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13  
 14 **UNITED STATES DISTRICT COURT**  
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 NEW YORK MARINE AND  
 17 GENERAL INSURANCE  
 18 COMPANY, a New York  
 19 corporation,

20 Plaintiff,

21 v.

22 AMBER HEARD,

23 Defendant.

Case No. 2:22-cv-4685-GW (PDx)

Hon. George H. Wu, Courtroom 9D

**DEFENDANT AMBER HEARD'S  
 FIRST AMENDED AND  
 SUPPLEMENTAL ANSWER TO  
 NEW YORK MARINE AND  
 GENERAL INSURANCE  
 COMPANY'S FIRST AMENDED  
 COMPLAINT AND  
 COUNTERCLAIM**

**JURY TRIAL DEMANDED**

Complaint Filed July 8, 2022  
 FAC Filed July 11, 2022

1 Defendant Amber Heard hereby answers the First Amended  
2 Complaint of plaintiff New York Marine and General Insurance  
3 Company as follows:

4 **JURISDICTION AND VENUE**

5 1. Answering paragraph 1, Ms. Heard admits that she was a  
6 citizen of California at the time this action was filed and otherwise  
7 admits the allegations in this paragraph.

8 2. Answering paragraph 2, Ms. Heard admits that New York  
9 Marine purports to seek a judicial determination as alleged in this  
10 paragraph.

11 3. Answering paragraph 3, Ms. Heard admits that New York  
12 Marine asserts that its claims are authorized by 28 U.S.C. § 2201.  
13 Except as expressly admitted, Ms. Heard states that this paragraph  
14 contains only legal conclusions to which no response is required.

15 4. Answering paragraph 4, Ms. Heard does not dispute that  
16 venue may be proper in the Central District of California and that she  
17 had resided in California at the time this action was filed and had not  
18 yet permanently changed her place of residency to a new location. Except  
19 as expressly admitted, Ms. Heard denies the allegations in this  
20 paragraph.

21 5. Answering paragraph 5, Ms. Heard admits that New York  
22 Marine Policy number GL201800012500 (the “Policy”) was delivered in  
23 this District with a mailing address in this District and that the “Named  
24 Insured” listed in the Policy is “Under the Black Sky, Inc. As Per Named  
25 Insured Extension Schedule.” Except as expressly admitted, Ms. Heard  
26 denies the allegations in this paragraph.

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**THE PARTIES**

6. Answering paragraph 6, Ms. Heard lacks sufficient information to admit or deny the allegations of this paragraph and therefore denies them.

7. Answering paragraph 7, Ms. Heard admits that she is a natural person and was domiciled in California at the time of filing. Except as expressly admitted, Ms. Heard denies the allegations in this paragraph.

**FACTUAL ALLEGATIONS**

**The Insurance Policy**

8. Answering paragraph 8, Ms. Heard admits that New York Marine issued the Policy, the “Named Insured” is “Under the Black Sky, Inc. As Per Named Insured Extension Schedule,” which Schedule includes Ms. Heard as a “Named Insured,” the Policy has a policy period of July 18, 2018, to July 18, 2019, and the Policy lists an “Each Occurrence Limit \$1,000,000,” a “Personal & Advertising Limit \$1,000,000 Any one person or organization,” and a “Personal Liability” limit of “\$1,000,000 Each Occurrence.” Ms. Heard further admits that Exhibit A to the FAC appears to be a true and correct copy of at least a substantial part, if not all, of the Policy, with certain information redacted. Except as expressly admitted, Ms. Heard denies the allegations in this paragraph.

9. Answering paragraph 9, Ms. Heard admits that the Policy contains a coverage part entitled “Comprehensive Personal Liability Coverage” and that this coverage part includes the quoted language. Except as expressly admitted, Ms. Heard denies the allegations in this paragraph.

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1 Instructions include the quoted language. Except as expressly admitted,  
2 Ms. Heard denies the allegations in this paragraph.

3 20. Answering paragraph 20, Ms. Heard admits that the Jury  
4 Instructions are the best evidence of their contents and that the Jury  
5 Instructions include the quoted language. Except as expressly admitted,  
6 Ms. Heard denies the allegations in this paragraph.

7 21. Answering paragraph 21, Ms. Heard admits that the “Finding  
8 Instruction” in the *Depp* lawsuit is the best evidence of its contents and  
9 that the Finding Instruction includes the quoted language. Except as  
10 expressly admitted, Ms. Heard denies the allegations in this paragraph.

