actresses or 10 or whoever else tested who didn't get it. She got the role, and she got her salary doubled for Aquaman 1 to \$1 million. Now, Ms. Arnold wants you to believe that that million dollars would translate into she'd get that for each episode of a series. We know what she got for a series. She got a series in that period after Christmas 2018, before spring of 2020, she got a series. It was 8 episodes, and it was \$200,000 an episode. And Ms. Arnold is from somewhere, in a glib way, saying she'd get a couple of series and a million each. And I can tell you, as someone in the trenches, rarely, rarely does an actor get \$1 million for a series episode. And again, in those 16 months, there were no offers for a series at \$1 million an episode. In fact, her only series is the \$200,000. And if you look at her resume, the series that Ms. Heard were in, I think the longest one ran eight episodes.

Jason Momoa, if you were to believe Ms. Arnold, and somehow Jason Momoa's agent broke their confidentiality in the agreement, and he had a series of \$1 million an episode, if you're to believe that, Jason Momoa has had a series with 78 episodes, with 44 episodes, with 21 episodes, with 18 episodes, with 21 episodes. He was in... Again, there's not a comparableness there.

Ms. Lecaroz: We spoke a few minutes ago about the test option agreement. What's the significance of the option part of that agreement?

Mr. Marks: The option part of the agreement gives the employer, the studio, the option. They don't have to do anything. They have an option to either employ you at a very healthy salary to play this role or not. They can recast the superhero role. You just have to think of how many actors have played Batman or Superman. They can do what they want, and indeed, since there's no contract, they only have a choice to exercise your option or not. They might say, "We're not exercising unless you reduce your compensation." Who knows what the negotiation would be? But it's not a contract until the studio exercises the option, and they don't have to.

Ms. Lecaroz: What's the alternative to an option agreement?

Mr. Marks: Well, the alternative is most agreements in Hollywood, you're hired to play the role, or once you exercise the option, then it becomes, for that picture, an agreement. Like others in Hollywood, you are now hired to play that role. So most contracts are guaranteed, you're hired to play the role. In an option agreement, once they exercise the option for that movie, it becomes a guaranteed contract.

Ms. Lecaroz: Are you aware that Ms. Arnold testified that Ms. Heard was released from her Aquaman 2 contract and then subsequently rehired?

Mr. Marks: I heard that testimony.

Ms. Lecaroz: Is that consistent with your experience of the film industry, in connection with these multi-option contracts?

Mr. Marks: No.

Ms. Lecaroz: Why not?

Mr. Marks: Again, studios don't do things they don't have to do. As we heard Mr. Hamada, the president of the studio, say, "You either exercise your option or you don't." They exercised their option. He denied releasing and then rehiring. And in my experience, in almost five decades in the business, doing this type of work, not talking about it, not consulting, I mean, you know, I heard Ms. Arnold say she'd been an expert 100 times. I'm a transactional lawyer. I do this occasionally. Basically, you know, it's not a contract till they option it, and they pick up their option. And at that point, it's guaranteed contract and then different rules apply to it.

Ms. Lecaroz: In your experience in the industry, do studios typically comment on those types of actions that they're taking with respect to options?

Mr. Marks: No. Just like Mr. Hamada said, they don't need to comment on it. They either exercise the option or they don't. In Hollywood, silence is the default. You play no card before it's time, and the cards there were exercise the option or not. And I was surprised by Mr. Hamada, under oath, basically saying that there was this discussion of chemistry. That...

Mr. Nadelhaft: Objection, Your Honor, hearsay.

Ms. Lecaroz: I think it was an in-court statement this morning, I believe, Your Honor. That's fine.

Mr. Nadelhaft: It's the same hearsay that you were...it's hearsay like yesterday. I mean, it's hearsay.

Judge Azcarate: I'll overrule the objection. Go ahead.

Ms. Lecaroz: Thank you.

Mr. Marks: I didn't hear.

Judge Azcarate: Go ahead, sir.

Ms. Lecaroz: Overruled. You can continue, Mr. Marks.

Mr. Marks: Oh. I was surprised to hear Mr. Hamada say that they talked about chemistry. That would normally be behind closed doors, because it can't help your relationship with the actor. You're either going to exercise or not. And that was quite a bit of candor from someone at his level. And so, therefore, I take it at face value. I think he felt that he was under oath and he was telling the truth. But it wouldn't be...

Mr. Nadelhaft: Objection, Your Honor.

Judge Azcarate: I'll sustain the objection.

Ms. Lecaroz: Mr. Marks, are there circumstances where a studio would be more likely to say something about not using an actor again in a franchise?

Mr. Marks: Yes.

Ms. Lecaroz: What are those circumstances?

Mr. Marks: Once they've exercised the option, once the contract is guaranteed, the studio still has the right to pay the actor but not play

them. Pay or play them. And that is a rare condition because you've hired the actor, you've got to pay them, but you say, "Go home. We're recasting." In that situation, after you've exercised the option and the contract is guaranteed, if you pay off the actor, that's normally commented on. That becomes a bit of information because it's not normal.

Ms. Lecaroz: Is that circumstance different from Ms. Heard's contract with Warner Bros. for the Aquaman movies?

Mr. Marks: Oh, yeah, yeah. Ms. Heard's contract, again, it was just an option. Either we exercise it or we don't. And if we exercise it, she's in the film. If we don't, she's not. Until we exercise it, we have a right to recast or not make the movie. And even after we exercise it, we'd still have a right to recast and not make the movie. We just have to pay her salary.

Ms. Lecaroz: Do you understand that Ms. Arnold compares Ms. Heard's career trajectory with that of other actors, including Jason Momoa, Gal Gadot, Zendaya, Ana de Armas, and Chris Pine?

Mr. Marks: I heard that.

Ms. Lecaroz: And what's your opinion of those actors as comparables for Ms. Heard?

Mr. Marks: Even Ms. Heard's agent, Jessica K. said that four of those actors weren't comparable.

Mr. Nadelhaft: Objection, Your Honor, hearsay.

Ms. Lecaroz: And I believe the same response, Your Honor, that it was in testimony that was played in court earlier this week.

Mr. Nadelhaft: That's not what she testified to. I mean, he's characterizing testimony that was from days ago, and I don't even think she testified to that, Your Honor.

Judge Azcarate: You can cross-examine. Overruled.

Ms. Lecaroz: Overruled. You may continue, Mr. Marks.

Mr. Marks: Again they are not comparable. Jason Momoa was Aquaman. Chris Pine was Captain Kirk. Gal Gadot was Wonder Woman. Zendaya has been working on Disney Channel since she was 13. She's in all the Spider-Man movies. She goes by one name. Ana de Armas, you know, when she was in a movie that they call, you know, her

breakout, it was as a nude poster. She's been an ensemble piece, "Knives Out." These are not comparables.

Now, Ms. Arnold stuck to Jason Momoa, who is the most non-comparable because of his history and his career, but she didn't give us the advantage of telling us what his contracts were, what he renegotiated to, what he earned. She didn't give us any of those building blocks. She just created. She set him up as a comparable and then said what Ms. Heard should earn, but she never gave us the salary of Jason Momoa or the other comparables. And she built, like, this house of cards on nothing, you know. She showed us, with her words, the beautiful clothing that the emperor was wearing, but we could see, if you know the business, that he wasn't.

Mr. Nadelhaft: Objection, Your Honor, beyond the scope of the question.

Judge Azcarate: All right, I'll sustain the objection. Next question.

Ms. Lecaroz: Okay. You're just speaking about Mr. Momoa as a comparable. Are you aware that Ms. Arnold compares Ms. Heard to Mr. Momoa as an actor with equivalent franchise experience who was able to renegotiate his salary for significant increases and bonus?

Mr. Marks: Yes.

Ms. Lecaroz: What's your response to that opinion?

Mr. Marks: Again, he didn't have comparable franchise experience to Ms. Heard. He was Conan the Barbarian. He played Aquaman in a movie that Amber Heard was not in. He played Aquaman, not a supporting character like Mera. It's just not comparable, and you can say the words, but I saw nothing from Ms. Arnold to back it up, something to build on, which, if she was a negotiator in the trench, the studio negotiator would say, "Okay, so show us. You know, where's the cops? Let's talk numbers." Because, ultimately, that's where we have to get to, not just because you say it so. We just don't believe you. You've got to show us.

Ms. Lecaroz: In your experience in the industry, what factors influence the negotiation of the terms of a film agreement with an actor?

Mr. Marks: Well, I mean, first, it depends on the film. If the film is a million-dollar movie and everybody's deferring their salaries, that's one thing. If it's a superhero movie, that's another. But for deal makers and negotiators, the best predictor of what the deal should be is past earnings, precedent, comps. You also look at the budget of the movie,

what it can bear. Because if Jason Momoa's comp is \$10 million, but the budget's \$10 million, obviously, he has another price for that movie. But the best predictor of future earnings is past earnings. And I didn't see Ms. Arnold talk about past earnings at all except the earnings in this rarified superhero four-picture deal where, instead of incremental increases, which you normally see, it was multiples increases.

And then, when you get on a series, the big renegotiation was when the network has no more options. Until then, the actors on the series get 5%, 10%, 15%, small percentage raises. They don't get multiples. They get the multiples if it's a success, and the studio wants to continue making the series, and they want to keep these characters. That's when the renegotiation happens. Here, even if we believe Ms. Arnold, after Aquaman 2, there was still an option waiting at a big price, you know, double the previous payday.

Ms. Lecaroz: What's the significance of the timing of the Waldman statements to the opportunities Ms. Arnold claims Ms. Heard lost?

Mr. Marks: Well, the argument, as I understand it, is that Ms. Arnold says that Ms. Heard lost all these opportunities because of. Those losses were caused by Adam Waldman's statements 16 months later. So I think the timing...

Judge Azcarate: Sure.

Ms. Lecaroz: Mr. Marks, what's your overall assessment of Ms. Arnold's opinions in this case?

Mr. Marks: My overall assessment of her opinions is that they're not worth the paper they're not written on. She knows something about our business but not about negotiating deals. She may have gotten someone at the endeavor office to breach confidentiality, but she never laid out...

Mr. Nadelhaft: Objection, Your Honor, beyond the scope. Objection. Objection.

Mr. Marks: ...the building block.

Judge Azcarate: Excuse me. There's an objection. You have to stop talking, Mr. Marks. Thank you. Beyond the scope.

Ms. Lecaroz: Yeah. Mr. Marks, can you just limit your testimony to your opinion about Ms. Arnold's opinions, please?

Mr. Marks: Okay. My opinion, as someone who's made deals, as a deal maker for almost 50 years, is that she calls herself an expert, but she's not. She doesn't have the background. She doesn't have the day-to-day knowledge, and her testimony that I heard did not back up her bottom line. If you want to get those figures, you have to show why they're deserved. And again, she was constructing a Jenga without the bottom pieces. It does not hold up under scrutiny by someone who makes deals.

Ms. Lecaroz: No further questions.

Judge Azcarate: All right, cross-examination.

Mr. Nadelhaft: Good morning, Mr. Marks.

Mr. Marks: Good morning.

Mr. Nadelhaft: So you agree that studios use comps to negotiate deals, correct, with actors?

Mr. Marks: Sometimes they do.

Mr. Nadelhaft: And you have an issue with the comps that Ms. Arnold used, correct, as you testified to?

Mr. Marks: I have an issue with the comps that she says she used that she didn't disclose.

Mr. Nadelhaft: The comps being the actors that you just talked about. She did disclose. I mean, she disclosed the actors.

Mr. Marks: She disclosed the actors and budget figures from their movies. She never disclosed their salaries and salary history as comps.

Mr. Nadelhaft: You're not offering a different set of comparators that should be used, correct?

Mr. Marks: I'm saying, if you're going to...

Mr. Nadelhaft: That's not my question. Are you offering a different set of comparators than what Ms. Arnold used?

Mr. Marks: I'm not here offering comparators. I'm saying what she offered are not comparators.

Mr. Nadelhaft: That was my question. You're not offering comparators, correct?

Mr. Marks: No. I would say that Ms. Heard's comparisons are...

Mr. Nadelhaft: That was it. That was my...sir, respectfully, that was my question. Motion to strike after...

Judge Azcarate: All right, we'll strike after that. Just answer the questions, Mr. Marks. Thank you.

Mr. Nadelhaft: Now, you're a deal maker, correct?

Mr. Marks: Yes.

Mr. Nadelhaft: What actors have you negotiated for in superhero movies?

Mr. Marks: Well, recently, I've negotiated for Chris Pratt in a superhero series for Amazon. I've negotiated a deal for Michael Douglas, not in a superhero movie but a historical movie. I've negotiated recently a deal for Paul Rudd and Will Ferrell on an Apple series, Billy Crudup on an Apple series. Those are the recent talent deals.

Mr. Nadelhaft: What actors have you negotiated for a superhero movie?

Mr. Marks: As I sit here now, I can't remember a superhero movie that I've negotiated. I've certainly negotiated over my career franchise movies and fantasy movies.

Mr. Nadelhaft: Your Honor, so it's no, you haven't negotiated for any actors for superhero movies, correct?

Mr. Marks: So you would define, like, I don't know, "Jungle Book" isn't a superhero movie. It's more of a fantasy.

Mr. Nadelhaft: Okay. So, no, correct?

Mr. Marks: Okay. All right. So as I sit here, I can't think of a Marvel-type superhero movie that I've negotiated, although, I know there's one or two in here.

Mr. Nadelhaft: Now, you testified and you agree that Mr. Momoa negotiated his multi-picture contract for Aquaman 2, correct?

Mr. Marks: I heard Mr. Hamada say there was a renegotiation, but no facts were offered, such as he didn't have an option, his options were out, what he was earning and what he renegotiated to, and he is Aquaman. So, yes, I did hear there was a renegotiation.

Mr. Nadelhaft: And you understand that his salary went from \$3 million to \$4 million to \$15 million.

Mr. Marks: If you tell me that, I haven't seen his contract, and I haven't heard any testimony under oath that that's where the leap was.

Mr. Nadelhaft: Now, Ms. Heard's contract...

Mr. Marks: Did he get more options for...when he made that leap, did he get more options?

Mr. Nadelhaft: Ms. Heard's contract was a talent option contract, correct?

Mr. Marks: Yes.

Mr. Nadelhaft: Okay. And you agree that, if there's an Aquaman 3, Ms. Heard would have an option to receive \$4 million, correct, for the movie?

Mr. Marks: Well, actually, you would language it, Warner Bros. would have the option to engage her.

Mr. Nadelhaft: And if they engaged her, she would receive \$4 million, correct?

Mr. Marks: She doesn't have the option to refuse. They have the option to engage her.

Mr. Nadelhaft: And she would receive \$4 million, correct?

Mr. Marks: Yes, \$4 million.

Mr. Nadelhaft: Would you agree that the money Amber was making on Aquaman 2 or 3 would be her market rate for future studio movies?

Mr. Marks: I would think it would be her rate for future studio superhero movies but not necessarily studio movies that aren't superheroes. That could be standalone. That could be other type of studio movies.

Mr. Nadelhaft: But for studio superhero movies, it would be \$4 million, correct?

Mr. Marks: If I was Ms. Heard's agent, that's where I would start, assuming everything was equal, the budget of the superhero movie that she was in the ensemble. There's a lot of ifs to look at, but all things being equal.

Mr. Nadelhaft: You agree that Aquaman was a breakthrough role for Ms. Heard, wasn't it?

Mr. Marks: It's the first movie of that ilk that she makes, but she is not Aquaman. She is Mera.

Mr. Nadelhaft: But it was a breakthrough movie for Ms. Heard, correct?

Mr. Marks: For her, it's a breakthrough movie to be in that film and in the ensemble, absolutely.

Mr. Nadelhaft: Now, she was the female star of that movie, correct?

Mr. Marks: I believe so.

Mr. Nadelhaft: You would agree that for all of the actors Ms. Arnold listed as comparables, their career trajectory went up after their breakthrough, correct?

Mr. Marks: She didn't give us the raw materials to look at, but I'll take your word that all those unrelated actors in unrelated films, except for Jason Momoa, they went up. As did Ms. Arnold when she went from one to two.

Mr. Nadelhaft: In your experience, can you identify an actor or an actress who's not been able to get a new studio movie after a breakthrough performance in a superhero movie?

Mr. Marks: As I sit here now, I haven't been asked to opine on that, but there are lots of supporting characters in movies that don't appear in the next movie.

Mr. Nadelhaft: But the female star in a breakthrough movie, in a superhero movie, can you identify any actress who's not gotten another studio movie after that?

Mr. Marks: Well, after Ms. Heard's breakthrough in 2018, she did get Aquaman 2.

Mr. Nadelhaft: Aquaman 2 was already...she already had the option for Aquaman 2, correct?

Mr. Marks: All right. So Ms. Heard did not get any movies after 2018, long before the Adam Waldman statements.

Mr. Nadelhaft: Other than Ms. Heard, can you identify any actor or actress who's not gotten another studio movie after their breakthrough in a superhero movie?

Mr. Marks: As I sit here now, I haven't been asked to research that, and I can't. That would be a normal thing.

Mr. Nadelhaft: And you're not providing an alternative number for Ms. Heard's damages, correct, for the jury?

Mr. Marks: Correct, I'm not providing an alternate number. I think, you know, she's been more than adequately paid.

Mr. Nadelhaft: I'd move to strike after "No, I've not been provided another number." That's all. I mean, my question was you're not providing another number.

Ms. Lecaroz: I think it's in fairness and the full answer of the question, Your Honor.

Mr. Nadelhaft: It was a yes or no question. He said his answer was no.

Judge Azcarate: I'm not going to strike it.

Mr. Nadelhaft: Okay. All right, no further questions.

Judge Azcarate: All right, redirect.

Ms. Lecaroz: Mr. Marks, in response to some questions from Mr. Nadelhaft, you were discussing some franchise and fantasy movie agreements that you've negotiated with actors. Could you just describe some of those for us?

Mr. Marks: You know, I've had such a long career that I mainly forget what I've done, but I negotiated all the contracts for "Pinocchio," if you will, that was produced, you know, is coming to America, the original. Is that a fantasy movie? "The Golden Child," is that a fantasy movie? Yeah. And by the way, I may have negotiated contracts, and ultimately, the film wasn't made, but as I sit here now, those are the only ones that come to pass. If I was looking at my resume or going through my files, I might think of others. But there isn't a deal that I haven't made.

Ms. Lecaroz: And I think you also testified, in response to Mr. Nadelhaft's questions, that you have negotiated some deals for Chris Pratt and Paul Rudd. Do you recall that testimony?

Mr. Marks: Yes, these are for a streaming series.

Ms. Lecaroz: Do you happen to know if both of those actors have played Marvel superheroes?

Mr. Marks: I believe they have but don't quote me because, you know, that's not my genre.

Ms. Lecaroz: Okay. No further questions, Your Honor.

Judge Azcarate: All right. Thank you, Mr. Marks. You can...you're free to stay in the courtroom or you can leave, okay?

Mr. Marks: Thank you very much.

Judge Azcarate: Thank you. All right, your next witness.

Mr. Dennison: Plaintiff calls Michael Spindler.

Judge Azcarate: Michael Spindler. You've testified previously, correct, Mr. Spindler? All right. Just a reminder that you're still under oath, okay, sir?

Mr. Spindler: Yes.

Judge Azcarate: All right, thank you. Yes, sir.

Mr. Dennison: Thank you. Good morning, Mr. Spindler.

Mr. Spindler: Good morning.

Mr. Dennison: Can you remind the jury who you are and what you do?

Mr. Spindler: Yes. I'm Michael Spindler. I'm a forensic accountant. I'm a CPA, a certified fraud examiner, amongst some other certifications. I'm with B. Riley Advisory Services, a national firm that does forensic accounting, bankruptcy and restructuring work, and business evaluations and appraisals. I've got over 40 years of experience.

Mr. Dennison: Are you familiar with the testimony rendered by Ms. Arnold in this matter?

Mr. Spindler: Yes, I am.

Mr. Dennison: Do you understand that Ms. Arnold testified that Ms. Heard has suffered economic damages resulting from three statements being made by Mr. Waldman?

Mr. Spindler: Yes, I do.

Mr. Dennison: Do you have an opinion of that claim?

Mr. Spindler: I do.

Mr. Rottenborn: Objection, Your Honor, may we approach?

Judge Azcarate: All right.

Mr. Dennison: Thanks, Mr. Spindler. Now, you indicated that you had listened to Ms. Arnold, and she testified on behalf of Ms. Heard relative to economic damages. Have you formed an opinion as to the testimony and opinion rendered by Ms. Arnold?

Mr. Spindler: Yes, I have.

Mr. Dennison: And what's that opinion?

Mr. Spindler: It is not adequately supported, and it is unreasonable.

Mr. Dennison: There were multiple elements to that analysis, both damages related to her film career and to endorsements. Have you analyzed both those issues?

Mr. Spindler: Yes, I have.

Mr. Dennison: What is your opinion of the claims that have been asserted relative to the film career and endorsements?

Mr. Spindler: Okay. Well, first of all, with respect to her damages calculation, there was no calculation, per se. She initially looked at these comparable actors and seemed to use that as a basis for numbers. She didn't provide the underlying calculations. She didn't provide underlying support. And then it appeared as though, in her testimony, she backed away a little bit from that, but she still suffers from the issues of not providing detailed calculations or support for where those numbers come from. And she still, to some extent, appears to be using some kind of comparable analysis.

Mr. Dennison: All right. What is the type of analysis that you think is appropriate here?

Mr. Spindler: Well, I think, and as you heard from the last witness, I think that something that is anchored in facts, taking a look at historical compensation as a basis for anticipating future compensation.

Mr. Dennison: Had you looked at Ms. Heard's prior compensation?

Mr. Spindler: Yes, I have. I've looked at tax returns that were provided for the period of 2013 through 2019.

