

2nd Civil B341119
Consolidated Appeal No. B345361

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA, SECOND APPELLATE DISTRICT
DIVISION ONE**

JANE DOE,

Plaintiff and Respondent

v.

ALKIVIADES DAVID, an Individual, et al.

Defendant and Appellant.

Superior Court of the State of California
County of Los Angeles, Case No. 20STCV37498
Honorable Christopher K. Lui, Judge Presiding

RESPONDENT'S BRIEF

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to California Rules of Court, Rule 8.208, Plaintiff and Respondent Jane Doe and her counsel certify that apart from the attorneys representing the Plaintiff/Respondent in this proceeding, as disclosed on the cover of this Brief, they know of no other person or entity that has a financial or other interest in the outcome of the proceeding that they reasonably believe the Justices of this Court should consider in determining whether to disqualify themselves under Canon 3E of the Code of Judicial Ethics.

Dated: April 1, 2026



John M. Upton

TABLE OF CONTENTS

TABLE OF AUTHORITIES	7
INTRODUCTION	12
STATEMENT OF FACTS AND PROCEEDINGS BELOW	15
LEGAL ARGUMENT	21
I. THE DAMAGES ARGUMENTS	21
A. The judgment is presumed correct, the jury determines damages, and the trial court’s order conditionally granting a new trial (remittitur) is reviewed only for abuse of discretion	21
B. The conditional order granting new trial (remittitur) was a proper exercise of the trial court’s discretion and therefore furnishes no basis for appellate reversal.	23
C. The trial court acted within its discretion in fixing compensatory damages at \$10 million through remittitur.	24
1. The conditional order granting new trial is presumed correct on appeal.	24
2. Appellant has not furnished the Court with the kind of record needed to establish abuse of discretion regarding the conditional order.	24
3. The trial court’s conditional order demonstrates the careful exercise of the trial court’s independent judgment.	26
D. The damages awarded are not unconstitutional for want of notice.	28
E. Appellant fails to demonstrate that the trial court violated his due process rights in its conditional order awarding \$80 million in punitive damages.	31

1. Governing standards.	31
2. The applicable constitutional guideposts support the trial court’s conditional new trial order (remittitur) regarding punitive damages.	33
F. The conditional new trial order ensures that evidence of Appellant’s conduct toward third parties did not improperly influence the size of the punitive damages award.	35
G. Appellant has not demonstrated reversible error in connection with the CACI 3940 Instruction.	37
1. Standard of review.	37
2. There was no error or ambiguity in the trial court’s instruction.	38
3. Appellant waived the issue by not objecting at trial.	40
4. The Court’s responses to the juror’s inquiries adequately addressed alleged instructional ambiguity.	41
H. Appellant forfeited the right to challenge punitive damages for lack of ability-to-pay evidence.	42
1. Obstructors are estopped from arguing that the evidence of financial condition was insufficient to support a punitive damage award.	42
2. Appellant plainly evaded financial discovery and forfeited any right to contest the punitive damages award for want of proof of his financial condition.	44
II. THE DUE PROCESS ARGUMENTS	45
A. Introduction and standard of review.	45

B. Subsequent notices to Appellant were governed by the withdrawal order and thus provided due process.	46
1. A withdrawal order establishes a pro per litigant’s service address.	46
2. Glaser Weil’s withdrawal placed Appellant in propria persona and fixed the method of service going forward.	47
3. Once a litigant becomes self-represented, the obligation to maintain accurate service information shifts to that litigant.	49
4. A self-represented litigant who fails to update his address cannot later claim lack of notice.	50
C. Appellant was not deprived of his due process rights regarding notice of trial.	51
1. Appellant was provided notice in the order authorizing his prior counsel to withdraw.	51
2. Respondent also provided Appellant with notice of the trial and related dates.	51
3. Code of Civil Procedure section 594(a) does not require a new 15-day notice for continued trial dates where the party had actual notice and an opportunity to appear.	54
III. THE ACCOMMODATION ARGUMENTS	56
A. The absence of a written ruling on Appellant’s accommodation request does not constitute structural error because the requests sought trial-management orders, not disability accommodations.	56

B. Even if the trial court was required to issue a ruling on appellant’s accommodation request, the absence of a formal determination was, at most, harmless error.	61
IV. THE “DEEMED ADMITTED” ARGUMENT	64
V. THE MISCARRIAGE OF JUSTICE ARGUMENTS	66
A. Relevant standards.	66
B. Appellant’s inadequate record forfeits his claims.	67
C. Appellant does not establish a miscarriage of justice.	68
VI. CONCLUSION	70
BRIEF FORMAT CERTIFICATE PURSUANT TO C.R.C.	
8.204(C)	71

TABLE OF AUTHORITIES

Cases

<i>Adams v. Murakami</i> (1991) 54 Cal.3d 105.....	42
<i>Argame v. Werasophon</i> (1997) 57 Cal.App.4th 616.....	29
<i>Au-Yang v. Barton</i> (1999) 21 Cal.4th 958.....	56
<i>Backlund v. Stone</i> (2025) 115 Cal.App.5th 580.....	50
<i>Ballard v. Uribe</i> (1986) 41 Cal.3d 564	26
<i>Bethlahmy v. Customcraft Industries, Inc.</i> (1961) 192 Cal.App.2d 308	46, 47
<i>Bigler-Engler v. Breg, Inc.</i> (2017) 7 Cal.App.5th 276	23
<i>Biscaro v. Stern</i> (2010) 181 Cal.App.4th 702	passim
<i>Blank v. Kirwan</i> (1985) 39 Cal.3d 311.....	66
<i>BMW of North America, Inc. v. Gore</i> (1996) 517 U.S. 559.....	32, 34
<i>Bullock v. Philip Morris USA, Inc.</i> , (2008) 159 Cal.App.4th 655	24, 26, 32, 34
<i>Cassim v. Allstate Ins. Co.</i> (2004) 33 Cal.4th 780	67
<i>Champir, LLC v. Fairbanks Ranch Assn.</i> (2021) 66 Cal.App.5th 583	67
<i>Collins v. Union Pac. R.R. Co.</i> (2012) 207 Cal. App. 4th 867.....	24
<i>Conservatorship of D.P.</i> (2019) 41 Cal.App.5th 794	38
<i>Cooper Industries, Inc. v. Leatherman Tool Group, Inc.</i> (2001) 532 U.S. 424	32
<i>Cosenza v. Kramer</i> (1984) 152 Cal.App.3d 1100	25
<i>Cucinella v. Weston Biscuit Co.</i> (1954) 42 Cal.2d 71	65
<i>Dam v. Lake Aliso Riding School</i> (1936) 6 Cal.2d 395	68
<i>Denham v. Superior Court</i> (1970) 2 Cal.3d 557	25, 66
<i>Electronic Funds Solutions v. Murphy</i> (2005)	

134 Cal.App.4th 1161	29
<i>Elkins v. Superior Court</i> (2007) 41 Cal.4th 1337.....	59
<i>Fasuyi v. Permatex, Inc.</i> (2008) 167 Cal.App.4th 681.....	66
<i>Foust v. San Jose Construction Co., Inc.</i> (2011)	
198 Cal.App.4th 181	26
<i>Gee v. American Realty & Construction, Inc.</i> (2002)	
99 Cal.App.4th 1412	25
<i>Gober v. Ralphs Grocery Co.</i> (2006) 137 Cal.App.4th 204	33
<i>Green v. County of Riverside</i> (2015) 238 Cal.App.4th 1363.....	40
<i>Gutierrez v. G &M Oil Co., Inc.</i> (2010) 184 Cal.App.4th 551	65
<i>Hernandez v. California Hospital Medical Center</i> (2000)	
78 Cal.App.4th 498	26
<i>Honda Motor Co. v. Oberg</i> (1994) 512 U.S. 415	31, 32
<i>Hyatt v. Sierra Boat Co.</i> (1978) 79 Cal.App.3d 325	40
<i>Ilczyszyn v. Southwest Airlines Co.</i> (2022) 80 Cal.App.5th 577 ..	38
<i>In re Cortez</i> (1971) 6 Cal.3d 78.....	66
<i>In re Marriage of Arceneaux</i> (1990) 51 Cal.3d 1130.....	67
<i>In re Marriage of Davenport</i> (2011) 194 Cal.App.4th 1507 ...	36, 37
<i>Jones v. Interstate Recovery Service</i> (1984) 160 Cal.App.3d 925.	29
<i>Kramer v. Traditional Escrow, Inc.</i> (2020)	
56 Cal.App.5th 13	47, 50
<i>Lent v. Tilson</i> (1887) 72 Cal. 404	66
<i>Litwin v. iRenew Bio Energy Sols., LLC</i> , (2014)	
226 Cal. App. 4th 877	46
<i>Maria P. v. Riles</i> (1987) 43 Cal.3d 1281	26
<i>Marriage of James M.C. & Christine J.C.</i> (2008)	
158 Cal.App.4th 1261	61

<i>Merlo v. Standard Life & Acc. Ins. Co.</i> (1976) 59 Cal.App.3d 5..	21
<i>Myers v. Trendwest Resorts, Inc.</i> (2009)	
178 Cal.App.4th 735	67, 68
<i>Neal v. Farmers Ins. Exch.</i> (1978) 21 Cal. 3d 910.....	32
<i>Nickerson v. Stonebridge Life Ins. Co.</i> (2016) 5 Cal.App.5th 1 ...	34
<i>Paterno v. State of California</i> (1999) 74 Cal.App.4th 68	67
<i>Pearl v. City of Los Angeles</i> (2019) 36 Cal. App. 5th 475.....	22, 24
<i>People ex rel. San Francisco Bay Cons. etc. Com. v. Smith</i> (1994)	
26 Cal.App.4th 113	54, 55
<i>People v. Bell</i> (1998) 61 Cal.App.4th 282.....	31
<i>People v. Campos</i> (2007)156 Cal.App.4th 1228.....	40
<i>People v. Cox</i> (1991) 53 Cal.3d 618	59
<i>People v. Gonzalez</i> (2018) 5 Cal.5th 186.....	42
<i>People v. Jones</i> (2017) 3 Cal.5th 583.....	37
<i>People v. McKinnon</i> (2011) 52 Cal.4th 610.....	31
<i>People v. Nakano</i> (2023) 89 Cal.App.5th 623	37
<i>People v. Shiga</i> (2016) 6 Cal.App.5th 22.....	37
<i>People v. Watson</i> (1956) 46 Cal.2d 818	67
<i>Philip Morris USA v. Williams</i> (2007)	
549 U.S. 346	31, 32, 36, 41
<i>Pool v. City of Oakland</i> (1986) 42 Cal. 3d 1051.....	21, 22, 23
<i>Roby v. McKesson Corp.</i> (2009) 47 Cal.4th 686.....	29, 30
<i>S.Y. v. Superior Court</i> (2018) 29 Cal.App.5th 324	37
<i>Schwab v. Rondel Homes, Inc.</i> (1991) 53 Cal.3d 428	29
<i>Seffert v. Los Angeles Transit Lines</i> (1961)	
56 Cal.2d 498.....	22, 23, 28