11 22. Answering paragraph 22, Ms. Heard admits that the court in  
12 the *Depp* lawsuit issued additional “Finding Instructions” and that these  
13 “Finding Instructions” are the best evidence of their contents. Except as  
14 expressly admitted, Ms. Heard denies the allegations in this paragraph.

15 23. Answering paragraph 23, Ms. Heard admits the allegations in  
16 this paragraph.

17 24. Answering paragraph 24, Ms. Heard admits that the Special  
18 Verdict Form in the *Depp* lawsuit is the best evidence of its contents and  
19 that the jury answered “yes” to questions 1(a), 2(a), and 3(a) in the  
20 Special Verdict Form. Except as expressly admitted, Ms. Heard denies  
21 the allegations in this paragraph.

22 25. Answering paragraph 25, Ms. Heard admits that the Special  
23 Verdict Form in the *Depp* lawsuit is the best evidence of its contents and  
24 that the jury answered “yes” to questions 1(b), 2(b), and 3(b) in the  
25 Special Verdict Form. Except as expressly admitted, Ms. Heard denies  
26 the allegations in this paragraph..

27 26. Answering paragraph 26, Ms. Heard admits the allegations in  
28 this paragraph.

**FIRST CAUSE OF ACTION**

**(Declaratory Relief as to Plaintiff’s Duty to Indemnify Heard  
for the Judgment Order Under the Policy)**

27. Answering paragraph 27, Ms. Heard incorporates by reference her answers to paragraphs 1 through 26 above.

28. Answering paragraph 28, Ms. Heard admits that California Insurance Code section 533 contains the quoted language and that the remainder of this paragraph contains only legal contentions to which no response is required.

29. Answering paragraph 29, Ms. Heard denies the allegations in this paragraph.

30. Answering paragraph 30, Ms. Heard admits that there is a dispute between New York Marine and her regarding New York Marine’s duties under the Policy, the implied covenant of good faith and fair dealing, and the law, that New York Marine contends that it has no duty to indemnify her as to the June 24, 2022, Judgment Order, and that she disputes New York Marine’s contentions, contending that New York Marine is obligated to perform all its duties in connection with the *Depp* lawsuit. Except as expressly admitted, Ms. Heard denies the allegations in this paragraph.

31. Answering paragraph 31, Ms. Heard denies that there is an actual and present controversy regarding New York Marine’s duty to indemnify Ms. Heard for any judgment, settlement, or other award against her in the *Depp* lawsuit because Ms. Heard is not seeking indemnity from New York Marine for any amount that theoretically might have been paid pursuant to any judgment in the *Depp* Lawsuit because the *Depp* lawsuit has been settled with another insurer paying the settlement amount. Ms. Heard admits that New York Marine

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1 requests a judicial declaration as stated in this paragraph and that New  
2 York Marine contends that it has no obligation to indemnify Ms. Heard  
3 for the Judgment Order. Except as expressly admitted, Ms. Heard denies  
4 the allegations in this paragraph.

5 **SECOND CAUSE OF ACTION**

6 **(Declaratory Relief as to Plaintiff’s Duty to Indemnify Heard**  
7 **for Any Judgment in the Underlying Action)**

8 32. Answering paragraph 32, Ms. Heard incorporates by  
9 reference her answers to paragraphs 1 through 31.

10 33. Answering paragraph 33, Ms. Heard admits that California  
11 Insurance Code section 533 contains the quoted language and that the  
12 remainder of this paragraph contains only legal contentions to which no  
13 response is required.

14 34. Answering paragraph 34, Ms. Heard denies the allegations in  
15 this paragraph.

16 35. Answering paragraph 35, Ms. Heard admits that there is a  
17 dispute between New York Marine and her regarding New York Marine’s  
18 duties under the Policy, the implied covenant of good faith and fair  
19 dealing, and the law, that New York Marine contends that it has no duty  
20 to indemnify her for the *Depp* lawsuit, and that she disputes New York  
21 Marine’s contentions, contending that New York Marine is obligated to  
22 perform all its duties under the Policy. Except as expressly admitted, Ms.  
23 Heard denies the allegations in this paragraph.

