

Filed 5/27/22

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL – SECOND DIST.

DIVISION TWO

FILED

May 27, 2022

DANIEL P. POTTER, Clerk

ocarbone Deputy Clerk

MAHIM KHAN,

B305849, B308727

Plaintiff and Respondent,

(Los Angeles County

Super. Ct. No. BC654017)

v.

ALKIVIADES DAVID,

Defendant and Appellant.

APPEAL from a judgment of the Superior court of Los Angeles County, Michelle Williams Court, Judge. Affirmed.

Glasser Weil Fink Howard Avchen & Shapiro and Fred D. Heather for Defendant and Appellant.

Allred, Maroko & Goldberg, Nathan Goldberg, Dolores Y. Leal, Renee Mochkatel; Pine Tillett Pine, Norman Pine and Scott Tillett for Plaintiff and Respondent.

Alkiviades David sexually battered his employee Mahim Khan, engaging in despicable behavior witnessed by coworkers. David treated Khan's harassment suit with cavalier indifference. He did not produce documents (including financial information) nor did he answer interrogatories, sit for a deposition or pay court-ordered discovery sanctions. After disobeying an order to submit to a deposition, he was barred from testifying at trial. At trial, he engaged in insulting behavior toward the jury, the judge, plaintiff, and counsel. After repeatedly disrupting proceedings with profane outbursts, David lost the right to represent himself.

The jury awarded Khan over \$8 million in compensatory damages and \$50 million in punitive damages. David challenges rulings preventing him from introducing evidence that was not produced in discovery, revoking his self-representation, allowing expert testimony, and allowing plaintiff's counsel to make certain unfavorable closing arguments. He also contends that punitive damages are excessive. Most of his claims were forfeited by his failure to object at trial. None are meritorious. We affirm.

FACTS

Khan's Testimony

Khan was raised in a conservative, patriarchal Islamic family. She embraces her religion, praying five times daily. Since her childhood, her father physically abused her, slapping or punching her face or stomach and choking her. He locked her in a bathroom or tickled her until she urinated on herself. Her mother did not help, saying, "That's just the way it is." He abused her daily, without provocation. It was taboo to disclose the abuse to others.

Khan lived at home during college, where she majored in communications, radio, television and film, minoring in economics and business. She volunteered at a hospital. After college, Khan worked in real estate and television production, becoming a television host when she moved to California. In 2014, she was hired as a production assistant at David's entertainment companies, FilmOn TV, Inc. and Alki David Productions (ADP).

David began sexually harassing Khan in December 2014. He would walk up behind her as she sat at her desk, swivel her chair aggressively to

face him, grab her neck and force her face into his groin, with his pants unzipped or belt undone, making thrusting movements, moaning, and tilting his head back in pleasure. Khan described it as “oral sex gestures.” She tried to push him away and felt “frozen.” Afterward, he “theatrically” rezippped his pants and said, “Thanks, MK. That was amazing,” implying that she had performed oral sex. Other employees witnessed it, but no one talked about it.

David’s sex simulations continued “significantly more often” in 2015. Sometimes his pants fell to the ground, exposing his underwear, when he grabbed her head and thrust his pelvis at her. At times, her head touched his pelvis. She estimated that it occurred 20 times per month between January and June 2015. Khan disconnected emotionally from the abuse and continued to work for David.

At a February 2015 meeting with Khan, outside business contacts, and two employees, David walked in with a box he said contained cocaine. He projected onto the conference room wall a pornographic, scatological video of women eating their feces called “2 Girls, 1 Cup.” He showed the same video to Khan and two coworkers in spring 2015. Khan walked out. Minutes later, he called her into an office. His pants and underwear were pulled down to his knees. He tucked his penis between his thighs and began waddling; this was his display of a “mangina,” i.e., a mock vagina. Khan did not say anything and returned to her workspace. She felt she had no choice but to respond when he called her because he was the boss.

In spring of 2015, 25 employees at David’s company met in conference to discuss the company’s sexual harassment policy. When David received his copy of the policy, he laughed, crumpled it, tossed it on the table, and left the meeting.

David touched Khan’s breasts and vagina in the workplace. As she sat at her computer one day, he approached stealthily and squeezed her breast so forcefully that it came out of her dress and was publicly exposed. He grabbed her breasts on other occasions, but she remembers that incident vividly.