Mr. Dennison: Why do you want to use historical earnings?

Mr. Spindler: Well, once again, you want an analysis that's anchored in fact. I don't believe that Ms. Arnold has done that in her analysis. So here, we've got some actual data, we've got some historical compensation, and as the last witness mentioned, that often provides somewhat of a basis for future anticipated earnings. In addition, I believe that Ms. Arnold herself said that she had hoped to be able to look at a renegotiated salary for Aquaman 2 and then use that as a basis for future compensation, that being the new kind of base, if you will.

Mr. Dennison: All right. Were there any years, in particular, that you focused on in your analysis as to Ms. Arnold's testimony?

Mr. Spindler: In terms of the historical compensation?

Mr. Dennison: Yes.

Mr. Spindler: Well, for 2013 through 2019, in total, her compensation was around \$10 million for all those years combined. In 2019, the last of those years, her compensation was somewhere between about \$2.6 million and \$3 million. Now, that's a good year. That's known as a clean year.

Mr. Dennison: What do you mean by a clean year?

Mr. Spindler: Well, you know, for example, 2019, you had Aquaman was released in December of 2018, and that was a successful film. So in 2019, you've got the benefit of that kind of success, and you also don't have any potential impact from the alleged defamatory Waldman statements that occurred in April of 2020. So 2019 is clean of all that.

Mr. Dennison: What did you understand Ms. Arnold's methodology to be?

Mr. Spindler: Her methodology, initially, appeared to be based on these comparable actors that she had identified and, theoretically, the compensation that they earned, although, she doesn't identify what that compensation is or provide any support for it or any calculations.

Mr. Dennison: What is your opinion of that methodology from an accounting perspective?

Mr. Spindler: That methodology was unsound. It's just unsupported. There are no numbers. There's no data that she provided and support for that.

Mr. Dennison: What methodology did you understand Ms. Arnold to adopt at trial?

Mr. Spindler: Okay. Well, it looked like somewhat of a mix-and-match approach. She used different approaches, I believe, for different elements of the damages, although, it's still a little bit unclear to me, a little bit vague. But there are four basic components that she was looking at, and we can go through those in any order you wish.

Mr. Dennison: All right. With respect to the television series portion of her analysis, what do you understand that methodology to be?

Mr. Spindler: Okay.

Mr. Rottenborn: Objection, Your Honor, may we approach?

Judge Azcarate: All right.

Mr. Dennison: The earnings from television shows, what was...did you analyze what historical earning Ms. Heard had during the period that you were concerned with relative to television shows?

Mr. Spindler: Well, yes. During 2019, she entered into a contract in July of 2019 to appear in the television series at \$200,000 per episode.

Mr. Dennison: All right. What about endorsement deals? Did you look at what she had made on endorsement deals during that period?

Mr. Spindler: She did have a contract with L'Oréal at \$1,625,000.

Mr. Dennison: All right. With respect to her movie roles, what were her historical earnings during that period?

Mr. Spindler: Well, certainly, for the most recent years, you had the Warner Bros. deal, which was a four-picture deal. The first film was \$450,000. Then, the first Aquaman was \$1 million base fee, then, \$2 million for Aquaman 2, and presuming that there was an Aquaman 3, that would have been \$4 million.

Mr. Dennison: Okay. Why do you look at historical earnings as part of your analysis?

Mr. Spindler: Because you want your analysis to be anchored in facts. You want it to have a sound methodology, and you want to come up with a reasonable result. So, if you take a look at, for example, the analysis that Ms. Arnold did, it didn't appear to be...

Mr. Dennison: Let's just look at the analysis that you're doing. So what you said, I think, is you wanted them anchored in facts. Why?

Mr. Spindler: Because that provides a sound basis for coming up with something with reasonable certainty. There is AICPA or American Institute of Certified Public Accountants, guidance with respect to reasonable certainty. And those are the basic elements of it.

Mr. Dennison: Thank you. No further questions.

Judge Azcarate: All right, cross-examination.

Mr. Rottenborn: Hello, again, Mr. Spindler.

Mr. Spindler: Good morning.

Mr. Rottenborn: I'm going to ask you a few questions that may refer to the statements in Amber's counterclaim against Mr. Depp. When I refer to those statements, I'm going to refer to them as the Depp-Waldman statements. Do you agree that we can both be on the same page what I'm referring to when I say that?

Mr. Spindler: That's fine, you can use your terminology.

Judge Azcarate: I'm sorry, there's an objection, sir. Hold on.

Mr. Rottenborn: Can we approach?

Judge Azcarate: Okay.

Mr. Rottenborn: So, Mr. Spindler, when I refer to the Depp-Waldman statements, you understand me to be referring to the statements in Ms. Heard's counterclaim against Mr. Depp, correct?

Mr. Spindler: I'll understand that, yes.

Mr. Rottenborn: Now, you're here to provide a rebuttal opinion to part of Ms. Arnold's testimony, correct?

Mr. Spindler: Correct.

Mr. Rottenborn: You're not providing opinion on whether Ms. Heard suffered ... Mr. Depp, correct?

Mr. Spindler: That is true.

Mr. Rottenborn: You're not offering an opinion as to what any of the underlying facts relating to whether Mr. Depp abused Amber, correct?

Mr. Spindler: That's correct.

Mr. Rottenborn: You're not offering an opinion as to the magnitude of damages that you believe Ms. Heard may be entitled to if she proves defamation by Mr. Depp. You're just reviewing what Ms. Arnold has said, correct?

Mr. Spindler: That's correct.

Mr. Rottenborn: And you said that you want your analysis to be accurate in facts, right?

Mr. Spindler: Anchored in facts.

Mr. Rottenborn: Anchored in facts. You'd agree that what an actor earns in one period isn't necessarily reflective of what he or she may earn in future periods, correct?

Mr. Spindler: Correct.

Mr. Rottenborn: And that's because...

Mr. Spindler: There can be some variability, yes.

Mr. Rottenborn: ...an increase in the number of roles may lead to greater income, correct?

Mr. Spindler: I'm sorry. Could you repeat that? I was speaking out in here.

Mr. Rottenborn: One of the reasons that what you earn in one period may not be reflective of what an actress may earn in future periods is because an increase in the number of roles may lead to greater income, correct?

Mr. Spindler: The number of roles or the particular project itself, yes.

Mr. Rottenborn: Sure, getting better roles may lead to greater income, correct?

Mr. Spindler: Correct.

Mr. Rottenborn: And the same is true for an endorsement. As an actress's profile grows, the amount of money that she may be able to earn from endorsements grows as well, correct?

Mr. Spindler: It can. It depends.

Mr. Rottenborn: So, what Ms. Heard earned from, say, 2013 to 2019 that you testify to isn't necessarily reflective of what she might earn over the next five years, correct?

Mr. Spindler: Not necessarily. It is a good indicator, though.

Mr. Rottenborn: And you'd agree that, from 2013 to 2019, in terms of earnings and star power, that Ms. Heard's career trajectory was on the upswing, correct?

Mr. Spindler: There was a slight increase during that period of time in her earnings from 2013 through 2019.

Mr. Rottenborn: And you'd agree that that was as a result of getting more lucrative roles, right?

Mr. Spindler: Yes.

Mr. Rottenborn: Now, you're not a causation expert, right? You're just a damages expert.

Mr. Spindler: That's correct.

Mr. Rottenborn: So you're not testifying as to whether the Depp-Waldman statements caused her to lose any roles, correct?

Mr. Spindler: That's correct.

Mr. Rottenborn: And you're not offering any opinion as to whether the Depp-Waldman statements kept her from being considered for roles that she otherwise would have been considered for, correct?

Mr. Spindler: That's correct. I'm not testifying on causation issues.

Mr. Rottenborn: And you can't speak to what opportunities may never have materialized for Amber as a result of the Depp-Waldman statements, correct?

Mr. Spindler: Yeah, I've not done those calculations.

Mr. Rottenborn: And you don't have an opinion about whether or not Ms. Heard could have renegotiated a contract for Aquaman 2, correct?

Mr. Spindler: That was not part of my work.

Mr. Rottenborn: And you don't have an opinion on the impact that additional exposure or press coverage or magazine covers or interviews would have had on Ms. Heard's career, correct?

Mr. Spindler: Correct. I'm just looking at Ms. Arnold's calculations.

Mr. Rottenborn: You've never served as an expert witness before to calculate damages based on lost roles by an actress resulting from defamation against that person, correct?

Mr. Spindler: I've been involved in defamation cases, but I've not done the calculations as an expert witness and testified thereto.

Mr. Rottenborn: And there's never been an instance in which you have served as an expert witness in a case to calculate damages based on alleged defamation against an actress, correct?

Mr. Spindler: Correct.

Mr. Rottenborn: And you're not offering any expert opinion on what impact the alleged defamation by Mr. Depp has had on Ms. Heard's career, correct?

Mr. Spindler: I'm sorry, one more time?

Mr. Rottenborn: You're not offering any expert opinion on what impact the Depp-Waldman statements by Mr. Depp has had on Ms. Heard's career, correct?

Mr. Spindler: Other than taking a look at Ms. Arnold's calculations.

Mr. Rottenborn: And you're not offering any expert opinion about what impact, if any, social media coverage of this case or Ms. Heard may have had on Ms. Heard's career, correct?

Mr. Spindler: Correct. That's other experts.

Mr. Dennison: Can we approach, Your Honor?

Mr. Rottenborn: No further questions. Thank you.

Judge Azcarate: All right.

Mr. Spindler: Okay.

Judge Azcarate: All right. Thank you, Mr. Spindler. You can have a seat in the courtroom or you're free to go.

Mr. Spindler: Thank you, everyone.

Judge Azcarate: Thank you. All right, your next witness.

Ms. Lecaroz: Plaintiff calls Doug Bania, Your Honor.

Judge Azcarate: Okay. Can you spell the last name for me?

Ms. Lecaroz: B-A-N-I-A.

Judge Azcarate: Thank you.

[02:09:28]

[silence]

[02:10:04]

All right. Sir, you can... Sir, just a reminder that you're still under oath, okay, sir? Thank you.

Ms. Lecaroz: Good afternoon, Mr. Bania.

Mr. Bania: Good afternoon.

Ms. Lecaroz: Can you briefly reintroduce yourself to the jury, please?

Mr. Bania: Yes. Hi, Doug Bania. I am from Nevium Intellectual Property Consultants based in San Diego. I value intellectual property. I provide litigation support in infringement and defamation cases, as I'm doing today. And I use internet and social media analytics, and both of those services.

Ms. Lecaroz: Since you last testified in this case, the jury has heard testimony from Ronald Schnell and Kathryn Arnold. Are you familiar with their testimony?

Mr. Bania: Yes.

Ms. Lecaroz: Were you asked to analyze their testimony and provide opinions in response?

Mr. Bania: Yes, I was.

Ms. Lecaroz: Have you formed opinions in response to the testimony of Mr. Schnell and Ms. Arnold?

Mr. Bania: I have.

Ms. Lecaroz: Generally, what are those opinions?

Mr. Bania: Generally, you know, Mr. Schnell provided no evidence of a correlation between the Waldman statements and the hashtags and the spikes of those hashtags on Twitter. Second, based on my internet and social media analytics investigation, I've concluded that the alleged comparable actors that Ms. Arnold came up with are not comparable with Ms. Heard. And then, thirdly, Mr. Schnell and Ms. Arnold both failed to provide any evidence of a causation as it relates to the Waldman statements causing any economic harm to Ms. Heard.

Ms. Lecaroz: Let's dig into those opinions a little bit. You're familiar with the testimony of Mr. Schnell that there are more than 2.7 million alleged negative tweets related to Ms. Heard between January 2018 and June 2021?

Mr. Bania: Yes.

Ms. Lecaroz: And what's your understanding of how Mr. Schnell identified those particular 2.7 million tweets?

Mr. Bania: Yeah. So essentially, Mr. Schnell chose hashtags that he felt were negative towards Ms. Heard. Those hashtags range from #JusticeForJohnnyDepp, #AmberHeardIsAnAbuser, #AmberTurd, and the #WeJustDontLikeYouAmber. So then he used those hashtags, and he searched through using the Twitter API, searched through various tweets, and then came up with any tweets that were using those hashtags.

Ms. Lecaroz: Did you conduct an analysis of those tweets?

Mr. Bania: Yes, I was given that exact...the data that Mr. Schnell used on a hard drive. So, yes, I dug into that data as well.

Ms. Lecaroz: And what was the purpose of your analysis?

Mr. Bania: So what I'm trying to do and what's that issue of the case today, at this point, is, you know, were these tweets...did they contain the Waldman statements? That's where we're at right now, are the Waldman statements. So I wanted to analyze those tweets to determine which ones, and if any, contain the Waldman statements.

Ms. Lecaroz: And what's your understanding of what the Waldman statements are?

Mr. Bania: So my understanding is there's three Waldman statements that were published in the Daily Mail. The Daily Mail is a UK tabloid. And Mr. Arnold was quoted in three of those articles, and those dates were on April 8th, 2020, April 27th, 2020, and on June 24th, 2020. And my understanding of those quotes...I'm sorry, I think I said the wrong name. But those quotes are the only remaining in this case.

Ms. Lecaroz: Did you analyze the timing of the tweets that we were talking about as compared to the timing of the Waldman statements?

Mr. Bania: And that's exactly what I did. So I wanted to look at the Waldman statements, look at the dates that they happened, and then analyze those as it compared to the Twitter data that I had.

Ms. Lecaroz: Have you prepared a demonstrative that reflects that aspect of your analysis?

Mr. Bania: Yes.

Ms. Lecaroz: Your Honor, may I approach?

Judge Azcarate: Yes. [inaudible 02:14:58] counsel. All right, so 1293 will just be marked for identification as demonstrative and can be published to the jury.

Ms. Lecaroz: Mr. Bania, can you explain to the jury what this demonstrative shows?

Mr. Bania: Yes. So this shows the total hashtags and tweets that Mr. Schnell was analyzing. This is the summary data. They're tweets that are running from January 2018 to June of 2021, and again, these are related to the four hashtags that I discussed. Whenever I get an assignment such as this, when I'm dealing with a defamatory statement that's allegedly gone viral online, where there's economic damages involved and there's a lot of data involved, I like to take the data and I like to do a 30,000-foot view of the data to see what I'm looking at, to see if there's anything interesting, odd, different about the data.

And the first thing that I noticed is 35% of the tweets were prior to the Waldman statements. So again, remember, my assignment is to determine if the Waldman statements are part of the tweets that Mr. Schnell analyzed. So obviously, if these tweets were prior to the Waldman statements, in no way could they have anything to do with the Waldman statement. So that was the first issue that I noticed.

Then, I noticed what I like to call kind of the alleged defamatory time frame, and as I discussed, that's when the Waldman statements were published. That's the date down here. You know, the first one was in the beginning of April, and the last one, which is the third one, was at the end of June. But what I found interesting is only 2% of all of the tweets happened during this Waldman statement period. So really, these are just observations, and for me, there were red flags that I made note of. And then I just continued with my analysis.

Ms. Lecaroz: What other work have you performed in connection with forming your opinions about the purportedly negative tweets?

Mr. Bania: Yeah. So now I realize that 35% are irrelevant and 2% can only happen during this important period, I just continued to dig into the 2.79 million tweets that Mr. Schnell provided.

Ms. Lecaroz: And, Tom, can we take that one down? And, Mr. Bania, have you prepared another demonstrative that depicts that analysis that you were just describing?

Mr. Bania: Yes.

Ms. Lecaroz: Okay. Your Honor, may I approach?

Judge Azcarate: Okay. All right.

Ms. Lecaroz: To be used as a demonstrative.

Judge Azcarate: Okay. We'll just see if he has an objection. I'll give you time to look at it, sir.

[02:18:19]

[silence]

[02:18:36]

All right, plaintiff's... Can you turn on your microphone? Sorry.

Mr. Nadelhaft: No objection at the demonstrative.

Judge Azcarate: Okay. All right. Plaintiff's Exhibit 1294 will be marked for identification as a demonstrative and will be published to the jury.

Ms. Lecaroz: Thank you, Your Honor. Mr. Bania, can you explain what this demonstrative shows?

Mr. Bania: Yes. This is showing the various spikes as it relates to the hashtags that Mr. Schnell testified about. This is actually an exhibit or a demonstrative that he used in his testimony. What this is showing are the largest spikes related to the hashtag #JusticeForJohnnyDepp. I don't know if you remember his testimony or any of his demonstratives. The other three hashtags did spike at the same time but a very small spike. So what I'm showing you here are the six top spikes in Mr. Schnell's analysis.

And what's important here, again, is the very first spike and the largest spike, again, happened before the Waldman statements. So what I'm trying to figure out is what tweets were related to the Waldman statements. So this number one spike, which is the biggest spike, was prior to the Waldman statements. So it's irrelevant to the case.

And then the second thing I noticed that was interesting here is here are the dates in gray, right here, this is the time in which the Waldman statements happened. And you're going to notice, as we discussed before, only 2% of the tweets happened during that time, but I found it very interesting for such a viral event that has potentially caused such economic harm. There's no spikes in this area, and actually, you're going to see that Mr. Waldman, you know, his statement came out here in the first of April 2020 article, then the second one came out here, and then

the third one came out in June. There's actually a downward use of the spike, downward use of the hashtags. So I'm not seeing any correlation as it relates to the Waldman statements and any spikes here as it relates to the hashtags Mr. Schnell chose.

Ms. Lecaroz: Did you analyze each of the spikes that are depicted here?

Mr. Bania: Yes. So what I did is I looked at the six different spikes, and you're going to notice that each spike represents a month. So the second spike, you know, is July of 2020, and so on, to the sixth spike, going to April 2021. And what I did is, I don't know if you remember my last testimony when I went into Google Search, and I'm able to go into Google Search, I went in, and I typed in Amber Heard. And then, after you hit Search, you can use the tool, and you can go back in time. And I chose each six of these dates to go back in time to see what was the media talking about back then, you know, what was the general public being fed as it relates to Amber Heard back during those spikes. And what I found is none of them...well, I actually analyzed the top three search results because they represent 50% to 70% of what people click on. And now I realize that none of them had anything to do with the Waldman statements.

Ms. Lecaroz: Are you aware of Mr. Schnell's testimony that the tweets using the four hashtags he looked at were mathematically correlated?

Mr. Bania: Yes.

Ms. Lecaroz: What does that mean?

Mr. Bania: So what Mr. Schnell is saying, which is irrelevant to this case, is the four hashtags that he randomly chose, they tend to go up and down together, and that's why he had these spikes here. So the correlation there is how those four hashtags work or dance together going up and down. But first of all, the hashtags have nothing to do with the Waldman statements, and the fact that there's a correlation with the hashtags is irrelevant to this case because we're dealing with the Waldman statements, which none of that correlation analysis he did had to do with.

Ms. Lecaroz: How do you know that the correlation doesn't have anything to do with the Waldman statements?

Mr. Bania: Can I clear this at all? No. Oh, yeah. Well, first of all, I know because that would happen right here, you know. When Mr. Waldman, one of his quotes was published, you would see a big spike right here, and then you would see maybe a little noise down here, and then the

third time you might see a big...second time a big spike and the third time a big spike. That's not here. So that's telling me there's no correlation between the Waldman statements and this hashtag used. And then I've actually provided evidence that there's no correlation because I analyze each of these spikes, and none of them had to do with the Waldman statements.

Ms. Lecaroz: Is mathematical correlation the same as causation?

Mr. Bania: No.

Ms. Lecaroz: Why not?

Mr. Bania: I mean, a correlation is simply a relationship between two or more variables or two or more things. In this case, the correlation question is, when the Waldman statements were published, at the same time, did you see a correlation with spikes and these hashtags? And again, you... Can we clear this? You see none of that right here. It's actually a downward trend. There's no spikes. There's no correlation. So you know, again, Mr. Schnell provided no evidence of any correlation.

Ms. Lecaroz: What correlation opinion did he provide during his testimony?

Mr. Bania: Well, he provided the correlation that the four hashtags, you know, spiked together, but again, A, the hashtags have nothing to do with the Waldman statements, and the facts that they're correlating or moving together is irrelevant to the case because the case is about the Waldman statements.

Ms. Lecaroz: So what is causation then?

Mr. Bania: So causation is where one thing causes a change in the other. So, as it relates to this case, did the Waldman statements cause Ms. Heard to have economic harm? In other words, did the Waldman statements cause Ms. Heard not to make as much money in her career? And again, Mr. Schnell provided no evidence of this. Ms. Arnold provided no evidence of this. And as a matter of fact, during Ms. Arnold's testimony yesterday, she didn't even know what causation was, you know. She was asked, "Do you know the difference between causation and correlation?" And she said that she's not a semantics expert. We're not talking about the words. You know, when it comes to damages, you have to prove causation prior to calculating damages, you know. So there is no causation that's proven here, therefore, a damages analysis is not appropriate.

Ms. Lecaroz: Did you hear Mr. Schnell testify that he agreed with your opinion in this case?

Mr. Bania: Yes.

Ms. Lecaroz: What's your understanding of the opinion that he agreed with?

Mr. Bania: Well, he agreed that he failed to link the spikes in the hashtags on Twitter to the Waldman statements.

Ms. Lecaroz: Did he try to do that?

Mr. Bania: Well, he tried to do that. Well, again, his analysis was looking at the word "waldman" and looking at the word "waldmignon" and then trying to say that 25% of the tweets included those two terms. But first of all, Waldman isn't the issue here. It's the Waldman statements. And waldmignon, I don't even know what that is, but it's not relevant to this case.

Ms. Lecaroz: We can, I think, take that one down, please, Tom. Mr. Bania, what other work have you done in connection with forming your opinions about Mr. Schnell's testimony?

