APPEAL NO. B341119

Consolidated with Appeal No. B345361

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JANE DOE,

Plaintiff and Respondent,

vs.

ALKIVIADES DAVID, an Individual, et al.

Defendants and Appellant.

APPEAL FROM THE SUPERIOR COURT FOR LOS ANGELES COUNTY

Trial Court Case No. 20STCV37498

Hon. Judge Christopher K. Lui

APPELLANT ALKIVIADES DAVID's OPPOSITION TO MOTION TO DISMISS

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I.

INTRODUCTION

The Disentitlement doctrine is a discretionary doctrine; not a jurisdictional doctrine. It is not to be applied lightly as it is the most drastic of sanctions. In deciding whether to apply the disentitlement doctrine, the court must take into account the equities of the individual case. Balancing the equities involved, the application of the doctrine must give way to having DAVID's appeal heard on its merits to preserve fairness and so that violations of constitutional rights do not go unreviewed or unremedied.

This appeal implicates various constitutional rights, including rights to be free from discrimination due to disability, the right to disability accommodations under Federal and State law, the right to due process, including the right to notice of trial and other hearings, the opportunity to be heard, and the right to due process before being deprived of property. DAVID requests the Court consider his appellant's opening brief in ruling on this motion.

DAVID's appeal has implications far beyond the violation of his individual constitutional rights- it affects litigants' constitutional rights in general and the court process as a whole, which, like the disentitlement doctrine, implicates the integrity of the judicial system and process and public confidence or lack thereof, in the judicial system.

The appeal further presents an issue of first impression which the California Supreme Court has not yet addressed- whether Notice of Trial under C.C.P. Section 594(a) applies to a continued trial date. DAVID did not

receive Notice of Trial pursuant to C.C.P. Section 594(a) of the continued trial date and was not present at trial. DAVID maintains he did not receive notice of the trial at all and he learned of the $900,000,000 jury verdict through the media.

Trial went forward without DAVID, without a court reporter, and with no guardrails. The jury returned a verdict after about two hours of deliberation in the amount of $900,000,000, $100,000,000 in compensatory damages based in part on a medical expert undisclosed prior to trial, and a verdict of $800,000,000 in punitive damages in a trial where DAVID was not present and maintains he did not receive notice.

A terrible injustice occurred at the trial court level. The trial court reduced the verdict to $90,000,000 from $900,000,000 in the motion for new trial acknowledging the verdict "shocks the conscience and virtually compels the conclusion the award is attributable to passion or prejudice." (4 AA Tab 109, 1488-1500; Tabs 105-108, 1480-1487; 8 RT, 2101-2134; 4 AA, Tab 98, 1451-1452, Tab 114, 1513-1518.) $90,000,000 is still nonetheless substantial and should be reviewed on its merits.

The disentitlement doctrine requires a "willful" violation of an order. There is no "willful" violation of the trial court's post-judgment discovery order. DAVID is working on the discovery responses, but there is delay due to his disability limitations and the lack of disability accommodation to date. The compliance date on the post-judgment discovery order is less than three-months old. DAVID is not the typical litigant. DAVID is disabled. In light of his disability, answering the subject discovery which requests information going back 10 years is a daunting and herculean task for DAVID. A request for extension was requested before the discovery was due. The request was

denied. A further request for extension was made upon the threat of a motion to compel- again denied.

Respondent's team is aware DAVID struggles with litigation tasks and gets triggered as evidenced and described in the Requests for Accommodations, the hearing transcripts in the trial court where these issues were raised, and in his deposition transcript and video. DAVID requested disability accommodations in the trial court during the pendency of the case, and to this day, the trial court has not provided him accommodations or ruled on the requests. The trial court relieved DAVID's counsel from the case and DAVID's requests went by the wayside without being addressed by the trial court before trial. DAVID submitted Disability Accommodation requests to the trial court as early as August 28, 2023, June 5, 2023 and December 28, 2023. These requests were filed with this appellate court under seal on December 12, 2025 and December 15, 2025. DAVID is submitting further Disability Accommodation requests in the trial court and with this court for consideration.

DAVID did not "choose" to not post a bond. Posting a bond for a $90,000,000 Judgment is also a tall order given the size of the Judgment. The statute requires the amount to be 1.5 times to 2 times the amount of the judgment, plus other costs in the judgment, or $135,000,000 to $180,000,000.

Respondent has unclean hands and should be precluded from invoking the disentitlement doctrine. Respondent, through counsel, violated court orders and her violations indeed had a direct impact on the injustice that occurred at trial- the violations resulted in DAVID not receiving proper Notice of Trial pursuant to C.C.P. Section 594(a) or even reasonable notice. That trial resulted in a $900,000,000 verdict against him, later reduced to

$90,000,000. Unlike the subject discovery order which is unrelated to the merits or subject embraced in the Judgment appealed Respondent's failure to give notice of trial and notice of the motion that resulted in 116 facts being deemed admitted goes to the heart of the due process violations perpetrated on DAVID at trial. The trial court ordered her counsel to give notice of the trial several times. The file contains no proof of service that Respondent's counsel ever complied with the trial court's orders to give notice. Respondent is requesting this court impose the ultimate sanction on DAVID- dismissal of an appeal from a $90,000,000 judgment, where it can be argued her counsel's failure to comply with the trial court's orders to give notice of trial and the failure to give DAVID notice of a motion to deem requests for admission admitted, resulting in 116 facts admitted and later used as a basis for a directed verdict on liability at trial and the content of a Special Jury instruction- resulted in the $900,000,000 verdict against DAVID.

DAVID respectfully requests that the motion to dismiss be denied and that this Court consider his appeal on its merits. In the alternative, DAVID requests that this motion be denied without prejudice for Respondent to raise in her Respondent's brief and the issue be ruled on in connection with the merits on the appeal, or that the court stay the appeal affording DAVID the opportunity to get disability accommodations in place so he can have adequate time and support to answer the discovery.

II.

RELEVANT FACTS AND PROCEDURAL BACKGROUND

A. Nature of Action

This action arises from an employment related complaint filed in September 2021 by Thomas Girardi on behalf of Respondent as "Jane Doe"[1] against Alkiviades David ("DAVID"). (6 AA, Tab 144, 1692.) DAVID was later represented by Dordick Law Corporation ("Dordick firm") and Livingston Bakhtiar. (1 AA Tab 1 0015-48.) On November 2, 2021 David filed an Answer containing a general denial and affirmative defenses. (1 AA Tab 3, 0060-71.)

B. <u>Requests for ADA Accommodations</u>

David submitted a Disability Accommodation Request for deposition and trial on June 5, 2023, August 28, 2023 and a follow up request providing additional information on or about December 28, 2023. (1 RT p. 5:20-22; AA, Tab 11, 112-122; AA, Tab 19, 257-284; Tab 32, 473-477.) The requests were submitted through counsel. *Vesco* hearings were held. The ADA requests were never ruled on by the Court. (6 AA Tab 145, 1691-1740; 6 AA Tab 144, 1713-1730.)