Once, after David asked Khan to stand next to his chair to look at his computer, he grabbed her vagina over her clothing while making moaning sounds. She immediately moved away. Another time, she was in an editing

room with others when David approached, grabbed her pelvis, pulled her close and rubbed his hand from her pelvis to her vagina saying, “Mmm, I like this area.” She pushed him away and told him to stop. He responded by laughing.

On more than one occasion David slapped Khan’s buttocks as he walked by her. “He was just always, like, probing or prodding or touching” the lower half of her body, she testified. In spring 2015, Khan was in a conference room chatting with a client. When David arrived, Khan stood up, only to have him push her back into the chair and simulate a lap dance over her, shoving her head into his groin by forcefully holding her neck and making moaning sounds. Khan was mortified. In early summer of 2015, David walked up from behind and put his hands on her breasts, in front of male coworkers.

Apart from experiencing unwanted touching, Khan saw David harass colleagues: He simulated oral sex with another female worker and slapped the buttocks of the office manager so hard that she screamed in pain. He was demeaning to women, commonly referring to them as “cunt” or “bitch.” He hired a male stripper to perform in the office for a woman’s birthday.

By the summer of 2015, Khan was depressed and suicidal. She was eating poorly, losing her hair, unsociable, and sleeping a lot. On weekends, she stayed home in her pajamas and ignored friends’ calls and messages. She felt violated and unworthy from David’s misconduct. She wished to quit but was unable to pay her rent without a job and unsuccessful in finding work elsewhere.

A colleague resigned due to harassment, prompting Khan to e-mail senior vice president Gary Shoefield in August 2015. Shoefield previously checked on Khan’s well-being after David squeezed her breast. Khan mentioned the resignation and wrote, “I’m specifically worried about Alki [David] continually being sexual towards me. It makes it difficult to work here I can’t stand him touching me anymore.” When they met to discuss Khan’s concerns, Shoefield knew about the harassment, but said David was “never going to change.”

Shoefield suggested Khan seek help from the company’s financial controller Yelena Calendar. In a meeting, Khan described David’s

harassment, such as touching her breasts, vagina, and simulating oral sex. Calendar responded, “It is what it is. Alki’s Alki and no one can control him.” Calendar did not take notes or investigate. A few weeks later, David returned from a trip and resumed his harassment, rubbing Khan’s pelvis and inner thigh and simulating oral sex.

Khan resigned on October 1, 2015. David asked her to return, writing that she is “a valuable member of the team and maybe I should have been gentler in my manner.” Calendar wrote saying that David and Shoefield wanted Khan back, adding, “Are you sure you don’t want to reconsider? You will be treated very well.” Khan did not respond to their messages. She did not want to work in an “unsafe place” where she felt violated.

After leaving her job, Khan felt “hopeless.” She moved in with a relative, slept 18 to 20 hours a day, gained weight from a binge eating disorder, and stopped washing herself. She cried, had suicidal thoughts, and ate sugary foods to soothe her emotions. She was haunted by flashbacks of David’s conduct and overreacted when anyone approached her from behind or tried to touch her head. She did not tell relatives what had happened for fear of shaming her family, who would blame her for David’s behavior though it was not her fault.

Khan eventually moved back home. She worries that she will have to disclose the sexual abuse to potential suitors. She no longer trusts men and hearing loud male voices triggers her fear. Seeing David yell and cuss at deposition and at trial caused her to tremble. She cannot seek help from her imam because sex is a taboo topic. She received counseling and was prescribed medication for depression and binge eating. She cannot afford to buy the antidepressant because she lacks insurance.

Corroborating Witness Testimony

Nicholas Hyams worked in David’s office. He saw David “walk up to [Khan] and casually fondle her breasts” over her clothing on five occasions. Khan looked startled, shocked, and fearful. David always approached Khan from behind when he touched her breasts.

Hyams saw David “fondle [Khan] in her crotch area.” David walked up behind Khan, put his hands between her legs, and grabbed at her vagina. Khan looked startled and upset. Hyams saw David walk into Khan’s cubicle,

stand in front of her, grab her head and move it back and forth “to simulate the act of oral sex,” then said, “Thanks, MK,” and walked away. When Khan walked by, David “would smack her on the rear end. It was very common,” Hyams testified. Hyams regrets his failure to stop David’s abuse of Khan, but he did not want to increase the awkwardness, there were no supervisors to take misconduct reports and, “I was afraid to lose my job.”