<i>Simon v. San Paolo U.S. Holding Co., Inc.</i> (2005)	
35 Cal.4th 1159	33, 35
<i>Sommer v. Gabor</i> (1995) 40 Cal. App. 4th 1455	22
<i>Soule v. General Motors Corp.</i> (1994) 8 Cal.4th 548.....	66, 67
<i>State Farm Fire & Casualty Co. v. Pietak</i> (2001)	
90 Cal.App.4th 600	67
<i>State Farm Mut. Automobile Ins. Co. v. Campbell</i> (2003)	
538 U.S. 408	32, 33, 34, 35
<i>Sweeting v. Murat</i> (2013) 221 Cal.App.4th 507	51
<i>Thompson Pacific Construction, Inc. v. City of Sunnyvale</i> (2007)	
155 Cal.App.4th 525	39
<i>Walker v. Superior Court</i> (1991) 53 Cal.3d 257	66
<i>Westphal v. Wal-Mart Stores, Inc.</i> (1998) 68 Cal.App.4th 1071..	23
Statutes	
California Constitution, Art. VI, § 13	25, 65, 66
Civil Code section 3295, subd. (e)	28
Code of Civil Procedure section 128.....	59
Code of Civil Procedure section 269.....	69
Code of Civil Procedure section 425.10.....	28
Code of Civil Procedure section 425.11.....	29
Code of Civil Procedure section 475.....	65
Code of Civil Procedure section 594(a)	54, 55, 56
Code of Civil Procedure section 607a.....	40
Code of Civil Procedure section 662.5.....	21
Code of Civil Procedure section 2034.210.....	30
Evidence Code section 664	37

Other Authorities

CACI No. 3940 38, 39, 41

Rules

California Rules of Court, rule 1.100.....passim

California Rules of Court, rule 2.200..... 49

California Rules of Court,, rule 3.250..... 29

INTRODUCTION

This case arises from a civil action filed on September 30, 2020, in which Respondent alleged that Appellant violently raped her during the course of her employment.

In June, 2024, Respondent went to trial on “sexual assault and battery” and “intentional infliction of emotional distress” causes of action, seeking both compensatory and punitive damages. At trial, she presented compelling testimony of a sustained course of misconduct culminating in a violent assault that inflicted not only physical injury but profound and lasting psychological harm that unraveled her personal relationships, destroyed her sense of self, and continues to affect her daily life. That testimony was corroborated by her treating psychologist, who diagnosed Respondent with post-traumatic stress disorder and major depressive disorder, and explained that these conditions are severe, mutually reinforcing, and permanent. Appellant, who had fired his counsel months earlier and was representing himself, did not appear at trial.

The jury returned a sizable verdict in favor of Respondent. Later, the trial court, on Appellant’s Motion for New Trial, issued an order conditionally granting a new trial based on the excessive size of the damages awarded, subject to Respondent accepting a remittitur for a substantially reduced amount. Respondent accepted the remittitur, the Motion was denied, and judgment was entered against Appellant.

This appeal is not about a party deprived of notice. It is about a litigant who had notice—repeated, unmistakable, and documented—and chose not to appear at trial.

For nearly three years, Appellant actively litigated this case. He retained sophisticated counsel, engaged in discovery, appeared for deposition, and contested the merits at every turn. Approximately six months before trial, Appellant fired his counsel, whom the court, on his former counsel’s motion, allowed to withdraw. Appellant’s former counsel confirmed under oath that Appellant retained separate counsel to monitor the case. Appellant was served with the Order approving the withdrawal of counsel containing the trial date. From that point forward, the record reflects a steady stream of communications: formal notices, trial documents, subpoenas, emails from Respondent counsel to Appellant’s agent for service (his Greek attorney), all identifying the trial date and its continuances. There were also telephone conversations with the Greek counsel and attempts at direct communication with Appellant, which were met with vile threats and insults. Appellant simply chose not to attend trial or engage in the litigation process while acting as his own attorney.

Having made that choice, Appellant now seeks to vacate the judgment entered against him by recasting his deliberate nonappearance as a failure of notice. His arguments are not well taken. Code of Civil Procedure section 594(a) protects against trials by ambush, not against the consequences of ignoring known proceedings. Where, as here, a party has actual notice and

a fair opportunity to appear, the statute is satisfied, and the trial court is authorized to proceed.

Appellant's remaining arguments fare no better. His challenge to the size of the verdict looks past the fact that the trial court exercised its independent judgment, conditionally granted a new trial on damages, and fixed a reduced award that Respondent accepted. That ruling, entitled to substantial deference, is the operative judgment on appeal. Yet Appellant asks this Court to revisit a superseded jury verdict while providing an incomplete record that precludes meaningful review.

Further, the court did not err in the manner in which it instructed the jury, in deeming admitted admissions requests that Appellant chose not to respond to, or in its handling of Appellant's purported ADA accommodation motion.

In short, this appeal asks the Court to disregard the presumption of correctness, overlook Appellant's failure to appear despite the repeated notices, and second-guess a trial court's reasoned exercise of discretion, all while providing this Court with a record that cannot support his arguments. There was no miscarriage of justice. The trial court made no errors prejudicing Appellant.

The Court should affirm.

STATEMENT OF FACTS AND PROCEEDINGS BELOW

Respondent filed this action on September 30, 2020. [6 AA 1692.] She later filed a First Amended Complaint naming Appellant and other entities as defendants. [1 AA 15–48.] In that First Amended Complaint, she alleges that Appellant violently raped her during her employment with his various business entities. [1AA 0021, 0028-0029.]. Included in the First Amended Complaint were Causes of Action for “Sexual Assault and Battery” and “Intentional Infliction of Emotional Distress” arising from Appellant’s conduct. [1AA 0031-0032, 0043.] She sought compensatory and punitive damages. [[1AA 0045-0046.] Appellant answered on November 2, 2021, asserting a general denial and affirmative defenses. [1 AA 60–71.]

From his first appearance in this matter through February 13, 2024, Appellant was represented by the law firm of Glaser Weil Fink Howard Jordan & Shapiro LLP (“Glaser Weil”). [2 AA 526-538.] During that period, Appellant litigated vigorously and contentiously. Through counsel, he propounded and responded to multiple rounds of written discovery, subpoenaed Respondent’s medical and employment records, took Respondent’s deposition, and filed and opposed numerous discovery motions. [4 AA 1319.]

Appellant fired Glaser Weil on December 13, 2023. [4 AA 1241.] On January 16, 2024, Glaser Weil moved to be relieved as counsel. [2 AA 481-489.] In an accompanying, sworn declaration, that firm confirmed that it had served Appellant with notice of the upcoming trial date, the Final Status Conference, and other pending proceedings, and further represented that Appellant had

retained separate counsel who was privy to developments in the case. [2 AA 490-498.] The court granted the motion on February 9, 2024, directing that all further correspondence and notices be sent to Appellant's newly retained counsel, Themis Sofos of Sofos & Partners. [2 AA 514-524.] On February 13, 2024, Glaser Weil served notice of the order containing notice of the upcoming trial date. [2 AA 525-542.]

Thereafter, Appellant continued to participate in the litigation with the assistance of Mr. Sofos. [4 AA 1319.] On March 1, 2024, Respondent took Appellant's remote deposition, at which Mr. Sofos appeared. [2 AA 545-664.] On May 7, 2024, the court granted Respondent's motion to deem Requests for Admission (Set Two) admitted. [2AA 743-745; 752-754.] Respondent promptly served notice of that ruling, which again identified both the trial date and an updated Final Status Conference date. [2 AA 746-751.] That same day, Respondent's counsel emailed Mr. Sofos regarding joint trial documents and reminded him of the upcoming conference. [4 AA 1363-1364.]

On May 8, 2024, after receiving no response concerning joint trial documents, Respondent served Appellant with her trial documents, each identifying the trial date. [2 AA 755-784; 3 AA 784-877.] Respondent also served a Notice to Appear at Trial and Produce Documents relevant to Appellant's financial condition on Appellant, which included the trial date. [3 AA 1002-1023.] On that same day, Respondent served multiple trial subpoenas on third-party witnesses and provided copies to Appellant; each likewise identified the trial date. [4 AA 1321; 1383-1384.]

In the weeks preceding trial, the court trailed the matter several times due to an ongoing trial in its courtroom. [3 AA 904-909.] On May 30, 2024, Respondent's counsel notified Appellant that this matter was trailing and expected to commence within approximately a week. [4 AA 1325.] On June 11, 2024, the court set the trial to begin June 13, 2024. [3 AA 908-909.] That same day, Respondent's counsel notified Appellant of the June 13 trial date. [4 AA 1321; 1385-1386.]

The record further reflects repeated direct communications regarding trial. From January through June 2024, Respondent's counsel engaged in multiple telephone discussions with both Mr. Sofos and Glaser Weil concerning the upcoming trial. [4 AA 132001321; 1325.] On June 6 and again on or about June 10, 2024, Respondent's counsel spoke with Mr. Sofos specifically about the June 13 trial date; during the latter call, Mr. Sofos expressly acknowledged awareness of that date and Respondent's inability to continue it. [4 AA 1325.]

Appellant's own conduct confirms actual notice. Between approximately May 6 and May 14, 2024, Appellant sent vulgar and threatening text messages to Respondent's counsel referencing the upcoming trial. [4 AA 1325; 1397-1410.] In his subsequent motion for new trial, Appellant admitted receiving a May 18, 2024, email from Glaser Weil reminding him of the imminent trial and urging him to act to preserve his rights. [4 AA 1253-1254; 1268-1269.]

Trial commenced on June 13, 2024. [3 AA 916-920; 4 AA 1321.] Appellant did not appear per Respondent’s Notice to Appear and Produce. [3 AA 916-920; 1058-1063; 1224.]

At trial, Plaintiff recounted a sustained course of sexual harassment and misconduct that culminated in Defendant’s violent rape. She described not only the physical injuries she suffered, but also the enduring psychological harm—harm that has persisted long after the assault. She testified that, following the attack, Defendant terminated her employment. She further explained that, before Defendant’s misconduct, she had reserved intimacy for marriage and had been intimate only with her husband. In the aftermath of the assault, her personal life unraveled: her relationships deteriorated, including her marriage, and she was left grappling with profound emotional distress—anger, shame, anxiety, sadness, and a pervasive sense of unworthiness. She told the jury that the attack cost her a part of herself and left her questioning whether she would ever again experience life as she once had. [4AA 1322.]