C. <u>DAVID Is In Pro Per Remainder of Case</u>

On February 9, 2024, the Court granted DAVID's counsel's motion to withdraw without DAVID having secured replacement counsel and leaving DAVID in pro per with unresolved ADA requests. (2 AA, Tab 39, 516-524; 2 AA, Tab 39, 0516; 5 RT 1204:24-25.) Effective February 13, 2024 DAVID was in pro per in the case and remained in pro per until September 16, 2024 the date of the hearing on the motion for new trial when Bohm Wildish & Matsen, LLP substituted in to argue the new trial motion. (2 AA Tab 39, 516; 6 AA, Tab 144 1723-1733, 2 AA, Tabs 40-41, 525-542.)

[1] The Plaintiff/Respondent Jane Doe made a motion during trial to publish her true name which was granted.

The issue of service of litigation documents on DAVID became an issue after his counsel was allowed to withdraw. Subsequent to February 13, 2024 through the conclusion of trial on June 17, 2024 trial, Respondent addressed all proofs of service to Mr. Sofos as "Attorney for Defendant Alkiviades David" and all proofs purport to be sent via *email* to Ms. Sofos. (6 AA, Tab 144, 1723-1730; 2 AA, Tab 48, 740-741; Tab 50, 749-751; Tab 52, 763-764; Tab 54, 781-782; 3 AA, Tab 55, 787-788; Tab 56, 794, 795; Tab 57, 876-877; Tab 58, 899-901; Tab 63, 914-915; Tab 68, 1000-1001; Tab 69, 1018-1023, Tb 70, 1028-1029; tab 71, 1052-1053, Tab 74, 1158-1159; Tab 78, 1219-1220.) None of the proofs of service for this time period reflect that any service was made on DAVID directly. Id.

Mr. Sofos was at all relevant times, an attorney in Greece and at no time was licensed to practice law in California. Mr. Sofos never made an appearance at any court hearing on DAVID's behalf. (4 AA, Tab 109, 1497.) There is no filing in the record from Mr. Sofos wherein he states he represents David in this California action or where he represents he is authorized to accept service on DAVID's behalf or that he agrees to accept service. There is nothing in the record from Mr. Sofos where he confirms he was in actual receipt of any service of documents from Respondent. (6 AA, Tab 144, 1723-1733.) There are no email communications in the record from Mr. Sofos to Respondent's counsel. (6 AA, Tab 144, 1723-1733; 4 AA, Tab 91, 1295, 1327-1410.) There is no filing by DAVID authorizing service on him through Mr. Sofos. (6 AA, Tab 144, 1723-1733.) There is no consent to receive electronic service signed or filed by David in this case at any time that he was in pro per. (6 AA, Tab 144, 1723-1733.)

D. **Granting of Motion to Deem Requests Admitted**

Respondent served requests for admission on DAVID's counsel on the eve of the motion to withdraw which DAVID did not receive. On March 12, 2024, Respondent filed a motion to deem facts in requests for admission admitted and never served DAVID with the motion. The proof of service on file for the motion reflects it was served by *email* on Mr. Sofos in Greece as "Attorney for Defendant Alkiviades David." (2 AA, Tab 48, 741-741.) Mr. Sofos was never DAVID's attorney in the action.

On May 7, 2024, the Court granted the motion in its entirety deeming all 116 facts in the requests admitted, without DAVID present and without proper notice to DAVID. (2 AA, Tab 49, 743-745; Tab 50, 746-751, Tab 51, 752-754.) The Order and facts deemed admitted as a result later served as a basis for the Court granting a directed verdict on the issue of liability in favor of Respondent. (3 AA, Tab 65, 923.) It also served as a basis for a Special Jury Instruction at trial wherein the jury was instructed that the 34 facts listed therein were "established facts" requiring no further proof essentially establishing Respondent's case and gutting DAVID's defenses. (3 AA, Tab 76, 1144-1146.)

E. Continuances of Final Status Conference and Trial and Orders that Respondent Give Notice and Respondent's Failure to Do So

The Court continued the Final Status Conference from May 13, 2024 to May 15, 2024 and ordered Respondent to give notice to DAVID, which she failed to do. (3 AA Tab 49, 743; 6 AA, Tab 49, 743.) On May 15, 2024, the Court, on its own motion, trailed the Final Status Conference set that day to May 24, 2024. David was not present. The Court ordered Respondent again to give notice. (3 AA, Tab 59, 902.) There is no proof of service in the record indicating Respondent gave DAVID notice. (6 AA, Tab 144, 1725-1727.)

On May 24, 2024 the case came on for a Final Status Conference. DAVID was not present. (3 AA, Tab 60, 904). There is no proof on file that he received notice of the hearing. The Court, on the Court's own motion, continued the jury trial (10 days) scheduled for May 28, 2024 and the Final Status Conference scheduled for May 24, 2024 to May 31, 2024. Respondent was again ordered to give notice. ((3 AA, Tab 60, 904).

On May 31, 2024 the case came on for Final Status Conference and Jury trial. No appearances by David. There is no proof of service was in the file indicating Respondent gave notice of this hearing as ordered. The trial and Final Status Conference set for May 31, 2024 are continued to June 11, 2024. Respondent was once again was ordered to give notice. (3 AA, Tab 61, 908-909.)

On June 11, 2024 the matter came on for hearing. No appearance by DAVID. No proof of service was in the file indicating Respondent gave notice as ordered. The minutes do not reference the lack of proof of service or admonishment to Respondent for having failed to give notice as ordered. (3 AA, Tab 62, 908-909.)

On the Court's own motion, the Final Status Conference and the jury trial scheduled for June 11, 2024 were continued to June 13, 2024 at 10:00 a.m. Respondent was again ordered to give notice. (3 AA, Tab 62, 908-909.) There is no proof of service in the record indicating Respondent gave DAVID notice of the continued Final Status Conference or trial. There is no proof of service that any notice was even sent to Mr. Sofos through any means. (6 AA1726-1728.)

F. The Jury Trial Went Forward Without DAVID and Culminated in a $900,000,000 Special Verdict

On June 13, 2024, the case was called for the Final Status Conference and jury trial. There are no appearances by or for Defendant nor any communication with the Court as to why there are no appearances by Defendant. (3 AA, Tab 64, 916-920.) There is no proof of service on file that David was served with notice of this trial date. (6 AA, Tab 144, 1727-1729; 3 AA, Tab 65, 921-923.)

At the start of trial through conclusion, there was no proof of service on file indicating notice to DAVID (or even to Mr. Sofos) of the continued trial date and continued Final Status Conference was given. There is no indication in the record that the Clerk was instructed to call DAVID to find out why he was not present at trial nor that she called David to inquire on his/her own. (6 AA, Tab 144, 1727-1729; Tab 64, 916-920.)