24 36. Answering paragraph 36, Ms. Heard denies that there is an  
25 actual and present controversy regarding New York Marine’s duty to  
26 indemnify Ms. Heard for any judgment, settlement, or other award  
27 against her in the *Depp* lawsuit because the *Depp* lawsuit has been  
28 settled with another insurer paying the settlement amount. Therefore,

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1 Ms. Heard is not seeking indemnity from New York Marine as to that  
2 settlement amount. Ms. Heard admits that New York Marine requests a  
3 judicial declaration as stated in this paragraph and that New York  
4 Marine contends that it has no obligation to indemnify Ms. Heard for any  
5 liability regarding the *Depp* lawsuit. Except as expressly admitted, Ms.  
6 Heard denies the allegations in this paragraph.

7 **THIRD CAUSE OF ACTION**

8 **(Declaratory Relief as to Plaintiff’s Duty to Defend Heard in the**  
9 **Underlying Action The [sic] Policy [California Insurance Code**  
10 **§ 533))**

11 37. Answering paragraph 37, Ms. Heard incorporates by  
12 reference her answers to paragraphs 1 through 36.

13 38. Answering paragraph 38, Ms. Heard denies the allegations in  
14 this paragraph.

15 39. Answering paragraph 39, Ms. Heard admits that there is an  
16 actual controversy between New York Marine and her regarding New  
17 York Marine’s duties under the Policy, the implied covenant of good faith  
18 and fair dealing, and the law, that New York Marine contends that it has  
19 no duty to defend her in the *Depp* lawsuit based on California Insurance  
20 Code section 533, and that she disputes New York Marine’s contentions,  
21 contending that New York Marine is obligated to perform all its duties  
22 and that New York Marine had a duty to fully defend her in the *Depp*  
23 lawsuit through its final resolution.

24 40. Answering paragraph 40, Ms. Heard admits that there is an  
25 actual and present controversy as described in her answer to paragraph  
26 39 above and that New York Marine seeks a judicial declaration as it  
27 states in this paragraph. Ms. Heard denies that there is an actual and  
28 present controversy regarding New York Marine’s duty to defend “on an

1 ongoing basis” for the *Depp* lawsuit because the *Depp* lawsuit is no  
2 longer pending, having been resolved by a settlement.

3 **FOURTH CAUSE OF ACTION**

4 **(Declaratory Relief as to Plaintiff’s Duty to Defend and**  
5 **Indemnify Heard in the Underlying Action Under the Policy**  
6 **[Conditions])**

7 41. Answering paragraph 41, Ms. Heard incorporates by  
8 reference her answers to paragraphs 1 through 40.

9 42. Answering paragraph 42, Ms. Heard admits that the Policy’s  
10 “Comprehensive Personal Liability Coverage” is the best evidence of its  
11 contents and that this coverage part includes the quoted language.  
12 Except as expressly admitted, Ms. Heard denies the allegations in this  
13 paragraph.

14 43. Answering paragraph 43, Ms. Heard denies the allegations in  
15 this paragraph.

16 44. Answering paragraph 44, Ms. Heard admits that there is an  
17 actual controversy between New York Marine and her regarding New  
18 York Marine’s duties under the Policy, the implied covenant of good faith  
19 and fair dealing, and the law regarding New York Marine’s duty to  
20 defend her in the *Depp* lawsuit, that New York Marine contends that it  
21 has no duty to defend and/or indemnify her in the *Depp* lawsuit because  
22 of Ms. Heard’s alleged failure to comply with the conditions of the Policy,  
23 and that she disputes New York Marine’s contentions, contending that  
24 New York Marine is obligated to perform all its duties and that New  
25 York Marine had a duty to fully defend her in the *Depp* lawsuit through  
26 its final resolution. Except as expressly admitted, Ms. Heard denies the  
27 allegations in this paragraph.

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1 unclean hands with respect to the Policy, the events upon which its  
2 causes of action are based, and its conduct.

3 **Fourth Affirmative Defense**

4 **(Waiver)**

5 50. By its conduct, representations, and omissions, New York  
6 Marine has waived, relinquished, and/or abandoned any claim for relief  
7 against Ms. Heard respecting the matters that are the subject of the  
8 First Amended Complaint.

9 **Fifth Affirmative Defense**

10 **(Estoppel)**

11 51. By its conduct, representations and omissions, New York  
12 Marine is equitably estopped to assert any claim for relief against Ms.  
13 Heard respecting the matters that are the subject of the First Amended  
14 Complaint.

