



Fletcher, Heald & Hildreth PLC (“Fletcher Motion” and the “Fletcher Amici,” and collectively with the Simpson Amici, the “Amici”), stating as follows:

### **INTRODUCTION**

This is a kitchen sink appeal, with Appellant purporting to assert no fewer than 16 assignments of error. Appellant Amber Laura Heard (“Ms. Heard”), who is represented by two large and well-regarded law firms, is seeking to relitigate virtually every major ruling made by two distinguished and highly respected Chief Judges of the Fairfax County Circuit Court - the Honorable Bruce D. White (retired) and the Honorable Penney S. Azacarte - over the course of a three-year litigation and six-week jury trial. In addition to the oversized brief of 55 pages that Ms. Heard has filed in support of her appeal, the Amici seek to present a collective *93 pages of additional argument* in support of Ms. Heard’s positions. If the Motions were granted, Mr. Depp would be required to respond to a total of 148 pages with his own brief – which presently is set at 55 pages.

Though there are doubtless cases in which briefing by amici curiae might assist the Court in resolving the issues before it, this is not one of them. Mr. Depp respectfully submits that the filing of such extensive additional briefing by amici curiae here is neither necessary nor appropriate and should not be allowed. As a threshold matter, the Court should deny their motions because the Amici failed to comply with the applicable Rules by, *inter alia*, neglecting to properly assign error,

which violation constitutes sufficient grounds for denial. Moreover, Ms. Heard is very competently represented and is not in need of assistance or additional briefing in support of her position. Nor should Mr. Depp be burdened with having to respond to such voluminous additional briefing.

Finally, the Amici's arguments add nothing to the legal analysis provided by Appellant Heard's counsel and appear focused instead on arguing with the jury's clear findings in favor of Mr. Depp on the underlying factual issues. The Amici proceeds from the essential premise that Ms. Heard is a representative of domestic abuse victims – a premise that was emphatically and soundly rejected by the jury who paid careful attention to the evidence presented during the six-week trial. Both amicus briefs cherry pick evidence that they believe should have swayed the jury to a different finding, but offer the Court no insight on the legal issues actually at issue in Ms. Heard's appeal. Allowing this additional briefing would merely serve to complicate what is already a sprawling, misplaced appeal. Accordingly, Mr. Depp most respectfully requests that the Court deny the Fletcher and Simpson Motions.<sup>2</sup>

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<sup>2</sup> It bears noting that the trial court rejected a motion to file an amicus brief at the pleading stage of this case for many of the same reasons that the Motions should be denied here, with then Chief Judge White noting on the record that “[Ms. Heard’s] counsel in the case are highly experienced,” and would “present the law quite adequately to the court,” while rejecting the suggestion that the trial court “in ruling on this specific case, should take [the amici’s] policy goals into effect, as

## ARGUMENT

### **1. The Court Should Deny Leave Because the Amici Failed to Comply with the Applicable Rules**

The Amici failed to comply with the applicable rules, to wit: “A brief amicus curiae must comply with the rules applicable to the brief of the party supported.” Va. R. S. Ct. 5A:23(c). Because the Amici are seeking to support Ms. Heard’s Opening Brief on her appeal, they are required to comply with all of the requirements set forth in Rule 5A:20, including the requirement under Rule 5A:20(c) that the brief must contain a separate heading for assignments of error, with a list of the specific errors claimed to have been made by the trial court, and “[a]n exact reference to the page(s) of the... record... where the error has been preserved.” A failure to assign error, or insufficiencies in the assignments of error are both a basis to dismiss an appeal, as is the failure to adequately support an assignment of error with citations to the relevant pages of the record. Rule 5A:20(c)(1)-(3); Rule 5A:1A.

Here, neither the brief offered by the Simpson Amici nor the brief offered by the Fletcher Amici complies with these express requirements. The Fletcher Amici’s brief *does not contain a section for assignments of error at all*, while the

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opposed to really, in this case, on what the law already is in the Commonwealth and the evidence and facts that I hear.” (R. 22956.)

Simpson Amici included a separate section for assignments of error but failed to support it with *any* citations to the record.

In addition to their failure to provide any supporting citations, the Simpson Amici also violated the Rules by using a size 12 font rather than the required size 14, meaning their brief is actually even longer than it appears to be on its face. Based on their clear violations of the Rules, the Court should deny their Motions for Leave.