Mr. Bania: Again, the assignment was to determine if the Waldman statements were part of the tweets, so I've continued to dig in, you know, to the data. I believe the next step is now that I've excluded, you know, the 35% that was before the Waldman statements, because they're irrelevant, I wanted to really analyze from the April 2020 forward to see if any of those tweets, you know, contain the Waldman statements.

Ms. Lecaroz: Did you prepare a demonstrative that reflects that analysis that you did?

Mr. Bania: Yes, I did.

Ms. Lecaroz: Okay. Your Honor, may I approach again?

Judge Azcarate: All right. Yes, ma'am. Any objection, sir?

Mr. Nadelhaft: No objection at the demonstrative.

Judge Azcarate: All right, we'll mark it for identification as Plaintiff's 1295 as demonstrative and published to the jury.

Ms. Lecaroz: So, Mr. Bania, did you consider the content of the statements made by Waldman as part of the work that you did?

Mr. Bania: Yes. Yes. So here, I reviewed the Waldman statements again, and what I wanted to do is I wanted to determine what, if any, tweets included the Waldman statements. So I went back to the Waldman statements, and I came up with, you know, key terms and key themes for those Waldman statements, which are listed here. You know, the Waldman statements were about abuse hoax, sexual violence hoax, and fake sexual violence. So what I did is we're now dealing with the 1.2 million tweets because, you know, we're starting in April 2020, because that's when the Waldman statements started. And what I did is I searched the 1.2 million tweets, you know, for these 3 phrases, and I determined that there were 751 tweets that included those key terms, which is 0.06% of the 1.2 million.

And then, as I was sifting and sorting and analyzing this data, I realize that a lot of these tweets had the exact same language, you know. It was interesting to see, it was the exact same tweet. Because I'm analyzing the language to see if it matches one of these three, I realize that a lot of these tweets were retweets, likes, or shares. So, therefore, I eliminated any of those, and it came down with 95 unique tweets. And then what I did from there is I analyzed those to determine if any of these terms were in there, and I identified five tweets that were related to the Waldman statements.

Ms. Lecaroz: Do any of the hashtags Mr. Schnell analyzed include the words from the Waldman statements?

Mr. Bania: No. No, they don't. And you know, because I am rebutting Ms. Arnold, you know, her testimony yesterday, she was saying that the Waldman statements caused these hashtags. Then, throughout her testimony, she walked that back and admitted, "No, none of these tweets have anything to do with the Waldman statements. They don't include the Waldman statements." You know, these hashtags are only hashtags that Schnell, in his opinion, felt that they were negative towards Ms. Heard.

Ms. Lecaroz: Based on your expertise, what are your overall opinions about Mr. Schnell's testimony and the Twitter hashtag data?

Mr. Bania: You know, Mr. Schnell provided no evidence that any of the tweets were related to the Waldman statements. Mr. Schnell, there's no correlation there. He also provided no evidence that there's any causation that, you know, the Waldman statements caused any economic harm towards Ms. Heard.

Ms. Lecaroz: Your Honor, I'm about to switch to a different topic. I don't know if you want to break now or push.

Judge Azcarate: All right, it's going to be a little while, I assume.

Ms. Lecaroz: A little bit more, yes. Yeah.

Judge Azcarate: Okay. Let's go ahead and break for lunch, ladies and gentlemen, okay? Do not discuss the case and do not do any outside research, okay?

[02:31:36]

[silence]

[02:32:04]

All right, we'll come back at 1:40 then. Is that right?

Ms. Lecaroz: Thank you, Your Honor.

Bailiff: All rise.

Judge Azcarate: Your next question.

Ms. Lecaroz: Mr. Bania, before lunch, we were talking about your opinions in response to the testimony of Mr. Schnell. Did you also analyze the testimony of Ms. Arnold in this case?

Mr. Bania: Yes, I did.

Ms. Lecaroz: And are you aware of her opinion that Ms. Heard's career would have followed the same trajectory as that of Jason Momoa, Gal Gadot, Zendaya, Ana de Armas, and Chris Pine if not for the Waldman statements?

Mr. Bania: Yes.

Ms. Lecaroz: What's your understanding of Ms. Arnold's basis for her opinion that Ms. Heard's career should have been similar to that of those identified actors?

Mr. Bania: Ms. Arnold stated that when producers or her industry is looking to hire talents and actors that it's important to best understand the public's perception of the actors that they're considering and that it's important to look into social media to see what is happening with the actors they're considering for either a movie or even an endorsement opportunity with companies. So that was her approach.

Ms. Lecaroz: And is that the process she followed in providing her analysis of those purportedly comparable actors?

Mr. Bania: No. Although, she stated that, she went in and brought in these alleged comparable actors and without really reasoning behind that.

Ms. Lecaroz: Did you conduct an analysis based on your expertise in social media and internet analytics of Ms. Heard compared to the actors to whom Ms. Arnold compares her?

Mr. Bania: I did.

Ms. Lecaroz: And what did you find?

Mr. Bania: Well, since Ms. Arnold stated that the proper approach is looking at the public perspective, looking into social media, and she did not do that, I felt that was the best approach to do this based on her words. So, yes, I did go into, you know, best understanding the public perspective of Ms. Heard and the alleged comparable actors using Q Scores. Then, I also went and did some analysis online and on social media as well.

Ms. Lecaroz: Can you briefly remind the jury what Q Scores are?

Mr. Bania: Yeah. Again, Q Scores measure how well a celebrity, it could be a cartoon character, it could be a sports person, how well they're known, how well they're liked, and how much they're disliked. And it's an industry-standard tool that's used. It's not just focused on the movies that they're in, but it's focused on them as actors, but also, what's happening in their personal lives come to play as well. So that's how Q Scores are typically used.

Ms. Lecaroz: Did you prepare a demonstrative that reflects the Q Score analysis you completed?

Mr. Bania: Yes, I did.

Ms. Lecaroz: Okay. Your Honor, may I approach again?

Judge Azcarate: All right.

Ms. Lecaroz: Thank you.

[02:35:12]

[silence]

[02:35:29]

Mr. Nadelhaft: No objection to the demonstrative.

Judge Azcarate: All right, we'll identify Plaintiff's 1296 for identification and publish to the jury.

Ms. Lecaroz: Mr. Bania, what point in time do these Q Scores represent that are reflected on your demonstrative? So these are the winter 2019 Q Scores that are reflected here, and what was important for me is I wanted to find Q Scores that represented Ms. Heard after Aquaman. And you know, remember, Aquaman is December of 2018. These Q Scores were gathered January and February of '19 but before the Waldman statements.

Ms. Lecaroz: And what did you find based on the Q Scores?

Mr. Bania: ...Q Scores. And you know, the higher the number, the better. As you can see, you know, Ms. Gadot has the highest Q Score out of the group of actors here, at a 28, but you're going to notice Ms. Heard has the lowest positive Q Score. She has a nine. So I find that very interesting that she doesn't appear to fit in as a comparable with these alleged comparable actors. I think what's also interesting is the average Q Score for all actors being scored at that time, which include all the alleged comparable actors here, score at an average of 17, and you can see, again, she is 9, well below that.

And then, on the right side, you're going to see the negative Q Scores. So this is how much people dislike you, you know. So the lower the score is better. You can see Mr. Momoa is over here, with the lowest, at an eight. But you can see, Ms. Heard is over here at a 28, which was quite a difference, you know, a 20-point difference from Mr. Momoa and also a 10-point difference, you know, from the average of all actors. So she is very much little...her positive score is very low, and her negative score is very high, which tells me that she does not fit in as a comparable as it relates to these alleged comparable actors.

Ms. Lecaroz: What opinions did you form based on that Q Score analysis?

Mr. Bania: My opinion, as it relates to these Q Scores, is, you know, Ms. Arnold used these actors as allegedly comparable actors, but really listening to her testimony yesterday, it appears that she's abandoned this approach. I don't think she's using these comparable actors or these alleged comparable actors anymore. She's more relying on her experience, and I agree with that.

Ms. Lecaroz: Did Ms. Arnold offer a criticism of your use of the Q Scores here?

Mr. Bania: She did, yes.

Ms. Lecaroz: And what's your understanding what that criticism is?

Mr. Bania: Well, what I believe she was saying is that I should have ran Q Scores for these allegedly comparable actors after each of their breakout films, which I disagree. First of all, Q Score doesn't work like that. Q Scores are available twice a year, so it's not that I could pick a month or a different month for each of the Q Score actors. So I feel that, you know, what was important for me, and this doesn't always happen when I'm using Q Scores, you can get this perfect moment in time, as Ms. Heard said....I'm sorry, but as Ms. Arnold said that, you know, Aquaman was Ms. Heard's breakout moment, you know. So these scores reflect that breakout moment, and they're terrible Q Scores.

Ms. Lecaroz: How would your analysis change if you had used Ms. Arnold's logic with respect to the timing of the Q Scores that you looked at?

Mr. Bania: I mean, if you really think about what Ms. Arnold was saying, is she's saying that she thinks Q Scores are the highest for each actor right after their breakout moment. So I would think, if anything, these Q Scores could have been a bit lower because it's not right after their breakout moment. But again, what's important for me is the fact that these scores reflect, you know, who Amber Heard was at the time before the Waldman statements but after the Aquaman release.

Ms. Lecaroz: We can take that one down, Tom. Thank you. What other work have you done in connection with forming your opinions in this case?

Mr. Bania: Again, taking the advice from Ms. Arnold, it's important. She says the industry looks into social media, what their followings are like, you know, what the numbers as it relates to their followers, you know, again, what is the public perception of them. So I analyzed their social media accounts but prior to the Waldman statements, so.

Ms. Lecaroz: And how did you do that?

Mr. Bania: Yeah. So what I did, I don't know if you're all familiar with the archive.org. They have a tool called the Wayback Machine. What archive.org does is it archives the internet. So you can go back in time to see what websites and web pages used to look like in the past. Not all

the time can you actually get a celebrity's social media accounts to have been archived, but we were fortunate that each of the alleged comparable actors' social media accounts were in archive.org. So I was able to go back in time prior to the Waldman statements to see what the following activity was for each of the alleged comparable actors.

Ms. Lecaroz: Mr. Bania, did you prepare a demonstrative that reflects your social media analysis?

Mr. Bania: Yes.

Ms. Lecaroz: Your Honor, may I approach?

Judge Azcarate: Yes, ma'am.

[02:41:39]

[silence]

[02:41:55]

Mr. Nadelhaft: No objection to the demonstrative.

Judge Azcarate: All right, we'll mark it for identification purposes, Plaintiff's 1297, and publish.

Ms. Lecaroz: Could you tell the jury what you found when you looked at the social media?

Mr. Bania: And so what I found, again, this is prior to the Waldman statements, you know, first thing you're going to notice here is not all actors use social media. You're going to see Mr. Pine doesn't have Facebook, Twitter, or Instagram, and Momoa and de Armas don't use Facebook or Twitter. But what's important to look at is you have Ms. Heard prior to the Waldman statements with 3.8 Instagram followers and 142,500 Twitter followers. And then you move down to Gal Gadot, with 37 million Instagram followers, compared to her 3.8 million, and you know, the 2.3 million Twitter followers compared to Ms. Heard's 142,000. And you can then even go down to Zendaya, with 65.9 million and 17.2 million Twitter followers.

What this is telling me is really, you know, more people are interested in Ms. Gadot and Zendaya and even Mr. Momoa than Ms. Heard on social media. It just tells me a lot of people are interested in these actors as opposed to Ms. Heard, more of a following, Q Scores, well liked, less disliked. So it kind of fits into the analysis of determining whether or not these alleged comparable actors are actually comparable.

Ms. Lecaroz: Based on your expertise, what are your overall opinions about Ms. Arnold's analysis of the so-called comparable actors?

Mr. Bania: Yes. Again, you know, it appears that she's abandoned this approach, and I agree with that. I feel that, you know, through the Q Score analysis and the social media analysis that they're just not comparable.

Ms. Lecaroz: Tom, we can take that one down. Mr. Bania, based on all the analyses you did in this case, what are your overall opinions?

Mr. Bania: Yes, my overall opinions are that Mr. Schnell failed to prove any causal connection with the Waldman statements and the search or the hashtag activity, those spikes, as it relates to Twitter. There's no causal connection there. My second opinion is, you know, based on my social media and Q Score analysis, Ms. Arnold's alleged comparable actors are not comparable. And then, third, Ms. Arnold and Mr. Schnell both failed to prove any causation as it relates to the Waldman statements causing economic harm to Ms. Heard. So you know, as a damages expert, which Ms. Arnold is, you need to take into consideration causation before you can calculate damages. You look at damages and you look at this allegedly damaging event, and not only do you have to prove that 100% of the damage is because of these Waldman statements.

She didn't even consider COVID. It happened at the same time. You know, a lot of actors probably made a lot less money because of COVID. Maybe films didn't get made. And you know, when you do an analysis of damages, you prove causation, but you also have to look at everything else that might have caused this alleged economic harm. And she didn't look into any of that. She didn't even know what causation was. So I don't think damages is an appropriate approach in this case.

Ms. Lecaroz: No further questions, Your Honor.

Judge Azcarate: All right, cross-examination.

Mr. Nadelhaft: Good afternoon, Mr. Bania.

Mr. Bania: Hi.

Mr. Nadelhaft: Yeah. You're not a damages expert, correct?

Mr. Bania: I am a damages expert but not providing any quantitative damages opinions in this case.

Mr. Nadelhaft: In this case, okay. And is it your testimony that only if a person repeats the Waldman-Depp statements could they be related to the defamation?

Mr. Bania: Say that one more time?

Mr. Nadelhaft: Are you saying that a person literally has to repeat the Waldman-Depp statements in a tweet for them to be related to the defamation?

Mr. Bania: No. If you looked at my analysis, I did pick the three themes as it relates to the tweets, and I analyzed those themes, and I came up with five examples of when those themes were used.

Mr. Nadelhaft: And you ran searches for "abuse hoax, sexual violence hoax, and fake sexual violence," and you ran all those in quotes, correct?

Mr. Bania: I did.

Mr. Nadelhaft: So only if a person used a tweet with those words in that order and with that spacing would they hit on your searches, correct?

Ms. Lecaroz: Objection, compound.

Judge Azcarate: Overruled.

Mr. Bania: Yeah, so I used them in quotes because, you know, hoax could be used in many other contexts. So I wanted to make sure I was fitting my search with the theme of the Waldman statements.

Mr. Nadelhaft: So if someone tweeted, "Ms. Heard faked sexual violence," that wouldn't appear in your searches, correct? Faked, with an -ed.

Mr. Bania: It would not.

Mr. Nadelhaft: Okay. And if they used two spaces between abuse and hoax, that wouldn't fit in your search?

Mr. Bania: That's correct.

Mr. Nadelhaft: Okay. Did you...and a tweet can only be 280 characters, correct?

Mr. Bania: That's correct.

Mr. Nadelhaft: All right. So certain of the Waldman-Depp statements, a person could not tweet the whole thing in one tweet, correct, the whole statement in one tweet?

Mr. Bania: The Waldman statements?

Mr. Nadelhaft: Correct.

Mr. Bania: No, you could not tweet those entire quotes.

Mr. Nadelhaft: Did you make any determination if there was an online bullying campaign against Mr. Depp after Ms. Heard's op-ed?

Mr. Bania: I didn't look into any online bullying campaign for Ms. Heard nor Mr. Depp.

Mr. Nadelhaft: Did you determine if there were tweets harassing Mr. Depp that quoted from Ms. Heard's op-ed?

Mr. Bania: No, my assignment was to determine if the Waldman statements were part of the tweets that Mr. Schnell provided. I was rebutting him.

Mr. Nadelhaft: And in your analysis of when you testified before, you never looked to see if the op-ed was quoted anywhere, correct?

Ms. Lecaroz: Objection, Your Honor, may we approach?

Judge Azcarate: All right, question's withdrawn. Next question.

Mr. Nadelhaft: Now, you have no objection to Ms. Arnold's use of comparables, correct? Just the use of comparables in general.

Mr. Bania: I listened to her testimony and my understanding that she abandoned that approach. But as it relates to my testimony today, my opinion was related to those specific alleged comparable actors that they were not comparable.

Mr. Nadelhaft: You're not offering an opinion as to who the appropriate comparables should be to Ms. Heard, correct?

Mr. Bania: Correct.

Mr. Nadelhaft: Okay. And you testified just before about the Q Scores of Ms. Heard and the comparables. That was Plaintiff's Exhibit 1296, correct?

Mr. Bania: I don't know what 1296 means.

Mr. Nadelhaft: Okay. The demonstrative in front of you.

Mr. Bania: Mine? Yes, that's correct.

Mr. Nadelhaft: And you said that those were all for the winter of 2019?

Mr. Bania: I said Ms. Heard's were from the winter of 2019.

Mr. Nadelhaft: Because isn't it true that none of the rest of these people were from the winter of 2019, correct?

Mr. Bania: That's correct.

Mr. Nadelhaft: Okay. In fact, Mr. Momoa's was from the summer of 2020.

Mr. Bania: That's correct. Not all alleged comparable actors had Q Scores for that date. What was important for me is to get Ms. Heard's Q Scores right after Aquaman but before the Waldman statements.

Mr. Nadelhaft: So you weren't comparing apples to apples, correct?

Mr. Bania: I wouldn't say that. I'm saying that it's not the exact same years.

Mr. Nadelhaft: Well, so, in the winter of 2019, that Q Score comes out. The field work dates for that is from January 22nd, 2019 to February 7th, 2019, correct?

Mr. Bania: That is correct.

Mr. Nadelhaft: So that would be start...so the field work would be starting almost immediately after Aquaman just came out, correct?

Mr. Bania: Yeah, in her star-is-born moment, yes.

Mr. Nadelhaft: You'd agree that, for the winter of 2020, where you took Jason Momoa's Q Score, would have more time to account for the rise in popularity of the film, "Aquaman," correct?

Mr. Bania: Well, actually, if I use Ms. Arnold's suggestion, these celebrities tend to have, you know, the celebrity moment right after they have their breakout film. So I disagree with that. I think maybe his Q Scores could be lower as it relates to when I use them.

Mr. Nadelhaft: You'd agree that, for the winter of 2020, Mr. Momoa's Q Score would have more time to account for the rise in popularity of the film, "Aquaman."

Mr. Bania: I don't know if it accounts for the rise of popularity. Again, using Ms. Arnold's words, usually, a Q Score will be the highest right after the film, like I did measure Ms. Heard.

Mr. Nadelhaft: May I approach, Your Honor.

Judge Azcarate: All right. Do so.

Mr. Nadelhaft: All right.

Ms. Lecaroz: Thank you.

Judge Azcarate: All right. Thank you.

[02:51:59]

[silence]

[02:52:15]

Mr. Nadelhaft: If you look on page 177 of your deposition transcript, you see that?

Mr. Bania: I don't see the pages that...what you handed me.

Mr. Nadelhaft: You don't see page 177? I think they're four pages. Four pages per...

Mr. Bania: Oh, yes, thank you.

Mr. Nadelhaft: And I ask you, at lines 6 through 10, you'd agree that, for the winter of 2020, Jason Momoa's Q Score would have more time to account for the rise of popularity in the film, "Aquaman." And you answered yes.

Mr. Bania: Yeah. At that time, as I am a rebuttal expert to Ms. Arnold, based on her testimony, I've learned something new from her.

Mr. Nadelhaft: Okay. And you didn't look at Ms. Heard's Q Score for summer of 2020, correct?

Mr. Bania: She doesn't have any.

Mr. Nadelhaft: And Ms. de Armas had a lower familiarity score than Ms. Heard, correct?

Mr. Bania: If I don't have that in front of me, but if you're saying that, yes.

Mr. Nadelhaft: Okay. And Ms. de Armas's career trajectory has gone up since the summer of 2020, correct?

Mr. Bania: I don't know. I didn't analyze her career trajectory.

Mr. Nadelhaft: Okay. Could you put up Plaintiff's Trial Exhibit 1297? That was the demonstrative. Ms. de Armas has less Instagram followers than Ms. Heard, correct?

Mr. Bania: Correct.

Mr. Nadelhaft: And Ms. Heard has more than double the Instagram followers of Ms. de Armas, correct?

Mr. Bania: Yes.

Mr. Nadelhaft: Okay. And isn't it true that you get more social media followers the longer you're on social media?

Mr. Bania: Not necessarily. It doesn't work that way. It depends on many other factors.

Mr. Nadelhaft: And so Ms. de Armas had a lower familiarity score and less Instagram followers, yet your testimony is that she would not be a proper comparable to Ms. Heard?

Mr. Bania: That's correct.

Mr. Nadelhaft: Okay. And you're not offering a different set of people who should be comparables, correct?

Mr. Bania: That's correct.

Mr. Nadelhaft: Okay. Thank you. You can take that down. Now, you understand that Mr. Waldman has been banned from Twitter for life for harassing Amber Heard, correct?

Mr. Bania: I don't know that, but if that's the case.

Mr. Nadelhaft: And you understand that Mr. Waldman appealed the decision to Twitter, and they have confirmed his ban for life?

Ms. Lecaroz: Objection, Your Honor. May we approach on this one?

Judge Azcarate: Okay, sure.

[02:55:00]

[silence]

[02:55:32]

Mr. Nadelhaft: You agree that, in looking at Mr. Schnell's data, 65% of the uses of negative hashtags relating to Ms. Heard occurred between April 1st, 2020 and June 15th, 2021, correct?

Mr. Bania: Correct.

Mr. Nadelhaft: Okay. And you would agree that five of the six highest spikes of the negative hashtags were after the Depp-Waldman statements, correct?

Mr. Bania: Correct.

Mr. Nadelhaft: Okay. And where you talked about the February 2020 spike...and the 65%, by the way, even includes the February 2020 spike of tweets, correct?