15 **Sixth Affirmative Defense**

16 **(Breach of Contract)**

17 52. New York Marine’s claims are barred, in whole or in part,  
18 because New York Marine has breached its obligations under the Policy.

19 **Seventh Affirmative Defense**

20 **(Bad Faith)**

21 53. New York Marine is barred from any recovery against Ms.  
22 Heard by reason of its tortious breaches of the implied covenant of good  
23 faith and fair dealing and its bad-faith unreasonable conduct.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Ms. Heard prays for a judgment:

26 1. Declaring that New York Marine is not entitled to the relief it  
27 seeks in its First Amended Complaint or to any relief;

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**JURY TRIAL DEMANDED**

Defendant Amber Heard hereby demands a trial by jury.

DATED: January 13, 2023 PASICH LLP

By: /s/ Kirk Pasich  
Kirk Pasich

Attorneys for Amber Heard

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**COUNTERCLAIM BY AMBER HEARD**

Pursuant to Federal Rule of Civil Procedure 13, Counter-Claimant Amber Heard hereby counter-claims against plaintiff and counter-defendant New York Marine and General Insurance Company (“New York Marine”) and alleges and follows.

**NATURE OF THE ACTION**

1. New York Marine sold Ms. Heard an insurance policy in which it promised to defend and indemnify Ms. Heard against, among other things, lawsuits alleging that she defamed others. When Ms. Heard was sued by Johnny Depp for defamation, she timely notified New York Marine and asked New York Marine to defend her. While New York Marine promised to do so, it did not provide the full and capable defense to which Ms. Heard was entitled, it failed to pay the attorneys’ fees and costs that it was obligated to pay for Ms. Heard’s defense, and it acted in other ways that prejudiced Ms. Heard and her defense.

2. In acting in this manner and as described in greater detail below, New York Marine breached its contractual duties, tortiously violated the insurance policy’s implied covenant of good faith and fair dealing, and repudiated the duties that it owed to Ms. Heard while she pursued her appeal in the lawsuit brought by Mr. Depp. New York Marine’s conduct and its coverage positions are contrary to the terms of its insurance policy, the law, the facts, and insurance industry custom and practice. Ms. Heard is entitled to recover damages to compensate her for the injuries that New York Marine has inflicted and punitive damages because of New York Marine’s tortious bad faith.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this Counterclaim pursuant to 28 U.S.C. § 1367 because each claim is so related to claims within the

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1 Court’s original jurisdiction that they form part of the same case or  
2 controversy.

3 4. Venue is proper in this District pursuant to 28 U.S.C.  
4 § 1391(b)(2) because a substantial part of the events or omissions giving  
5 rise to the claim occurred in this District, including delivery of the policy  
6 at issue.

7 **PARTIES**

8 5. Ms. Heard is an actor. She has appeared in such films as  
9 *Aquaman* and *Justice League*.

10 6. Ms. Heard is informed and believes, and on that basis alleges,  
11 that New York Marine is a corporation organized and incorporated under  
12 the laws of the State of New York with its principal place of business in  
13 New York.

14 7. Ms. Heard is informed and believes, and on that basis alleges,  
15 that New York Marine is a sophisticated national insurance company  
16 that holds itself out as offering excellent customer service and an  
17 experienced claims-handling team.

18 8. Ms. Heard is informed and believes, and on that basis alleges,  
19 that at the time New York Marine sold the Policy, New York Marine was  
20 part of the ProSight Specialty Insurance Group (“ProSight”) and that  
21 ProSight advertised and made public statements, including on its  
22 website, on behalf of New York Marine and its other member companies,  
23 including New York Marine.

24 9. Ms. Heard is informed and believes, and on that basis alleges,  
25 that ProSight used its website to market its insurance products;  
26 represent the nature of its insurance products, its policy underwriting,  
27 and its claims handling; and represented the quality of insurance and  
28 service customers of its group members will receive if they do business

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1 with a ProSight company. Ms. Heard is informed and believes, and on  
2 that basis alleges, that New York Marine authorized the statements and  
3 representations that ProSight made on its website and that those  
4 statements and representations are made on behalf of New York Marine.  
5 Ms. Heard is informed and believes, and on that basis alleges, that when  
6 ProSight said things through its websites, advertising, and statements, it  
7 was speaking on behalf of, and is authorized to speak on behalf of, New  
8 York Marine.