**2. The Court Should Deny Leave to File the Briefs Because Appellant Is Well Represented, and Responding to the Amici Would Unnecessarily Burden Mr. Depp**

Subject to exceptions not pertinent here, a brief amicus curiae is permitted “only on motion... and by consent of this Court.” Va. R. S. Ct. 5A:23(a)(3). The rules therefore reflect that such briefing is generally considered unnecessary. Nor would it be necessary or helpful in this case.

It is undisputed that Ms. Heard is well represented in this action by two major law firms, Ballard Spahr LLP (“Ballard Spahr”) and Woods Rogers Vandeventer Black PLC (“Woods Rogers”), which also acted as Ms. Heard’s co-lead trial counsel. On behalf of Ms. Heard, Woods Rogers and Ballard Spahr have already filed an oversized brief of 55 pages that seeks to put at issue *sixteen separate assignments of error*. She certainly does not need 93 pages of additional supporting briefing from outside amici – as noted above in light of the Simpson

Amici's use of smaller font size, the actual pages of extra briefing are closer to 100 - to adequately present her arguments to the Court.

Moreover, Ms. Heard's counsel appear to be acting in coordination with counsel for the Amici, which strongly indicates an attempt by Appellant Heard to circumvent the page limits imposed on both parties. For example, in the proposed amicus brief offered by the Simpson Amici, which was filed and served the same day as Ms. Heard's Opening Brief, Ms. Heard's entire statement of facts is simply incorporated by reference, in an open acknowledgment that the Amici had previously received Ms. Heard's brief and were acting in coordination with her counsel.

Mr. Depp, who has received leave to file a brief of only 55 pages, would be unnecessarily and unfairly burdened if the amici briefs were allowed. Mr. Depp must already respond to Ms. Heard's highly unusual sixteen separate assignments of error in a single brief. Further, Mr. Depp must also address the three additional assignments of error he identified for the Court's consideration in the event of remand. If the amici briefs were allowed, Mr. Depp would also be forced to address their 93 pages of argument (totaling 148), all in the same responsive brief. The burden on Mr. Depp of doing so would be substantial and unjustified.

**3. The Court Should Deny Leave Because the Arguments of the Amici Are Irrelevant and Inappropriate**

Mr. Depp will not address the substance of the Amici's arguments in detail in this Opposition, other than to point out that the arguments in their briefs are for the most irrelevant to the legal issues on this appeal and consist largely of disagreements with the jury's factual findings or complaints about the impact of the jury's factual findings on society in general. The Amici cherry pick and misstate evidence that they maintain supports their personal factual conclusions to argue that the jury got the factual issues wrong, while ignoring the substantial evidence, including testimony of credible disinterested witnesses, that was presented to the trier of fact of Ms. Heard's abusive conduct, admissions, and conspicuous lack of credibility. The Amici also expend many pages arguing that the jury's verdict is somehow harmful to abuse victims in general.

Such arguments are wholly inappropriate on appeal. This Court should not substitute its own judgment (much less the judgment of amici curiae) for that of the jury. *See, e.g., Kelly v. Commonwealth*, 41 Va. App. 250, 257 (2003) ("we do not substitute our judgment for that of the trier of fact"). Likewise, the Amici's focus on some perceived social harm that will result to abuse victims generally from the verdict is both factually misguided (because the jury clearly and emphatically concluded that Mr. Depp is *not* an abuser) and an inappropriate argument (because the jury was tasked with making a factual determination with respect to only the parties to this action, *not* with sending a message to society at large). *Hutchins v.*

*Commonwealth*, 220 Va. 17, 20 (1979) (closing argument asking a jury to send a message to society in general was improper, because of its tendency to inflame a juror’s prejudices, and “to divert the juror’s attention from the evidence produced at trial and focus it upon extraneous and inadmissible matters”).

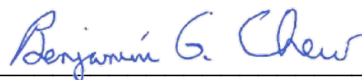
In this context, it would be unfair to force Mr. Depp to use some of his limited pages in responding to these extraneous arguments. Moreover, a back-and-forth between Mr. Depp and the Amici on these non-issues would be a distraction and add nothing useful to the Court in assessing the actual legal issues before it on appeal.

### **CONCLUSION**

Based on the aforesaid, the Court should deny Amici’s Motions for Leave.

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Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5<sup>th</sup> day of December 2022, I caused copies of the foregoing to be served electronically on the following:

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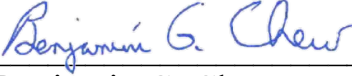
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