The jury also heard from Plaintiff’s treating psychologist, Dr. Craig Snyder, who testified regarding his diagnosis, treatment, and prognosis. Dr. Snyder detailed his education, training, and experience in both clinical and forensic psychology, and explained how that background informed his opinions. Drawing on years of treatment, he described Plaintiff’s presentation, including her reliance on humor, exaggerated voices, and other subconscious defense mechanisms to avoid confronting the trauma. He explained the clinical significance of these observations and how

they supported his diagnoses of Post-Traumatic Stress Disorder and Major Depressive Disorder. Dr. Snyder further testified that these conditions affected not only Plaintiff's emotional well-being, but also her cognitive functioning—distorting her self-image, perception of reality, motivation, concentration, memory, and outlook for the future. He explained that these disorders interact in a mutually reinforcing cycle, exacerbating one another, and that Plaintiff is expected to endure their effects for the remainder of her life. [4AA 1322-1323.]

On June 17, 2024, the jury returned a verdict in Respondent's favor in the amount of \$100,000,000.00 in compensatory damages and \$800,000,000.00 in putative damages. [3 AA 1223-1225.] The Court signed the Judgment on Special Verdict on July 5, 2024. [4 AA 1228-1232.]

On July 8, 2024, Appellant filed a motion for new trial. The motion was filed without proof of service, and Appellant failed to properly serve Respondent. [4 AA 1245-1271; 1322.] On or about September 3, 2024, Appellant emailed Respondent's counsel a document styled as a request for the court to consider supplemental information in support of the motion for new trial, reiterating the same accusations previously advanced. [4 AA 1326; 1411-1418.]

Respondent opposed the motion on September 5, 2024. [4 AA 1295–1420.] Appellant filed a reply on September 16, 2024. [4 AA 1440–1450.] That same day, new counsel substituted in for Appellant and presented oral argument. [4 AA 1421–1423; 1451-1452.]

On September 17, 2024, the court issued a detailed ruling. It conditionally granted a new trial limited to damages unless Respondent accepted a remittitur reducing compensatory damages from \$100 million to \$10 million and punitive damages from \$800 million to \$80 million. [4 AA 1480–1499.] The clerk served notice of the ruling that day. [Id.]

Respondent timely accepted the conditional reduction pursuant to Code of Civil Procedure section 662.5 on September 25, 2024. [5 AA 1513–1518.] The court subsequently denied Appellant’s motion to set aside and vacate the judgment in light of Respondent’s acceptance. [5 AA 1608–1611.]

On December 23, 2024, the court entered an Amended Judgment on Special Verdict reflecting the remittitur. [6 AA 1655–1666.] Respondent later served notice of entry of that amended judgment. [6 AA 1741-1748.]

Appellant filed notices of appeal from the July 5, 2024 judgment, the September 17, 2024 order, and the December 23, 2024 amended judgment. [4 AA 1453–1479; 5 AA 1540–1556; 6 AA 1667-1677.]

LEGAL ARGUMENT

I. THE DAMAGES ARGUMENTS

A. The judgment is presumed correct, the jury determines damages, and the trial court's order conditionally granting a new trial (remittitur) is reviewed only for abuse of discretion

Code of Civil Procedure section 662.5, subdivision (a)(2), authorizes a court that has decided it would be proper to order a new trial limited to the issue of damages to issue a conditional order granting the new trial unless the party in whose favor the verdict has been rendered consents to a reduction of the award in an amount “the court in its independent judgment determines from the evidence to be fair and reasonable.”

“[A] reviewing court must give considerable deference in matters relating to damages to the jury in the first instance and to the trial court secondarily.” (*Merlo v. Standard Life & Acc. Ins. Co.* (1976) 59 Cal.App.3d 5, 17.) The trial court's ruling is entitled to deference because having been present at the trial, the trial judge was necessarily more familiar with the evidence.” (*Pool v. City of Oakland* (1986) 42 Cal. 3d 1051, 1067.)

“[W]hen a trial court grants a new trial on the issue of excessive damages, whether or not the order is conditioned by a demand for reduction, the presumption of correctness normally accorded on appeal to the jury's verdict is replaced by a

presumption in favor of the order.” (*Pearl v. City of Los Angeles* (2019) 36 Cal. App. 5th 475, 486.)

Appellant repeatedly urges this Court to evaluate whether the jury’s original damages verdict “shocks the conscience.” But that inquiry was already undertaken by the trial court when it ruled on Appellant’s motion for new trial. Once the trial court conditionally granted a new trial and the plaintiff accepted the remittitur, the question on appeal is not whether the original verdict was excessive, but whether the trial court abused its discretion in its conditional order granting new trial. The reviewing court in such a circumstance does not act de novo. (*Sommer v. Gabor* (1995) 40 Cal. App. 4th 1455, 1471.)

California law entrusts the trial judge (who observed the witnesses and presided over the trial) with the primary responsibility to evaluate whether a damages award is excessive. The jury’s verdict is the first determination of damages; the trial court’s ruling on a new trial motion is the second. (*Pool, supra*, 42 Cal.3d at p. 1067.) They see and hear the witnesses and frequently, as in this case, see the injury and the impairment that has resulted therefrom. (*Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 506-507.)

That framework of review effectively disposes of Appellant’s argument concerning the size of the jury’s verdict. The trial court expressly exercised its supervisory authority over the verdict by conditionally granting a new trial unless the Respondent accepted the remittitur, consisting of substantially reduced compensatory and punitive damages awards. [4AA 1488-1499.]

As a consequence of that remittitur being accepted, the operative judgment is the reduced award, not the jury's original verdict.

The trial court's determination therefore represents the very safeguard the law contemplates when a verdict appears excessive: the trial court independently evaluates the evidence and fixes a figure it finds supported by the record. (*Pool*, supra, 42 Cal.3d at p. 1067.)

Appellant nevertheless attempts to relitigate the issue by focusing on the jury's superseded verdict and repeating the phrase "shocks the conscience." The trial court already agreed that the original verdict was excessive and corrected it through remittitur. The only question on this point remaining for appellate review is whether the conditional order granting new trial is supported by the evidence and falls within constitutional limits. This review is narrow: "the duty of an appellate court is to uphold the jury and trial judge whenever possible." (*Seffert v. Los Angeles Transit Lines*, supra, 56 Cal.2d at 508.) All presumptions favor the correctness of the trial court's determination. (See *Westphal v. Wal-Mart Stores, Inc.* (1998) 68 Cal.App.4th 1071, 1074, 1078.)

B. The conditional order granting new trial (remittitur) was a proper exercise of the trial court's discretion and therefore furnishes no basis for appellate reversal.

Appellant's effort to revive the "shocks the conscience" test at the appellate level by focusing on the jury's *original* damages verdict misconceives the governing inquiry. His reliance on *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276 is therefore

misplaced. That case did not involve a conditional order granting new trial with a remittitur accepted by the plaintiff. *Bigler-Engler* evaluated the excessiveness of the damages directly from the jury's verdict.

Where, as here, a plaintiff accepts a remittitur reducing an excessive damages award, the appellate court reviews the trial court's conditional new trial order for abuse of discretion, and the reduced amount, not the original jury verdict, becomes the relevant figure for appellate review. (*Bullock v. Philip Morris USA, Inc.*, (2008) 159 Cal.App.4th 655, 689; *Pearl v. City of Los Angeles*, *supra*, 36 Cal.App.5th at 490.)

C. The trial court acted within its discretion in fixing compensatory damages at \$10 million through remittitur.

1. The conditional order granting new trial is presumed correct on appeal.

“When a trial court grants a new trial on the issue of excessive damages, whether or not such order is conditioned by a demand for reduction, the presumption of correctness normally accorded on appeal to the jury's verdict is replaced by a presumption in favor of the order.” (*Collins v. Union Pac. R.R. Co.* (2012) 207 Cal. App. 4th 867, 882.) The order will not be reversed unless it plainly appears that the trial court judge abused his discretion. (*Id.*)

2. Appellant has not furnished the Court with the kind of record needed to establish abuse of discretion regarding the conditional order.

Appellant's attempt to relitigate the trial court's discretionary determination by re-arguing the supposed inflammatory nature of the evidence and contending that the compensatory damages were punitive in nature. These arguments find no substantive support in the record before this Court. Indeed, the record, such as it is, forecloses Appellant's suggestion that the trial court acted with bias, passion, or incomplete consideration when it issued its conditional new trial order (remittitur).

It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record. (See, e.g., *Cosenza v. Kramer* (1984) 152 Cal.App.3d 1100, 1102.) "A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, 566.)

Appellant bears the burden of demonstrating reversible error on an adequate record. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at 564; see also Cal. Const., art. VI, § 13.) From that principle follows a necessary corollary: when the record is inadequate for meaningful review, the appellant defaults, and the judgment must be affirmed. (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) The burden rests squarely on the appellant to provide a sufficient record;

failure to do so requires that the issue be resolved against him. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

The courts have repeatedly applied this rule. In numerous contexts, ranging from motions for new trial to evidentiary rulings and jury instructions, appellate courts have declined to reach the merits where no reporter's transcript or suitable substitute was provided. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186–187; see also *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574–575.)

Here, Appellant furnished a severely limited record of trial proceedings that contained no reporter's transcript. Without a transcript detailing the testimony, exhibits, and evidentiary rulings, Appellant provides this Court with no basis to evaluate his claim that the trial court abused its discretion in the conditional new trial order in the context of the evidence presented, what conflicts existed in that evidence (if any), how the trial court assessed the evidence, and the manner in which it weighed the proof in ruling on Appellant's new trial motion.

3. The trial court's conditional order demonstrates the careful exercise of the trial court's independent judgment.

An appellate court must affirm the court's decision if the court states adequate reasons for the decision and substantial evidence supports the decision. (*Bullock*, *supra*, 159 Cal. App. 4th at pp. 688–89.) Such is the case here.

The trial court, in its conditional order, expressly and correctly recognized that, in ruling on a motion for new trial based on excessive damages, it does not sit “in an appellate capacity but as an independent trier of fact.” It then undertook precisely that task. It reviewed the entire record, weighed the evidence, and determined that the jury “clearly should have reached a different verdict” on damages.

The trial court did not rubber-stamp the jury’s verdict; it reduced the compensatory award from \$100 million to \$10 million after independently evaluating the testimony and the evidentiary record. A ruling that substantially reduces a verdict through remittitur is compelling evidence of neutral judicial deliberation, not blind passion or enmity against a litigant amounting to an abuse of discretion.

Equally important, nothing in the record suggests that the court relied on improper considerations. The ruling contains no statements reflecting hostility toward Appellant, no reliance on extraneous information, and no indication that the court sought to “send a message” in the compensatory damages segment of the remittitur embedded in its conditional order. Instead, every indication in the conditional order granting new trial affirms that the court based its decision on proof presented at trial. It analyzed the testimony of Respondent and her therapist, evaluated the nature and severity of the injuries proved at trial, and explained why the original award “shock[ed] the conscience.” The court then fixed new damages amounts that it determined were “fair and reasonable” based on its independent evaluation of

the evidence. In short, there is no indication of bias, passion, or abuse of discretion on the record.

Nor can Appellant demonstrate that the remitted amounts bear no reasonable relationship to the evidentiary record. The trial court carefully explained that Respondent had proved serious, life-altering emotional injuries stemming from sexual assault, supported by the testimony of both Respondent and her therapist. Nothing about those determinations suggests irrationality or arbitrariness, nor do the amounts “shock the conscience.”