9 10. Among other things, ProSight stated that it offered  
10 “[e]xcellent insurance coverage ready to protect you,” and “unrivaled  
11 value for a wide range of insurance coverages, services, and solutions  
12 that are smart, safe and sure.”<sup>1</sup> ProSight represented, “We create  
13 unrivaled value for our customers by exceeding expectations in  
14 everything we do. We accomplish this based on our unique performance  
15 culture and a desire to succeed at uncommon challenges.”<sup>2</sup>

16 11. ProSight further stated, “The claims process should be more  
17 than a just a transaction. For us, our steadfast team works relentlessly  
18 on each claim to provide you our gold standard of attentive and efficient  
19 advantages. The team engages customers with an innovative plan of  
20 action from gathering facts and data to investigation and reporting. They  
21 are meticulous about servicing you throughout the entire process,  
22 achieving the best possible outcome.”<sup>3</sup> In describing its claim-handling  
23 process, ProSight stated, “Tell us what happened, and we’ll begin  
24

25 <sup>1</sup><https://web.archive.org/web/20170703003245/https://www.prosightspecialty.com/the-prosight-difference-contact-prosight/>

26 <sup>2</sup> <https://web.archive.org/web/20180116194202/https://www.prosightspecialty.com/>

27 <sup>3</sup> <https://web.archive.org/web/20190218065832/https://www.prosightspecialty.com/claims-expertise/>

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1 immediately to deliver the excellent service that is the hallmark of  
2 ProSight. We'll focus first on assuring your well-being. Then we'll tend to  
3 every detail of your claim with care.”<sup>4</sup>

4 12. Ms. Heard also is informed and believes, and on that basis  
5 alleges, that New York Marine is now part of the Coaction Specialty  
6 Insurance Group (“Coaction”) and that Coaction advertises and makes  
7 public statements, including on its website, on behalf of New York  
8 Marine and its other member companies, including New York Marine.<sup>5</sup>

9 13. Ms. Heard is informed and believes, and on that basis alleges,  
10 that Coaction uses its website to represent the nature of its insurance  
11 products and its claims handling and represents the quality of insurance  
12 and service customers of its group members will receive if they do  
13 business with a Coaction company. Ms. Heard is informed and believes,  
14 and on that basis alleges, that New York Marine authorized the  
15 statements and representations that Coaction has made on its website  
16 and that those statements and representations are made on behalf of  
17 New York Marine. Ms. Heard is informed and believes, and on that basis  
18 alleges, that when Coaction say things through its websites, advertising,  
19 and statements, it is speaking on behalf of, and is authorized to speak on  
20 behalf of, New York Marine.

21 14. Coaction represents to the public and to its customers its  
22 “Coaction Values,” which it says are its “intrinsic beliefs and are  
23 important in and of themselves.”<sup>6</sup> Among other things, Coaction states as  
24 follows on its website:

25 \_\_\_\_\_

26 <sup>4</sup> [https://web.archive.org/web/20170702205831/https://www.prosightspecialty.com/  
how-we-handle-claims/](https://web.archive.org/web/20170702205831/https://www.prosightspecialty.com/how-we-handle-claims/)

27 <sup>5</sup> The Coaction website is: <https://www.coactionspecialty.com/get-to-know-us/>.

28 <sup>6</sup> *Id.*

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- “**Customer focused** – We serve the customer – whether they be the broker, policyholder, or another internal or external customer – it is fundamental to everything we do and is a core focus of our decision-making.”<sup>7</sup>
- “**Integrity and respect** – We consistently display honesty and consideration for the feelings, wishes, right and traditions of others across our undertakings – even and especially when no one is watching.”<sup>8</sup>
- “**Accountability** – We accept responsibility for our own actions and are willing to be judged based on performance – it requires a willingness to be transparent.”<sup>9</sup>

15. Coaction also represents to the public and to its customers that it has special expertise in providing insurance to companies and individuals in the entertainment industry. Among other things, Coaction states as follows on its website:

- “We are EXPERTS. . . . Coaction is more than an insurance company. *We’re a specialty company.*”<sup>10</sup>
- “Coaction has been writing Entertainment business for over a decade with a team of experts located in Southern California, New York, and New Jersey who have

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> <https://www.coactionspecialty.com/>

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dedicated their entire careers (over 300 years of collective experience) to these customers.”<sup>11</sup>