Mr. Bania: That's correct. Well, there was no spike in Feb. 2020, during the Waldman statements.

Mr. Nadelhaft: Well, the spike in February 2020 was before the Waldman statements, right?

Mr. Bania: I would have...can we pull up the chart again if you want to talk about the spikes?

Mr. Nadelhaft: Sure. Can you put up 1294? Number one.

Mr. Bania: Number one, yeah, that spike happened before the Waldman statements.

Mr. Nadelhaft: Okay. And there was hardly any activity in negative hashtags until February 2020, correct?

Mr. Bania: That's correct.

Mr. Nadelhaft: And you understand that the spike in February 2020 was related to the partial tape that Mr. Waldman and Mr. Depp leaked to the Daily Mail, right?

Mr. Bania: I'm aware that the articles were related to Heard admitting to hitting Depp.

Mr. Nadelhaft: And you understand that Mr. Waldman testified that Mr. Depp and Mr. Waldman met with the Daily Mail in person to provide the partial tape to the Daily Mail.

Ms. Lecaroz: Objection, Your Honor.

Mr. Nadelhaft: She's talking about...he talked about what the number one related to.

Judge Azcarate: What's the objection?

Ms. Lecaroz: Sorry, lack of foundation.

Mr. Nadelhaft: I'm asking if he knows or he doesn't.

Judge Azcarate: All right. I'll rule.

Mr. Bania: So what's important to me is the fact that this spike is prior to the Waldman statements.

Mr. Nadelhaft: Sir, do you know if Mr. Waldman testified that Mr. Depp and he met with the Daily Mail in person to provide the partial tape in February of 2020?

Mr. Bania: No.

Mr. Nadelhaft: You don't know one way or the other.

Mr. Bania: That's irrelevant to my opinion.

Mr. Nadelhaft: Okay. And the spike in July of 2020 came right after the last defamatory statement by Mr. Depp and Mr. Waldman, correct?

Mr. Bania: The July spike, which is number two, is not related to the Waldman statements, and they're articles related to abuse between Heard and Depp and feces found in Depp's bed.

Mr. Nadelhaft: And that's based on Google Searches you did?

Mr. Bania: That's correct.

Mr. Nadelhaft: Okay. But the July spike in time came after the June 27th, 2020 defamatory statement by Mr. Depp and Mr. Waldman, correct?

Mr. Bania: That's correct.

Mr. Nadelhaft: Okay. And five of the six spikes came after the defamatory statements, correct?

Mr. Bania: After the Waldman statements, yes.

Mr. Nadelhaft: Okay. Now, you testified before that you eliminated shares and likes of the Depp-Waldman statements from your analysis, right?

Mr. Bania: Repeat that, please?

Mr. Nadelhaft: Did you say that you eliminated shares and likes of tweets that included the Depp-Waldman statements?

Mr. Bania: That's correct. When I was doing my analysis, I noticed the exact same text was a part of many of these tweets.

Mr. Nadelhaft: Don't shares and likes disseminate the negative information?

Mr. Bania: That's quite possible.

Mr. Nadelhaft: Okay. And you agree, right, that use of the term waldman or waldmignon occurred over 25% of the time in the negative tweets toward Ms. Heard from April 2020 through January 2021, correct?

Mr. Bania: Although it's irrelevant to this case, it has nothing to do with the Waldman statements, that's what Mr. Schnell says.

Mr. Nadelhaft: You don't disagree with the search results, correct?

Mr. Bania: Although it has nothing to do with this case or the Waldman statements, I do not disagree.

Mr. Nadelhaft: So if people are tweeting about Adam Waldman or waldmignon at the same time as tweeting negative hashtags about Amber Heard, that has...it's your testimony that they have nothing to do with this case?

Mr. Bania: The hashtags have nothing to do with this case.

Mr. Nadelhaft: That's what you're saying. Okay.

Mr. Bania: Yeah.

Mr. Nadelhaft: Okay. And even if they include the negative hashtags with Mr. Waldman, the name, and waldmignon, you're saying they have nothing to do with the defamatory statements.

Mr. Bania: All four hashtags that Schnell used had nothing to do with the Waldman statements. Waldman, himself, has nothing to do with the Waldman statements. We're talking about the Waldman statements here. Waldmignon, I don't even know what that is, but again, it has nothing to do with this case, and it's not related to the Waldman statements. That's what's important.

Mr. Nadelhaft: And the reason you're saying they're not related to the Waldman statements is because someone didn't literally copy what Adam Waldman said in the Daily Mail and tweet it out?

Mr. Bania: Well, I looked at enough tweets that included the name Waldman that have nothing to do with anything negative or the Waldman statements. I mean, Mr. Waldman...

Mr. Nadelhaft: No, they must have had to have the negative hashtags toward Ms. Heard, because the only way that those would have been in the data you looked at would have had the negative hashtags towards Ms. Heard. It was looking at that universe, correct?

Mr. Bania: Well, first of all, I don't agree that #JusticeForJohnnyDepp is a negative hashtag towards Amber Heard. So, listen, the assignment was to determine if the tweets that Mr. Schnell presented were related or included the Waldman statements.

Mr. Nadelhaft: In your review of the tweets related to Ms. Heard, you cannot point to any that were positive toward Mr. Heard, correct?

Mr. Bania: Again, I was not looking for that.

Mr. Nadelhaft: And you did not review the hashtag #JusticeForJohnnyDepp during the time frame from April 1st, 2020 to January 1st, 2020 to see if there were any that were not negative toward Ms. Heard.

Mr. Bania: I did not look into anything as it relates to anything other than what relates to the Waldman statements. That's what's at issue here today as we sit in court.

Mr. Nadelhaft: Okay. And you didn't form any statistical analysis to rule out the Waldman statements' impact on the hashtags, correct?

Mr. Bania: Correct.

Mr. Nadelhaft: You did not analyze whether media and press coverage other than the Waldman statements affected Ms. Heard's career, correct?

Mr. Bania: Correct.

Mr. Nadelhaft: Okay. Looking at the exhibit that's in front of you where you have the numbers here, those you said are related to Google Searches?

Mr. Bania: The one through six?

Mr. Nadelhaft: Correct.

Mr. Bania: Yes.

Mr. Nadelhaft: Okay. And can we put up Plaintiff's 888? And we could just start at one. Do you understand that you're...? Okay. Oh, thanks. And 888, it's page 76, these are the documents you relied upon for your opinion today?

Mr. Bania: Yes.

Mr. Nadelhaft: And are these the search...where it has the different letters, these are the searches that you ran for the various time frames and the articles that came up for numbers one through six, correct?

Mr. Bania: No. I mean, obviously, Document 1A is the Heard Supplemental Expert Witness Disclosure. These are documents that I used throughout the time I've been working on this project. So these aren't related to those one through six numbers.

Mr. Nadelhaft: Okay. These are documents you relied upon for your opinion today?

Mr. Bania: These are the documents that I relied upon when I presented my designation.

Mr. Nadelhaft: For your opinions today, that you're offering today?

Mr. Bania: Yeah, these are the documents that, yes, I've relied on throughout this entire...this case.

Mr. Nadelhaft: Okay. And actually, Michelle, could you turn in this designation to...let's see. Hold on one second. Can you just scroll down? Yeah, keep scrolling. Let's keep going. Keep going. Okay, stop. This was the chart you provided with your designation for your opinions in this case, correct?

Mr. Bania: Yes.

Mr. Nadelhaft: Okay. And it's similar to the chart that we had before with the one through six, correct?

Mr. Bania: That's correct.

Mr. Nadelhaft: And where it has the various boxes, it's talking about documents 6E through 6H, for instance, related to Depp wanting to have Heard replaced on Aquaman.

Mr. Bania: Yes.

Mr. Nadelhaft: You prepared this chart, correct?

Mr. Bania: Yeah, this was part of my designation.

Mr. Nadelhaft: I'd like to have this page as a demonstrative.

Ms. Lecaroz: Your Honor, I do have an objection, if I might be heard.

Judge Azcarate: All right, if you wanna come forward. Page 99.

[03:05:19]

[silence]

[03:05:42]

Mr. Nadelhaft: Mr. Bania, other than... So as I understand it, the way you determined that the tweets were not related to the Waldman statements was that you looked at time and then you ran certain Google Searches, correct?

Mr. Bania: Correct.

Mr. Nadelhaft: And then the top three hits came up.

Mr. Bania: Correct.

Mr. Nadelhaft: And then you looked through the article to see if the Waldman statements were there.

Mr. Bania: So as it relates to any trending event, any defamation that's happened online, any allegations of economic loss because something went viral, going to Google, looking at the spikes in time, and going back in time to see what was happening on those top three sites will give you an indication of the best results that were being served at that time. So something viral that's happening would appear most likely in those top three results.

Mr. Nadelhaft: And just so the record is clear, if we could go back to page 76 of this document. Numbers 6A through 6N, going to the next page, those are the headlines of the searches that you found.

Mr. Bania: Correct.

Mr. Nadelhaft: Okay. And you don't disagree that the negative tweets toward Ms. Heard have continued throughout the analysis of the tweets, correct?

Mr. Bania: I'm not looking at whether they're negative tweets or those hashtags are negative. I'm determining if those tweets are related to the Waldman statements.

Mr. Nadelhaft: Okay. So you have no opinion whether the tweets were positive or negative towards Ms. Heard, that's what you're saying?

Mr. Bania: Yes, I'm just analyzing whether or not they're related to the Waldman statements.

Mr. Nadelhaft: Okay. Thank you. Nothing further.

Judge Azcarate: All right, redirect.

Ms. Lecaroz: I have no further questions of this witness, Your Honor. Thank you, Mr. Bania.

Judge Azcarate: Sir, you can leave the courtroom or you can...

Mr. Bania: Thank you.

Judge Azcarate: All right, your next witness. All right. Ladies and gentlemen, we're going to take a brief recess for you at this point. Hopefully, within 15 minutes we'll be back here, okay? Do not discuss the case, do not do any outside...sorry. Do not discuss the case and don't do the outside research. Sorry. We'll just take a short break.

[03:08:30]

[silence]

[03:08:51]

All right. So, just so that we're on the same page...you can have a seat. You don't have to keep standing the whole time. All right. Just so we're on the same page with Mr. Night's testimony...actually, can Mr. Night go back out, please?

All right, all right. So we're on the same page with Mr. Night's testimony, there's a rule on witnesses, however, Mr. Night's a rebuttal witness. The purpose of excluding witnesses from the courtroom, usually, it's a courtroom, is to deprive a later witness of the opportunity to shape testimony to correspond with that of an earlier witness. The issue we have here, obviously, if it was a direct witness in the direct testimony, you had time to rule on witnesses, let them know about the rule on witnesses. With a rebuttal witness, it's a little different because they didn't know they were going to be a witness. You didn't know they were going to be a witness. I understand that part. The problem is the courtroom, in this particular case, appears to be the world.

So what we have to do here is I'm going to do a voir dire, and I'll allow both sides to ask questions as well of Mr. Night to see what he has seen

of the case. And I'm just going to use the factors that the case law in Virginia uses, which, the factors to consider, because the court does have broad discretion to permit or prohibit a witness to testify in this particular circumstance. So the factors I'm going to consider is if the impropriety was intentional, which we'll find out, the prejudice attached to it, also, if the excluded witness learned about substantive aspects of the case from an earlier testifying witness, and whether that knowledge had any effect on his or her testimony. So those are the three factors I'm going to look at in weighing this decision. So keep that in mind when you do your voir dire. And it's my understanding that the evidence that Mr. Night will testify only relates to Hicksville. Is that correct? Okay. All right. Now, we can have Mr. Night come back.

All right. So, Mr. Night, if you could come forward to be sworn.

Woman: Do you solemnly swear or affirm to testify truthfully in this case in a penalty of law?

Mr. Night: I do.

Judge Azcarate: All right. Sir, if you can just have a seat, please. Sir, what we're doing is I'm just going to ask you a few questions outside the presence of the jury, and then the attorneys are going to ask you a few questions, okay? Then, I'm going to have you step back outside after that, okay?

Mr. Night: No problem.

Judge Azcarate: All right. What's your full name, sir?

Mr. Night: Morgan Higby Night.

Judge Azcarate: Okay, you don't have to be that close. All right. All right. How do you spell your last name?

Mr. Night: N-I-G-H-T.

Judge Azcarate: Okay. All right. And, sir, before I can have you testify, I just want to ask you a few questions. Have you seen any of the trial that's been going on for the past six weeks?

Mr. Night: Approximately five weeks ago, a friend of mine texted me that Hicksville was mentioned, and I watched a little clip where it was mentioned.

Judge Azcarate: Okay. Which clip did you watch?

Mr. Night: I believe it was somebody testifying about...I think it was the security guard testifying maybe about Hicksville. I forget exactly who was testifying, but it was something where Hicksville was mentioned, and it was about something about a wrist, or something like that.

Judge Azcarate: All right. And what did you do after that? At some point, did you get in contact with attorneys?

Mr. Night: So I didn't reach out to them. I didn't really care. The innkeepers that worked at Hicksville before reached out to them and said, "We saw some stuff that wasn't true," and then they asked, "Is it okay if I give the attorneys your phone number?" So the attorneys reached out to me.

Judge Azcarate: Okay. And when did the attorneys reach out to you?

Mr. Night: May 3rd.

Judge Azcarate: May 3rd. And you talked to the attorneys at that time?

Mr. Night: Yeah, yeah.

Judge Azcarate: Okay.

Mr. Night: Not Camille, but Yarelyn.

Judge Azcarate: Okay. And then, have you seen any other parts of the trial?

Mr. Night: No, she instructed me not to watch anything about it, regardless of if it was about Hicksville or not. So I have been keeping off the internet and turning off anything that seems to be...like, it's on social media, so I just don't watch any of that.

Judge Azcarate: Okay. All right. And questions, Ms. Bredehoft?

Ms. Bredehoft: So, Mr. Night, you were contacted by an attorney for Mr. Depp on May 3rd?

Mr. Night: Yes.

Ms. Bredehoft: Okay. And you said it was Carolyn?

Mr. Night: Yarelyn.

Ms. Bredehoft: Yarelyn. Oh, Yarelyn, I got it. Okay. And what...

Mr. Night: I do think it's pronounced Yarelyn.

Ms. Bredehoft: Okay. Can you tell us the conversation you had with her at that time?

Mr. Night: Yeah. She just asked me my recollection of the evening, and I told her, and she said, "Okay, would you mind testifying?" And I said, "Sure." And she said, "Okay, well, then, we're not sure if we're gonna call you or not, but just in case, please don't watch anything having to do with the case." And I said, "I will do."

Ms. Bredehoft: Now, how is it that, to your best knowledge, how is it that Yarelyn was able to get hold...how did she know that you knew something?

Mr. Night: So, like I said, two of my innkeepers, my innkeeper and my manager, had reached out to her team, I think, through email, and one of them texted me and said, "Hey, do you mind if we give Yarelyn your phone number?"

Ms. Bredehoft: Now, you also communicated on Twitter, did you not, about this case?

Mr. Night: Yeah, two weeks prior to Yarelyn reaching out to me, someone had made a comment about something that happened by the fire pit, and I said, "That's not my recollection. I didn't see...that's not what I saw."

Ms. Bredehoft: So, who was it that made a comment about something that happened at the fire pit?

Mr. Night: So once I was told about the fact that Hicksville was mentioned, I went and did a Twitter search of Hicksville Trailer. So it was...I don't know who it was, but I was just, like, "What are they saying about Hicksville?" And so that was why I did a search just to see, because it was weird and fascinating, because the night to me wasn't that remarkable in the context of all the different experiences I've had at the Trailer Palace.

Ms. Bredehoft: So explain to me, please, what you mean by you did a trailer search.

Mr. Night: So if you go to Twitter and you put in keywords and do a search, all the tweets regarding that subject come up or anything with those keywords in it. So that is how I found the tweet that I replied to.

Ms. Bredehoft: Okay. And how many tweets did you find that mentioned Hicksville when you did that trailer search?

Mr. Night: Probably, like, five or six. I only replied to one of them.

Ms. Bredehoft: Okay. And what do you recall those tweets saying about Hicksville?

Mr. Night: The one that I replied to said that there was some incident by the fire pit, and Johnny was yelling at Amber. And I replied that I didn't see that. I was there all night, and I was, you know, I was working that night. So I didn't see anything like that.

Ms. Bredehoft: So your best recollection on that one was that somebody said somebody was testifying that Johnny was yelling at Amber?

Mr. Night: Yeah, and I believe, grabbed her or something along those lines.

Ms. Bredehoft: Do you recall who said Johnny was yelling at Amber and grabbed her?

Mr. Night: I have no idea. It was a stranger, so I didn't really pay attention to who was writing it.

Ms. Bredehoft: All right. You said that you responded to it. How did you respond to it?

Mr. Night: I said, "That's not what happened. I was there all night." Yeah, basically, I'm paraphrasing. It was...

Ms. Bredehoft: Did you say anything about what you thought happened?

Mr. Night: I just said that didn't happen. I didn't say what...I believe I said maybe something along the lines of, "From what I saw, Amber was the one acting jealous, not Johnny."

Ms. Bredehoft: And you said this to one of the tweets.

Mr. Night: Yes.

Ms. Bredehoft: Do you recall whether that was the Umbrella Man?

Mr. Night: I don't recall. That's a ridiculous name, though.

Ms. Bredehoft: Okay. So tell me about the other five tweets that you recall seeing when you ran your trailer search.

Mr. Night: I think they were similar in nature, but I don't specifically remember the details of them. That was pretty much the only one I remembered, and that's the only one I replied to.

Ms. Bredehoft: Do you remember anything about the other five and what was said?

Mr. Night: No.

Ms. Bredehoft: Okay. When you said that somebody told you about the security guard, what was your understanding of what the security guard said?

Mr. Night: I just got a text that somebody in the trial had said that they were talking about the Trailer Palace during the trial, and so that's what led me to go on Twitter and do a search.

Ms. Bredehoft: Okay. And did you have any communications with the two innkeepers about what you knew or what you thought?

Mr. Night: No, I hadn't talked to them in years, and still haven't regarding the case.

Ms. Bredehoft: So, how is it that the innkeepers, then, contacted you and said, "Do you mind if we give you the telephone number to the attorneys?"

Mr. Night: Because they still have me in their phone, and Christie, who was the manager at the time, is the one that texted me and said, "Hey, do you mind if we pass this along? Mr. Depp's attorneys want to talk to you."

Ms. Bredehoft: Do you mind if we pass what along?

Mr. Night: Your phone number.

Ms. Bredehoft: Right. But how is it that...what is the communication you had with the innkeepers that even led them to understand that you believed you had knowledge about the Hicksville incident?

Mr. Night: There was no conversation. They knew because they were both working that same night. Jenna was the innkeeper, and she was there along with me that night. Christie was the one who texted me, and she had come in the following morning for her shift. And I slept over. I was live-in innkeeper that night.

Ms. Bredehoft: So I'm trying to understand. So, just based on the fact that, seven years ago, they happened to know that you were working that night.

Mr. Night: Nine years ago, and it's because I was there with them.

Ms. Bredehoft: Okay. My math...well, it's 2022 right now, and that was what year?

Mr. Night: 2013.

Ms. Bredehoft: Oh, that was '13, you're right. Okay. So, how is it that, out of the blue, they remembered, nine years ago, that you worked there that night and that you might have some knowledge?

Mr. Night: I mean, to be honest, like, we do get celebrities sometimes, but it was, you know, it's not that unmemorable. It's not like it's any other night of the week. So I'm sure they remembered the specifics of that night.

Ms. Bredehoft: Had Mr. Depp's attorneys ever attempted to contact you before?

Mr. Night: No.

Ms. Bredehoft: Had you ever attempted to contact Mr. Depp's attorneys before?

Mr. Night: No, I had no interest.

Ms. Bredehoft: All right. Have you had any conversations with Mr. Depp's attorneys other than the one you described with Yarelyn?

Mr. Night: Since?

Ms. Bredehoft: Yes.

Mr. Night: Well, I met with Camille last night.

Ms. Bredehoft: All right. And what was that conversation? Please describe.

Mr. Night: I just went through, you know, the story, again, that I had told Yarelyn.

Ms. Bredehoft: And let's hear what that story was.

Mr. Night: You want me to go through...

Ms. Bredehoft: Yes.

Mr. Night: Oh, sorry.

Mr. Chew: Your Honor, we would object to attorney work-product.

Ms. Bredehoft: There's no attorney work-product.

Judge Azcarate: No, I'll overrule that objection.

Mr. Chew: All right.

Judge Azcarate: That's okay. Go ahead. Go ahead, sir.

Mr. Night: Yes, sure. That I described, like, them getting to the Trailer Palace, me showing them around, the interactions I had when I was on duty with Mr. Depp and Ms. Heard, how the evening progressed throughout the night, the levels of drinking and drug use that I witnessed, what the state of the damaged trailer the next morning, and basically just, yeah, the details that I had only, you know, spent total 45 minutes to an hour with Mr. Depp and Ms. Heard throughout the entire course of the night. So it was my recollection of those events during that time.

Ms. Bredehoft: And what did Ms. Vasquez say to you?

Mr. Chew: Your Honor, this is beyond...we object on the grounds that it's beyond the scope of the voir dire, which is limited to the first criteria...

Ms. Bredehoft: No. I think whatever she said to him is very...

Mr. Chew: May I please finish stating my objection, Your Honor?

Judge Azcarate: Go ahead. Yes, sir.

Mr. Chew: The objection is that it's beyond the scope of the voir dire. Your Honor enumerated the three criteria, which are relevant here. And this is a rebuttal witness, so.

Ms. Bredehoft: Your Honor, whatever Ms. Vasquez shared with him is going to be very important here because they knew, by this time, he was going to be a witness. So...

Judge Azcarate: That was last night.