Further still, each case turns on its own facts, and comparisons to unrelated verdicts (such as Appellant’s reference to *E. Jean Carroll v. Trump*) provide no meaningful basis for overturning a damages award supported by the record. California courts have repeatedly cautioned that verdict comparisons are of limited value because the circumstances of each case are unique. (See, e.g., *Seffert*, supra, 56 Cal.2d at p. 508.)

D. The damages awarded are not unconstitutional for want of notice.

Appellant’s “lack-of-fair-notice-of-the-the-severity” argument misstates both applicable pleading statutes and the governing due-process framework. In personal-injury actions, a plaintiff may not plead the amount of compensatory damages demanded. (Code Civ. Proc., § 425.10, subd. (b).) Nor may any complaint specify the amount of punitive damages sought. (Civ. Code, § 3295, subd. (e).) The prohibition exists to prevent exaggerated monetary demands from becoming public record and prejudicing

defendants. (*Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th 1161, 1176; *Jones v. Interstate Recovery Service* (1984) 160 Cal.App.3d 925, 928-929.)

Due process is satisfied through a different mechanism. To fill the void left by section 425.10, Code of Civil Procedure section 425.11 entitles defendants to a separate “Statement of Damages,” served but not filed, which provides actual notice of potential liability. (*Schwab v. Rondel Homes, Inc.* (1991) 53 Cal.3d 428, 433; *Weakly-Hoyt v. Foster* (2014) 230 Cal.App.4th 928, 932–933.) The statute applies whenever personal injury or emotional distress lies at the heart of the action. (*Schwab*, supra, 53 Cal.3d at p. 432; *Jones*, supra, 160 Cal.App.3d at p. 928.) But the statute does not require or even invite the statement to be filed with the court; indeed, it contemplates the opposite. (Code Civ. Proc., § 425.11; Cal. Rules of Court, rule 3.250(a)(20).) The court’s docket therefore will not, and should not, reflect its service.

Equally important, the defendant may request a statement of damages at any time after the complaint is filed. (Code Civ. Proc., § 425.11, subd. (b).) If the plaintiff fails to serve one after a proper request, the defendant’s remedy is a noticed motion to compel; failure to pursue that remedy constitutes waiver. (*Argame v. Werasophon* (1997) 57 Cal.App.4th 616, 617–618.) In the record offered here, however, Appellant identifies no such request, no motion to compel, and no order compelling Respondent to provide such a statement.

Appellant’s reliance on *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686 does not advance his “no fair notice” theory. *Roby* did

not address pleading notice, statements of damages, or any claimed surprise about the amount sought. It addressed federal constitutional limits on the size of a punitive-damages award after a fully litigated trial in which the defendant appeared and defended. (*Id.* at pp. 712–718.) Nothing in *Roby* suggests that due process requires that the damages demanded by Respondent appear in her Complaint or in any publicly filed docket.

As to the “surprise” allegedly associated with Dr. Snyder testifying on behalf of Respondent, Appellant attempts to constitutionalize what might be, at most, a garden-variety discovery dispute. Respondent certainly left the door open to calling Dr. Snyder when her counsel simply indicated during meet and confer efforts that she was not planning to call treating physicians to testify at trial “at this time.” There is certainly no evidence that Respondent entered into some sort of stipulation that she would not be calling an expert or treater to testify regarding Respondent’s psychological and emotional damages stemming from this horrific incident. Appellant identifies no demand for a simultaneous exchange under Code of Civil Procedure section 2034.210 et seq., and no order compelling expert designation. Absent a proper exchange demand, there was no obligation for Respondent to designate and identify retained and non-retained experts before trial.

Further, even if it was an error for the trial court to allow Dr. Snyder to testify, Appellant’s challenge to that testimony was not preserved in the trial court. As the Supreme Court has explained, “as a general rule, ‘the failure to object to errors

committed at trial relieves the reviewing court of the obligation to consider those errors on appeal.” (*People v. McKinnon* (2011) 52 Cal.4th 610, 638.) This rule applies even where the alleged error implicates statutory or constitutional claims. (*Ibid.*)

Indeed, the courts consistently hold that a party who proceeds without objecting to the testimony of a witness forfeits any claim of discovery violation on appeal. In *People v. Bell* (1998) 61 Cal.App.4th 282, for example, the court held that any objection to the admission of a witness’s testimony on the ground that the prosecution had failed to disclose the witness in discovery was waived where the defendant proceeded to trial without objecting. (*Id.* at 291)

E. Appellant fails to demonstrate that the trial court violated his due process rights in its conditional order awarding \$80 million in punitive damages.

1. Governing standards.

Respondent does not dispute that due process requires both substantive and procedural protections against arbitrary punitive awards. (*Honda Motor Co. v. Oberg* (1994) 512 U.S. 415, 432 (“*Oberg*”).) But if such protections are in place, punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition. (*Philip Morris USA v. Williams* (2007) 549 U.S. 346, 352 (“*Williams*”).)

Williams also recognized that the Constitution imposes certain limits, in respect to both procedures for awarding punitive damages and to amounts forbidden as “grossly

excessive.” (*Id.* at p. 353, referencing *Oberg*, supra, 512 U.S. 415 at p. 432 [requiring judicial review of the size of punitive awards]; *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.* (2001) 532 U.S. 424, 443, [review must be de novo]; *BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 575 (“*Gore*”) [exemplary damages imposed on a defendant should reflect “the enormity of his offense” but may not be “wholly disproportioned” to it]; *State Farm Mut. Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408, 425 (“*Campbell*”) [excessiveness more likely where ratio exceeds single digits.]

The amount of punitive damages offends due process under the Fourteenth Amendment as arbitrary only if the award is grossly excessive in relation to the state's legitimate interests in punishment and deterrence. (*Bullock*, supra, 198 Cal.App.4th at p. 558.)

In determining the constitutional limits of a punitive damages award, Federal courts apply three guideposts: (1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the harm suffered and the punitive award; and (3) the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases. (*Campbell*, supra, 538 U.S. at p. 418; *Gore*, supra, 517 U.S. 559 at 575.) California courts look to the reprehensibility of the conduct, the harm suffered, and the wealth of the particular defendant. (*Neal v. Farmers Ins. Exch.* (1978) 21 Cal. 3d 910, 928, fn. 13.)

Appellate courts independently review the application of these guideposts de novo. (*Campbell*, supra, 538 U.S. at p. 418;

Simon v. San Paolo U.S. Holding Co., Inc. (2005) 35 Cal.4th 1159, 1172 (“*Simon*”); *Gober v. Ralphs Grocery Co.* (2006) 137 Cal.App.4th 204, 212.)

2. The applicable constitutional guideposts support the trial court’s conditional new trial order (remittitur) regarding punitive damages.

“The most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct.” (*Campbell*, supra, 538 U.S. at p. 419.) Reprehensibility is assessed by reference to five factors: whether the harm was physical rather than economic; whether the defendant acted with indifference to or reckless disregard for the health or safety of others; whether the plaintiff was financially vulnerable; whether the misconduct was repeated or an isolated incident; and whether the harm resulted from intentional malice, trickery, or deceit, as opposed to mere accident. (*Id.*)

Appellant makes no effort to argue against the degree of reprehensibility of his conduct under California or Federal analysis, nor could he given the nature of the conduct at issue as recounted by the trial court in its conditional new trial order (finding misconduct culminating in rape [an act “obviously heinous”], physical injury, and severe psychological trauma.)

The “comparable civil penalties” guidepost carries little weight here. It has limited utility where, as in this case, liability rests on breach of a common law tort duty. (*Simon*, supra, 35 Cal.4th at p. 1183-1184.) Appellant’s effort to invoke statutory penalties drawn from employment law misses the mark. Those

provisions do not govern the claims that were actually tried. Appellant concedes as much, acknowledging that Respondent proceeded to trial solely on common law tort theories. (AOB 45.) Where no meaningful statutory analogue exists, courts need not rely on this factor in determining the constitutional maximum of punitive damages. (*Nickerson v. Stonebridge Life Ins. Co.* (2016) 5 Cal.App.5th 1, 23.)

Finally, as to the third goalpost, punitive damages must bear a reasonable relationship to the plaintiff's actual or potential harm and to the compensatory damages awarded. (*Gore, supra*, 517 U.S. at p. 575, 580; *Campbell, supra*, 538 U.S. at p. 424–426; *Bullock, supra*, 198 Cal.App.4th at p. 563.) Courts must ensure that the punishment imposed is both reasonable and proportionate in light of the harm suffered. (*Campbell, supra*, 538 U.S. at p. 426.)

Due process does not, however, impose a bright-line rule. The United States Supreme Court has “consistently rejected” any “simple mathematical formula” and has declined to adopt a categorical approach. (*Gore, supra*, 517 U.S. at p. 582.) Although the Court has identified single-digit multipliers as generally consistent with due process and has cited 4:1 as an “instructive” benchmark, it has refused to set a rigid ceiling. (*Campbell, supra*, 538 U.S. at pp. 424–425.) Instead, it has observed that “few awards” exceeding a single-digit ratio “to a significant degree” will satisfy due process. (*Id.* at p. 425.)

California follows the same flexible framework. Our Supreme Court has explained that ratios significantly exceeding

9 or 10 to 1 are suspect and, absent special justification, such as extraordinary reprehensibility or difficulty in measuring harm, will not survive constitutional scrutiny. (*Simon*, supra, 35 Cal.4th at p. 1182.) Although “a ratio significantly greater than single digits ‘alerts the court[] to the need for special justification’ [citations]” (*ibid.*) “the presumption of unconstitutionality applies only to awards exceeding the single-digit level ‘to a significant degree.’” (*Id.* at p. 1182, fn. 7, quoting from *Campbell*, supra, 538 U.S. at p. 425.)

The California Supreme Court has rejected the notion that a 4:1 ratio marks the outer constitutional limit, making clear that such ratios are not binding, but merely instructive. (*Simon*, supra, 35 Cal.4th at p. 1182–1183; quoting *Campbell*, supra, 538 U.S. 408 at p. 425.)

As applied here, the 8:1 ratio adopted by the trial court is well within the constitutionally permissible range. It reflects a measured, constitutionally sound exercise of discretion. Appellant’s repellant act of misconduct was intentional, egregious, and resulted in severe and lasting harm. The ratio is proportionate to the harm, responsive to the reprehensibility of the conduct, and firmly within the range that due process permits. The record reveals no basis to disturb it.

F. The conditional new trial order ensures that evidence of Appellant’s conduct toward third parties did not improperly influence the size of the punitive damages award.

Appellant argues that the punitive damages awarded to Respondent were to punish Appellant for past wrongs to both Respondent *and* third parties, thus violating his due process rights. In support of this claim, he relies heavily on the United States Supreme Court’s ruling in *Williams*. That case does not, however, further his claim that his due process rights were violated here. *Williams* holds that a jury may not punish a defendant for harm to nonparties and that courts must guard against procedures creating a significant risk of such punishment. (*Williams*, supra, 549 U.S. at pp. 353–357.)