The Minutes do not indicate evidence was taken or admitted on the issue of whether DAVID had been given notice of the trial. A jury trial went forward in DAVID's absence pursuant to C.C.P. Section 594(a) without a proof of service of Notice of Trial on file, on June 13, 14, and 17, 2024. (6 AA, Tab 144, 1727-1729; Tab 64, 916-920; Tab 65, 0921-23; Tab 73, 1058-1063; 6 AA, Tab 144, 1726-1730.) DAVID was the only defendant at trial and two causes of action went to the jury: sexual assault and battery and intentional infliction of emotional distress.[2] There was no Court reporter for any of the three trial days. (3 AA, Tab 64, 916; Tab 65, 921, Tab 73, 1064.) Respondent excused 16 prospective jurors. (3 AA, Tab 64, 916.)

On June 14, 2024 at 9:09 a.m. (7:09 pm. Athens, Greece time), Respondent filed "Plaintiff's First Amended List of Exhibits" adding 15 new previously undisclosed exhibits on the day 2 of trial consisting of

[2] Defaults were entered against other defendants, but no default judgments were ever entered.

inflammatory texts between DAVID and Respondent's counsel as well as judgments/special verdicts involving other women v. DAVID. The minutes show they were "identified." There is no indication any documentary exhibits were introduced at trial. (3 AA Tab 65, 921-923; Tab 66, 924-988.) DAVID was not served. Respondent also filed a "Second Amended Witness List" paring down her list and adding two new witnesses: Dr. Craig Snyder and Kevin Cordova. (3 AA, Tab 70, 1024.) Both testified that same day on June 14, 2024. There is no indication in the record that the Court or clerk attempted to call DAVID to find out why he was not present at trial.

Excerpts of the video recorded deposition of DAVID were played in open court. (3 AA, Tab 65, 921-923.) Notice of the excerpts were not served on Mr. Sofos until after they were played and were never served on DAVID. Respondent rested. The designation of the amended excerpts was only served on Mr. Sofos (who was not counsel of record) and was not served until after hours PST after the video clips had been played. (3 AA Tab 71, 1030-1053.)

After Respondent rested, an oral motion for directed verdict as to causes of action number 1 (sexual assault and battery) and 10 (intentional infliction of emotional distress) was heard on both liability and damages. The minutes do not reflect the basis for the motion or the arguments made or evidence relied on in this regard. The minutes reflect the Court granted the motion for directed verdict on the issue of liability only based on the Court's ruling on the Motion to Deem Admitted Requests for Admission issued on May 7, 2024 and unspecified testimony during trial. There is no statement of reasons given reflected in the minutes. (3 AA, Tab 65, 921-923.)

Respondent made an oral motion to dismiss causes of action two through nine without prejudice and those were dismissed without prejudice.

The clerk served notice of the dismissal, but only on Respondent's counsel; not on DAVID. (3 AA, Tab 65, 921-923; Tab 67, 989-991.)

After Day 2 concluded and Respondent had rested on June 14, 2024, at 6:16 p.m. PST (June 15, 2024, 4:16 a.m. Athens, Greece time), Respondent caused to be filed a notice of lodgment for a notice to appear. There is a proof of service in the file indicating service of the document was on Mr. Sofos only, and only by email. There is no proof of service in the court file indicating DAVID was served with the Notice to Appear or with the lodgment. (6 AA, Tab 144, 1728-1730; 3 AA, Tab 69, 1002-1023.)

On June 17, 2024 the matter resumed for Day 3 and the final day of trial. Jury trial resumed in DAVID's absence. The jury was given a Special Verdict on the issue of punitive damages and compensatory damages only. (3 AA, Tab 72, 1054-1055.) The jury was provided with a Special Instruction No.1- Established Evidence. The instruction contained 34 items, all of which are taken from the Requests for Admission (Set Two) that were deemed admitted and the jury was instructed those facts are established. (3 AA, Tab 76, 1011, 1144-1146.) The jury was also given a modified CACI 3940 instruction on punitive damages among other instructions. (3 AA, Tab 76, 1011, 1116-1117.)

On June 17, 2024 the jury deliberated for about two hours. The jury came back with a $900,000,000 verdict 35 minutes after the Court answered the questions, $100,000,000.00 in non-economic compensatory damages and $800,000,000.00 in punitive damages. (3 AA, Tab 72, 1054-1057; Tab 73, 1058-1063.)

DAVID learned of the verdict through the media and on July 8, 2024 timely filed a motion for new trial and motion to set aside and vacate the

judgment. (4 AA, Tab 83, 1236-1244; Tab 84, 1245-1271; 4 AA Tab 94, 1428-1430; Tab 95, 1431-1433; Tab 96, 1438, 1434-1439.)

The trial Court conditionally granted a new trial on damages reducing the damages award from $100M compensatory to $10M compensatory and from $800M punitive damages to $80M punitive damages finding the damages award "shocks the conscience and virtually compels the conclusion the award is attributable to passion or prejudice." (4 AA Tab 109, 1488-1500; Tabs 105-108, 1480-1487; 8 RT, 2101-2134; 4 AA, Tab 98, 1451-1452, Tab 114, 1513-1518.) Respondent accepted the reduction and therefore, the court ordered DAVID's motion denied. (5 AA, Tab 114, 1513-1518; Tabs 131, 132, 1608-1611.) On December 23, 2024 the Court entered the Amended Judgment on Special Verdict. (6 AA, Tab 136, 1655-1662.)

On February 21, 2024 David timely filed a Notice of Appeal from the December 23, 2024 Amended Judgment on Special Verdict. On December 10, 2025, DAVID filed Appellant's Opening Brief.

G. <u>Post Judgment Discovery at Issue</u>

Respondent served an inspection demand and interrogatories electronically on July 17, 2025. Twenty-five out of the 35 interrogatories sought information going back ten years. Thirty-one out of the 35 inspection demands sought information going back 10 years. The discovery sought information concerning third-parties while the only judgment debtor in the case was DAVID, in his individual capacity. The record reflects there were no findings of alter-ego in the case. The discovery also sought information regarding DAVID's net worth, although the jury had already awarded $800,000,000 in punitive damages.

The responses were due on August 19, 2025. Contrary to Respondent's counsel's representations to the trial court and in this motion that no request for extension was requested, DAVID did seek an extension of time to respond to the discovery prior to the due date. The request for extension was denied. Indeed it was Mr. Moaven, who declared under penalty of perjury no extension was requested, the person that responded to DAVID's counsel and denied the request for extension. That was the first request for extension. **(cite)** DAVID's counsel requested additional time during the meet and confer process which was denied. There was no response to the written invitation for further meet and confer or to DAVID's meet and confer letter. Instead, Respondent served her motions to compel the next day.

Prior to the filing of this motion to dismiss, Respondent's counsel did not request the responses or any lesser remedy. There was no motion filed with the trial court to compel compliance or seeking a lesser sanction. The motion to dismiss is the first and only time, and the only means through which, after the entry of the Order that Respondent's counsel communicates to DAVID's counsel about the Order.

DAVID is working on responding to the discovery. The process has been a daunting one for him given his disability and the scope of the requests.