Ms. Bredehoft: Right.

Judge Azcarate: So, how does that fit into one of the three factors of deciding whether or not he's going to testify?

Ms. Bredehoft: Well, one of the three factors...well, Your Honor, may I approach so that the witness doesn't hear?

Judge Azcarate: Okay, that's fine.

Ms. Bredehoft: Mr. Night, did Ms. Vasquez provide you with any information that anyone had testified to or said at any point?

Mr. Night: No, she didn't talk about anything except for asking me my experience and just getting a clear understanding of what my experience was. She didn't mention anything outside of the scope of what I saw and just asked me for the facts and told me just tell the truth and let me know, you know.

Ms. Bredehoft: Do you know what any of the witnesses said in this trial?

Mr. Night: About? I mean, outside of what I described earlier, with a friend of mine texting that someone was talking about Trailer Palace, I do not.

Ms. Bredehoft: Do you know whether any of the witnesses testified about any jealousy?

Mr. Night: Other than the tweet that I replied to? No.

Ms. Bredehoft: All right. Thank you. Your Honor, may we approach?

Judge Azcarate: All right. Well, do you have any questions? All right. Sir, if you could have a seat back outside the courtroom.

Mr. Night: Sure.

Judge Azcarate: Thank you.

Mr. Night: Can I leave my water?

Judge Azcarate: Yes, you can leave your water. Some matters we have to take up outside your presence, okay? All right. Thank you. All right, your next witness.

Ms. Vasquez: Plaintiff calls Morgan Night.

Judge Azcarate: All right. Mr. Night, if you could come forward to be sworn.

Woman: Do you solemnly swear or affirm to testify truthfully in this case in a penalty of law?

Mr. Night: I do.

Judge Azcarate: Sir, if you can have a seat.

Mr. Night: ...palace. So there's also different kind of amenities. There's a pool in Joshua Tree. There's a rec room up at Hicksville Pines.

Ms. Vasquez: When did you first become the owner of the Trailer Palace?

Mr. Night: Trailer Palace, I started building it in 2009. It took about a year, with my collaborator, Steven butcher on the trailers, and we got done and opened in 2010.

Ms. Vasquez: Did there come a time that you sold the Hicksville Trailer Palace?

Mr. Night: Yeah, I did. At the beginning of 2020, I had some health issues, and it was too much to run both at the same time. So I chose Idyllwild because it was newer and shinier.

Ms. Vasquez: And just for my sake, how long did you own the Trailer Palace?

Mr. Night: So, 10 years of us being open, 11 years total.

Ms. Vasquez: And what was the Hicksville Trailer Palace?

Mr. Night: So it started out as an artist retreat. I was a filmmaker at the time and wanted a place to get away and work on film projects outside of Los Angeles. I also put in a recording studio so musicians could record records there. I had lived in New Orleans for five years, and there was an amazing recording studio there called Kingsway where all the musicians would come, and they'd live in this big mansion and record their records. And I just thought that was a really neat thing for artists to be able to get away and create whatever they're working on.

Over the course of the build-out of all the trailers, themed trailers, which I'm a huge fan of this hotel called Madonna Inn, and so I wanted to do really detailed themed trailers. It became too expensive to just make a living off of an artist retreat, so I decided, before I was done, to make it a hotel as well.

Ms. Vasquez: And what were your job responsibilities, generally speaking, when you owned the Hicksville Trailer Palace?

Mr. Night: So I would be live-in manager some nights, a couple of nights a week. I would also drive out from Los Angeles twice a week and bring supplies that you can't get out in the Yucca Valley area and Joshua Tree. There's just a lot of things, like, you know, Smart & Finals, Costcos, and stuff. So I would drive that stuff out. There's also no USPS, so sometimes I'd have to get things shipped to my house and drive them out as well. I would also just do constantly building and creating new stuff at Trailer Palace, whether it's new trailers or amenities. So I would be working on that stuff as well. I'm a big fan of the fact that Disneyland is always making it better and better.

Ms. Vasquez: And when you were the live-in manager, does that mean that you spent the night at the Hicksville Trailer Palace?

Mr. Night: Yeah, we have a house on-site where the recording studio was, and there's a bedroom in there. So whoever is live-in manager those nights stays in the house and basically lives out of the kitchen and everything.

Ms. Vasquez: Have you ever met the plaintiff in this case, Mr. Depp?

Mr. Night: I had met him really briefly at the Viper Room in the late '90s. I worked with some of the people that performed there and was good friends with this girl, Robin, from the Pussycat Dolls and some other friends in this band, The Imposters. So I was there, and I met him once.

Ms. Vasquez: How about Ms. Heard? Ever met her?

Mr. Night: I had never met her before they were guests at the hotel.

Ms. Vasquez: When was the first time that you met Mr. Depp and Ms. Heard together?

Mr. Night: In late May 2013, when they were guests, Mr. Depp's assistant, Nathan, had rented out the entire place so they could have a night there in privacy.

Ms. Vasquez: What do you recall, if anything, about Mr. Depp and Ms. Heard's arrival to the Hicksville Trailer Palace?

Mr. Night: Mr. Depp got lost, so his security guard, who arrived early, asked me if I could go fetch them, because he had an old car that didn't really fare on the dirt roads out there, which are pretty horrible. So I went out and made sure that they got themselves and the car back to Hicksville safely.

Ms. Vasquez: Do you remember, approximately, at what time that was?

Mr. Night: It was 3:00 to 4:00 in the afternoon.

Ms. Vasquez: What was Mr. Depp's demeanor when they first arrived?

Mr. Night: At Trailer Palace, he was super excited about the place, really complimentary, just had a lot of questions, and which just seemed like he was in a really great mood.

Ms. Vasquez: And how about Ms. Heard's demeanor? Anything stick out?

Mr. Night: She was pretty quiet. She just kind of didn't say that much when I was giving them the tour of the grounds and the trailer.

Ms. Vasquez: And was anyone else with Mr. Depp and Ms. Heard when they first arrived?

Mr. Night: There's people that are arriving throughout the afternoon. So there was, I think, 10 to 12 people total ended up staying. The security guard had gotten there earlier just to check out the place. But, yeah.

Ms. Vasquez: And did I understand your testimony previously that the entire Trailer Park was rented out by Mr. Depp and Ms. Heard?

Mr. Night: Yeah. The whole place let, I believe, at the time, about 25 people, but there was only 10 to 12 at this party.

Ms. Vasquez: And who was part of that party besides Mr. Depp and Ms. Heard?

Mr. Night: I'm really horrible with names, but I remember one of them was Ms. Heard's sister and the security guard I mentioned before. But I honestly forgot his name too.

Ms. Vasquez: Okay. What happened when Mr. Depp and Ms. Heard first came on to the property?

Mr. Night: So I gave them a tour. We give all guests a tour of their specific trailer and the grounds and show them around. When someone rents the whole place, they get another trailer called the bar trailer, which is basically a place to set up their alcohol and stuff. And some people in the group were just putting their beverages in that area.

Ms. Vasquez: And where were you when Mr. Depp and Ms. Heard...did there come a time when Mr. Depp and Ms. Heard went to the bar trailer?

Mr. Night: I didn't notice. Most of the time, my interactions with them, everything's kind of centrally located. So there's a fire pit, bar trailer, and picnic tables, all right in the same area. So they were generally around that area the entire evening that I saw them.

Ms. Vasquez: What did you observe of Mr. Depp and Ms. Heard as the evening progressed?

Mr. Night: So Mr. Depp was just super curious and really nice. He was also really interested in my innkeeper, because she was a musician. So they would talk about music a lot. At one point, the innkeeper who lived at the next-door property went home and grabbed her guitar, and they

had sung a song or two around the campfire in the early evening. There's another instance where Mr. Depp, the innkeeper, her name is Jenna, and myself were talking about books and music. And Ms. Heard came over and kind of interjected. She seemed a little annoyed that Mr. Depp wasn't spending time with her.

Ms. Vasquez: What about Ms. Heard's demeanor made you think that she was annoyed?

Mr. Night: I think, just generally, she...it's hard. Like, she, I think...I don't know. It was just, like, a gut reaction. Like, I can't describe it, you know.

Ms. Vasquez: How long were you with Mr. Depp and Ms. Heard that evening, generally?

Mr. Night: So throughout the course of the evening, I was probably mostly with Mr. Depp, but 45 minutes to an hour total. So it was, yeah, that's over the whole course until the end of the night after they checked in.

Ms. Vasquez: Okay. And did you have an opportunity to observe Mr. Depp interact with other people, guests on the property that evening?

Mr. Night: Yes. I saw him hanging out with the security guard at one point, and outside of the time, him and Jenna were singing around the campfire. He was off by himself a lot of the time. And Ms. Heard was over at the campfire with her friends and seemed to have a good time.

Ms. Vasquez: And if you haven't already, can you generally describe for the jury your observations have Ms. Heard that evening?

Mr. Night: Yeah. She seemed to be having a really nice time with her friends around the campfire, and, yeah, everyone was in a pretty good mood.

Ms. Vasquez: Did there come a time in the evening that you observed Mr. Depp and Ms. Heard had a disagreement or an argument?

Mr. Night: Yes. I was speaking with Mr. Depp, just one on one, talking about Hicksville. And Ms. Heard came over, and she said, "I want to talk to you," and seemed really upset about something. So I went back in the house because it was really...they went off on their own, and she started yelling at him. And I didn't want to hear it, honestly. It was really triggering because I've been in an emotionally abusive relationship before.

Ms. Bredehoft: Objection. Objections, move to strike.

Judge Azcarate: What's the objection?

Ms. Bredehoft: Your Honor, may we approach?

Judge Azcarate: Okay, sure.

Ms. Vasquez: Mr. Night, will you please just explain for us what you observed when you saw Mr. Depp and Ms. Heard having an argument?

Mr. Night: Yes. So Ms. Heard asked him to go talk off to the side, and she was upset at him, and she was yelling at him. And I personally had...

Ms. Bredehoft: Objection.

Judge Azcarate: All right, I'll sustain the objection.

Mr. Night: Okay.

Ms. Vasquez: You could just explain to the jury what you observed when you saw Mr. Depp and Ms. Heard having an argument.

Mr. Night: Okay. He was kind of cowering and seemed almost afraid, and it was really, like, odd to see because he was older than her, obviously, so. But I just went back in the house because I didn't wanna...

Ms. Bredehoft: Objection, to what he did.

Judge Azcarate: All right, I'll sustain this too.

Ms. Vasquez: Understood. So after you observed the argument, fair to say, you went back to your house on-site?

Mr. Night: Yes, I did. Yeah.

Ms. Vasquez: Okay. What happened after that?

Mr. Night: So when I saw Mr. Depp on my next rounds, he apologized profusely and said, "I'm really sorry about that. She was upset."

Ms. Bredehoft: Objection, Your Honor, hearsay.

Judge Azcarate: Sustain. Next question.

Ms. Vasquez: What, if any, type of reaction did Mr. Depp have?

Mr. Night: He was just really...

Ms. Bredehoft: Objection, Your Honor, hearsay. He's gonna say it again.

Ms. Vasquez: It's the reaction. It's not the statement.

Judge Azcarate: All right, if you could make that clear, that's fine.

Ms. Vasquez: Yeah. Just what type of physical reaction did Mr. Depp have after the argument between Mr. Depp and Ms. Heard?

Mr. Night: He honestly, throughout the rest of night, became a lot more quiet and was just very more petulant. In the beginning of the night, he was a lot more outgoing and extroverted, and throughout...as the course of the night went on, he was less and less so and more quiet.

Ms. Vasquez: Did you observe any of the guests consuming alcohol while on the property?

Mr. Night: I assume they were. I mean, people had cups, and there was alcohol set up in the bar trailer. But I didn't physically see them pour alcohol into their cup and cup go into the mouth, per se.

Ms. Vasquez: Did you witness Mr. Depp drink any alcohol that evening?

Mr. Night: I couldn't say.

Ms. Vasquez: Okay. Anything about Mr. Depp's demeanor that made you think he was perhaps intoxicated?

Mr. Night: Yes. As the night went on, I am a former bar owner, so even though I wasn't drinking that night, I'm very familiar with the signs. So just as the night went on, like I said, he became more and more quiet, but he also, as we would have conversations, his head would kind of sway a little bit back and forth, which was a little, you know...he was much less sharp than he was earlier in the night.

Ms. Vasquez: Did Ms. Heard appear intoxicated to you?

Mr. Night: She did. She seemed...I think when she was angry at him, it seemed like she was intoxicated, but that's just based on my experience and my own personal trauma dealing with abuse.

Ms. Vasquez: Okay.

Ms. Bredehoft: Objection, Your Honor, move to strike.

Judge Azcarate: All right, I'll sustain the objection. We'll strike it from the record. Please, disregard that testimony.

Ms. Vasquez: Did you observe anyone do or take drugs?

Mr. Night: I did not.

Ms. Vasquez: Did you witness Mr. Depp and Ms. Heard interact other than the argument that you previously described for the jury?

Mr. Night: At the end of the night, I heard a commotion. I was inside the house and came out. I couldn't tell what was going on. And Mr. Depp and Ms. Heard were having a discussion about I'm not sure what, but then they went to their trailer. At that point, a lot of people had already gone to bed. So it just kind of petered out. Everyone went to bed, including myself, and I didn't hear anything else the rest of the night.

Ms. Vasquez: What time did the evening come to an end?

Mr. Night: I'd say it was almost around 3 a.m.

Ms. Vasquez: Did you ever see Mr. Depp grab anyone?

Ms. Bredehoft: Objection, leading.

Judge Azcarate: Sustained.

Ms. Vasquez: Did you ever see Mr. Depp become physical with anyone?

Ms. Bredehoft: Objection, leading.

Judge Azcarate: Sustained. Next question.

Ms. Vasquez: Okay. Did you ever witness Mr. Depp get angry?

Ms. Bredehoft: Objection, leading.

Judge Azcarate: Sustained.

Ms. Vasquez: What, if anything, happened the next morning?

Mr. Night: The next morning, we have checkout at noon, at the time, before COVID. And so, around 11:00, one of my innkeepers let me know that there was some damage.

Ms. Bredehoft: Objection, hearsay.

Ms. Vasquez: Did something happen that caused you to go to Mr. Depp and Ms. Heard's trailer?

Mr. Night: Yes, I was informed that...

Ms. Bredehoft: Objection, hearsay.

Ms. Vasquez: It's not being offered for the truth, Your Honor. I mean, may we approach on this one topic?

Judge Azcarate: Okay, sure.

Ms. Vasquez: Thank you. What, if anything, happened the next morning, Mr. Night?

Mr. Night: The innkeepers let me know that there was some damage in one of the trailers, and it happened to be Mr. Depp and Ms. Heard's trailer. So I wanted to inspect the trailer because I was extremely worried. All those trailers that Steve and I worked on were like my babies, and the one they were staying in was the only one that was mostly original and restored 1950s style. And so I was very concerned.

Ms. Vasquez: So, what did you observe when you went to the trailer?

Mr. Night: I observed that there was a light sconce by the bathroom in the bedroom that had been broken off the wall and a couple of pieces were on the floor. And they were...and, yeah, was basically just broken. The light fixture was hanging on the wall still, except for the pieces that were on the floor.

Ms. Vasquez: Did you come to understand how that happened?

Ms. Bredehoft: Objection, foundation.

Judge Azcarate: All right, foundation. I'll sustain as to foundation, how you knew.

Ms. Vasquez: Did you ask how the sconce was broken?

Ms. Bredehoft: Objection, hearsay.

Judge Azcarate: Sustained.

Ms. Vasquez: How often do light fixtures in the trailers break?

Mr. Night: They break pretty often. I mean, it's not, like, a usual thing, but things in the trailers generally get broken because it's all vintage trailers. And I would say, as much as every couple of weeks, there's some incident of damage in one of the trailers. In this case, Mr. Depp had told me that...

Ms. Bredehoft: Objection, hearsay.

Judge Azcarate: I'll sustain the objection.

Mr. Night: So, anyway, yes.

Ms. Vasquez: Beyond the light fixture, was anything else in the trailer damaged?

Mr. Night: No, everything else looks fine. In fact, we have something we call a piggy fee that we address to guests that, if there's anything, what we call, inconsiderate or unusually large messes, we charge them extra for it, for a \$25 an hour cleaning fee. But they did not receive one of those, because everything outside of light fixture looked fine.

Ms. Vasquez: And what was your reaction to seeing the damaged light fixture?

Mr. Night: To be honest, I was relieved because it was not a big deal. I just tucked...there was already another light in the room, so I just tucked the wires in the wall until I had a few months later time to buy. It was matching sconce with another one in the room, so I had to, on eBay, find a matching pair that would fit there. And when I finally got around to it, I was able to get that and charge it to Nathan, whose credit card I had.

Ms. Vasquez: And what was your understanding of who Nathan was?

Mr. Night: Mr. Depp's assistant.

Ms. Vasquez: Okay. And what did you charge Nathan or Mr. Depp for replacing that pair of light fixtures?

Mr. Night: The pair came out to \$62.

Ms. Vasquez: Okay. While you were on-site, Mr. Night, did you ever wear a mesh shirt?

Mr. Night: No, I would absolutely never wear that.

Ms. Vasquez: At any time during Mr. Depp and Ms. Heard's stay on the property, did you see Mr. Depp become physical with anyone?

Mr. Night: I did not.

Ms. Bredehoft: Objection, leading.

Judge Azcarate: Overruled. That's fine.

Ms. Vasquez: I'm sorry, that answer was?

Mr. Night: I never saw Mr. Depp get physical with anyone when I saw him.

Ms. Vasquez: Okay. Thank you, Your Honor. Nothing further.

Judge Azcarate: All right, cross-examination.

Ms. Bredehoft: Thank you, Your Honor. Mr. Night, you are a pretty big fan of Johnny Depp, aren't you?

Mr. Night: I am not. To be honest, throughout the evening, I...

Ms. Bredehoft: Sorry, I just asked you one question.

Mr. Night: Oh, I apologize.

Ms. Bredehoft: I didn't ask you the rest of that. You wanted to participate in this trial, didn't you?

Mr. Night: I did not. I was asked by the attorney, and I wanted to. They asked me, and I said I'll be happy to come and tell the truth.

Ms. Bredehoft: You knew this was on camera, that it was being broadcast to a lot of people, and you saw testimony, did you not, in this case, and you seized the moment and responded to the Umbrella Guy, the lead person for Mr. Depp's Twitters, did you not?

Ms. Vasquez: Objection, Your Honor, argumentative compound.

Judge Azcarate: Overruled.

Mr. Night: Mr. Umbrella Guy is the lead what?

Ms. Bredehoft: You knew that he is...he leads one of the most predominant pro-Depp Twitters out there.

Mr. Night: I have no idea. I don't care or follow the Umbrella Guy.

Ms. Bredehoft: In fact, you do follow a Twitter called Johnny Depp fan, don't you?

Mr. Night: Absolutely not.

Ms. Bredehoft: You don't? That's your testimony under oath?

Mr. Night: It is my testimony under oath.

Ms. Bredehoft: All right. And on April 21st, Mr. Depp testified in this case about Hicksville, didn't he?

Mr. Night: I wasn't here.

Ms. Bredehoft: And in fact, you tweeted in response to the Umbrella Guy on April 21, '22, "That never happened. I was with them all night. Amber was the one acting all jealous and crazy." Do you recall writing that?

Mr. Night: I do recall writing that.

Ms. Bredehoft: Michelle, can you bring that up, please? We're going to call it Defendant's 1903.

Judge Azcarate: 1903.

Ms. Bredehoft: And I'm going to go ahead and ask you to redact, leaving the Umbrella Guy and the date and the bringing in the Hicksville. Your Honor, I'm sorry.

[03:47:21]

[silence]

[03:47:45]

While she's working on that, did you write and direct a piece called "Matters of Consequence" back in 1999?

Mr. Night: I did.

Ms. Bredehoft: And didn't Mr. Depp's first wife, Lori Anne Allison, work as a makeup artist on that?

Mr. Night: She absolutely did.

Ms. Bredehoft: And while we're looking at that, four days after you tweeted to Umbrella Man...

Mr. Night: That was Umbrella Guy.

Ms. Bredehoft: Umbrella Guy, okay. Well, all right, now we have this up. I'm gonna ask you to take a look what is Defendant's Exhibit 1903. Do you see that?

Mr. Night: I do.

Ms. Bredehoft: Okay. And that's from ThatUmbrellaGuy on 4/21/22, correct?

Mr. Night: Correct.

Ms. Bredehoft: And it says, "Bringing in the Hicksville incident accusations." Do you see that?

Mr. Night: I do.

Ms. Bredehoft: And there's clearly Mr. Depp testifying there, likely a video, right?

Mr. Night: Okay.

Ms. Bredehoft: And you respond, "That never happened. I was with them all night. Amber was the one acting all jealous and crazy." Do you see that?

Mr. Night: I do.

Ms. Bredehoft: Your Honor, I'm going to move the admission of Defendant's 1903.

Judge Azcarate: Any objection?

Ms. Vasquez: Yeah, Your Honor, we believe the first part of the ThatUmbrellaGuy's tweet should be unredacted for context.

Mr. Night: I have no idea what I was replying to.

Ms. Bredehoft: It's hearsay. It's rank hearsay. The context is not necessary.

Judge Azcarate: If you want to approach.

Ms. Vasquez: Of course.

Judge Azcarate: All right. You can make that redaction. With that redaction, any objection?

Ms. Vasquez: No, Your Honor. Thank you.

Judge Azcarate: Okay, 1903 will be in evidence, as redacted.

Ms. Bredehoft: Now, so you reached out to the Umbrella Guy in this text, this Twitter, right?

Mr. Night: I wouldn't call it reaching out.