Though Appellant takes issue with the introduction of evidence of his conduct involving other women, *Williams* itself, however, confirms that evidence of these prior bad acts was admissible and relevant. The *Williams* Court explained that “[e]vidence of actual harm to nonparties can help to show that the conduct that harmed the plaintiff also posed a substantial risk of harm to the general public, and so was particularly reprehensible,” while cautioning that “a jury may not go further than this and use a punitive damages verdict to punish a defendant directly on account of harms it is alleged to have visited on nonparties.” (*Williams*, supra, 549 U.S. at p. 355.)

Nothing in this record supports the suggestion that the trial court transgressed that boundary in its conditional order. A trial court is presumed to know and follow the law. (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1526.) This presumption also extends to the trial court's ability to "distinguish admissible from inadmissible evidence, relevant from irrelevant facts, and to

recognize those facts which properly may be considered in the judicial decision making process." (*Id.*)

In the absence of an affirmative showing to the contrary, a reviewing court assumes that the trial court understood and correctly applied the governing statutory and case authority. (*People v. Jones* (2017) 3 Cal.5th 583, 616.) This presumption is codified in Evidence Code section 664, which provides that official duties are presumed to have been regularly performed. (*S.Y. v. Superior Court* (2018) 29 Cal.App.5th 324, 333; *People v. Shiga* (2016) 6 Cal.App.5th 22, 40-41.) Thus, unless the record affirmatively demonstrates error, an appellate court must presume that the trial court was aware of and followed the applicable law. (*People v. Nakano* (2023) 89 Cal.App.5th 623, 635-636.)

Here, nothing in the record suggests that the trial court conflated reprehensibility with impermissible punishment for harm to nonparties in issuing the conditional new trial order. To the contrary, the court performed the analysis the law requires. It independently reweighed the evidence, expressly found that the original punitive award "shocks the conscience," and substantially reduced the award to a level it deemed constitutionally permissible. The conditional new trial order reflects a considered exercise of discretion, not a constitutional misstep. There is no basis to disturb it.

G. Appellant has not demonstrated reversible error in connection with the CACI 3940 Instruction.

1. Standard of review.

The legal adequacy of jury instructions presents a question of law subject to de novo appellate review. (*Ilczyszyn v. Southwest Airlines Co.* (2022) 80 Cal.App.5th 577, 584.) Even so, instructional error in a civil case warrants reversal only upon a showing of prejudice; i.e., where it is reasonably probable the verdict rested on the erroneous instruction. (*Ibid.*) In assessing both accuracy and prejudice, courts do not view a single instruction in isolation, but consider the charge as a whole. (*Conservatorship of D.P.* (2019) 41 Cal.App.5th 794, 807.)

These standards alone defeat Appellant's argument. The operative judgment was not based on the jury's damages verdict, but on the reduced amount set forth in the trial court's conditional new trial order (remittitur), which Respondent accepted. Any claimed instructional error concerning damages thus cannot establish prejudice, because the judgment rests on the court's independent determination, not the jury's verdict. Absent a showing that the court's remittitur determination was itself affected by the alleged instructional error (and there is no evidence in the record suggesting this is so), Appellant cannot demonstrate reversible prejudice.

2. There was no error or ambiguity in the trial court's instruction.

In any event, the trial court did not err in its instruction to the jury. Appellant contends that his due process rights were violated because the jury was not expressly instructed that it could not punish him for harm to nonparties, emphasizing that the court gave a modified version of CACI No. 3940 that omitted

the optional language stating punitive damages may not be used to punish a defendant for misconduct toward persons other than the plaintiff.

This is not error. The trial court's "duty to instruct the jury is discharged if its instructions embrace all points of law necessary to a decision." (*Thompson Pacific Construction, Inc. v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 553.) "A party is not entitled to have the jury instructed in any particular fashion or phraseology, and may not complain if the court correctly gives the substance of the applicable law." (*Ibid.*)

The language of CACI No. 3940, as given, adequately confined the jury's punitive-damages inquiry to appellant's conduct toward this plaintiff. The instruction directed the jury to decide whether "[Appellant]'s conduct caused plaintiff harm" and whether "that conduct justifies an award of punitive damages." It then defined the purposes of punitive damages as "to punish a wrongdoer for the conduct *that harmed the plaintiff* and to discourage similar conduct in the future." (Italics added.) By its plain terms, the instruction repeatedly and exclusively tethered punishment to the conduct that harmed this plaintiff, not to conduct affecting any others.

That focus was reinforced by the burden of proof the instruction imposed. The jury was told it could award punitive damages "only if plaintiff proves by clear and convincing evidence that Appellant engaged in *that conduct* with malice, oppression, or fraud." (Italics added.) "That conduct" necessarily refers back to the conduct that caused harm to Respondent. Nothing in the

instruction authorized punishment for injuries to nonparties, and nothing about its wording invited the jury to base punitive damages on harms suffered by others.

3. Appellant waived the issue by not objecting at trial.

Appellant, had he chosen to appear and participate at trial, had the opportunity to request a special jury instruction clarifying this alleged ambiguity. Indeed, it is the duty of counsel for the respective parties to propose reasonable and proper jury instructions on all legal theories advanced in the case. (Code Civ. Proc. § 607a.) This burden was on Appellant, not the trial court. It is the duty of each party to propose proper instructions on all legal theories relevant to the party's case. (Code Civ. Proc. § 607a).

To appeal on the basis of the trial court's failure to instruct on a particular issue, the aggrieved party must have requested "specific proper" instructions. (See *Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 335; *Green v. County of Riverside* (2015) 238 Cal.App.4th 1363, 1371 [because record did not establish plaintiff's counsel provided trial court with correct written instruction on standard of care applicable to prearrest use of force tactical decisions, instructional error argument rejected on appeal.]) "[A] party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or incomplete unless the party has requested appropriate clarifying or amplifying language" (*People v. Campos* (2007) 156 Cal.App.4th 1228, 1236.) By not appearing and not requesting

alternate instruction, Appellant has waived any claim of instructional error.

4. The Court’s responses to the juror’s inquiries adequately addressed alleged instructional ambiguity.

Any asserted ambiguity in CACI No. 3940 was dispelled by the court’s answers to the jury’s questions during deliberations. Here, questions 3 and 4 show that the jury was probing the limits of its authority, not seeking license to punish for harms to others.

The jury asked whether it could be told “the amounts of previous awards, including breakdown of compensatory versus punitive,” and whether a “ten times” punitive amount was “statutorily” prescribed. [3AA 1212.] The court’s responses (declining to supply prior verdict amounts and declining to endorse any fixed multiplier) [3AA 1213] reinforced the principle that punitive damages must be determined based on the evidence in this case and under the court’s instructions, not by reference to other cases or extrinsic benchmarks. In doing so, the court steered the jury away from comparative punishment and toward a case-specific assessment linked to Appellant’s conduct toward this plaintiff.

As discussed above, *Williams* requires “assurance that the jury will ask the right question, not the wrong one.” (*Williams*, supra, 549 U.S. at 355.) These questions, and the court’s answers, provide that assurance. Read together, CACI No. 3940 and the court’s clarifying responses left no room for juror confusion and there was no error. The instructions focused punishment on “the conduct that harmed the plaintiff,” and the court’s answers

foreclosed any temptation to anchor punishment to other cases or perceived statutory formulas. Jurors are presumed to follow the Court's instructions. (*People v. Gonzalez* (2018) 5 Cal.5th 186, 202)

H. Appellant forfeited the right to challenge punitive damages for lack of ability-to-pay evidence.

1. Obstructors are estopped from arguing that the evidence of financial condition was insufficient to support a punitive damage award.

As a general rule, a plaintiff seeking punitive damages must introduce evidence of the defendant's financial condition so that the award may punish without destroying. In making this point, and in arguing that the trial court erred in awarding punitive damages in its conditional new trial order (remittitur), Appellant relies heavily on *Adams v. Murakami* (1991) 54 Cal.3d 105 (“*Adams*”).

In *Adams*, the plaintiff prevailed at trial on medical-malpractice and intentional-tort claims and obtained a substantial punitive-damages award. Neither party introduced any evidence of the defendant physician's financial condition at trial. (*Id.* at 109) On appeal, the defendant argued that the punitive award was improper for that reason alone. The Court of Appeal affirmed without discussion. (*Id.*) The Supreme Court reversed the punitive-damages award and remanded, holding that evidence of the defendant's financial condition is a prerequisite to sustaining punitive damages, and that the burden

of producing such evidence rests with the plaintiff. (*Id.* at 110-112, 123-124)

As opposed to the case at bar, in *Adams*, there was no evidence of obstruction, discovery abuse, or strategic non-production of financial evidence by the defendant. Rather, it was a case where there was a complete non-presentation by either side. *Adams* involved no claim that the plaintiff subpoenaed evidence of financial condition and was thwarted. Nothing in *Adams* holds that punitive damages must fail where the absence of financial evidence is attributable to the defendant's own noncompliance. That question simply was not before the *Adams* Court.

A well-developed body of law holds that when a defendant refuses to produce financial information after being properly noticed or ordered to do so, the defendant is estopped from arguing that punitive damages award necessarily fails for lack of net-worth evidence. (*Garcia v. Myllyla* (2019) 40 Cal.App.5th 990, 995–997; *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 609 (“*Issod*”).)

Also on point here is *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, in which the court held that a defendant who fails to produce financial records in response to a trial subpoena is estopped from later challenging a punitive damages award on the ground of insufficient evidence of ability to pay. (*Id.* at pp. 1337–1338.) The court reasoned that, for purposes of compelling attendance and document production at trial, a subpoena is tantamount to a court order. (*Id.* at p. 1338.) Having defied that

obligation, the defendant could not be heard to complain that the evidentiary record was inadequate: “he is estopped from challenging the punitive damage awards based on lack of evidence of his financial condition or insufficiency of the evidence to establish his ability to pay the amount awarded.” (*Ibid*, see also *Fernandes v. Singh* (2017) 16 Cal.App.5th 932, 942 [“A defendant is in the best position to know his or her financial condition, and cannot avoid a punitive damage award by failing to cooperate with discovery orders”].)

2. Appellant plainly evaded financial discovery and forfeited any right to contest the punitive damages award for want of proof of his financial condition.

Appellant plainly evaded his obligation to appear at trial and present the financial information sought by Respondent relevant to Appellant’s financial condition. On May 8, 2024, Respondent caused her “Notice to Defendant Alkiviades David Custodian of Records In Lieu Of Subpoena to Attend Trial and Request for Production of Documents” to be served on Appellant consistent with the Court’s Order relieving Appellant’s prior counsel. [AA 1003 -1023, 1321.] Requests 1–54 and 63 are aimed at income, assets, liabilities, net worth, and ability to pay. This document was filed and lodged with the trial court on June 14, 2024. [AA 1003-1023.] There is no indication on the record that Appellant ever appeared at trial or produced the documents requested. Indeed, the record reflects no appearances at trial or at any final status conference by Appellant [AA 0905, 0907, 0909, 0917-0920, 0922, 0923, 1059-1063.]