III.

ARGUMENT

A. THERE IS NO WILLFUL FAILURE TO COMPLY

The application of the disentitlement doctrine requires a finding of a "willful" failure to comply with a court order.

1. DAVID is Working on the Responses; There is no "Willful" Failure to Comply

The disentitlement doctrine requires willful disobedience. Findleton v. Coyote Valley Band of Pomo Indians (2021) 69 Cal.App.5th 736. There is no willful failure to comply by DAVID. DAVID is working on the responses. He is not refusing to comply. He needs more time. Before the discovery was due an extension was requested and it was denied by Respondent's counsel. Prior to the filing of the motions to compel, requests for additional time and additional meet and confer were requested on DAVID's behalf, and were again denied. Respondent's team is aware of DAVID's disability and is using it as a sword against him knowing he struggles and is triggered.

The Court's deadline pursuant to the Court's Order was December 24, 2025, only a little over two months ago. Responding to the discovery which requests information going back 10 years in 56 out of the 70 discovery requests is a daunting and herculean task for any litigant and much more so for DAVID who is disabled. DAVID is not the typical litigant. Because of his disability, he needs and requests additional time to respond. Three Requests for Disability Accommodations were submitted by DAVID's prior counsel in the trial court on this case and they were never ruled on by the trial court. To this day, the trial court has not honored his requests for ADA accommodations. The requests were submitted on June 5, 2023, August 28, 2023, and December 28, 2023. Medical reports accompanied two of the requests. This court has his three Request for Disability Accommodations. They were filed with the appellate court on December 12, 2025 and December 15, 2025 under seal. DAVID requests they be considered in connection with this motion. DAVID also requests that this court allow him more time to respond as an accommodation.

The trial court failure to provide DAVID the disability accommodations is one of the issues raised by DAVID on appeal. DAVID maintains the failure of the trial court to rule on DAVID's disability accommodations request is reversible error.

The court must respond to these requests by considering the provisions of the Unruh Civil Rights Act (CC §§ 51 et seq.) and the ADA, as well as other applicable state and federal laws, in determining whether to provide an accommodation. Cal Rules of Ct 1.100(e)(1); *Biscaro v. Stern* (2010) 181 Cal.App.4th 702, 709-710- (court must rule on every properly presented request for accommodation that court receives; failure to rule on request is structural error requiring reversal). The court must promptly inform the applicant of its determination to grant or deny an accommodation request and, if the request is denied in whole or in part. The response must be in writing. Cal Rules of Ct 1.100(e)(2). *Biscaro, supra,* 181 Cal.App.4th at 708.

In the present case, David submitted a Disability Accommodation Request for deposition and trial on June 5, 2023, August 28, 2023 and a follow up request providing additional information on or about December 28, 2023. (1 RT 5:20-22.) The requests were submitted through counsel. The trial court never ruled on the requests, although the court did state on several occasions it would not allow a deposition by written question. The Court held several *Vesco* hearings, pursuant to *Vesco v. Superior Court of Ventura* (2013) 221 Cal.App.4th 275. The court shared its thoughts on what it was amenable to doing for the deposition, but never ruled on the accommodations. Specifically, hearings were held on August 23, 2023 (1 AA, Tab 18, 254; 1 RT 5:20-22; 11:16. 21; 1 RT 12:19-28), September 25, 2023, January 5, 2024, and February 13, 2024; (2 AA, Tab 28, 461; 1 RT 19:23-28.) (3 RT 617:2:21; 2 AA, Tab 33, 478; 4 RT 617:20-21.)

The accommodation requested for deposition was to have a deposition of David through written questions and answers or otherwise was frequent breaks and breaking up the deposition into perhaps multiple sessions. A later request was made to postpone the deposition so David could undergo treatment. (RT v.1, p.12:1928.) The court noted it was inclined to deny a deposition on written questions, but inclined to grant reasonable breaks and perhaps multiple sessions. (RT v.1, p. 13:9-p. 15:1.)

The accommodation for trial was a request for breaks and/or a remote appearance and advising the jury of the disability, and also having him not be present if he does not have to because of outbursts. This assumed, of course, he would have counsel representing his interests. (RT v.1, p.13:1-4.)

The court was made aware of the prejudice to David if he was not accommodated due to his traumatic brain injury. (RT v. 3, p. 606:17-p.607:1.) (RT v. 3, p. 606:17-p.607:1.) (RT v. 3, p. 607:2-8.) (RT v. 3, p. 607:17-25.) (RT v. 3, p. 607:26- 608: 3.) (RT v. 4, p. 905:1-15.) (RT v. 3 ,p. 608: 4-10.)

David's counsel further explained, "this is a case that can have catastrophic effects on Mr. David, and we're not playing games with his medical condition. I'm sure the court knows that the- foundation of our request is well grounded and a serious medical challenge." (RT v. 3, p. 611: 6-10.) The trial court had witnessed first hand how DAVID's disability manifested itself.

David's counsel addressed the trial accommodation stating that based on discussions he has had with Dr. Wexler and the ADA expert and based on counsel's own observations of David in other trials, "it would probably be best if Mr. David was not in courtroom when he didn't have to be because he reacts to many different things that go on." (RT v. 3, p. 612:17-24.) Counsel

expressed that there is high risk with David being in the courtroom the entire time. (RT v. 3, p. 612:17- p. 613: 3.) (RT v. 3, p. 613: 27-614:7.)

The last *Vesco* hearing took place February 13, 2024 after David's counsel had been relieved. (RT v. 6, pp. 1501-1510.)

David sat for deposition on March 1, 2024 without an accommodation request. The case proceeded to trial without David present and without any Order made by the Court on the requests for accommodation. The deposition was on video and turned out to be highly prejudicial. Excerpts were played to the jury to David's prejudice. What counsel was concerned about manifested itself and was used against David at trial. David's deposition was taken without accommodation and on video. David was triggered and his conduct became dysregulated as a result. His deposition was taken, without an accommodation, got him on camera, and video clips where he exhibits dysregulated behavior were played to the jury. Without the knowledge of the traumatic brain injury, that behavior is interpreted adversely and is highly prejudicial to David. (RT, v.1, p. 15:16-p. 16:17.)

Here, Respondent obtained the discovery order, also without the trial court ruling on his accommodation requests.

2. **Obtaining a Bond for a $90,000,000 is a Tall Order**

The fact that a bond was not posted does not mean there is a willful failure to comply. The law requires at least 1.5 times the amount of the judgment plus costs, and up to two times the amount of the judgment. C.C.P. Section 917.1; Quiles v. Parent (2017) 10 Cal.App.5th 130; That would require DAVID to post a bond of at least between $135,000,000 and $180,000,000.

3. The Discovery is not "Routine" Discovery

The discovery is not "routine." It consists of 70 requests, 56 of which seek information going back 10 years' time. Respondent is critical that objection only responses were served. An extension to respond was requested and Respondent denied. An extension of further time to meet and confer to try and resolve the dispute, including the overbreath of the scope of the discovery was requested- and again denied. It is true that the trial court, surprisingly overruled each and every objection, including objections based on attorney-client privilege when the responses were timely made.