- “Target Customers . . . Artists and Entertainers.”<sup>12</sup>

16. Coaction also states in its “Entertainment Fact Sheet Final”:

- “At Coaction, we strive to provide an exceptional claims handling experience to our clients. Our average claim adjuster has over 15 years of experience and are strategically aligned with our underwriting vertical to provide our insured and claimants a specialized claims encounter,” including “Expert claims team known for its quality, commitment and integrity.”<sup>13</sup>
- “Policies are underwritten by the insurers of Coaction Specialty Insurance Group, which includes New York Marine and General Insurance Company . . . .”<sup>14</sup>
- Coaction has “\$1.1B Estimated 2022 Premium” and “\$3.2B Total Assets.”<sup>15</sup>

**THE POLICY**

17. New York Marine sold insurance policy number GL201800012500 to Ms. Heard for the July 18, 2018, to July 18, 2019, policy period (the “Policy”). The “Named Insured” is “Under the Black Sky, Inc. As Per Named Insured Extension Schedule,” which Schedule includes Ms. Heard as a “Named Insured.”

<sup>11</sup> <https://www.coactionspecialty.com/entertainment/>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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1           18. The Policy contains multiple coverage parts, each of which  
 2 provides several separate coverages to Ms. Heard. The Commercial  
 3 Liability General Liability Coverage Form provides \$1,000,000 in  
 4 coverage “Any one person” for Personal and Advertising Injury. The  
 5 Comprehensive Personal Liability Coverage separately provides  
 6 \$1,000,000 in coverage “each occurrence” for Personal Liability.

7           19. The Policy’s Commercial General Liability Coverage Form’s  
 8 “Coverage B personal and Advertising Liability” obligated New York  
 9 Marine to “pay those sums that [Ms. Heard] becomes legally to pay as  
 10 damages because of ‘personal and advertising injury’ . . . .” Commercial  
 11 General Liability Coverage Form, Coverage B, ¶ 1.a. It also obligated  
 12 New York Marine “to defend [Ms. Heard] against any ‘suit’ seeking  
 13 damages for ‘personal and advertising injury’ . . . .” *Id.* The Policy defines  
 14 “personal and advertising injury” to mean “injury, including  
 15 consequential ‘bodily injury,’ arising out of one of more of the following  
 16 offenses: . . . Oral or written publication, in any manner, of material that  
 17 slanders or libels a person . . . .” *Id.*, Commercial General Liability  
 18 Coverage Form § V.14.

19           20. The Policy’s Comprehensive Personal Liability Coverage  
 20 obligated New York Marine to “pay up to [its] limit of liability for the  
 21 damages for which [Ms. Heard] is legally liable” “[i]f a claim or a suit is  
 22 brought against [Ms. Heard] because of . . . ‘personal injury’ caused by  
 23 an ‘occurrence’ . . . .” *Id.*, Comprehensive Personal Liability Coverage,  
 24 Coverage L. The Comprehensive Personal Liability Coverage also  
 25 obligated New York Marine to “provide a defense at [its] expense by  
 26 counsel of [its] choice, even if the suit is groundless, false or fraudulent.”  
 27 *Id.* “Personal injury” is defined to include “injury . . . arising out of one  
 28 or more of the following offenses: . . . oral or written publication of

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1 material that slanders or libels a person or organization including other  
2 forms of defamation; or . . . oral or written publication of material  
3 including other forms of defamation that violates a person’s right of  
4 privacy.”

5 21. To the extent not waived or otherwise excused, Ms. Heard has  
6 complied with all terms and conditions contained in the Policy.  
7 Therefore, Ms. Heard is entitled to all benefits of the Policy.

8 **THE DEPP LAWSUIT**

9 22. In March 2019, Ms. Heard’s ex-husband, Johnny Depp, filed a  
10 lawsuit against Ms. Heard in Virginia state court (the “*Depp* lawsuit”).  
11 Mr. Depp alleged in his lawsuit that Ms. Heard defamed him in a  
12 December 2018 *Washington Post* Op-Ed.

13 23. In June 2022, the jury in the *Depp* lawsuit returned a verdict  
14 against Ms. Heard for three counts of defamation. Ms. Heard appealed  
15 the judgment to the Virginia Court of Appeals. In December 2022, the  
16 parties finally resolved the *Depp* lawsuit pursuant to a confidential  
17 agreement.