Issod, Garcia, and Corenbaum articulate a settled limitation on the general rule set forth in *Adams*. Because Appellant’s own conduct deprived Respondent of access to financial-worth evidence, he forfeits or is estopped from arguing that the punitive damages awarded must be set aside for want of proof. This also moots Appellant’s argument that the jury should have been instructed to consider his financial condition.

II. THE DUE PROCESS ARGUMENTS

A. Introduction and standard of review.

Appellant would have this court believe, despite nothing under penalty of perjury supporting such a claim, that he had no knowledge of the dates set for trial in the underlying matter. This argument is further belied by the trial court’s February 9, 2024, Order allowing his prior counsel to withdraw after he fired that firm, which also established Appellant’s Greek attorney as his agent for service. [AA 2AA 517-524.]

Not only did this Motion confirm Themis Sofos as Appellant’s agent for service, it also confirmed an e-service agreement. In the declaration of Fred D. Heather supporting its motion to withdraw, Appellant’s then-counsel indicated under penalty of perjury that the Greek attorney would accept service by email. [2 AA 0491] The record does not reflect that Appellant filed a change his service address or substitute new counsel before trial. [6AA 1691-1740].

Once the court granted the withdrawal order, Respondent’s counsel e-served all notices and documents from that point

forward on Appellant's Greek counsel. [4AA 1321, 1328-1332, 1364, 1366, 1368-1382, 1386.] There was nothing particularly unusual or random about Mr. Sofos serving as a service agent. Indeed, Mr. Sofos appeared with Appellant at his deposition a month later, and the transcript from that hearing confirms the same physical and email address for Mr. Sofos as appeared on the withdrawal motion orders. [2AA 546-551.] In short, Appellant, through his agent, was served with pleadings and notices from the date of withdrawal forward in a manner consistent with the withdrawal order. His non-appearance at trial was not for want of due process.

An appellate court's review of the manner of giving notice is governed by the abuse of discretion standard; its review of the content of notice may be de novo. (*Litwin v. iRenew Bio Energy Sols., LLC*, (2014) 226 Cal. App. 4th 877, 883.)

B. Subsequent notices to Appellant were governed by the withdrawal order and thus provided due process.

1. A withdrawal order establishes a pro per litigant's service address.

When counsel withdraws and a defendant proceeds in propria persona, the withdrawing attorney must identify the client's last known address in the motion and order permitting withdrawal, and that address becomes the operative address for service once the client is self-represented. As *Bethlahmy v. Customcraft Industries, Inc.* (1961) 192 Cal.App.2d 308 explained more than 60 years ago, counsel's disclosure of the client's address in withdrawal papers satisfies procedural requirements

and establishes the service address going forward. (*Id.* at pp. 310–311.) This standard was reiterated in *Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, where the Court of Appeal emphasized that the trial court’s signed order granting counsel’s withdrawal, which listed the defendants’ home address, telephone number, and email address, supplied the address on which the court and opposing party were entitled to rely for subsequent service. (*Id.* at pp. 30–31.)

2. Glaser Weil’s withdrawal placed Appellant in propria persona and fixed the method of service going forward.

On January 16, 2024, Appellant’s then-counsel, Glaser Weil, filed its Notice of Motion and Motion to be Relieved as Counsel for Appellant in the subject action. [2AA 0482-0484.] That Motion was supported by a declaration of Glaser Weil attorney Fred D. Heather [2 AA 0491-0492.] who confirmed, under penalty of perjury, the following:

- Appellant was served by mail with the Notice of Motion and Motion and with the Declaration in Support at Appellant’s last known address. [2AA 491.]
- Within the past 30 days preceding that Motion, Mr. Heather confirmed Appellant’s address was current. [2AA 491.]

Of material importance in this case, Mr. Heather indicated, again under penalty of perjury, that Appellant's Greek counsel (identified on the proof of services as Themis Sofos, “Attorney for Alkiviades David”) confirmed that Mr. David **“can be served by**

email in connection with the service of all case related documents (emphasis added).” [2AA 491.]

Both the Notice of Motion and the Declaration were served on Appellant in the same manner [2AA 0485-0489; 0494-0498.]:

- By personal service on Respondent’s counsels.
- By email/e-service on the following:
 - Respondent’s counsels;
 - Themis Sofos, Sofos & Partners, Asklepiou Str. 6-8 GR 10680 Athens/Greece themis@sofos.com.gr; and
 - Defendant David at filmonpersonal@gmail.com.
- By USPS Mail on Themis Sofos, Sofos & Partners, Asklepiou Str. 6-8 GR 10680 Athens/Greece.

The Glaser Weil Motion came regularly for hearing on February 9, 2024, and was granted on the grounds set forth in the moving papers. [2AA 0514-0515.] David filed no opposition to the Glaser Weil Motion. [AA0514.] The Order granting this Motion confirms that Appellant’s current address was Defendant Alkiviades David c/o Themis Sofos, Sofos & Partners, Asklepiou Str. 6-8 GR 10680 Athens/Greece +302103633322. [2AA 0517-0518.] Notice of the Order Granting Attorney’s Motion to be relieved as counsel was served on Appellant by Glaser Weil in the same way it served the Notice of Motion and the Declaration. [2 AA 0526-0543.]

In short, the record establishes that once Glaser Weil served the Order granting its Motion to withdraw, Appellant was to be served via his Greek attorney/agent Themis Sofos of Sofos & Partners at the Athens address and that Mr. Sofos authorized

email as a means of service of all case related documents on Appellant in connection with the service. The service documents identify and affirm “themis@sofos.com.gr” as the email address of Themis Sofos.

The trial court confirmed this understanding of Mr. Sofos as Appellant’s agent for service in its ruling on Appellant’s Motion to Set Aside and Vacate Judgment and for New Trial, observing that Mr. Sofos’s “participation renders him an agent of Defendant for purposes of notice.” [4AA 1497.]

Email service was a sensible and practical method of service under the circumstances reflected in the record. The court-recognized physical address for service on Appellant was not in California or even in the United States but in Athens, Greece. Service by international mail is inherently slower, less reliable than domestic first-class mail, and often difficult to verify. By contrast, Mr. Sofos’s agreement to e-service ensured that emailed documents would reach Appellant via Mr. Sofos, his agent for service, quickly and directly, despite his overseas location.

3. Once a litigant becomes self-represented, the obligation to maintain accurate service information shifts to that litigant.

California Rules of Court, rule 2.200 imposes an affirmative, continuing duty on any self-represented litigant to notify the court and all parties of any change in address or contact information by serving and filing written notice. (Cal. Rules of Court, rule 2.200.) Until that notice is filed, the court and opposing parties are entitled to rely on the address previously

provided; most commonly, the address identified in the withdrawal order.

Appellant infers as part of his “miscarriage of justice” argument that Respondent had a duty to try and find Appellant’s whereabouts for purposes of serving him with notice of trial (AOB, p. 66), but *Kramer* squarely rejects the notion that responsibility for tracking a pro per litigant’s whereabouts rests with anyone other than the litigant himself, holding that “it was defendants’ duty to inform the court and plaintiff if they wished to be served at another address.” (*Kramer, supra*, 56 Cal.App.5th at p. 31.) Services made per the withdrawal order are therefore proper and effective unless and until the self-represented party files a valid notice of change of address.

4. A self-represented litigant who fails to update his address cannot later claim lack of notice.

A self-represented litigant who fails to discharge his duty to maintain a current address for service cannot later complain of improper service. In *Backlund v. Stone* (2025) 115 Cal.App.5th 580, the Court of Appeal held that a party who actively litigates a case and then proceeds in propria persona “has adequate notice that he may be served notice papers by mail to the only address he provides for himself.” (*Id.* at p. 594.)

California courts have also made clear that a litigant who elects to proceed without counsel must accept the responsibility for monitoring the case and receiving papers at the address provided to the court. In *Backlund v. Stone, supra*, 115 Cal.App.5th 580, the Court of Appeal rejected a claim of defective

notice by a party who had substituted himself in place of counsel but then failed to receive mailed papers. The court held that once the party chose to proceed in propria persona and provided a mailing address, he was responsible for checking mail at that address. (*Id.* at p. 596.)

Service at that address is proper even if the documents are not personally received by the litigant. In *Sweeting v. Murat* (2013) 221 Cal.App.4th 507, a self-represented plaintiff filed a notice specifying the address to which all documents in the case should be sent. The Court of Appeal held that this designation governed service in the action and that delivery of the relevant papers to an adult at that address constituted valid service. (*Id.* at pp. 512-514.)

C. Appellant was not deprived of his due process rights regarding notice of trial.

1. Appellant was provided notice in the order authorizing his prior counsel to withdraw.

The court's February 9, 2024, order allowing Glaser Weil to withdraw as counsel for Appellant, served on him by his former counsel, provided Appellant with actual notice of the May 13, 2024, Final Status Conference and May 28, 2024, trial. [2 AA 0518, 0526-0543.]

2. Respondent also provided Appellant with notice of the trial and related dates.

The record further establishes that Appellant was served with ample and repeated notice of the trial and its continued settings from Respondent, via e-service and otherwise, on his

agent, Mr. Sofos. It is worth noting that Appellant did not offer any statement under penalty of perjury in his Motion for New Trial denying that Mr. Sofos was his authorized agent for service in this matter or a declaration from Mr. Sofos in support of his new trial motion denying receipt of any of these documents and notices. [4 AA 1237-1238; 1240-1244; 1246-1257; 1259-1260, 1262-1266.] By contrast, evidence of services of such notices was provided by Respondent's counsel Dustin Z. Moaven, in a declaration under penalty of perjury submitted in support of Respondent's Opposition to Appellant's Motion for New Trial [4AA 1319-1411], who affirmed the following:

- On May 7, 2024, Appellant e-served Respondent with a Notice of Ruling on Respondent's motion to deem Requests for Admissions (Set 2) admitted. The notice expressly identified both the upcoming trial date and that the Final Status Conference was continued to May 15, 2024, at 8:30 A.M. [4AA 1328-1332.]
- On May 7, 2024, Respondent's counsel emailed Appellant's Greek counsel, Mr. Sofos, for purposes of meeting and conferring regarding joint trial documents and to reaffirm the Final Status Conference date of May 15, 2024. [4AA 1364.]
- On May 8, 2024, Respondent served Appellant via Mr. Sofos with Respondent's trial documents, which included the trial date. [4AA 1366.]