Again, the failure to meet the Court's December 24, 2025 deadline does not constitute "willful" noncompliance. From the start DAVID has requested more time; he has pending ADA accommodations that have never been ruled on. From the start, Respondent has been inflexible, unwilling to give routine extensions consistent with the State Bar civility guidelines, and seeks to use DAVID's disability as a sword against him knowing this is a monumental task for a person like him with his given disability.

B. RESPONDENT HAS UNCLEAN HANDS TO SEEK DISENTITLEMENT

Respondent seeks to avail herself of the disentitlement document to impose the ultimate doomsday sanction (without a prior lesser sanction) yet Respondent has unclean hands.

The doctrine of unclean hands is an equitable defense which prevents a plaintiff from obtaining relief when the plaintiff has engaged in unconscionable, bad faith, or inequitable conduct in connection with the matter in controversy. Mendoza v. Ruesga (2008) 169 Cal.App.4th 270. The

doctrine presents an equitable rationale for refusing a plaintiff relief where principles of fairness dictate that the plaintiff should not recover. Meridian Financial Services, Inc. v. Phan (2021) 67 Cal.App.5th 657. The unclean hands doctrine applies where where the inequitable conduct occurred in a transaction directly related to the matter before the court and affects the equitable relationship between the litigants. Unilogic, Inc. v. Burroughs Corp. (1992) 10 Cal.App.4th 612. The doctrine of unclean hands "promotes justice by making a plaintiff answer for her own misconduct in the action" and "prevents a wrongdoer from enjoying the fruits of [her] transgression. Meridian Financial Services, Inc. v. Phan (2021) 67 Cal.App.5th 657.

Here, Respondent was ordered several times to give notice of the trial dates in the case. The Court file before the trial court proceeded to hold a jury trial in DAVID's absence is void of any notice of trial to DAVID by Respondent or her counsel. (Please see Sections II. E. and F. above.) Her lack of notice has a direct impact on the judgment that resulted from the trial which the trial court later ruled "shocks the conscience." Her conduct in failing to serve DAVID with the motion to deems requests admitted also infected the proceedings as it resulted in the directed verdict on liability and a jury instruction with "established facts." (V. 3, Tab 76, 1011-1210.)

C. THE APPLICATION OF THE DISENTITLEMENT DOCTRINE IS DISCRETIONARY; NOT JURISDICTIONAL

The disentitlement doctrine is not jurisdictional; it is a *discretionary tool* that may be applied only when the *balance of equitable concerns* makes it a proper sanction. San Francisco Unified School Dist. ex rel. Contreras v. First Student, Inc. (2013) 213 Cal.App.4th 1212, 1239-1240. Even where the court finds it warranted to apply the doctrine, the court has discretion to stay

the action as opposed to imposing the ultimate doomsday sanction or to dismiss it. Marriage of Hofer (2012) 208 Cal.App.4th 454; Alioto Fish Co., Ltd., v. Alioto (1994) 27 Cal.App.4th 1669, 1691.

The disentitlement doctrine "is particularly likely to be invoked where the appeal arises out of the very order the party has disobeyed." Ironridge Global IV Ltd. v. Scrips America Inc. (2015) 238 Cal.App.4th 259, 265.

D. CONSTITUTIONAL PROTECTIONS WEIGH HEAVILY IN BALANCING THE INTERESTS AND EQUITIES

Courts do not lightly apply the disentitlement doctrine, and "it should be applied in a manner that takes into account the equities of the individual case." In re Marriage of Cohen (2023) 89 Cal.App.5th 574.

The balance between enforcing court orders and protecting constitutional rights requires careful consideration of the equities in each case. California courts do not apply it lightly particularly where constitutional issues or issues in which the state or general public are at stake.

In San Francisco Unified School Dist. ex rel. Contreras v. First Student, Inc. (2013) 213 Cal.App.4th 1212, 1239-1240, the doctrine was not invoked where appellate court was seriously concerned the injunction being appealed conflicted with policies underlying False Claims Act and constituted unconstitutional restraint on speech.

In re Claudia S (2005) 131 Cal.App.4th 236, the court found the disentitlement doctrine inapplicable where conducting hearings in the parents' absence rendered proceedings fundamentally unfair, and thus violated due process." In dependency cases, "the doctrine has been applied

only in cases of the most egregious conduct by the appellant, which frustrates the purpose of dependency law and makes it impossible to protect the child or act in the child's best interests." In re E.M.(2012) 204 Cal.App.4th 467.

In Polanski v. Superior Court (2009) 180 Cal.App.4th 507, the appellate court declined to apply the disentitlement doctrine on appeal to preclude its review on the merits of a fugitive's writ of mandate. This was particularly the case where the petition for writ of mandate "made very serious allegations of judicial and prosecutorial misconduct in the criminal prosecution."

In Polanski, the court noted that the disentitlement doctrine does not bar relief when a matter presents systemic issues and interests of higher importance than the values advanced by disentitlement. Polanski v. Superior Court (2009) 180 Cal.App.4th 507. The court also recogizied that when a fugitive defendant seeks to vindicate a constitutional right, courts should give weight to this factor in exercising discretion. Polanski v. Superior Court (2009)180 Cal.App.4th 507. The court in Polanski explained:

> "Because of the very serious allegations of judicial and prosecutorial misconduct raised by Polanski in this matter, and their implications for the integrity of the criminal justice system, we decline the People's request to apply the disentitlement doctrine to Polanski's petition for writ of mandate and instead consider it on the merits." Polanski v. Superior Court (2009) 180 Cal.App.4th 507, 530.

Here too, because of the serious allegations of the judicial conduct (failure to rule on ADA accommodation; proceeding to trial without a Notice of Trial; the introduction of inflammatory non-party victim evidence, misleading jury instruction, failure to instruct properly on financial wealth

for punitive damages), and the implications of what transpired for the integrity of the civil justice system, this appeal should be reviewed on its merits.

In describing the disentitlement doctrine, the court noted:

> The doctrine is a blunt weapon, not appropriate in every matter is which a party has fled criminal prosecution." Id.at 533. Courts have found that although the interests in redressing the affront to the courts [of the defendant's flight] and the need to deter flight by others were "substantial," "disentitlement is too blunt an instrument for advancing them." Polanski at 533 citing Degan, 517 U.S. at 828, 116. S.Ct. 1777 (U.S. Supreme Court holding trial court not justified in striking the civil filings of a claimant in a civil forefeiture action and granting summary judgment against him because of his failure to appear in a criminal prosecution.) Degen, supra, 517 U.S. at pp. 821, 825.

The court in Polanski also explained that in noncriminal contexts, courts routinely decline to disentitle litigants on the basis of contempt, fugitive status or noncompliance with court orders when the issues raise by the litigants entail interests beyond the personal of the individual petitioner, such as the welfare of minor children, or overarching issues of public interest and policy. Polanski at p. 536.

