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2022 JUL -8 PM 12: 05

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff and Counterclaim-Defendant,

v.

AMBER LAURA HEARD,

Defendant and Counterclaim-Plaintiff.

Civil Action No.: CL-2019-0002911

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF SECTION VII  
OF DEFENDANT AND COUNTERCLAIM PLAINTIFF AMBER HEARD'S  
POST-TRIAL MOTIONS BASED ON ADDITIONAL DISCOVERED FACTS**

Defendant and Counterclaim-Plaintiff Amber Laura Heard ("Ms. Heard") hereby supplements Section VII of her Post-Trial Motion based on newly discovered facts and information that Juror No. 15 was not the individual summoned for jury duty on April 11, 2022, and therefore was not part of the jury panel and could not have properly served on the jury at this trial. Therefore, a mistrial should be declared and a new trial ordered.

Virginia law provides that only those "[j]urors whose names appear in the list provided for under §§ 8.01-348 and 8.01-351 shall be used for the trial of cases, civil and criminal, to be tried during the term." Va. Code § 8.01-355. Fairfax County explains that these potential jurors are selected from the list of registered voters in Fairfax County. **Att. 1** ("Every year, citizens' names are randomly selected by the Virginia Supreme Court, from the list of registered voters for the Fairfax area."); *see also Att. 2*, THE ANSWER BOOK FOR JURY SERVICE ("Potential jurors are selected randomly by the jury commissioners using lists designated by the courts, such as the voter registration list and the driver's license list.").

In this case, the Jury Panel List included an individual named "[REDACTED]" with a listed

Date of Birth of [REDACTED], 1945 residing in [REDACTED], Virginia, [REDACTED]. This means the individual would have been 77 years old at the time of trial. **Att. 3.** The attached voter registration information lists two individuals with the last name [REDACTED] residing in [REDACTED], VA: “[REDACTED], DOB XX/XX/1945 (77)” – the same person listed on the Jury Panel List, and a “[REDACTED], DOB XX/XX/1970 (52).” **Att. 4.** Both of these individuals, [REDACTED] [REDACTED], apparently live at the same address. *Id.* The individual who appeared for jury duty with this name was obviously the younger one. Thus, the 52-year-old [REDACTED] sitting on the jury for six weeks was *never* summoned for jury duty on April 11 and did not “appear in the list,” as required under Va. Code § 8.01-355.

As the Court no doubt agrees, it is deeply troubling for an individual not summoned for jury duty nonetheless to appear for jury duty and serve on a jury, especially in a case such as this. This was a high-profile case, where the fact and date of the jury trial were highly publicized prior to and after the issuance of the juror summonses. Virginia has in place statutory code provisions designed to ensure the person called for jury duty is the person arriving for jury duty. *See* Va. Code § 8.01-353.1 (requiring verification by the Court of an individual’s identity before jury service). Fairfax County’s Juror Questionnaire webpage furthers this goal by requiring all County residents to login using their 7-digit Juror number, Zip code, and “***Birth Date.***” **Att. 5** (emphasis added). Those safeguards are in place and relied upon by the parties to verify the identity of the correct juror, to ensure due process and a fair trial for all litigants. When these safeguards are circumvented or not followed, as appears to be the case here, the right to a jury trial and due process are undermined and compromised.

Ms. Heard had a right to rely on the basic protection, as prescribed by the Virginia Code, that the jurors in this trial would be individuals who were actually summoned for jury duty. In

this case, it appears that Juror No. 15 was not, in fact, the same individual as listed on the jury panel. Ms. Heard's due process was therefore compromised. Under these circumstances, a mistrial should be declared, and a new trial ordered.<sup>1</sup>

### CONCLUSION

For all the reasons set forth above and in the initial Memorandum, Ms. Heard respectfully requests this Court declare a mistrial due to improper juror service in violation of her due process rights, and order a new trial, and such other action or relief as may be appropriate.

Deadline

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<sup>1</sup> Mr. Depp would be incorrect in contending Ms. Heard somehow waived this argument by not raising it during voir dire. Not only were the voir dire questions ruled on in advance and the parties limited to those questions during voir dire, but the responsibility to ensure that the potential jurors participating in voir dire are the ones listed on the jury panel rests with those individuals and the Court. *See* Va. Code § 8.01-353. Due process entitles litigants such as Ms. Heard to rely on the basic assurance that potential jurors are who they say they are and are the actual individuals the Court summoned.

July 8, 2022

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 8<sup>th</sup> day of July 2022, by email, by agreement of the parties, addressed as follows:

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