Hyams saw David “tuck his genitals between his legs and, fully in the nude, just present himself” several times. David once walked into a meeting in the conference room to display his “mangina,” as he referred to it, to a group of employees. Hyams saw David fling a female coworker over his shoulder and walk around the office. He saw David show the “disgusting” video “2 Girls, 1 Cup” in the conference room while Khan met with prospective clients.

Hyams heard David demean women, in their presence or after they walked away, saying, “Look at the tits on her,” “She has great tits,” or describing their attractiveness. David spoke of his wealth frequently and it was obvious and palpable that he felt his wealth gave him license to do whatever he wanted, without consequences. David harassed Hyams, who had to watch “2 Girls, 1 Cup” multiple times while David filmed viewer reactions and posted them on-line; saw David’s “mangina”; had David put him in a dog shock collar in front of other employees; and had to meet with David in a rest room while David defecated.

Helen Davis worked in David’s office. Davis saw David grab Khan’s vagina as Khan walked to her desk. Khan jumped in surprise, then hurried to her chair.

Lauren Reeves worked for David in 2016. She testified that he asked if she had “seen his mangina”; when she said, “No,” he instructed her to wait in the hall and went into his office. When he reappeared, he was “completely naked with his genitals tucked between his legs and his pants down around his ankles.” He waddled around with his knees together and did a little dance before returning to his office.

In September 2016, David called Reeves into his office to discuss a show she was working on. He closed the blinds, pulled his pants down, shoved Reeves’s head into his crotch, and held it there. He called the name of

another employee, who came in, saw what was happening, and left without interceding. David began kissing Reeves while she tried to push him away. He said, “You’re coming with me after work to my apartment.” Reeves left David’s office that day and never returned to work for him.

Expert Witness Testimony

Anthony Reading teaches classes in sexual assault trauma at UCLA’s medical school. He evaluated and did psychological testing on Khan. He listed acts of sexual misconduct that she described. David was not in the courtroom and did not object to Reading’s testimony.

Reading testified that Khan’s conservative religious roots and history of abuse by her father made her vulnerable to David’s behavior. She felt helpless and unsafe when faced with an abusive parent or boss who was in control, which eroded her ability to cope. Most people would fear someone like David, who is volatile, loud, profane, and lacks boundaries. In Khan’s case, her fear and shame were exacerbated by David’s repeated taboo touching and simulated oral sex, in front of people who did not react because it was part of the office culture.

Reading diagnosed Khan with post-traumatic stress disorder and major depressive disorder, with passive suicidal thoughts. David’s conduct affected her sense of self-worth and derailed her career; she does not feel safe working with men and has panic attacks. It is unlikely she will ever fully recover. She requires years of cognitive behavioral treatment, will always have residual impact from these events, and be easily triggered. Reading opined that Khan’s illness was caused by events at David’s office; the severity and trajectory of her symptoms were affected by her childhood history of abuse.

PROCEDURAL HISTORY

Khan’s Complaint

Khan filed suit in 2017 against David and his companies, seeking compensatory and punitive damages for his treatment of her at work. Her claims for violation of the Fair Employment and Housing Act (FEHA) and battery were brought to trial.

David cross-complained against Khan and her attorneys for extortion and emotional distress arising from this litigation. The pleading was

stricken as a Strategic Lawsuit Against Public Participation and David was ordered to pay \$19,628 in attorney fees. He did not appeal the ruling.

Discovery Disputes

Khan moved to compel responses to interrogatories, requests for admissions and requests for production, and to compel David's deposition. The court ordered David to respond to discovery and awarded sanctions. However, no responses to interrogatories or documents were provided, David failed to appear three times for his deposition, and sanctions were unpaid.

Khan sought terminating sanctions. While the motion was pending, David appeared for deposition but failed to bring documents, said he came to waste counsel's time, shouted obscenities, live streamed the event, gave no testimony, and left after 15 minutes. After viewing the videotape, the court declared that David was "uncooperative" and the deposition was "tantamount to not appearing at all."¹ It denied the request for terminating sanctions; however, it barred David from testifying in his own defense and barred defendants from calling undisclosed witnesses or introducing unproduced documents, including Khan's employment agreement.