Citing to Hull v. Superior Court (1960) 54 Cal.2d 139, which confirmed the disentitlement doctrine but noted that the court need not disentitle a petitioner if the public interest will be better served by handling the matter on its merits. Polanski at 536. In this regard, the California Supreme Court in Hull stated:

> "A court should have the right to deny its processes and aid to one who stands in contempt or is in contempt of its orders. . . But it must be remembered that even though the moving party has been adjudicated in contempt, the court is not required to bar entry of the final decree, but such action remains within the trial court's discretion. If the court determines that the public interest will be better served by finally and permanently dissolving the marital status it is entirely within the power to do so." Hull, supra, 54 Cal.2d at 146.

Similarly, in Smith v. Smith (1955) 135 Cal.App.2d 100, the Court of Appeal refused to apply the disentitlement doctrine against an absconding father because his appeal raised questions of the best interests of the minor children involved. As the court explained: "The personal rights of the parties are by no means the sole subject of judicial concern." Id. at 107. See also, Dupes v. Dupes (1919) 43 Cal.App.67, declining to dismiss mother's appeal in dissolution matter based on "consideration for the welfare of the minors and of their probable ultimate disposition, as well as the interest the state has in the maintenance of the marital state."

In In Re A.K. (2024) 99 Cal.App.5th 252, the court of appeal declined to apply the disentitlement doctrine where "the fundamental due process violations [the father] suffered must not go unremedied."

In Calvert v. Al Binali (2018) 29 Cal.App.5th 954, the court refused to dismiss an appeal under the disentitlement doctrine where the judgment was void on its face for improper service, holding that the patient's failure to appear at a judgment debtor exam did not warrant dismissal because "the trial court never had jurisdiction over the patient.

In re Marriage of Cohen (2023) 89 Cal.App.5th 574, 581, the appellate court declined to dismiss the appeal under the disentitlement doctrine despite husband's repeated failures to comply with court ordered support obligations. The court found the failure insufficient to deprive husband of his right to seek judicial review based on those acts. Id. at 581.

These cases demonstrate that constitutional concerns can outweigh the equitable considerations supporting disentitlement. In summary, California courts decline to apply the disentitlement doctrine where the balance of the equities does not support dismissal, the conduct lacks willfulness, adequate record support is absent, or where constitutional or systemic concerns outweigh interests served by disentitlement.

E. A BALANCING OF THE INTERESTS TIPS HEAVILY AGAINST APPLYING THE DISENTITLEMENT DOCTRINE

A balancing of the interests in this case, and the potential impact the constitutional issues in this case have on the integrity of the civil judicial system, and the rights of other litigants tips heaving in favor of denying the motion to dismiss.

Dismissal is too blunt and harsh of a result. This is a $90,000,000 judgment. DAVID is disabled, the compliance deadline was only a little over two months ago, DAVID has not been provided his disability accommodations and/or does not have a ruling on whether accommodations will be provided. The discovery order does not have anything to do with the merits of the Judgment appealed. Respondent seeks a doomsday sanction where no lesser sanction has been imposed and DAVID is making efforts to comply to the best of his ability given his disability.

The order is an order pertaining to discovery for enforcement. If affirmed, the ability to enforce will still be there. Respondent has demonstrated no prejudice- that these written discovery responses are her only source of finding out information (as opposed to public records, prior debtor exams provided by DAVID, etc.) The amount of the Judgment, $90,000,000 is astronomical. The cases cited by Respondent and the cases research has uncovered deal with much smaller amounts. The highest judgment amount the research shows was about $8M. This Judgment is for $90M. The stakes are much higher in this case and the prejudice resulting from dismissal is great. The cases relied on by Respondent are not cases where constitutional rights were alleged to be violated. There is unclean hands here by Respondent.

The issues in this appeal are mostly constitutional in nature, including violation of due process rights, and have far reaching implications than just the personal rights of the parties. A summary of the issues on appeal are as follows:

(1) The failure to rule on the Request for disability accommodations (described above.)
(2) Whether the $10M compensatory damage award is excessive or unconstitutional;
(3) Whether the $80M punitive damages award is excessive or unconstitutional;
(4) Whether the $80M award violates DAVID's due process rights because it punishes him for harm to non-parties to the litigation. Phillip Morris USA v. Williams (2007) 549 US 346, 353-354, 127 S.Ct. 1057, 1063.

(5) The prejudicial effect of the admission of highly inflammatory evidence regarding harm to non-party "victims," and the failure to properly instruct the jury as to the limited purpose of such evidence (The jury heard overwhelming evidence about multiple rapes of other women, bad acts, sexual assault, other graphic sexual misconduct and public ridicule type conduct by David toward other women. The jury was given Special Jury Instruction No. 1 which instructed the jury many such bad acts regarding other women-nonparties and strangers to the litigation, have been established. (4 AA, Tab 91, 1323, Tab 81, 1313.)

(6) As the trial court ruled in the new trial ruling, the evidence the jury heard about these other women "aroused the passion of the jurors and their determination of damages was based **also on evidence of Defendant's economic power, mistreatment of other women, and history of losing multimillion dollar verdicts."** (4 AA, Tab 109, 1488, 1495.)

(7) Instructional error in giving the jury a modified CACI 3940;

(8) Error in answering the Jury's question: Is the "ten times" amount for punitive statutorily based or just a suggestion?" (3 AA, Tab 77, 1211; Tab 76, 1116-1117.)

(9) The reversal of the punitive damages award because Respondent failed to submit evidence of DAVID's financial net worth, a prerequisite for an award of punitive damages. Adams v. Murakami (1991) 54 Cal.3d 105, 108, 109.

(10) The jury was not instructed on DAVID's financial condition. Instead, the trial court modified CACI 3940(c) which implies no

evidence of financial condition was presented. (3 AA, Tab 76, 1116, 1117.)

(11) Whether the Trial Court committed prejudicial error by failing to instruct the jury on DAVID's financial condition in arriving at the punitive damages award. CACI 3940; *Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1184-1186

(12) DAVID was denied his due process rights to a fair hearing warranting reversal of the Judgment. DAVID raises several issues on appeal regarding the denial of his due process rights to a fair hearing under the Fourteenth Amendment and under the California Constitution (Article I, Section 7). Errors infringing on this right, sometimes referred to as "structural error" in the "trial mechanism" are presumptively prejudicial and "reversible per se." See *Conservatorship of Person & Estate of Maria B.* (2013) 218 Cal.App. 4th 514, 534, 13; *Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 292-293.