Ms. Bredehoft: Okay. In fact, the Umbrella Guy is in Mr. Adam Waldman. Do you know who Adam Waldman is?

Mr. Night: I have no idea.

Ms. Bredehoft: Well, he's testified earlier that he talks to the Umbrella Guy.

Mr. Night: Did he what, he talked to the Umbrella Guy?

Ms. Bredehoft: Yeah. Were you aware of that?

Mr. Night: Honestly, this sounds like schizophrenia.

Ms. Bredehoft: Okay. Now, four days after this event where you texted, and, Your Honor, yeah, it's in, okay, good, four days after that, you tweeted something pretty nasty about Elon Musk, didn't you?

Mr. Night: I did.

Ms. Bredehoft: Okay. Thank you. So you don't like Elon Musk, right?

Ms. Vasquez: Objection, relevance.

Mr. Night: I don't know Elon Musk.

Judge Azcarate: Overruled.

Ms. Bredehoft: Thank you.

Mr. Night: So that was...the context of that is that he...

Ms. Bredehoft: I didn't ask you for the content.

Mr. Night: I apologize.

Ms. Bredehoft: Okay. But you texted something that had swear words in it, would you agree, about Elon Musk?

Mr. Night: Yes.

Ms. Bredehoft: Okay. Now, let's talk about your recollections here. Forty-five minutes to an hour, your recollection is that Mr. Depp actually drove there?

Mr. Night: Yes.

Ms. Bredehoft: What type of car was he driving?

Mr. Night: An old one that was a convertible.

Ms. Bredehoft: An old convertible?

Mr. Night: I'm not a car guy, so I couldn't express the model.

Ms. Bredehoft: All right. And your recollection was this was May of 2013?

Mr. Night: Yes.

Ms. Bredehoft: Okay. Do you recall when in May?

Mr. Night: Late May.

Ms. Bredehoft: Okay. Now, you said that you spent a total of 45 minutes to an hour with Mr. Depp and Ms. Heard. Is that correct?

Mr. Night: After the...mostly Mr. Depp, but that's after the tour and after they were checked in throughout the course of the night.

Ms. Bredehoft: Okay. And you don't recall any of the people that were there other than Ms. Heard's sister and the security guard, correct?

Mr. Night: I don't recall any of their names.

Ms. Bredehoft: Do you remember how many of them were female?

Mr. Night: I believe it was predominantly female.

Ms. Bredehoft: Do you remember how many males were there?

Mr. Night: I don't, outside of the security guard.

Ms. Bredehoft: Do you remember what any of the other people looked like?

Mr. Night: They honestly just seem like youngish hipsters, like, for lack of a better term. I know that, previously, a couple of them had stayed at Hicksville Trailer Palace. That's how they knew about the place.

Ms. Bredehoft: Okay. So you don't recall seeing how much anybody had to drink that night, correct?

Mr. Night: I did not witness that.

Ms. Bredehoft: And do you recall the use of drugs at all?

Mr. Night: I did not witness that.

Ms. Bredehoft: Okay. Were you sitting at any point with these people at the campfire?

Mr. Night: I was not.

Ms. Bredehoft: Okay. And when you said that you saw Ms. Heard and Mr. Depp, and Ms. Heard was yelling at Mr. Depp, where were they?

Mr. Night: She pulled him for a chat, and it was off towards their trailer, like, a little bit off towards the dirt.

Ms. Bredehoft: How many feet were there between the campfire and their trailer?

Mr. Night: The campfire and their trailer?

Ms. Bredehoft: Yes.

Mr. Night: Approximately 75.

Ms. Bredehoft: Okay. So where in that 75 feet did Ms. Heard pull Mr. Depp and yell at him and he cowered?

Mr. Night: Twenty.

Ms. Bredehoft: Okay. Twenty from...

Mr. Night: From the campfire.

Ms. Bredehoft: From the campfire. So your testimony is that Ms. Heard grabbed Mr. Depp, pulled him 20 feet over, yelled at him, and he cowered.

Mr. Night: Yes, that's what I witnessed.

Ms. Bredehoft: And then, did they go back?

Mr. Night: I went inside the house.

Ms. Bredehoft: So you don't know whether they returned to the campfire or they returned to their trailer.

Mr. Night: I do not.

Ms. Bredehoft: Okay. And do you know whether there were any disagreements or physical communications, anything of that nature at the campfire?

Mr. Night: I do not.

Ms. Bredehoft: Do you know whether Mr. Depp did anything to anybody else at the campfire?

Mr. Night: I didn't see anything.

Ms. Bredehoft: Okay. Do you know whether Mr. Depp grabbed anybody's wrist and asked them if they knew how many pounds of pressure it took to break their wrist?

Mr. Night: I wasn't there the whole time.

Ms. Bredehoft: Okay. Is it your testimony that Mr. Depp and Ms. Heard went last to their trailer, everybody else went before them?

Mr. Night: The rest of the people, I think about half of them, had already gone to bed, and they went...I can't...it was all around the same time at

the end of the night that the rest kind of scattered. There might have been a couple of people that went right after them or right before, but it was all around the same time.

Ms. Bredehoft: Okay. So your recollection is that when Amber and Johnny Depp went back to their trailer, that dissipated...everybody then left at that point.

Mr. Night: Yes.

Ms. Bredehoft: Okay. Now, how far away was your house that you were staying in from the trailer that Amber and Johnny Depp were staying in?

Mr. Night: I'd say it was about 75 feet away.

Ms. Bredehoft: Okay. And the next time that you saw or heard anything was when you went there in the morning and saw the broken sconce. Is that correct?

Mr. Night: Yes, I didn't hear anything after I went to bed.

Ms. Bredehoft: Okay. And that's the extent of your knowledge.

Mr. Night: Yes.

Ms. Bredehoft: Okay. I have no further questions.

Judge Azcarate: All right, redirect.

Ms. Vasquez: Mr. Night, how did you get involved in this trial?

Mr. Night: I got a text from one of our old employees who I didn't talk to for years.

Ms. Bredehoft: Objection, hearsay.

Ms. Vasquez: Don't tell us what the text said, just how did you get involved?

Mr. Night: Okay. I got a text from...I got...

Ms. Bredehoft: That's still hearsay, Your Honor. Objection.

Mr. Night: Okay.

Judge Azcarate: Overruled.

Ms. Vasquez: Thank you. Go on, Mr. Night.

Mr. Night: I was asked if it was...

Ms. Bredehoft: Objection, hearsay.

Mr. Night: Apologize.

Ms. Vasquez: What did you...?

Mr. Night: I got a text.

Ms. Vasquez: You received a text, okay.

Mr. Night: Yes.

Ms. Vasquez: From whom?

Mr. Night: From a former employee.

Ms. Vasquez: Okay. And how long had it been since you had heard from this former employee?

Mr. Night: Approximately five years.

Ms. Vasquez: Okay. And did you contact Mr. Depp or any of his attorneys?

Ms. Bredehoft: Objection, leading.

Judge Azcarate: Overruled.

Mr. Night: I did not.

Ms. Vasquez: How did you get in touch with Mr. Depp's attorneys?

Mr. Night: They got in touch with me.

Ms. Bredehoft: Objection, hearsay.

Judge Azcarate: Overruled.

Ms. Vasquez: Go on, Mr. Night.

Mr. Night: They reached out to me.

Ms. Bredehoft: Oh, okay. Sorry.

Judge Azcarate: It's okay.

Ms. Bredehoft: I don't have an objection right now.

Judge Azcarate: Thank you.

Ms. Bredehoft: It's only if he talks more.

Judge Azcarate: Next question.

Ms. Vasquez: And how do you feel about participating in this trial?

Ms. Bredehoft: Objection, relevance.

Ms. Vasquez: It's extremely relevant considering that they have accused him of being...

Judge Azcarate: Overruled.

Ms. Vasquez: Thank you.

Mr. Night: How do I feel about it?

Ms. Vasquez: Yeah.

Mr. Night: I'm happy to tell what I saw, and that's the extent of it. I really don't care outside of that.

Ms. Vasquez: Thank you very much, Mr. Night.

Judge Azcarate: All right. I assume this witness is not subject to recall. Is that correct? All right. So you're free to go. Thank you.

Mr. Night: Thank you.

Judge Azcarate: All right, your next witness. Or is it going to be a deposition, or is it going to be...?

Ms. Vasquez: Apologies, Your Honor. Thank you. Dr. Shaw. Plaintiff calls Dr. Shaw.

Judge Azcarate: Okay, Dr. Shaw.

Woman: Do you solemnly swear or affirm to testify truthfully in this case in a penalty of law?

Dr. Shaw: I do.

Judge Azcarate: Thank you, sir. All right. Yes, ma'am.

Ms. Calnan: Good afternoon, Dr. Shaw. Can you please state your name for the record?

Dr. Shaw: My name is Richard John Shaw.

Ms. Calnan: Dr. Shaw, can you please describe your educational background?

Dr. Shaw: I'm a psychiatrist. I went to medical school at the University of London in England. I went straight off to high school. That's actually the system in the British medical system. I did two years of pre-clinical training and then three years of clinical work with patients. Following that, I moved to New Zealand to do an internship. It was an internship in neurology, medicine, surgery, and psychiatry. I spent three years in New Zealand, and I did a year of psychiatry residency training. Excuse me. Following that, I...excuse me. Following that, I moved here to the United States for the first time and did a residency in adult psychiatry at the Albert Einstein College of Medicine, which is in New York. That was four years of training in the Bronx. And I also did some subspecialty training in family therapy, couples, and family therapy in my fourth year. And after that, I moved to California, and I've worked at Stanford. I studied at Stanford. I did a fellowship in child and adolescent psychiatry, and I've been at Stanford pretty much since then.

Ms. Calnan: Dr. Shaw, what is your current position?

Dr. Shaw: I'm a professor of psychiatry in the Department of Psychiatry at Stanford. I also run what's called the psychiatry consult service at the Children's Hospital at Stanford.

Ms. Calnan: What, if any, professional certifications have you received?

Dr. Shaw: I have what's called board certification in adult and general psychiatry. I obtained that from the American Board of Psychiatry and Neurology in 1991. And then I obtained subspecialty board certification in child and adolescent psychiatry in 1993.

Ms. Calnan: Are you a member of any professional organizations in the field of psychiatry?

Dr. Shaw: Yes, I am. I'm a member of the American Academy of Child and Adolescent Psychiatry. I'm also a member of the Academy of Consultation-Liaison Psychiatry.

Ms. Calnan: How long have you been practicing psychiatry?

Dr. Shaw: If you include my training in psychiatry residency in the U.S., that would be since 1985.

Ms. Calnan: Is that approximately 35 years?

Dr. Shaw: Yeah, I think so.

Ms. Calnan: Okay. What percentage of your practice involves treating patients?

Dr. Shaw: Yeah, approximately three-quarters of my time is working with patients. I work in the pediatric hospital, treating a combination of, mainly, children and adolescents with severe medical conditions, but also working with parents of children who have severe medical conditions. I also consult to the pediatric emergency room, and we evaluate patients who show up with suicide attempts and other serious situations.

Ms. Calnan: What does the remaining quarter of your practice entail?

Dr. Shaw: Well, as a professor, I have to do a number of academic activities. So I do research. I do a lot of teaching. I give lectures. I supervise residents, medical students, and fellows in psychiatry. I do some administrative work. Yeah. So it's a pretty diverse, you know, varied day and week.

Ms. Calnan: Can you tell the jury a little bit about your research and academic work?

Dr. Shaw: A lot of my research has involved looking at the issue of trauma and PTSD in parents who have medically fragile children. A lot of these parents are naturally really affected by their child's illness and develop trauma symptoms. So I've developed some interventions to try to help parents, you know, provide support and treatment to reduce their symptoms of trauma.

Ms. Calnan: Have you published articles or books in your area of expertise?

Dr. Shaw: Yes, I have. I've published approximately 70 or probably closer to 80 peer-reviewed manuscripts in different scientific journals. I've also published a number of book chapters on various topics, approximately 30. And I have published three textbooks, one of which has gone into a second edition on topics that are related to my area of expertise, and one of them actually is about the treatment of PTSD in parents of premature infants.

Ms. Calnan: Have you published a book through the APA?

Dr. Shaw: Actually, all of those books were published through the APA, the American Psychiatric Association. They have a publishing house, and that's been my publishing company.

Ms. Calnan: What is the APA?

Dr. Shaw: The APA, the American Psychiatric Association, not to be confused with the American Psychological Association, is a professional

organization that represents psychiatrists in the U.S. The last time I looked at this, I think there's about 37,000 or 38,000 members, and the APA has many different roles. One of it is advocacy in psychiatry in the U.S., but it also has an important role in terms of education. So they host an annual scientific meeting every year, in which psychiatrists will present their research. It publishes a number of journals in the field. And from time...well, fairly frequently, it publishes guidelines for professional practice or about ethical guidelines that they hope the members will follow as part of their practice.

Ms. Calnan: What ways are you involved with the APA?

Dr. Shaw: Well, I mentioned my publishing. I also present at the scientific meetings. I last presented in 2021, during COVID, was virtually but on the topic of group therapy for parents with trauma symptoms. You know, I follow the APA and the various guidelines. I think it's a really influential and important institution.

Ms. Calnan: Going back to your credentials, what, if any, professional awards have you received?

Dr. Shaw: I've been given a number of several teaching awards at Stanford University, and the American Academy of Child and Adolescent Psychiatry that I mentioned honored me with an award for service to my specialty several years ago, I don't remember exactly when.

Ms. Calnan: Have you given any public presentations in the field of psychiatry?

Dr. Shaw: Yes, that's part of our work as an academic psychiatrist is to lecture, to give presentations. So I present fairly frequently at annual scientific meetings, as I mentioned. I've been invited to give grand round presentations at different medical centers, including the University of Pennsylvania and Harvard. So that's just part of, I think, our role is to try to educate our colleagues about our work.

Ms. Calnan: Have you testified as an expert in the field of psychiatry before?

Dr. Shaw: Yes, I have.

Ms. Calnan: On how many occasions?

Dr. Shaw: I would estimate, in terms of deposition and trial testimony, approximately 50 times in the past 15, 20 years.

Ms. Calnan: What type of cases did you testify as an expert in?

Dr. Shaw: They're pretty varied. So some of them have been medical malpractice. I've also done a number of cases evaluating victims who've been subject to physical or sexual assault or trauma.

Ms. Calnan: What work were you asked to do in this case?

Dr. Shaw: My role in this case was to give my opinions about the testimony and opinions of Dr. Spiegel, whom you heard from yesterday morning.

Ms. Calnan: And what work have you done to form your opinion?

Dr. Shaw: I was present yesterday in court, listening to his testimony. I have viewed his depositions, he had two depositions earlier this year, and I watched those depositions. I've also read a lot of deposition testimony, for example, testimony by Mr. Depp's psychiatrist, Dr. Blaustein, by his physician, Dr. Kipper, and Nurse Debbie Lloyd. I've reviewed depositions by many of the therapists involved in this case, including Dr. Banks, the relationship consultant, Dr. Cowan, who was Ms. Heard's therapist, and I think Dr. Anderson, who, I think, provided some couple's therapy. I've also reviewed the medical records of Dr. Kipper and Dr. Blaustein and some various email communications, I think a lot of the information that has been talked about here.

Ms. Calnan: Thank you. Your Honor, at this time, we'd like to offer Dr. Shaw as an expert in the field of psychiatry.

Judge Azcarate: Any objection?

Mr. Nadelhaft: May we approach?

Judge Azcarate: Okay. All right. So, any objection?

Mr. Nadelhaft: No objection, Your Honor.

Judge Azcarate: All right. So he'll be moved as an expert. Thank you.

Ms. Calnan: Dr. Shaw, you testified that you observed Dr. Spiegel's testimony yesterday.

Dr. Shaw: Yes, that's correct.

Ms. Calnan: And to reorient the jury, can you please generally describe the main areas in which Dr. Spiegel testified?

Dr. Shaw: Yes, he...

Mr. Nadelhaft: Objection, Your Honor, they heard what he testified [inaudible 04:09:31].

Ms. Calnan: Foundation to reorient them.

Judge Azcarate: That's okay. We can move forward.

Ms. Calnan: Okay. Do you have an opinion of Dr. Spiegel's testimony?

Dr. Shaw: Yes, I do.

Ms. Calnan: And what is your opinion?

Dr. Shaw: I have a couple of primary opinions. The first is that...my opinion is that he violated the ethical principles that are outlined in the Goldwater rule when he gave his opinions about Mr. Depp, specifically, with relationship to personality, traits, and his cognitive abilities. My second primary opinion would be that Dr. Spiegel's opinions were unreliable and that he had insufficient information.

Mr. Nadelhaft: Objection, Your Honor.

Judge Azcarate: All right. If you want to approach.

[04:10:24]

[silence]

[04:10:48]

Ms. Calnan: Dr. Shaw, you mentioned the Goldwater rule. What led up to the publication of the Goldwater rule?

Dr. Shaw: The Goldwater rule came about in response to an incident that occurred during the 1964 presidential election, when Senator Barry Goldwater was running as a Republican candidate, and there was a magazine called "Fact Magazine" that started a campaign to discredit Senator Goldwater. And they obtained a mailing list from the AMA and sent out a single survey questionnaire to about 12,000 psychiatrists in the U.S., asking if they felt that Senator Goldwater was fit to run for office. And about 2,000 psychiatrists responded, 1,000 of whom expressed very negative opinions about Senator Goldwater and made comments such as, for example, he was a megalomaniac, he was a paranoid schizophrenic, that he had narcissistic personality disorder. And as a result of that, he was replaced as a candidate and then went on to sue Fact Magazine for defamation of character. And he was successful in that lawsuit.

And in response to this incident, the American Psychiatric Association that I think was really concerned about how psychiatry was being represented in statements psychiatrists were making about someone

they had never met or evaluated, issued the Goldwater rule. And the main premise of the Goldwater rule is that it was improper for a psychiatrist to render a professional opinion about a public figure unless they had personally and closely evaluated them.

Ms. Calnan: What justifications did the APA provide, other than the ones you mentioned, for enacting the Goldwater rule?

Dr. Shaw: They wanted to make sure that psychiatric illness wasn't being stigmatized. They wanted to ensure that individuals weren't defamed by statements made by a psychiatrist that weren't backed up by medical evidence. And they also wanted to preserve the integrity of the psychiatric profession. Since I think the public, in general, when a psychiatrist speaks out publicly and expresses an opinion, a psychiatric opinion, people generally like to take that seriously, and the APA wanted to make sure that those opinions were credible and could be relied upon.

Ms. Calnan: Have there been any updates to the Goldwater rule?

Dr. Shaw: Yes. Since 1973, which is when the Goldwater rule first came out, there have been a number of revisions and publications by the APA. They're called annotations in psychiatry, in which the Goldwater rule has been better defined and expanded to some degree. So for example, in 2017, in this publication, the APA reasserted that it was not ethical to provide a psychiatric or professional opinion about someone who had not been evaluated personally by that psychiatrist, that it was unethical to provide an evaluation without obtaining consent from that individual.

They also sort of really kind of defined what a professional opinion is, and how they defined it is that an opinion that a psychiatrist expresses about someone's speech, behavior, or any characteristic about that person. If that opinion is made using the expertise, experience, and knowledge inherent in the practice of psychiatry, that is considered a professional opinion. So it might include making a diagnosis or not making a diagnosis.

And the other, I think, a couple of important things about that 2017 document were that the APA specified that if a psychiatrist is to give an opinion about someone about the diagnosis or personality, characteristics, whatever, that they have to follow an appropriate methodology. They have to do an evaluation that follows the standard practice of a psychiatrist here in the U.S. And if they don't do that, they are considered to be, you know, affecting the integrity of both the psychiatrists and the psychiatric profession.

And this revision of the Goldwater rule definitely received a lot of support. The president of the APA at the time stated that breaking the Goldwater rule was irresponsible, stigmatizing, and definitely unethical. So that was a very strong statement from the president of the APA.

Ms. Calnan: What other medical organizations have weighed in on this issue?

Dr. Shaw: Yeah. A number of organizations have their own sort of version of the Goldwater rule. The American Medical Association that represents physicians in the U.S. has an annual meeting, and they have what's called a Council of Ethical and Judicial Affairs. And they had a meeting in 2017 in Honolulu, and they came up with their own statements about the issue of whether physicians can provide opinions without directly evaluating somebody, and their opinion was that physicians should refrain from giving a psychiatric diagnosis about any public figure, including celebrities and people in the media.

Ms. Calnan: Are there exceptions to the Goldwater rule?

Dr. Shaw: There are exceptions, yeah. And I think Dr. Spiegel had a lot to say about this yesterday when he was saying that if you couldn't express an opinion without evaluating someone, it sort of made the whole specialty of or role of experts in the court sort of null and void. But there are exceptions and situations in which an expert can give testimony in court. So one good example would be if there was a medical malpractice case or if there was a case that involved a patient who had committed suicide, and the courts wanted to find out whether the psychiatrist had followed appropriate practice. The expert can review medical records and can give an opinion based on those records, provided those records have sufficient information, for example, about the diagnosis, about the treatment, about how the patient was responding or not responding to treatment.

Ms. Calnan: Did you form an opinion about whether Dr. Spiegel complied with the Goldwater rule?

Dr. Shaw: Well, my opinion is that he did not. He expressed a number of professional opinions about Mr. Depp that we heard about yesterday. And again, he did so without an evaluation, without consent. He did not follow the guidelines of the APA, the 2017 revision, where it was considered important that there'd be sufficient information obtained by that expert to give an opinion. So I definitely felt that his conduct, unfortunately, did violate the Goldwater rule.

Ms. Calnan: And specifically, what opinions that Dr. Spiegel gave yesterday do you feel violated the Goldwater rule?