- On May 8, 2024, Respondent served a formal notice to appear at trial and produce documents—again specifying the trial date. [4AA 1368-1382.]
- Mr. Moaven affirmed that between May 15 and June 11, 2024, the trial court continued the trial several times due to an ongoing matter in its courtroom. [4AA 1321.]
- On June 11, 2024, the court reset trial for June 13, 2024. Respondent promptly notified Appellant of that new trial date by email to Mr. Sofos the same day. [4AA 1386.]
- Mr. Moaven affirmed that, from approximately January 2024 to June 2024, he and other attorneys from his office had multiple telephone conversations with both Mr. Sofos and representatives of Appellant’s former counsel Glaser Weil regarding the upcoming trial, including specific conversations about the trial date. [4AA 1321.]

On May 30, 2024, Respondent’s lead counsel, Gary Dordick, emailed Themis Sofos to advise that trial in this matter was trailing another case then in progress before the Court and was expected to commence within approximately one week. Mr. Dordick spoke with Mr. Sofos by telephone on June 6, 2024, regarding the impending trial and again on or about June 10, 2024, during which Mr. Sofos expressly acknowledged his awareness of the June 13 trial date and Respondent’s inability to obtain a continuance. [4 AA 1325.]

Appellant was also contacted directly, giving him actual notice of the upcoming trial. Specifically, on May 14, 2024, Respondent’s lead counsel, Gary Dordick, sent Appellant a text

message requesting his cooperation in the completion of pretrial documents. Appellant did not express confusion or request clarification as to upcoming trial dates. Instead, he responded with hostile and profane messages, including: “F*** off idiot. Read the law,” “You are a dumb f***,” and “you are going to prison a*****k.” [4AA 1325-1326, 1398-1410.] That response is telling. It reflects not a lack of notice, but a conscious decision to disregard the forthcoming trial proceedings.

3. Code of Civil Procedure section 594(a) does not require a new 15-day notice for continued trial dates where the party had actual notice and an opportunity to appear.

Appellant’s assertion that the trial proceeded without his knowledge is belied by the record and provides no basis to disturb the jury’s verdict. Code of Civil Procedure section 594(a) permits a trial to proceed in the absence of a party so long as that party has received notice sufficient to afford a fair opportunity to appear. That requirement was satisfied here time and again as discussed above.

Although Code of Civil Procedure section 594(b) contemplates notice by mail, California courts have long rejected the notion that technical defects in proof of service invalidate a judgment where the absent party had actual notice. In *People ex rel. San Francisco Bay Conservation etc. Com. v. Smith* (1994) 26 Cal.App.4th 113 (“*Smith*”) the court of appeal held that actual notice for the statutory period is sufficient, even in the absence of

strict compliance with formal service requirements. (*Id.* at p. 126-127.)

Smith is directly on point. There, the defendant failed to appear at trial and later sought to invalidate the resulting injunction based on alleged defects in notice. The court rejected that argument, finding that the defendant had actual notice after attending a settlement conference at which the matter was assigned for trial. (*Id.* at p. 127.) That knowledge imposed a duty to remain informed of subsequent proceedings, including continued trial dates. (*Id.* at p. 129.) The court further concluded that the plaintiff's efforts to provide notice satisfied due process because they reasonably ensured the defendant would be informed of the trial. (*Id.*)

The same principles apply here. Appellant was aware that trial was forthcoming and had been served with notices both from his former counsel and from Respondent's counsel regarding the forthcoming trial dates and continuances. Under these circumstances, any alleged deficiency in formal proof of service does not negate the fact of notice. Nor does the plain language of section 594(a) require repeated, formal notice of each continued trial date where the party already has actual knowledge of the proceedings and the original trial date. While the statute refers to "trial," it does not specify that each continued or trailed date constitutes a new "trial" requiring fresh notice. This interpretation is reflected in cases like *Smith*, which recognize that actual notice and participation in the litigation process can satisfy the statute's purpose. (*Id.* at p. 127, 129)

Appellant’s reliance on *Au-Yang v. Barton* (1999) 21 Cal.4th 958 is misplaced. *Au-Yang* involved a trial date *advanced* to a point where compliance with the 15-day notice requirement was impossible. The Supreme Court held that the statute applies to such circumstances and prohibits proceeding when notice cannot be given. Here, Appellant was served with notice of the May 28, 2025, trial date as early as February 13, 2024. Here, the trial was *continued* on the Court’s own directive.

Section 594(a) protects against trials by ambush, not against the consequences of a party’s decision to disregard known proceedings. Because Appellant had actual notice and failed to appear, the trial court acted well within its authority in proceeding to trial, and the resulting verdict remains valid. If there is a travesty of justice, it would be in Appellant’s contrary interpretation, which would elevate form over substance, allowing a party with actual notice to lie in wait, fail to appear, and then claim reversible error. Section 594(a) cannot have been enacted to sanction such gamesmanship.

III. THE ACCOMMODATION ARGUMENTS

A. The absence of a written ruling on Appellant’s accommodation request does not constitute structural error because the requests sought trial-management orders, not disability accommodations.

Appellant’s “structural error” argument regarding the trial court’s alleged failure to rule on his so-called accommodation request rests on a mistaken premise: that the requests he made

for disability accommodation were actually governed by California Rules of Court, rule 1.100. They were not.

Rule 1.100 defines “accommodations” as actions that make court services, programs, or activities accessible to persons with disabilities. (Cal. Rules of Court, rule 1.100(a)(3).) The rule illustrates the types of measures contemplated: modifying court policies or procedures, providing auxiliary aids such as readers or interpreters, supplying specialized equipment or alternative formats, relocating proceedings to accessible facilities, or providing services at alternate sites. (Cal. Rules of Court, rule 1.100(a)(3).) Each of these examples concerns physical or communicative access to the judicial system (for example, assistance for individuals who are deaf, visually impaired, or mobility-impaired) so that they may meaningfully attend and participate in court proceedings. (*Ibid.*)

The rule’s policy statement confirms this limited purpose. Rule 1.100 exists to ensure that “persons with disabilities have equal and full access to the judicial system.” (Cal. Rules of Court, rule 1.100(b).) Thus, the accommodation process is directed toward ensuring that court services and proceedings are “readily accessible to and usable by persons with disabilities.” (Cal. Rules of Court, rule 1.100(a)(3).) The examples provided in the rule (auxiliary aids, interpreters, accessible facilities, and similar measures) reflect that objective. (*Ibid.*)

Equally important, the rule strictly limits the scope of communications concerning an accommodation request. Rule 1.100 expressly provides that communications under the rule

“must address only the accommodation requested by the applicant and must not address, in any manner, the subject matter or merits of the proceedings before the court.” (Cal. Rules of Court, rule 1.100(d).) This restriction underscores that the rule is not a vehicle for litigating procedural advantages, trial management preferences, or other issues that affect the conduct of the case itself.

Here, however, the requests made by Appellant concerned the manner in which discovery and trial would proceed, which have nothing to do with accommodation access but are instead matters committed to the trial court’s ordinary discretion over litigation management.

- The accommodation requested for deposition was to have a deposition of Appellant through written questions and answers or otherwise with frequent breaks and breaking up the deposition into perhaps multiple sessions. (RT, v.1, p.11) A later request was made to postpone the deposition so Appellant could undergo treatment. (RT, v.1, p.14-15) The court noted on August 23, 2023, it was *inclined* to deny a deposition on written questions, but to grant reasonable breaks and perhaps multiple sessions. (RT, v.1, p.12-13)
- 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 be because of outbursts. This assumed, of course, he would have counsel representing his interests. (RT v.1, p.12.)

Each of these requests concerns the conduct of discovery, the structure of the trial, or the management of courtroom proceedings—subjects squarely within the trial court’s inherent authority to control litigation. (Code Civ. Proc., § 128, subd. (a)(3); *People v. Cox* (1991) 53 Cal.3d 618, 700 [trial courts possess broad discretion to control proceedings and the presentation of evidence]; see also Code Civ. Proc., § 128, subd. (a)(8), *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1351 [trial courts retain inherent authority to regulate the conduct of proceedings].)

Because Appellant’s requests concerned litigation management rather than access to the courts, they were not ADA accommodations within the meaning of rule 1.100. Consequently, the trial court was not required to issue a written ruling on such requests under rule 1.100(e). The trial court could instead address the issues in the ordinary course of pretrial proceedings, which it did. The record reflects that the trial court held multiple hearings on Appellant’s requests, considered the parties’ positions, and expressed its views regarding the requested deposition format and the availability of breaks or multiple sessions. These discussions were quintessential exercises of case-management and discovery-management discretion, not ADA determinations.

Appellant relies on *Biscaro v. Stern* (2010) 181 Cal.App.4th 702 (“*Biscaro*”), but that case does not advance his cause. In *Biscaro*, a litigant requested an ADA accommodation, specifically, a facilitator to assist him in communicating and participating in

court proceedings because of cognitive impairment. (*Id.* at pp. 705–706.) The trial court acknowledged the request but never ruled on it, and the litigant subsequently failed to appear at the hearing where a restraining order was issued against him. (*Id.* at p. 706.) The Court of Appeal held that the failure to rule on the ADA request violated rule 1.100 and constituted structural error because the reviewing court could not determine how the proceeding might have unfolded had the accommodation been granted. (*Id.* at pp. 707–710.)

This case bears no resemblance to *Biscaro*. Appellant was not seeking auxiliary assistance necessary to access the courtroom or communicate with the court. He was seeking procedural rulings governing the manner in which discovery and trial would occur. Those requests did not implicate the core purpose of rule 1.100, which is ensuring equal access to the courts for persons with disabilities. And unlike the litigant in *Biscaro*, Appellant participated in the litigation: he sat for deposition. The alleged error, therefore, did not undermine the basic reliability of the proceedings.

Nor does the record show that the trial court ignored the issues Appellant raised. To the contrary, the court held multiple hearings addressing the deposition format and the scope of accommodations that might be appropriate. That process reflects active judicial management of the case—not the kind of complete failure to act that concerned the court in *Biscaro*. The absence of a formal ADA ruling under Rule 1.100 is therefore immaterial.

In short, Appellant seeks to convert routine litigation issues and rulings into ADA accommodation determinations in order to invoke the structural-error doctrine. Rule 1.100 does not support such an expansion. Because Appellant's requests concerned trial management rather than disability access to the courts, such requests were fundamentally miscast by Appellant into a Rule 1.100 Request. As such, the trial court had no obligation to issue a written ruling under a Rule 1.100 framework that had no bearing on the Appellant's requests, and the structural-error rule discussed in *Biscaro* does not apply.

B. Even if the trial court was required to issue a ruling on appellant's accommodation request, the absence of a formal determination was, at most, harmless error.

California Rules of Court, Rule 1.100 allows a court to deny a request for accommodation for only three reasons: (1) if the applicant failed to satisfy the requirements of rule 1.100, (2) if the requested accommodation would create an undue financial or administrative burden on the court, or (3) if the requested accommodation would fundamentally alter the nature of the service, program, or activity. (*Biscaro*, supra, 181 Cal.App.4th at p. 709; rule 1.100(f); see *In re Marriage of James M.C. & Christine J.C.* (2008) 158 Cal.App.4th 1261, 1265 [“[r]ule 1.100(f) permits a trial court to deny a request for accommodation under the ADA only if the court makes a determination of at least one of three specifically identified grounds”].)