(13) The trial court's granting of the motion to deem requests admitted and the resulting directed verdict on liability and jury instruction with the 34 established facts;

(14) DAVID has a due process right of notice and opportunity to be heard and he maintains that C.C.P. Section 594(a) notice of trial applies to the continued trial dates. A litigant's notice of trial date pursuant to Code of Civil Procedure Section 594(a) is mandatory and jurisdictional and a judgment entered following a trial conducted in violation of this requirement is void. *Au-Yang v. Barton* (1999) 21 Cal.4th 958, 963; *Marriage of Goddard* (2004)

33 Cal.4th 49; *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857; *Bird v. McGuire* (1963) 216 Cal.App.2d 702, 713. DAVID asserts Section 594(a) is applicable to the continued trial dates of May 31, June 11 and June 13, 2024. David did not get Notice of Trial for those dates despite Respondent being ordered to give him notice. (6 AA Tab 144, 1723-1733; 3 AA, Tab 59, 0902, Tab 60, 0904, Tab 61, 908.) There is no proof of service in the file that he got notice of trial notices for any of those three dates, nor was there any such proof when the Court proceeded with the trial in David's absence. (6 AA, Tab 144, 1723-1733.) The trial court acted in excess of its jurisdiction. Proof of service or other competent evidence must be provided to the court *before* proceeding in the party's absence. *Marriage of Goddard* (2004) 33 Cal.4th 49, 54. This was not done. DAVID's Due Process Rights were Violated Through the Issuance of an Order deeming the facts in the Requests for Admission (all 116) admitted without DAVID receiving Notice or opportunity to be heard. Service on Mr. Sofos was invalid as Mr. Sofos was not DAVID's attorney.

14) DAVID asserts the errors below resulted in a miscarriage of justice and a verdict of $900,000,000 reduced to $90,000,000 after a new trial ruling. The errors include those referenced above; the failure to secure a court reporter so that DAVID is not denied meaningful appellate review that requires a reporter's transcript; the right to an impartial jury (16 jurors were excused by Respondent).

F. **THE CASES RELIED ON BY RESPONDENT ARE DISTINGUISHABLE AND ON BALANCE DO NOT WARRANT THE APPLICATION OF THE DISENTITLEMENT DOCTRINE**

The cases relied on by Respondent to support dismissal are distinguishable. Findleton v. Coyote Valley Band of Pomo Indians (2021) 69 Cal.App.5th 736 involved violations of multiple orders (at least five) by the Tribe. The Tribe violated orders; transferred assets in violation of orders; the Tribe had already been sanctioned before this doomsday sanction was imposed, and the Tribe was appealing from one of the orders it had violated. Here, the discovery order is not the order appealed; there are no prior sanctions orders against DAVID; there is only one order. The court in Findleton acknowledged that its case was "one of the rare cases where applying the doctrine is appropriate due to [the Tribe's] flagrant [repeated and continuous violation of the superior court orders." Findleton, supra,69 Cal.App.5th at 740. Even with such flagrant and systematic and continuous violations of multiple orders and no showing of willingness to comply, the court dismissed the appeals without prejudice subject to reinstatement.

Stoltenberg v. Ampton Investments, Inc. (2013) 215 Cal.App.4th 1225 is also distinguishable. Unlike this case, there was a contempt finding; there has been no contempt finding here. Here, DAVID is working on responses; he is not trying to frustrate the process. Further, in Stoltenberg, the amount in controversy was $81,500,000 less than this case. The court noted that in that case, the defendants "have repeatedly, and in contempt of sister state orders, frustrated enforcement of the California judgment.

The case of Marriage of Hofer (2012) 208 Cal.App.4th 454 is also distinguishable. There, husband was ordered to pay a fee award of $200,000. He challenged that order on lack of ability to pay. Because he had withheld his income and assets for the court to consider in making the fee order, and he was appealing from the very order which resulted from his failure to disclose, the court felt it appropriate to apply the doctrine. The husband had

failed to comply with three different orders and those orders went to the heart of what he was appealing.

IV.

CONCLUSION

DAVID respectfully requests that the motion to dismiss be denied and that the Court permit his appeal to proceed on the merits. What occurred in the trial court that culminated in a $900,000,000 verdict after only two hours of deliberation was a travesty of justice. Respondent has unclean hands as she played a huge part in the result by failing to comply with the Court's orders that DAVID be served with Notice of Trial; and by failing to serve DAVID with the motion which led to the request for admission motion granted. Dismissal is an overly harsh result. DAVID is working on the responses; no prejudice has been shown by the two-month delay in compliance. DAVID is disabled and needs accommodations to allow him to get through this daunting task. He is submitting further requests for disability accommodations; the ones previously submitted have not been decided. There has been no contempt and no lesser sanction (such as a monetary sanction) before this doomsday sanction. The stakes are too high- over $90,000,000 plus costs/interest. Constitutional issues are at play; the integrity of the civil judicial system is at play. The issues implicated go beyond the rights of the parties. If the court is inclined to apply the doctrine, the more equitable remedy would be a stay, not a dismissal, and without prejudice subject to reinstatement.

Dated: March 6, 2026 Bohm Wildish & Matsen, LLP

By: _____
JAMES G. BOHM, ESQ.
CECILIA PRECIADO, ESQ.

DECLARATION OF CECILIA PRECIADO, ESQ.

I, Cecilia Preciado, declare and state as follows:

1. I am an attorney at law licensed to practice before all courts in the State of California and a partner at Bohm Wildish & Matsen, LLP, attorneys of record for Appellant Alkiviades David ("DAVID"). I have personal knowledge of the herein stated, and as to those matters based on information and belief, I believe them to be true. If asked to testify thereto, I would and could completely do so.

2. This office was retained by Mr. David at the eve of a hearing on a Motion for New Trial from a $900,000,000 (Nine-hundred million dollar) verdict obtained by Plaintiff's counsel in a jury trial where Mr. David was not present nor represented at that trial. There was no court reporter at that trial, and hence, no reporter's transcript of the proceedings. Plaintiff's counsel has advised no exhibits were presented at the trial, but a jury awarded $900,000,000 against Mr. David. The special verdict consisted of $100,000,000 in compensatory damages and $800,000,000 in punitive damages.

3. I argued the Motion for New Trial.

4. I am informed and believe that Mr. David is working on the discovery responses to the subject Interrogatories and Inspection Demand with the assistance of Angelina Dettamanti, whom I am informed and believe is a Certified ADA advocate, but he has been unable to complete the responses at this time.

5. I am also informed and believe that Ms. Dettaamanti is assisting Mr. David in submitting further Requests for Disability accommodations in both the trial court and the court of appeal.

6. The only Judgment debtor in this case is Mr. David, not any companies Plaintiff or her counsel contend are affiliated with him. Based on my review of the file, there were other defendants in the case that were defaulted, but I am unaware that Judgments were entered.

7. I am informed and believe there were no findings of alter ego at trial.

8. On July 17, 2025 Plaintiff served on our office a Demand for Production of Documents (Set One) and Special Interrogatories (Set One).

9. The discovery resulted in Respondent filing two motions to compel which I opposed on Mr. David's behalf. My opposition papers are contained in Respondent's Appendix in connection with this motion in Volume II, pp. 326-509; Volume III, pages 577-598. My opposition contains a detailed meet and confer letter I wrote to Respondent's counsel and documentation regarding my efforts to obtain extensions of time to respond and to narrow the scope of the requests to manageable requests for Mr. David to be able to respond.