The Trial

David misbehaved at trial in November 2019. Before jury selection, he called the attorneys "criminal thugs." The court warned him, "there are going to be consequences," including exclusion from the courtroom if he persisted. He called Khan a liar, then walked out. The next court day, he called counsel "a disgusting, despicable criminal," then shouted at prospective jurors congregating outside the courtroom as he left. Moments after promising he would abide by the court's rules of conduct, he insulted Khan and her attorneys in court.

The court listed David's repeated misbehavior, including in discovery when he loudly and profanely assailed Khan and her attorneys during his deposition and refused to answer questions. The court found he "has engaged

¹ The deposition transcript shows David threatened Khan's attorney, saying, "I'm coming after you." Reminded that the court ordered his deposition, David replied, "Fuck you. Go fuck yourselves, all of you, you stupid idiots. Go fuck yourselves and shove it up your ass. You lying manipulative piece of shit."

in clear and deliberate conduct that has seriously disrupted and obstructed this case. Any future violation of court rules or orders concerning trial conduct by Mr. David may result . . . in a finding that the court's need to control this [trial] outweighs Mr. David's right to represent himself." The court did not strike David's answer as a terminating sanction despite an "almost irreconcilable tension" between the parties' rights to a fair trial.

Matters went downhill from there. In an opening statement, David baselessly accused Khan of crimes, told jurors to conduct their own research, and accused the court of ignoring counsel's purported criminality. He departed, though he was subpoenaed to be the first witness, posted video about the trial on-line, then shouted that counsel was a "sack of shit" for showing the video to the court the next day. When the court tried to stop his tirade, he threatened to "come after these people" while gesturing at Khan and her lawyers. He said, "I know I'm in nonsense court." He arrived at court late and left early.

The court again denied terminating sanctions. However, it found that David "continues to engage in this conduct that seriously disrupts and obstructs this trial; and the court finds that the need to control and resolve this case outweighs Mr. David's right to represent himself. So I am revoking your right to represent yourself." David swore at Khan's attorney, said, "You're all liars," and left, though the court urged him to stay. In the corridor, where jurors were waiting, David shouted "lying, cheating people" and told jurors they were wasting their time. The court admonished the jury to ignore David's outburst.

On November 18, the court asked David if he had retained counsel. He replied that the court was biased, ignored evidence of purported criminal behavior, and denied him the right to represent himself. The court said, "You need to stop shouting," and noted that he cannot represent himself because he did not follow court rules. David refused to hire an attorney and called Khan a "complete utter liar." The court said it would "reconsider" allowing David to represent himself, depending on how he behaved. At a break, the court reprimanded David for laughing and making faces during Khan's testimony. David repeatedly shouted, "You're absolutely ridiculous," while gesturing at the judge; he entered the corridor, still shouting, though jurors

were there. The court reminded the jury to only consider evidence elicited in court when deciding the case.

While Hyams was on the stand, David interjected his own opinions using the word “crap.” The court admonished him to sit down, be quiet, and asked the jury to leave. David called the court and counsel “corrupt” and Khan “[a] disgusting person” while the court repeatedly said “stop.” When the court asked if he would follow rules of decorum, David replied, “Absolutely not.” The court said, “I want to state for the record that you are shouting at me.” When his tirade continued, the court excluded David from the courtroom for the rest of the morning; it said he could return in the afternoon, but warned that every time there was an outburst, he would be excluded. When David asked to represent himself, the court denied his request based on his conduct the previous day and that morning during testimony.

David called Khan “an out-and-out liar” and threatened her attorney, saying, “I’m coming after you.” The court said, “I’m not going to tolerate anybody making threats.” David left, saying he would not return until he was allowed to testify, again using the word “crap.” Jurors indicated they would be able to disregard David’s statements.

David reappeared at the conclusion of plaintiff’s case and engaged in a lengthy outburst, calling the trial “a travesty of justice” and “a rigged mess” just as the court was telling the jury to go outside, causing the court to tell him to “stop shouting.” He accused the court of treating him as if this was “Nazi Germany.” He then yelled at the jurors in the corridor outside the courtroom. The court advised jurors to consider only evidence presented inside the courtroom.

The Verdict

A special verdict form posed questions about Khan’s claims and compensatory damages and asked whether she proved by clear and convincing evidence that David acted with malice, oppression, or fraud. After one day of deliberation, the jury found David liable for battery, sexual battery, sexual harassment, and hostile work environment. It found FilmOn and ADP liable for violating FEHA. It awarded Khan compensatory damages consisting of \$3 million for past noneconomic loss; \$5 million for future

noneconomic loss; \$40,000 for past lost earnings; \$0 for past medical expenses; \$80,000 for future lost earnings; and \$130,000 for future medical expenses.