Dr. Shaw: Yeah. I think that, well, there were sort of two primary ones. The first that you heard about was that Dr. Spiegel had professional opinions about Mr. Depp's personality, and he talked a lot about how he believed that Mr. Depp had narcissistic personality traits. So, and he also, you know, talked a lot about narcissistic personality disorder. So narcissistic personality disorder is a diagnosis in the Diagnostic and Statistical Manual, it's called the DSM-5 for short. It's a diagnostic manual published by the APA.

Mr. Nadelhaft: Objection, Your Honor. Can we approach?

Judge Azcarate: Okay.

[04:20:14]

[silence]

[04:20:41]

Ms. Calnan: Go ahead, Dr. Shaw. Please continue.

Dr. Shaw: Sure. So I was just talking about narcissistic personality disorder in the DSM-5. So the diagnostic criteria for that are...I'm not going to remember every word about this, but essentially, it's a pattern of grandiosity, a need for admiration, a lack of empathy that's demonstrated by that person since young adulthood. And the DSM-5 has nine specific criteria, and for someone to meet the diagnosis, you have to meet five of those criteria.

And so, when, as a psychiatrist, we're trying to make a diagnosis of any personality disorder or any diagnosis in general, the normal professional guidelines would dictate that we would do a very careful diagnostic interview, and there are actually interviews specifically written to assess personality disorders. It's also possible to have the individual fill out questionnaires. There's something called the Narcissistic Personality Inventory. This is a 40-item checklist that taps into various components of narcissistic personality disorder. And it's also possible to get psychological testing, like the MMPI, that I think you heard about in reference to one of the other experts here. So with all of this information, including collateral information from family members, work colleagues, information of that sort, it is possible to come up with a diagnosis of narcissistic personality disorder.

So in the case of Dr. Spiegel, he had none of this information, even though he came out and stated with what he described as a degree of medical certainty that Mr. Depp had narcissistic personality traits. And if you remember, somewhat towards the end of his testimony yesterday, he was asked to...since he couldn't provide any documentation from the medical record about narcissistic personality disorder or narcissistic personality traits, he was asked about what is referred to a lot in his testimony as record evidence, so information that he obtained from depositions, from text messages, from emails, whatever. And so he was asked to give, I think, five examples of record evidence that would make it seem like Mr. Depp met criteria for narcissistic personality traits, and I'll just mention a couple of them just to illustrate my opinion, as that testimony did not really hold together.

So he stated, for example, that one of the criteria for narcissistic personality disorder is a sense of entitlement, and the example Dr. Spiegel gave is that he believed that Ms. Heard married him for his money. So clearly, sense of entitlement is, from a psychiatry perspective, that's very different from a belief that someone wanted you for your money. A second example that was given was that he was asked to give an example of how Mr. Depp had shown that he was envious of others, which is another criterion for narcissistic personality disorder. And the example that Dr. Spiegel gave is that Mr. Depp was jealous of Ms. Heard because he believed she was having an affair with Mr. Franco. Now, if we look at these two terms as a psychiatrist, there's a big difference between being envious and being jealous. As a psychiatrist, when I think about envy, I think about somebody wants something that someone else has.

Mr. Nadelhaft: Objection, Your Honor. I think this is going beyond his designation.

Judge Azcarate: All right.

Ms. Calnan: He's giving his opinion as to how Dr. Spiegel violated the Goldwater rule with respect to his testimony about narcissistic personality traits.

Judge Azcarate: He did, but now I'll sustain the objection. Next question.

Ms. Calnan: Okay. Okay. And you mentioned two major examples. What was the second one?

Dr. Shaw: The second one was confusing being envious with being jealous.

Ms. Calnan: Oh, sorry, Dr. Shaw. I mean, you mentioned two major examples of ways Dr. Spiegel violated the Goldwater rule. What is the second?

Dr. Shaw: Oh, sure. So the other big category had to do with Dr. Spiegel's evaluation of Mr. Depp's cognitive abilities, and his general opinion was that Mr. Depp had deficits in his memory, in his attention, in his processing speed, that he had word-finding difficulties. Again, Dr. Spiegel did not evaluate Mr. Depp, and the information that he relied upon, there were two pieces of information. The first was that he watched a very long deposition that Mr. Depp gave the day after I think he had flown back from London to the East Coast. And he made observations about Mr. Depp's behavior in that deposition and felt that he could opine or give an opinion about processing speed and other cognitive aspects.

He also made reference to something you heard about yesterday, this thing called the mini-mental status examination. This is a brief screen for memory and cognitive functioning that is often done. And he testified that Dr. Blaustein had administered the mini-mental status examination. And although, you know, from the records, all we know is that...

Mr. Nadelhaft: Objection, Your Honor.

Judge Azcarate: I'll sustain the objection.

Ms. Calnan: Dr. Shaw, without going into Dr. Blaustein's record, what information does a mini-mental exam provide?

Mr. Nadelhaft: Objection, Your Honor. It's beyond the scope of his designation.

Judge Azcarate: Overruled as to that limited question.

Dr. Shaw: Yeah. So the mini-mental status is...it's a series of about 10 or 11 questions and tasks that someone completes, and you get a score out of 30. What Dr. Spiegel testified was that Mr. Depp could not recall three words after five minutes, and he used that as an example of Mr. Depp having cognitive deficits that he specifically attributed to Mr. Depp's alcohol and substance abuse. And he really did not have sufficient information. I liken a mini-mental status exam, it's like taking someone's temperature. If it's elevated...

Mr. Nadelhaft: Objection, Your Honor. I think it's going beyond.

Judge Azcarate: All right. I'll sustain the objection.

Ms. Calnan: Okay. Now is probably a good time for a break.

Judge Azcarate: Okay, sure. All right, ladies and gentlemen, I knew you had a break, but we didn't. So we're gonna go ahead and take our afternoon break for 15 minutes. Do not discuss the case, and do not do any outside research, okay? You can stay right there, Doctor.

All right. You're excused for 15 minutes too, sir, Doctor. Okay. We'll come back at 4:17, then, finish the day. Okay.

Bailiff: All rise.

[04:28:59]

[silence]

[04:29:17]

Judge Azcarate: Thank you. You may be seated. All right, your next question.

Ms. Calnan: Thank you. Dr. Shaw, is the Goldwater rule limited to diagnoses?

Dr. Shaw: It's not. It includes all professional opinions.

Ms. Calnan: Do you agree with Dr. Spiegel that the Goldwater rule doesn't apply to expert witnesses?

Dr. Shaw: I don't agree, no.

Ms. Calnan: How could Dr. Spiegel express an opinion without violating the Goldwater rule?

Dr. Shaw: This has actually been a topic that's been written and published about. So it is possible for someone to give testimony about a matter without interviewing someone, and there's certain sort of ways that it should be framed. So for example, when Dr. Spiegel was testifying about the report that Mr. Depp was unable to recall these three objects, what he could have done is say that, "I have not personally examined Mr. Depp, so I can't speculate about his cognitive state or ability to function cognitively. However, it is possible that someone who is not able to recall three objects could have issues related to substance use," which was what his opinion was. However, what he should have done in expressing his opinion is then have followed up to say that, in order to really establish whether these were relevant and significant cognitive deficits, Mr. Depp should have had psychological testing to establish the nature of these deficits. And he should also have added that there are

other potential explanations for these findings. So for example, it's possible that Mr. Depp...

Mr. Nadelhaft: Objection, Your Honor. He's now going past the designation.

Judge Azcarate: All right.

Ms. Calnan: I think he's just opining as to or responding to Dr. Spiegel's testimony yesterday.

Mr. Nadelhaft: No, he's opining as to what Dr. Spiegel could have said, but he's past the...whether he...about the Goldwater rule.

Judge Azcarate: All right. If we can move on.

Ms. Calnan: Okay. Who's qualified to give an opinion about cognitive deficits and processing speed?

Dr. Shaw: It would have to be someone who could conduct the type of neuropsychological testing that I was mentioning. You can't establish the presence of cognitive deficits without a battery of tests.

Mr. Nadelhaft: Objection, Your Honor. Objection, again, this beyond the Goldwater rule.

Judge Azcarate: Overruled.

Dr. Shaw: You can't establish cognitive deficits without appropriate neuropsychological testing, and that can only be done by a psychologist or neuropsychologist. So psychiatrists, like Dr. Spiegel, would be giving an opinion outside of his area of expertise if he gave an opinion about cognitive deficits that required psychological testing to be further evaluated.

Ms. Calnan: Dr. Spiegel yesterday testified about the practice of forensic psychiatry. Do you recall that testimony?

Dr. Shaw: Yes, I do.

Ms. Calnan: What is forensic psychiatry?

Dr. Shaw: Forensic psychiatry is a specialty of psychiatry that relates to matters on the intersection between psychiatry and the law. So for example, what we're doing today is forensic psychiatry, where a psychiatrist comes into court and gives an opinion about a matter to help the court come to an opinion.

Ms. Calnan: Are there professional standards that govern the practice of forensic psychiatry?

Dr. Shaw: Yes, there are.

Ms. Calnan: And what organizations have issued those standards?

Dr. Shaw: One of the primary organizations that has issued guidelines about the practice of forensic psychiatry is called the American Academy of Psychiatry and the Law. This is an organization that represents forensic psychiatrists, and it has published guidelines about what constitutes an ethical and sound practice of doing a forensic assessment and providing a psychiatric opinion. So this guideline, I think it was published in 2015, actually, contains many elements that are consistent with the Goldwater rule. So for example, it states that, for a forensic assessment to be done, there has to be informed consent, and there should be a very thorough comprehensive evaluation that would include reviewing past records, past psychiatric history. It would include doing what's called a mental status examination, which is a careful evaluation of someone's mood, cognition, things of that nature.

And the guidelines do state that it is reasonable or permitted to provide an opinion without an evaluation, but if you're going to do that, there are some things that you have to really make clear in your opinion when you express that opinion. And the first is that you have to acknowledge the limitations of your opinion and not, like Dr. Spiegel, say that his opinion was held with a degree of medical certainty. You have to explain what's missing, what data you did not have that you were not able to rely upon in coming to that opinion. You also have to talk about what additional information you would need to come to that opinion. And even though these guidelines say it's permissible to do this, the text is still, I think, not fully in support of psychiatrists doing this. So their statements are that opinions rendered without a proper database, which is what we, as psychiatrists, rely upon to make diagnoses and give opinions, professional opinions, is questionable and not generally recommended.

Ms. Calnan: Did you form an opinion about Dr. Spiegel's testimony with respect to these practice guidelines?

Dr. Shaw: Yes, I did.

Ms. Calnan: And what is your opinion?

Dr. Shaw: Well, my opinion is that he did not follow those guidelines. So for example, he did not have consent. He did not do even a basic evaluation of Mr. Depp when he gave his opinions. As I just mentioned,

he said they were opinions that he had to a degree of medical certainty. And he did not make any statements about what other additional information he would have wanted to make that opinion. So for example, when asked about, "Should neuropsychological testing be performed?" he said most patients don't have access to that, which is actually not at all true. I mean, every medical school has neuropsychologists that can do testing. So I think that was an unfortunate statement. So I think those are the primary ways in which the Goldwater rule was violated and the practice guidelines were not adhered to.

Ms. Calnan: Dr. Shaw, yesterday, Dr. Spiegel was talking about correlation and causation. What is the difference between correlation and causation?

Mr. Nadelhaft: Objection, it's not in this designation.

Ms. Calnan: It is. We can approach, and I can show you.

Mr. Nadelhaft: Okay.

Judge Azcarate: All right.

Ms. Calnan: Go ahead, Dr. Shaw.

Dr. Shaw: Yes. So the difference between a correlation and causation, correlation is a statistical analysis of a relationship between two different factors. So in Dr. Spiegel's testimony, he talked about, you know, there being a correlation between opinions he had about Mr. Depp, his narcissistic personality traits, his substance abuse, things of that nature. So a correlation doesn't say anything about whether or not these factors caused, you know, the behavior he was discussing.

Perhaps, one of the easiest ways I could describe this difference between correlation and causation is if we look at the issue of measles, if you bear with me. So there's a correlation between being young and catching measles. Now, we know that measles is not caused by being young. Measles is caused by a virus. But young children have not been exposed to the virus. They don't have the immunity, so they have a higher rate of measles. So the difference, statistically, is...well, the difference between causation and correlation is illustrated by that example. So another way I might put this is, you know, if we had 100 people in a room, just bringing it back to the issue of IPV that Dr. Spiegel was testifying about. Let's say we had 70 people who had all the risk factors for IPV and 30 people who had no risk factors for IPV. So, what can we say about those 70 people? We can't say that any single one of those people has perpetrated IPV, even though they may have all the

risk factors. And if we look at the 30 people who have no risk factors, we also can't say whether or not they had perpetrated IPV. So the actual presence of risk factors for IPV that Dr. Spiegel was talking about, they say absolutely nothing about what happened in this case.

Ms. Calnan: Thank you, Dr. Shaw. Nothing further.

Judge Azcarate: All right, cross-examination.

Mr. Nadelhaft: Good afternoon, Dr. Shaw.

Dr. Shaw: Good afternoon.

Mr. Nadelhaft: You're not offering any opinion as to Mr. Depp's psychology, correct?

Dr. Shaw: That's correct.

Mr. Nadelhaft: All right. And you testified a lot about the Goldwater rule. You know of no case where an expert has been excluded from testifying based on the Goldwater rule, correct?

Dr. Shaw: I don't know about the whole universe of cases. That's possible, but I don't know personally about one.

Mr. Nadelhaft: And before this case, you've never offered an opinion on the Goldwater rule before, correct?

Dr. Shaw: That's correct.

Mr. Nadelhaft: And you've never written an article on the Goldwater rule, correct?

Dr. Shaw: I have not.

Mr. Nadelhaft: And you've never given a presentation on the Goldwater rule, correct?

Dr. Shaw: I have not.

Mr. Nadelhaft: And you've never been on any committees regarding the Goldwater rule, correct?

Dr. Shaw: I have not.

Mr. Nadelhaft: Okay. And you agree that...you've testified that there are exceptions to the Goldwater rule about having to interview the subject, right?

Dr. Shaw: Yes.

Mr. Nadelhaft: And you understand that Dr. Spiegel requested to meet with Mr. Depp twice, that Mr. Depp declined, correct?

Dr. Shaw: I'm aware of that.

Mr. Nadelhaft: And Dr. Spiegel stated in his designation and at trial yesterday that he did not meet with Mr. Depp, right?

Dr. Shaw: Yes.

Mr. Nadelhaft: Okay. Can we put up Defendant's Exhibit 1904? Dr. Shaw, have you seen the opinions of the ethics committee on the principles of medical ethics?

Dr. Shaw: Yes.

Mr. Nadelhaft: Okay. And if you could turn to 79 of the PDF, and it's actually...thank you. You see where it's highlighted here.

Dr. Shaw: Yes.

Mr. Nadelhaft: And it says, "Psychiatrists have also argued that the Goldwater rule is not sound because psychiatrists are sometimes asked to render opinions..."

Ms. Calnan: Objection, hearsay.

Mr. Nadelhaft: He's an expert.

Judge Azcarate: Overrule.

Mr. Nadelhaft: "...without conducting an examination of an individual. Examples occur, in particular, in certain forensic cases and consultative roles. This objection attempts to subsume the rule with its exceptions. What this objection misses, however, is that the rendering of expertise and/or an opinion in these contexts is permissible because there is a court authorization for the examination (or an opinion without examination), and this work is conducted within an evaluative framework including parameters for how and where the information may be used or disseminated." You see that?

Dr. Shaw: I do, yes.

Mr. Nadelhaft: And this court authorized Dr. Spiegel to testify in this case, correct?

Dr. Shaw: Yes.

Mr. Nadelhaft: Okay. Thank you, You Honor. Nothing further.

Judge Azcarate: All right, redirect.

Ms. Calnan: Dr. Shaw, Mr. Nadelhaft just asked you about the court authorization of Mr. Depp's evaluation. Are you aware that the court has twice denied Ms. Heard's request for an evaluation of Mr. Depp?

Dr. Shaw: I heard that yesterday and in testimony, yes.

Ms. Calnan: Okay. Thank you. Nothing further.

Judge Azcarate: All right. Thank you, sir. You can either have a seat or you can leave. Thank you. Your next witness.

Ms. Vasquez: Your Honor, we call Jennifer Howell by video.

Judge Azcarate: All right.

[04:43:10]

[silence]

[04:44:12]

Ms. Bredehoft: Please state your name and address for the record.

Ms. Howell: Jennifer Howell, Los Angeles, California.

Ms. Bredehoft: And what is your current occupation?

Ms. Howell: I run the Art of Elysium, CEO of the Art of Elysium.

Ms. Bredehoft: Let me just go back. Now you've indicated that Whitney lived with you from January 2015...

Ms. Howell: No.

Ms. Bredehoft: I'm sorry, May 2015 to April 2016. Are you absolutely certain about those dates?

Ms. Howell: I am certain, yes. She came and went at different periods, but all of her stuff moved out of my house April 2016.

Ms. Bredehoft: And I'm sorry, did you say you were 100% certain of that? Just how could you answer my question?

Ms. Howell: Yes. She did go back to Amber and Johnny's at different points, but she was still living with me during that time.

Ms. Bredehoft: The question I asked, because you were talking at the same time Ms. Vasquez was giving an objection, was I believe that you said you were 100% certain of those dates. Is that correct?

Judge Azcarate: All right.

Ms. Vasquez: Oh, you previously testified that you were the CEO for Art of Elysium. Is that correct?

Ms. Howell: That is correct.

Ms. Vasquez: And are you still currently in that position?

Ms. Howell: Yes, I am.

Ms. Vasquez: And how long have you been the CEO for Art of Elysium?

Ms. Howell: I am the founder of the organization. So we did our first workshop in August of 1997, filed the legal paperwork in February of '98 to set up a 501(c)(3), so I guess since the beginning of the charity.

Ms. Vasquez: Ms. Howell, when did you first meet Amber Heard?

Ms. Howell: At the "Pineapple Express" premiere is where I met she and her sister, Whitney.

Ms. Vasquez: Do you remember, approximately, what year that was?

Ms. Howell: I believe it was around 2008. I'm sure that could be pulled. It was the L.A. premiere. I think there was probably multiple premieres, but it was a Los Angeles premiere of "Pineapple Express."

Ms. Vasquez: Was Ms. Heard there with Mr. Depp?

Ms. Howell: No, this was long before. I was a guest of James Franco, and Amber was in the movie. And so I met she and her sister at the...I mean, to be specific, at the after party of the premiere.

Ms. Vasquez: Did Ms. Henriquez end up working for Art of Elysium at some point?

Ms. Howell: Yes, she did.

Ms. Vasquez: What year did Ms. Henriquez begin working with Art of Elysium?

Ms. Howell: I believe it was in 2014. I don't have those documents right in front of me. I believe it was leading into the year Amber was receiving the award.

Ms. Vasquez: And what was Ms. Henriquez's position at Art of Elysium?

Ms. Howell: Art salon manager/director.

Ms. Vasquez: Does Ms. Henriquez still work for Art of Elysium?

Ms. Howell: No.

Ms. Vasquez: When did that end?

Ms. Howell: Oh, 2015, I believe.

Ms. Vasquez: Each time you saw Mr. Depp, did you ever see him doing any illicit, illegal drugs?

Ms. Howell: Never.

Ms. Vasquez: Did you ever see him consuming excessive amounts of alcohol?

Ms. Howell: No.

Ms. Bredehoft: Objection.

Ms. Howell: Never.

Ms. Vasquez: Did you ever see Mr. Depp appear intoxicated?

Ms. Howell: No.

Ms. Vasquez: Did Ms. Heard ever show you photographs depicting injuries on her face or body?

Ms. Howell: No.

Ms. Vasquez: Did Ms. Heard ever tell you that Mr. Depp was abusive towards her?

Ms. Howell: No.

Ms. Vasquez: Is Mr. Depp paying your legal fees, Ms. Howell, for this deposition and the testimony you've provided in the UK action?

Ms. Howell: He is not.

Ms. Vasquez: Who is?

Ms. Howell: Myself.

Ms. Vasquez: Do you feel any particular sense of loyalty towards Mr. Depp?

Ms. Howell: None at all.

Ms. Vasquez: Do you feel any sense of loyalty towards Ms. Heard?

Ms. Howell: None at all.

Ms. Vasquez: Ms. Howell, do you recognize this check as the check that the Art of Elysium received on behalf of Ms. Heard for an anonymous donation of \$250,000?

Ms. Howell: Yes. Yes.

Ms. Vasquez: I believe you testified previously that you understood that the anonymous donor was Elon Musk. Is that true?

Ms. Howell: Yes.

Ms. Vasquez: If I could please have Exhibit 4 brought up, and for the record, it's [inaudible 04:49:33] JH 22 through 29.

[04:49:36]

[Silence]

[04:50:02]

Do you recognize this document, Ms. Howell? And if you need to scroll through the eight pages, feel free.

Ms. Howell: Can you scroll down? Yeah, I recognize that.

Ms. Vasquez: And what is this?

Ms. Howell: That is an email, I believe, I sent to Whitney.

Ms. Vasquez: Scrolling up to the first page of this attachment, who is Marcel?

Ms. Howell: Pariseau?

Ms. Vasquez: Sure, Pariseau.

Ms. Howell: He is one of my oldest friends in Los Angeles who has served as a board member of the Art of Elysium and is one of my biggest confidants here in L.A., kind of, for the course of my career.

Ms. Vasquez: And going down to the third page of this exhibit. Thank you. This is an email, Ms. Howell, that you sent to Whitney Henriquez on or about Tuesday, July 28, 2020 at 11:20...excuse me, at 11:02 a.m.

Ms. Howell: It is.

Ms. Vasquez: Is this a true and accurate copy of an email exchange that you sent to Ms. Henriquez?