10. The responses were due on August 19, 2025. Prior to the due date, I requested an extension of time to respond and Mr. Moaven, Respondent's counsel denied the request leaving me no choice but to serve objections to preserve them.

11. Plaintiff's memorandum of points and authorities at page 3 line 21 states that the responses were due on or before August 19, 2025 and that Defendant did not request and extension to respond. Similarly, Mr. Moaven declares under penalty of perjury at paragraph 6 of his declaration in support

of the motion to compel further responses to the Demand for Production that "Defendant never asked for an extension of time to respond to Plaintiff's RFP." The same representations are made in the memorandum of points and authorities regarding the motion to compel further responses to Special Interrogatories and in Mr. Moaven's declaration at paragraph 6, p. 7.

12. It is not true that a request for extension to respond was not requested. Indeed a request for extension was requested and it was Mr. Moaven, who has declared under penalty of perjury no extension was requested, the person that responded to me and denied my request.

13. On August 19, 2025, I sought a two-week extension to respond to the discovery up to and including September 2, 2025. Attached as **Exhibit "A"** to my declaration in opposition to the motion is a true and correct copy of my August 19, 2025 email to Plaintiff's counsel, Dustin Moaven. I indicated in my email that Mr. Bohm (lead counsel) and I had been engaged in a 3-week trial and asked if we could please have a two week extension.

14. My request for a 2-week extension was denied. Attached to my declaration in opposition to the motion to compel as **Exhibit "B"** is a true and correct copy of Mr. Moaven's August 19, 2025 email to me denying my request for a two-week extension to respond.

15. My extension request was my <u>first</u> request for extension.

16. In light of the denial of the request for extension, on August 19, 2025 I served timely objections to the discovery. Attached as **Exhibit "C"** to my declaration in opposition to the motion to compel is a true and correct copy of Defendant Alkiviades David's Responses to Plaintiff Jane Doe's Judgment Debtor Requests for Production of Documents , Set One. Attached to my opposition declaration to the motion to compel **Exhibit "D"** is a true and correct copy of Defendant Alkiviades David's Response to Plaintiff Jane

Doe's Judgment Debtor Interrogatories to Alkiviades David Pursuant to Civil Code Section 708.020.

17. On September 4, 2025, I received correspondence from Mr. Moaven dated September 3, 2025. In his correspondence, Mr. Moaven states in part: "Unless defendant serves full, code-compliant amended responses and produces all responsive documents by the close of business on September 18, 2025, Plaintiff will have no choice but to move to compel and seek monetary sanctions pursuant to C.C.P Section 2030.300, 2031.310 and 2023.030."

18. On September 18, 2025, I wrote to Mr. Moaven acknowledging his September 3, 2024 letter. I requested time to address his letter and to meet and confer with him in an effort to resolve the issues set forth in his September 3, 2025 correspondence. I noted I needed more time to respond to the meet and confer. I informed Mr. Moaven in exchange, I agree to extend Plaintiff's motion to compel deadline the equivalent amount of time.

19. I further informed Mr. Moaven that as he is aware from my previous request for extension to respond to the discovery that my schedule was impacted with a heavy trial schedule.

20. I gave Mr. Moaven a detailed explanation of my impacted schedule, including identifying the dates I had been in trial and other commitments.

21. I noted in my September 18, 2025 email that I did not see any prejudice to Plaintiff by Mr. Moaven granting me additional time to enable us to meet and confer since I was granting an extension to file a motion to compel should that be necessary, and the case is on appeal and approaching the briefing schedule. Attached to my declaration in opposition to the motion to compel as **Exhibit "E"** is a true and correct copy of my September 18,

2025 email to Mr. Moaven. I received an out of office reply to the email and directing me to another attorney in the office, Brittney Ghadoushi. Attached to my declaration in opposition to the motion to compel as **Exhibit "F"** is a true and correct copy of the out of office notification.

22. I forwarded the email to attorney Ghadoushi in light of Mr. Moaven's absence. Attached to my declaration in opposition to the motion to compel as **Exhibit "G"** is a true and correct copy of my email to Ms. Ghadoushi

23. My request for extension to respond to the meet and confer was denied without explanation. Attached to my declaration in opposition to motion to compel as **Exhibit "H"** is a true and correct copy of Ms. Ghadoushi's email denying me request for extension.

24. On September 18, 2025 I sent a detailed meet and confer correspondence to Mr. Moaven and copied Ms. Ghadoushi on the email. In my meet and confer, I addressed the issue of an extension, asked that they reconsider, and cited them to Guidelines for Civility in Litigation and the State Bar of California Civility Toolbox encouraging attorneys to grant reasonable extensions. I also addressed the nature of his September 3, 2025 letter; that fact that it reads more as an ultimatum with a threat of a motion as opposed to a genuine attempt at a meet and confer. I also addressed deficiencies in the requests and interrogatories. I asked Mr. Moaven to limit the scope of the discovery as 25 out of the 35 special interrogatories seek information going back ten years and 31 out of the 35 Demand for Production of Documents requests seek documents going back ten years. I invited a telephonic meet and confer. Attached to my declaration on the motion to compel as **Exhibit "I"** is a true and correct copy of my September 18, 2025 meet and confer correspondence to Mr. Moaven with the transmittal email.

25. I received no response to my meet and confer correspondence. I received no phone call as I invited to meet and confer.

26. Instead, the very next day I received service of two motions to compel further responses purportedly signed by Mr. Moaven, even though I received an automatic email response the day before that he would be out of the office until September 22, 2205. The motion is silent on the fact that I sent a request for extension on the meet and confer and silent on the fact that I sent a detailed meet and confer letter to Plaintiff's counsel.

27. Prior to the filing of this motion to dismiss, Respondent's counsel did not inquire about the responses or any lesser remedy. He did not file a motion to compel compliance in the trial court.

28. Mr. David has not been ordered to pay monetary sanctions as a result of the discovery order. The discovery order did not include monetary sanctions.

29. The motion to dismiss is the first and only time, and the only means through which after the entry of the Order that Respondent's counsel communicates to DAVID's counsel about the Order or further responses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 6, 2026 in San Diego, CA.

_____
Cecilia Preciado

DECLARATION OF ANGELINA DETTAMANTI

I, Angelina Dettamanti declare:

1. I am a Certified ADA advocate. I have personal knowledge of the herein stated, and as to those matters based on information and belief, I believe them to be true. If asked to testify thereto, I would and could completely do so.
2. I have been assisting Alkiviades David in connection with responding to Interrogatories and Request for Production that are the subject of the Superior Court order.
3. The task is overwhelming for him and he and I continue to work on the responses, having to take frequent breaks, etc.
4. I have also assisted him in connection with the preparation and submission of Requests for Disability Accommodations which are being submitted to the trial court and also to the Court of Appeal.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 6, 2026 at Santa Barbara, California.

_____
ANGELINA DETTAMANTI