18 **NEW YORK MARINE’S BREACHES AND BAD-FAITH CONDUCT**

19 24. Ms. Heard timely notified New York Marine of the *Depp*  
20 lawsuit. New York Marine initially agreed to defend Ms. Heard subject  
21 to a reservation of rights. Unfortunately for Ms. Heard, New York  
22 Marine’s performance never lived up to its promises. Indeed, New York  
23 Marine never fully paid for Ms. Heard’s defense, leaving Ms. Heard to  
24 incur hundreds of thousands of dollars in defense costs not paid by any  
25 insurer, withdrew from Ms. Heard’s defense, expressly repudiated its  
26 duties to defend Ms. Heard, and has consistently placed its interests  
27 above those of Ms. Heard.

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1           25. Specifically, in October 2019, New York Marine reserved  
2 rights to deny coverage on the ground that Ms. Heard behaved  
3 intentionally, thus creating a conflict of interest with Ms. Heard and  
4 giving Ms. Heard the right to independent counsel, with New York  
5 Marine being obligated to pay for the fees and costs of this independent  
6 counsel. Nonetheless, New York Marine refused to agree to defend Ms.  
7 Heard through independent counsel and instead appointed its own  
8 counsel. Despite requests from Ms. Heard to reconsider, New York  
9 Marine persisted in its position, making it impossible for Ms. Heard to  
10 fully accept this “defense” provided by New York Marine without  
11 prejudicing her defense in the *Depp* lawsuit. New York Marine’s  
12 appointed counsel ultimately withdrew on November 20, 2020.

13           26. Ms. Heard is informed and believes, and on that basis alleges,  
14 that New York Marine thereafter agreed to participate in the defense of  
15 Ms. Heard by reimbursing Ms. Heard’s defending insurer, Travelers  
16 Commercial Insurance Company, for some of the amounts it had paid,  
17 and was paying towards Ms. Heard’s defense in the *Depp* lawsuit but has  
18 never done so. Thus, at no point has New York Marine fully honored its  
19 duty to defend Ms. Heard in the *Depp* lawsuit.

20           27. Once judgment was entered in the *Depp* lawsuit in accord  
21 with the jury’s verdict, New York Marine took the position that it need  
22 not defend Ms. Heard, even though that judgment was not final. Ms.  
23 Heard is informed and believes, and on that basis alleges, that New York  
24 Marine took this position to benefit its own economic interests at the  
25 expense of Ms. Heard’s interests and even though it knew, or should  
26 have known, that the bases for its position are contrary to the law and  
27 did not excuse New York Marine from its duty to defend Ms. Heard,  
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1 including its duty to pursue and fund an appeal on her behalf in the  
2 *Depp* lawsuit.

3 28. By refusing to provide the defense to which Ms. Heard was  
4 entitled in the *Depp* lawsuit and by wrongfully asserting that Ms. Heard  
5 was not entitled to indemnity for any amount that Ms. Heard might be  
6 legally obligated to pay in any judgment in or settlement of the *Depp*  
7 lawsuit, New York Marine wrongfully repudiated and refused to perform  
8 its duties to Ms. Heard. In so acting, New York Marine deprived Ms.  
9 Heard from receiving the full benefits that she was promised and to  
10 which she is entitled under the Policy.

11 **FIRST COUNT**

12 **(Breach of Contract)**

13 29. Ms. Heard realleges and incorporates by reference  
14 paragraphs 1 through 28 above.

15 30. New York Marine had a duty under the Policy, the law, and  
16 insurance industry custom and practice to fully defend Ms. Heard  
17 against the *Depp* lawsuit. New York Marine’s duty arose at least at the  
18 time it received notice of the *Depp* lawsuit and continued until the *Depp*  
19 lawsuit was finally resolved.

20 31. New York Marine also had and has a duty under the Policy,  
21 the law, and insurance industry custom and practice to promptly conduct  
22 a full and thorough investigation, including as to all bases that might  
23 support Ms. Heard’s claims for coverage. New York Marine also had and  
24 has a duty to give at least as much consideration to Ms. Heard’s interests  
25 as it gives to its own interests.