Rule 1.100 reflects the policy that persons with disabilities should have equal access to judicial proceedings and requires

courts to promptly determine requests for accommodations and to provide a written explanation if the request is denied. (Cal. Rules of Court, Rule 1.100(b), (e)(2).) But the rule does not require reversal whenever a written ruling is absent. Rather, a failure to rule on an accommodation request is reversible only when it amounts to a wrongful denial that deprives the requesting party of meaningful access to the proceedings. (*Biscaro*, supra, 181 Cal.App.4th at pp. 708–710.) Where the record demonstrates that the requesting party did not satisfy the requirements of rule 1.100, the court’s failure to issue a formal ruling is harmless because the request could properly have been denied. (*Id.* at pp. 707-708.)

That principle controls here. Appellant submitted several requests for disability accommodation during the litigation. Hearings were held concerning those requests, and the court expressly sought additional information necessary to evaluate them. As Appellant’s own counsel later reported in a February 5, 2024, status report, the trial court had requested an update from Appellant’s treating physician in Greece describing the progress of his treatment and addressing whether additional treatment was required to enable him to participate effectively in the defense of the case. The purpose of that request was to assist the court in determining scheduling and other matters related to Appellant’s participation in the proceedings. Yet Appellant’s counsel acknowledged that, as of that filing, no such medical information had been obtained. The record likewise does not

reflect that Appellant ever supplied the requested physician's report or any comparable update to the trial court.

Rule 1.100 expressly authorizes a trial court to request additional information regarding the impairment that purportedly necessitates the accommodation. (Cal. Rules of Court, rule 1.100(c)(2).) As indicated above, an applicant's failure to provide information reasonably requested by the court constitutes a failure to satisfy the rule's requirements and justifies denial of the requested accommodation. (*Biscaro*, supra, 181 Cal.App.4th at pp. 708-709.)

Under these circumstances, the absence of a written order does not justify reversal. The record demonstrates that the trial court sought additional information necessary to evaluate the accommodation requests and that Appellant failed to provide it. Because Appellant did not satisfy the requirements of rule 1.100, the court could properly have denied the requests on that ground alone. (*Biscaro*, supra, 181 Cal.App.4th at p. 709.) Accordingly, even if the court should have issued a formal written ruling, the failure to do so could not have affected the outcome of the proceedings and was therefore harmless. (*Id.* at pp. 708–709.)

Biscaro does not compel a different result. In that case, the Court of Appeal concluded that reversal was required because the trial court effectively denied an accommodation request even though none of the rule's permissible grounds for denial applied. (*Biscaro*, supra, 181 Cal.App.4th at pp. 708–710.) The court emphasized that the applicant had satisfied the rule's requirements and that the trial court's failure to act operated as

a wrongful denial of the requested accommodation. (*Id.* at p. 710.) The present case is fundamentally different. Here, the trial court expressly sought additional information necessary to evaluate the request, and Appellant never supplied it. Where the applicant fails to provide the information required by rule 1.100, the absence of a formal ruling does not constitute a wrongful denial and does not require reversal. (*Id.* at pp. 708–709.)

In summary, the record demonstrates that Appellant failed to provide the information the trial court reasonably requested to evaluate his accommodation claims. Because the court could properly have denied the requests on that basis, the absence of a written ruling (assuming it was error at all) was harmless and provided no basis to disturb the judgment.

IV. THE “DEEMED ADMITTED” ARGUMENT

Appellant contends that the Court granted the motion to deem admissions without a valid proof of service on Appellant. Not so. Respondent served Appellant with a Second Set of Admissions requests on February 8, 2024, when Glaser Weil was still Appellant’s counsel of record. [2 AA 0713-0739.] When no timely response was received, the Motion to Compel was filed and served March 12, 2024. Service was made on Appellant consistent with the Court’s February 9, 2024, order and the representations of Appellant’s trial counsel in the withdrawal motion: via e-service on service agent Themis Sofos. [2 AA 0741.] The trial court deemed Mr. Sofos as Appellant’s agent for purposes of service in its conditional order [4AA 1497], and for good reason. Not only did Appellant’s former counsel designate Mr. Sofos as

the service contact for Appellant, he also played a continuing support role for Appellant, including an appearance at Appellant's March 1, 2024 deposition. Due process was not offended as to the deemed admitted motion.

Even if the deemed admitted motion had been granted in error, there is no indication on the record that these deemed admissions had any effect on the trial court's conditional order granting new trial. To the contrary, the driving force behind the trial court's decision was the testimony of Respondent and her therapist. [4AA 1495.] There is no indication in the trial court's Ruling Re: Appellant's Motion to Set Aside and Vacate Judgment and for New Trial was influenced in any way by the admissions requests being deemed admitted. [4AA 1489-1499.]

The burden is on the appellant in every case to show that the claimed error is prejudicial; i.e., that it has resulted in a miscarriage of justice." (*Cucinella v. Weston Biscuit Co.* (1954) 42 Cal.2d 71, 82; *Gutierrez v. G & M Oil Co., Inc.* (2010) 184 Cal.App.4th 551, 566; Cal. Const., art. VI, § 13; Code Civ. Proc. § 475.) Appellant did not meet that burden here as there is no apparent connection between the deemed admitted order and the conditional order granting new trial (remittitur), and there is no basis for determining, based on the record provided, that the Court would have reached a different decision on Respondent's Motion for Directed Verdict [3AA 0923] absent the deemed admissions as the trial court specifically found the trial testimony of Respondent credible. [4AA 1495.]

V. THE MISCARRIAGE OF JUSTICE ARGUMENTS

A. Relevant standards.

Appellate review of discretionary rulings is sharply constrained. Under the “abuse of discretion” standard of review, appellate courts will disturb discretionary trial court rulings only upon a showing of “a clear case of abuse” and “a miscarriage of justice.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.) “Judicial discretion” has been described as “the sound judgment of the court, to be exercised according to the rules of law” (*Lent v. Tilson* (1887) 72 Cal. 404, 422); it “implies absence of arbitrary determination, capricious disposition or whimsical thinking.” (*In re Cortez* (1971) 6 Cal.3d 78, 85; see *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 695). Discretion is “abused” only when, in its exercise, the trial court “exceeds the bounds of reason, all of the circumstances before it being considered.” (*Denham, supra*, 2 Cal.3d at p. 566; *Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.)

“A judgment may not be reversed on appeal, even for error involving ‘misdirection of the jury,’ unless ‘after an examination of the entire cause, including the evidence,’ **it appears the error caused a ‘miscarriage of justice.’** (Cal. Const., art. VI, § 13.)” *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574 (emphasis added).) The “miscarriage of justice” phrase has been interpreted to prohibit a reversal unless there is “a reasonable probability that in the absence of the error, a result more favorable to the appealing party would have been reached.” (*Id.* at p. 574.)

“[A] “miscarriage of justice” should be declared only when the court, “after an examination of the entire cause, including the evidence,” is of the “opinion” that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800, citing *People v. Watson* (1956) 46 Cal.2d 818, 836, italics added.)

B. Appellant’s inadequate record forfeits his claims.

Every appeal begins with a presumption: the judgment is correct. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) The appellant seeking reversal has the burden to demonstrate reversible error. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) He may not evade that responsibility by challenging the respondent to prove the trial court was right or by placing the burden of discovering prejudicial error on the appellate court. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 102.)

“In every appeal, ‘the appellant has the duty to fairly summarize all of the facts in the light most favorable to the judgment.’” (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 739.) The opening brief must therefore recite all of the relevant facts and evidence, with proper citations to the record, in particular, evidence or facts that support the jury's verdict and the trial court's rulings. (*Champir, LLC v. Fairbanks Ranch Assn.* (2021) 66 Cal.App.5th 583, 597 [finding plaintiffs “forfeited the claim of any prejudicial error”]; *Myers, supra*, 178 Cal.App.4th at p. 745.)

Here, Appellant’s opening brief failed to provide a summary that would allow the Court to evaluate the entire cause. In light of the absence of a reporter’s transcript, Appellant has not presented much of the evidence presented at trial, including most of the evidence supporting the verdict, and instead he offered a largely self-serving version of events. This in and of itself renders his appeal subject to forfeiture. (*Myers*, supra, 178 Cal.App.4th at p. 739, 749 fn. 1.) There is simply not a complete record for this Court to review.

Further, on the record provided, it is in no way probable that a more favorable result would have occurred had Appellant himself participated in proceedings. This Court of Appeal has already had experience with Appellant at trial (*Khan v. David* (2022) No. B305849, 2022 WL 1702702), and there is no reason based on this record that he would have behaved any differently here.

C. Appellant does not establish a miscarriage of justice.

Even setting forfeiture aside, Appellant fails to carry his burden on the merits. He invokes a “cumulative error” theory (*Dam v. Lake Aliso Riding School* (1936) 6 Cal.2d 395, 399) but, as discussed above, he does not establish any cognizable error, much less a prejudicial one:

- No duty to locate Appellant. Appellant faults Respondent for not attempting to “find” him, yet cites no authority imposing such an obligation. None exists.
- No entitlement to a court reporter. Appellant claims prejudice from the absence of a reporter but identifies no

legal duty requiring the trial court or Respondent to furnish one. Code of Civil Procedure section 269 governs what must be reported if a reporter is present; it does not guarantee one in civil proceedings.

- No prejudice from deemed admissions. Even assuming error, the record contains nothing suggesting a different outcome was reasonably probable. The verdict rested on Plaintiff’s credited testimony, and the trial court independently reduced the damages through a conditional new trial order.
- Remittitur cures any alleged punitive “taint.” The trial court’s substantial reduction of the award confirms that the final judgment reflects a reasoned assessment—not jury passion or improper punishment for Appellant’s conduct with other women.
- No denial of participation. The court did not prevent Appellant from testifying or presenting evidence. He simply chose not to appear.
- The ADA claim is meritless. Appellant failed to provide the information the trial court requested, and his submissions did not establish a qualifying need. In any event, his wholesale nonappearance renders the issue academic.

Viewed singly or together, these assertions do not approach the constitutional threshold. There were no errors. And even if there were, Appellant has not shown, nor can he show, a

reasonable probability of a more favorable result absent the claimed errors. There was no miscarriage of justice.

VI. CONCLUSION

For the foregoing reasons, a new trial is not warranted, and the judgment should be affirmed in full.

Respectfully submitted,

DORDICK LAW CORPORATION

A handwritten signature in black ink, appearing to read "John M. Upton", is written over a horizontal line.

Gary A. Dordick, Esq.
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Attorneys for Plaintiff/Respondent

**BRIEF FORMAT CERTIFICATE PURSUANT TO
C.R.C. 8.204(c)**

Pursuant to C.R.C., rule 8.204(c) uses a 13 point Century Schoolbook font and in reliance on the word count of the computer program used to prepare the brief, I certify that the Respondent's Opening Brief and contains 13,809 words.



John M. Upton, Esq.

Attorneys for Plaintiff/Respondent