Ms. Howell: Yes. I believe I'm the one who gave that. Yes, it is.

Ms. Vasquez: And then, did you forward this email exchange and the attachments to Marcel Pariseau?

Ms. Howell: Yeah. I asked him to keep it for me.

Ms. Vasquez: Why did you send this email and letter to Ms. Henriquez?

Ms. Howell: Because I've struggled very much with what to do in a situation that I love someone who I know is doing something very wrong, and I know that they're doing it because they're trying to protect their sister. And I'm trying to protect her, and I'm just trying to get her to wake up and do the right thing, which is tell the truth. That's the only thing that can help everybody involved in this case.

Ms. Vasquez: Ms. Howell, do you recall submitting a witness statement in the United Kingdom?

Ms. Howell: Yeah. They basically just called to verify the witness statement that was submitted previously.

Ms. Vasquez: And do you recognize this document to be the witness statement and the declaration that you submitted in the UK? And if you want to scroll down to look at it.

Ms. Howell: Yes, I recognize it.

Ms. Vasquez: And at the first page, do you see a date on this document?

Ms. Howell: January 13th, 2021.

Ms. Vasquez: And is this document a true and accurate copy of the declaration that you submitted in the UK proceeding on or about January 13th, 2021?

Ms. Howell: Yes.

Ms. Vasquez: And are all the statements in your UK declaration accurate and true?

Ms. Howell: I mean, yes, I signed it. Yes.

Ms. Vasquez: All right. Let's pull up what I believe was Depp Exhibit 9. It's been marked as Depp Exhibit 9. Exhibit 9. So, Ms. Howell, earlier, you were shown this document. Scrolling to the end of it...

Ms. Howell: Can you go...? Okay.

Ms. Vasquez: There. Did Mr. Waldman assist you in drafting this email?

Ms. Howell: Absolutely not.

Ms. Vasquez: Did you speak with Mr. Waldman at all about drafting this email?

Ms. Howell: About writing an email? No. I did that on my own accord.

Ms. Vasquez: Did you speak with Mr. Waldman at all about contacting the ACLU?

Ms. Howell: I do not recall having a conversation with him about that.

Ms. Vasquez: And, Ms. Howell, you testified earlier that you received a check from Fidelity Charitable in January of 2018. Is that correct?

Ms. Howell: I don't know if I said the date, but yes, I received an anonymous donation from that check that was submitted. Whatever is on there, I just don't know the date off the top of my head.

Ms. Vasquez: And you testified that there was a letter sent along with that that said that it was in honor of Amber Heard?

Ms. Howell: Yes. [inaudible 04:55:44] I was guaranteed 20 minutes with them after being attacked for 3.5 hours by your side the last time. So I am going to stick by what I was told before entering this and what your side agreed to.

Judge Azcarate: All right, your next witness.

Mr. Chew: Your Honor, Mr. Depp calls Candie Davidson-Goldbronn, who is the corporate designee of the Children's Hospital of Los Angeles.

Judge Azcarate: All right. That's by deposition, is that correct?

Mr. Chew: Yes, Your Honor.

Judge Azcarate: Okay.

Plaintiff: Ms. Goldbronn, is it your understanding that you're here to testify today on behalf of the Children's Hospital?

Ms. Goldbronn: Right, yes.

Plaintiff: Okay. So as of June 2018, had any payments been made by Ms. Heard to the Children's Hospital in connection with the \$3.5-million pledge, aside from the original \$100,000 check from Mr. White in August of 2016?

Ms. Goldbronn: Yes, there was a payment, a gift, on January 9th, 2018.

Plaintiff: And what amount is that gift that you're referring to?

Ms. Goldbronn: Two hundred and fifty thousand dollars.

Plaintiff: Okay. And was that gift made by Ms. Heard or on Ms. Heard's behalf?

Ms. Goldbronn: By Ms. Heard.

Plaintiff: Okay. And what are you basing that statement on?

Ms. Goldbronn: By the check that we received from Fidelity Charity that came to Children's Hospital.

Plaintiff: What is this document?

Ms. Goldbronn: The letter to Mr. White from myself inquiring about further installment on the pledge that had not been fulfilled.

Plaintiff: And why did you write this to Mr. White on June 14th, 2019?

Ms. Goldbronn: I was trying to figure out if there were any other payments coming from Mr. White to fulfill the pledge, because Children's Hospital Los Angeles had not received any other correspondence from him.

Plaintiff: And what is this document?

Ms. Goldbronn: It is a letter to Ms. Gottlieb from myself, on behalf of Children's Hospital Los Angeles, inquiring about additional gift, pledge, payment, installment.

Plaintiff: This letter appears to be directed to Ms. Amber Heard care of Jodi Gottlieb. Is that correct?

Ms. Goldbronn: Correct.

Plaintiff: Who is Jodi Gottlieb?

Ms. Goldbronn: In the Children's Hospital Los Angeles records, Jodi Gottlieb was our contact for Ms. Amber Heard.

Plaintiff: Ms. Goldbronn, why did you send this letter to Ms. Heard and Ms. Gottlieb?

Ms. Goldbronn: I was trying to see if the pledge was going to be fulfilled or not.

Plaintiff: In your experience, is it common practice for anonymous donors when making donations to, in one paragraph, state that they wish to remain anonymous and, in the very next paragraph, identify themselves?

Ms. Goldbronn: Yes.

Plaintiff: That is common?

Ms. Goldbronn: It is common for donors to want to remain anonymous publicly but allow the charity to know who they are.

Plaintiff: Between June 2018 and the dates on which you've sent the letters to Ms. Heard and Mr. White in June of 2019, were any additional funds received from Ms. Heard?

Ms. Goldbronn: No.

Plaintiff: Okay. So as of June 2018, a total of \$250,000 have been received as far as the Children's Hospital is concerned from Ms. Heard, and that was the same amount that had been donated a year later in June of 2019. Is that accurate?

Ms. Goldbronn: Correct.

Plaintiff: As of the date of this deposition, March 30th, 2021, how much, in total, has Ms. Heard donated to the Children's Hospital?

Ms. Goldbronn: For this particular gift? I mean, in her lifetime?

Plaintiff: From 2016 to present.

Ms. Goldbronn: Two hundred and fifty thousand dollars.

Plaintiff: Ms. Goldbronn, do you recall we were speaking about this letter a few minutes ago?

Ms. Goldbronn: Correct.

Plaintiff: All right. And this was the letter that you sent to Ms. Heard, correct?

Ms. Goldbronn: Correct.

Plaintiff: Did you ever get a response to this letter?

Ms. Goldbronn: No.

Plaintiff: As of October of 2018, how much money had Ms. Heard directly donated to the Children's Hospital?

Ms. Goldbronn: Two hundred and fifty thousand dollars.

Plaintiff: As of March 30th...

Ms. Bredehoft: I'm sorry, I didn't hear the end of that.

Ms. Goldbronn: Sorry, I just realized. You said October 2018?

Plaintiff: Correct.

Ms. Goldbronn: Okay, yeah. Two hundred and fifty thousand dollars.

Plaintiff: Okay. As of March 30th, 2019, how much money had Ms. Heard directly donated to Children's Hospital?

Ms. Goldbronn: Two hundred and fifty thousand dollars.

Ms. Bredehoft: What is your understanding of the length of time over which Ms. Heard pledged the gift of 3.5 million to Children's Hospital?

Ms. Goldbronn: There was no date arrangement with Ms. Heard to have this pledge paid off in a particular time.

Ms. Bredehoft: If Ms. Heard were to pay this, the rest of the 3.5 million, in 2 years or 5 years, would Children's Hospital welcome that?

Ms. Goldbronn: CHLA welcomes every and any donation that comes its way.

Ms. Bredehoft: Has Amber Heard's pledge of the \$3.5 million to Children's Hospital expired, to your knowledge?

Ms. Goldbronn: Not that I'm aware of, no. It has not expired.

Judge Azcarate: All right. Thank you. Your next witness, sir.

Mr. Chew: Your Honor, I think we've concluded our witnesses for today. We will have more live witnesses tomorrow.

Judge Azcarate: Okay. All right. Ladies and gentlemen, that'll be the end of your day for today. Again, do not do any outside research, do not discuss the case with anybody, and we'll see you tomorrow morning at 9 a.m., okay? Thank you.

All right. You want to have a seat for just a moment because we do have a few proffers going to be done. Just for the record, we talked about it earlier, I will charge the 30 minutes extra time for today to the plaintiff's team so we can stay on time.

Mr. Chew: Understood, Your Honor.

Judge Azcarate: Okay. All right. And I believe, Mr. Rottenborn, you had some proffers you wanted to do for testimony for the record.

Mr. Rottenborn: We did, Your Honor. Testimony and a few exhibits. Mr. Nadelhaft is actually...

Judge Azcarate: Okay. Mr. Nadelhaft, if you want to proffer testimony for the record as to testimony that the court has sustained objections.

Mr. Nadelhaft: Here, Your Honor, [inaudible 05:03:53].

Judge Azcarate: That's fine. You can stay there, as long as you stay close to the microphone. I appreciate it.

Mr. Nadelhaft: And, Your Honor, what I will do is I'll explain what we're proffering the evidence for, and then we have copies, which I'll provide to you. We'll provide them to you electronically. I don't have another copy for you right now, but I will provide it for you.

Judge Azcarate: Okay. That's fine. Go ahead. Yes, sir.

Mr. Nadelhaft: Okay. Your Honor, for Laurel Anderson. On March 31st, 2022, the defendant attempted to designate certain portions of the deposition testimony for trial of Dr. Laurel Anderson, a clinical psychologist who worked with Ms. Heard and Mr. Depp. Dr. Anderson testified, in a therapy session, Ms. Heard reported to her that she was slapped by Mr. Depp, that he hit her in the head, had her hair pulled by Mr. Depp, kicked her in the leg, and that Mr. Depp gave Ms. Heard bruises. Ms. Heard also reported that Mr. Depp was the first to initiate any violence. Ms. Heard also reported that she hid in a bathroom to protect herself from Mr. Depp. Ms. Heard also reported to Dr. Anderson that Mr. Depp threw a phone at her on May 21st, 2016, hit her, and held her hair. Ms. Heard also reported to Dr. Anderson that she was a victim to Mr. Depp's abuse. The testimony is contained in Dr. Anderson's deposition transcript, which is Exhibit A. The court also excluded records of Dr. Anderson from Ms. Heard's and Mr. Depp's therapy sessions and a treatment summary, which are Exhibits B and C. Mr. Depp objected to Dr. Anderson's testimony, as described in medical records, stating that they were hearsay and that they did not fall into any exceptions,

including statements for purposes of medical treatment. The court sustained the objection on the ground that the testimony and exhibits were hearsay.

For Dr. Kipper. On March 31st, 2022, the defendant attempted to designate certain portions of the deposition testimony for trial of Dr. David Kipper, Mr. Depp's physician. Dr. Kipper testified, Ms. Heard voiced concerns of Mr. Depp's behavior while on drugs and alcohol, that Mr. Depp tried to fight and push Ms. Heard while he was attempting detox on his island, and that she found lots of cocaine in February 2016. Dr. Kipper also testified, he told Mr. Depp to "bury the dragon," which referred to the bad feelings that Mr. Depp has inside him. This testimony is contained in Dr. Kipper's deposition transcript, which is Exhibit D. Dr. Kipper also testified about an email he wrote explaining Mr. Depp's detox treatment. In the email, Dr. Kipper wrote to Mr. Depp's sister that Mr. Depp had fundamental issues with anger, romanticized the drug culture, and had no patience if his needs were not met. This email is Exhibit E. Mr. Depp objected to Dr. Kipper's testimony and the email, stating it was hearsay, that it did not fall into any exceptions, including statements for purposes of medical treatment. The court sustained the objection on the ground that the testimony and exhibits were hearsay.

Deborah Lloyd. On March 31st, 2022, the defendant attempted to designate certain portions of the deposition testimony for trial of Debbie Lloyd, Mr. Depp's nurse. Ms. Lloyd testified, Ms. Heard voice concerns about Mr. Depp's behavior while on drugs and alcohol and that Mr. Depp worked himself up into a rage and was trying to fight Ms. Heard while he was attempting detox on his island. This testimony is contained in Ms. Lloyd's deposition transcript, which is Exhibit F. Also, Ms. Lloyd kept nursing notes on these issues that she testified to, which is Exhibit G. Mr. Depp objected to Ms. Lloyd's testimony and portions of the nursing notes, stating it was hearsay, that it did not fall into any exceptions, including statements for purposes of medical treatment. The court sustained the objection on the ground that the testimony and portions of the nursing notes were hearsay.

Erin Boerum Falati. On March 31st and April 1st, 2022, the defendant attempted to designate certain portions of the deposition testimony for trial of Ms. Falati, Ms. Heard's and Mr. Depp's nurse. Ms. Falati testified that Ms. Heard reported to her on December 16th, 2015 that Mr. Depp head-butted Ms. Heard in the forehead. This also was contained in Ms. Falati's nursing notes, which is Exhibit H. Ms. Falati further testified that Ms. Heard reported being freaked out after the December 2015 incident and testified to text messages between herself and Ms. Heard where

Ms. Heard reported the incident of abuse. These text messages are Exhibits I, J, K, L, and M. Ms. Falati also testified that, on May 21st, 2016, Ms. Heard reported that Mr. Depp became completely delusional and crazed and hit Ms. Heard in the face while she was on the phone with iO Tillett Wright. Ms. Falati testified to text messages reporting this as well, which are contained in Exhibit N. The testimony is contained in Ms. Falati's deposition transcript, which is exhibit O. Mr. Depp objected to Ms. Falati's testimony, portions of the nursing notes, and the text messages referenced, stating it was hearsay, that it did not fall into any exceptions, including statements for purposes of medical treatment. The court sustained the objections on the ground that the testimony and portions of the nursing notes and the text messages were hearsay.

Amy Banks. Dr. Amy Banks. On April 29th, 2022, the defendant attempted to designate certain portions of the deposition testimony for trial of Dr. Amy Banks, a clinical psychologist and relationship consultant who worked with Ms. Heard and Mr. Depp. Dr. Banks testified that, in therapy sessions, Ms. Heard reported that Mr. Depp attacked her physically, including by hitting her with his hand. Dr. Banks also testified that Ms. Heard reported that Mr. Depp cut his finger off and burned himself with a cigarette. Dr. Banks also reported that Ms. Heard told her that Mr. Depp initiated the violence while in a session with Mr. Depp, and Mr. Depp did not object to the characterization of the violence. Finally, Dr. Banks testified that she believed Ms. Heard's accounts of the violence and that Ms. heard was a victim of domestic abuse. This testimony is contained in Dr. Banks's deposition transcript, which is Exhibit P. Mr. Depp objected to Dr. Banks's testimony, stating it was hearsay, that it did not fall into any exceptions, including statements for purposes of medical treatment and for providing improper expert opinion. The court sustained the objections on the ground that the testimony about the abuse was hearsay and that Dr. Banks's testimony that Ms. Heard was a victim of domestic abuse was improper expert opinion.

Connell Cowan. On April 29th, 2022, the defendant attempted to designate certain portions of the deposition testimony for trial of Dr. Connell Cowan, a clinical psychologist who worked with Ms. Heard. Dr. Cowan testified that, in the therapy session, Ms. Heard reported abuse by Mr. Depp, including text messages and medical notes where Ms. Heard reported in December 2015 that "Johnny did a number on me." This testimony is contained in Dr. Cowan's deposition transcript, which is Exhibit Q, is also contained in Dr. Cowan's medical notes in Exhibit R at Depp 91 22 through 23, and is contained in text messages that are Exhibits S and T. Mr. Depp objected to Dr. Cowan's testimony, stating it

was hearsay, that it did not fall into any exceptions, including statements for purposes of medical treatment. The court sustained the objections on the ground that the testimony about the abuse was hearsay.

Alan Blaustein. On April 29th, 2022, the defendant attempted to designate certain portions of the deposition testimony for trial of Dr. Alan Blaustein, a clinical psychologist who worked with Mr. Depp. Dr. Blaustein testified that, in therapy sessions, Mr. Depp reported that he cut himself as a child and burned himself with cigarettes. Dr. Blaustein also testified about the drugs that Mr. Depp was on, as reported to him by Ms. Lloyd. This testimony is contained in Dr. Blaustein's deposition transcript, which is Exhibit U. This information was also contained in emails, which are Exhibits V, W, and X. Mr. Depp objected to Dr. Blaustein's testimony regarding the cutting and burning himself as speculation, and the testimony regarding the drugs Mr. Depp was taking as hearsay, that it did not fall into any exceptions, including statements for purposes of medical treatment. The court sustained the objections on these grounds.

Bonnie Jacobs. On May 4th, 2022, the defendant attempted to introduce into evidence the treatment notes of Dr. Bonnie Jacobs, a clinical psychologist who worked with Ms. Heard. The treatment notes show Ms. Heard reporting abuse by Mr. Depp, including sexual violence. The treatment notes are Exhibit Y. And based on the court's ruling, the defendant did not call Bonnie Jacobs as a witness. Mr. Depp objected to Dr. Jacob's notes as hearsay, that it did not fall into any exceptions, including statements for purposes of medical treatment. The court sustained the objections on those grounds.

I have some more. Give me a moment.

Judge Azcarate: As long as you don't just keep turning every page in that book because I'm not staying for that.

Mr. Nadelhaft: No, it is not. It is not.

Judge Azcarate: Okay.

Mr. Nadelhaft: The UK judgment. On April 29th, 2022, Ms. Heard moved to allow evidence and questioning regarding the UK judgment and for admission of the judgment itself, which is Exhibit Z. In support for her motion, Ms. Heard argued that Mr. Depp had opened the door to the admission of the judgment by presenting evidence of damages after the date of the judgment on November 2nd, 2020. For example, Ms. Heard observed that Mr. Depp had sought damages for losing his role in Pirates of the Caribbean 6, a movie that has not yet been made. Ms.

Heard further observed that Mr. Depp testified that the op-ed had caused him and his family irreparable harm, thereby suggesting that his reputational harm had continued to the present. Ms. Heard noted that Mr. Depp's expert designation indicated Michael Spindler relied on Mr. Depp's earnings from 2019 to 2021 when reaching his opinion, which resulted in an amendment to the designation. Ultimately, the court found that Mr. Depp had not opened the door to the admission of the UK judgment and overruled the motion, which the court did again today with Mr. Bania's opinions.

Finally, Adam Bercovici. On May 19th, 2022, Ms. Heard attempted to call Adam Bercovici, who is an expert in the policing and Los Angeles Police Department policing of domestic violence calls for service. Mr. Bercovici would have testified to his qualifications in the field of policing and LAPD policing of domestic violence calls for service as follows and further outlined in Ms. Heard's fourth supplemental and rebuttal disclosures dated March 31st, 2022. Mr. Bercovici spent 30 years with the LAPD, retiring in 2012 at the rank of lieutenant. He has extensive experience as a patrol officer, field supervisor, uniformed watch commander, both as Sergeant II and Lieutenant I, along with multiple assignments as an officer in charge, Lieutenant II of specialized detective units. During his tenure with the LAPD, Mr. Bercovici held numerous positions directly responding to and overseeing subordinate officers' responses to the domestic violence calls for service, including as a patrol officer, supervisor, watch commander, and assistant watch commander. And actually, this, Your Honor, is a person who prepared a longer brief of what he was going to say. Is it okay to submit it rather than hearing me read it?

Judge Azcarate: All right. Any objection to that?

Mr. Chew: No objection.

Judge Azcarate: No objection, okay.

Mr. Nadelhaft: Okay.

Judge Azcarate: That's fine.

Mr. Nadelhaft: And with that, that's our proffer.

Judge Azcarate: Okay. You just scared me with the size of that.

Mr. Nadelhaft: No, I understand.

Judge Azcarate: Okay. All right. That's fine. If you can get Jamie our copy of it, we'll make sure it becomes part of the record as well, okay?

Mr. Nadelhaft: Thank you.

Judge Azcarate: All right. Do you have any proffers, Mr. Chew, that you need to, at this point?

Mr. Chew: Not at this time, Your Honor. Thank you.

Judge Azcarate: Okay. All right. Then, I think there's just a couple of things I need from you. Tomorrow, let me...by the end of the day tomorrow, if I could get clean jury instructions, without the sites on them for the ones that have been admitted, and also the verdict forms as well, if that's been worked out, okay?

Mr. Rottenborn: Your Honor, we sent revised jury instructions to them yesterday morning and a revised verdict form today, just waiting to [inaudible 05:16:08].

Judge Azcarate: Okay, sure. All right. Thank you. And you're working with Jamie about some exhibits. There are some that both sides noted that were in evidence that are not, so I want to make sure everybody gets everything cleared up.

Jamie: We're caught up.

Judge Azcarate: You're caught up?

Jamie: I've been in touch with both sides.

Judge Azcarate: Okay, good. All right, just keep that going, so we can get that...make sure that's taken care of. As far as time left, Sammy, today, I can give you a rough estimate for two reasons. One, you had some depositions, so make sure you give the breakdowns to Sammy about those. And two, Sammy wasn't here today. He had a mandatory CLE that he had to do, so I just did a rough estimate, and I want to qualify that as a rough estimate. But it looks like the plaintiff has used about five hours today and the defendant used about an hour and 15 minutes. That's what I have. Okay? And again, that's a rough estimate, so don't expect them to be the same. But Sammy is going to get to it this evening and send you an email this evening with the actual accurate times, okay? Anything else?

Mr. Chew: No, thank you, Your Honor. Thank you.

Judge Azcarate: All right.

Mr. Rottenborn: No, Your Honor. Thank you.

Judge Azcarate: Okay. Have a good evening. We'll see you in the morning.

Mr. Rottenborn: You, too. Thank you.

Bailiff: All rise.