26 32. New York Marine breached its duties by, among other things,  
27 a. refusing to fully and properly defend Ms. Heard in the  
28 *Depp* lawsuit;



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- 1 a. refusing to fully and properly defend Ms. Heard in the
- 2 *Depp* lawsuit and then repudiating its duty to defend;
- 3 b. refusing to indemnify Ms. Heard to its Policy limit as to
- 4 any judgment in, or settlement of, the *Depp* lawsuit;
- 5 c. failing to fully inquire into possible bases that might
- 6 support coverage for the *Depp* lawsuit;
- 7 d. asserting grounds for limiting coverage that it knows
- 8 are not supported by, and in fact are contrary to, the
- 9 terms of the Policy, the law, insurance industry custom
- 10 and practices, and the facts;
- 11 e. taking coverage positions that are contrary to Ms.
- 12 Heard's reasonable expectations of coverage;
- 13 f. giving greater consideration to its own interests than it
- 14 gave Ms. Heard's interests;
- 15 g. based on information and belief, failing to have
- 16 appropriate claims handling guidelines and failing to
- 17 consider and act in accord with the governing legal
- 18 requirements; and
- 19 h. otherwise acting as alleged above.

20 37. In breach of the implied covenant of good faith and fair  
21 dealing, New York Marine did the things and committed the acts alleged  
22 above for the purpose of consciously withholding from Ms. Heard the  
23 rights and benefits to which she is and was entitled under the Policy and  
24 the law.

25 38. New York Marine's acts are inconsistent with the reasonable  
26 expectations of Ms. Heard, are contrary to established insurance  
27 industry custom and practice, are contrary to legal requirements, are  
28 contrary to the express terms of the Policy, and constitute bad faith.

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1           39. As a direct and proximate result of New York Marine’s breach  
2 of the implied covenant of good faith and fair dealing, Ms. Heard has  
3 sustained and continues to sustain damages in an amount to be proven  
4 at trial. Also, pursuant to *Brandt v. Superior Court*, 37 Cal. 3d 813  
5 (1985), Ms. Heard is entitled to recover all attorneys’ fees that she has  
6 reasonably incurred, and continues to incur, in her efforts to obtain the  
7 benefits due under the Policy that New York Marine wrongfully has  
8 withheld, and is withholding, in bad faith. Ms. Heard is also entitled to  
9 interest at the maximum legal rate.

10           40. Ms. Heard is informed and believes, and on that basis alleges,  
11 that New York Marine—acting through one or more of its officers,  
12 directors, or other corporate employees with substantial independent and  
13 discretionary authority over significant aspects of New York Marine’s  
14 business—performed, authorized, and/or ratified the bad-faith conduct  
15 alleged above.

16           41. New York Marine’s conduct is despicable and has been done  
17 with a conscious disregard of Ms. Heard’s rights, constituting oppression,  
18 fraud, and/or malice. New York Marine has engaged in a series of acts  
19 designed to deny Ms. Heard the benefits due under the Policy.  
20 Specifically, New York Marine, by acting as alleged above, in light of  
21 information, facts, and relevant law to the contrary, consciously  
22 disregarded Ms. Heard’s rights and forced Ms. Heard to incur  
23 substantial financial losses, thereby inflicting substantial financial  
24 damage on Ms. Heard. New York Marine ignored Ms. Heard’s interests  
25 and concerns with the requisite intent to injure within the meaning of  
26 California Civil Code section 3294. Therefore, Ms. Heard is entitled to  
27 recover punitive damages from New York Marine in an amount sufficient  
28

1 to punish and to make an example of New York Marine and to deter  
2 similar conduct in the future.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Ms. Heard prays for relief as follows:

5 **ON THE FIRST COUNT**

6 1. For damages according to proof at the time of trial, plus  
7 interest;

8 **ON THE SECOND COUNT**

9 2. For damages according to proof at the time of trial, including  
10 reasonable attorneys' fees incurred in obtaining the benefits due under  
11 the Policy, plus interest;

12 3. For punitive damages in an amount to be determined at the  
13 time of trial;

14 **ON BOTH COUNTS**

15 4. For costs of suit herein; and

16 5. For such other, further, and/or different relief as may be  
17 deemed just and proper.

18 DATED: January 13, 2023 PASICH LLP

19 By: */s/ Kirk Pasich*

20 Kirk Pasich

21 Attorneys for Amber Heard  
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**JURY TRIAL DEMANDED**

Defendant and Counter-Claimant Amber Heard hereby demands a trial by jury on her counterclaims.

DATED: January 13, 2023 PASICH LLP

By: /s/ Kirk Pasich

Kirk Pasich

Attorneys for Amber Heard

PASICH<sup>LLP</sup>