Punitive damages were tried after the special verdict was reached. David did not appear, personally or by counsel. The court relieved Khan of the burden of proving David's financial condition after he disobeyed court orders to produce financial evidence and testify. No witnesses were called. The jury awarded \$50 million in punitive damages. David appealed the judgment.²

DISCUSSION

1. Motion to Dismiss the Appeal

Citing the doctrine of disentitlement, Khan requests dismissal of the appeal. She lists David's misconduct, including at a postjudgment debtor's exam, when he yelled obscenities, threatened to harm counsel, jumped on the table, and inspired the court reporter to call police. Juvenile behavior is not an adequate reason to dismiss David's appeal.

Disentitlement is "an equitable tool 'by which an appellate court may stay or dismiss an appeal by a party who has refused to obey the superior court's legal orders.'" (*Calvert v. Al Binali* (2018) 29 Cal.App.5th 954, 965 [refusing to dismiss appeal as a disentitlement after defendant missed a judgment debtor exam]; *In re E.M.* (2012) 204 Cal.App.4th 467, 474 [dismissal is not punishment but is intended to induce compliance with a valid order].) Application of disentitlement is discretionary. (*Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, 757.)

The trial court imposed evidentiary and monetary sanctions for David's repeated pretrial failures to provide discovery and is currently overseeing Khan's efforts to collect on her judgment, according to counsel for David. It is not appropriate for us to interfere. (*Menezes v. McDaniel* (2019) 44 Cal.App.5th 340, 346–347 [appellate court refused to apply disentitlement when the trial court was addressing sanctions for misbehavior].) We decline

² The corporate defendants did not appeal. David appealed an order awarding Khan costs and attorney fees but raises no claims relating to the award.

to exercise our discretion to dismiss the appeal, confident that the trial court will continue to maintain control of postjudgment proceedings, much as it did before and during trial.

2. Ruling on Motions in Limine

Khan moved in limine to (1) bar David from testifying in his defense, and (2) prevent the defendants from calling undisclosed witnesses or from introducing or referencing documents not produced in discovery. The court granted the motions, citing David's willful refusal to comply with court-ordered discovery or pay monetary sanctions. Khan submitted a proposed order listing witnesses and evidence to be excluded. The corporate defendants objected. At a hearing, counsel for the corporate defendants said David "was really not interested or involved in reviewing the witness list or exhibit list." He did not join counsel's objections.

When counsel for the corporate defendants claimed the evidence was produced, the court replied that documents "were produced months after they were ordered produced . . . on the eve of, if not after, the discovery cutoff." The court said it reviewed the list "very, very carefully. I've reviewed every witness and every document, every exhibit carefully because I wanted to be sure that it fell into the court's finding of willful failure to disclose." It added, "I don't think the code contemplates a party violating a court order to produce or identify evidence . . . for months, and then at or after the discovery cutoff, producing this information and then being able to use it at trial."

a. David Forfeited His Claims by Failing to Object

David was in propria persona when the court ruled on Khan's motions. He did not object on any *cognizable* ground to excluding his testimony, to the proposed order listing witnesses and evidence to be excluded, or to the court's ruling. He was asked twice if he wished to respond. Referring to the notice to produce, he said, "I don't read any of this stuff." He then "disrupt[ed] the proceedings by shouting insults and accusations at plaintiff's counsel and refusing to stop when admonished by the Court, [left] the courtroom and is heard shouting about the case . . . in the hallway in the presence of prospective jurors," according to the court's minute order.

"In order to preserve an issue for appeal, a party ordinarily must raise the objection in the trial court" as a matter of fairness to the court and

opposing party, based on the need for an orderly and efficient administration of the law. (*In re S.C.* (2006) 138 Cal.App.4th 396, 406.) “The party also must cite to the record showing exactly where the objection was made.” (*Ibid.*) In his reply brief, David points to his “objections” consisting of shouted insults and profanity, not provisions in the Evidence Code.

b. The Court Did Not Abuse Its Discretion

“The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence.” (Code Civ. Proc., § 2023.030, subd. (c).) Misuse of discovery includes failure to respond or submit to an authorized method of discovery and “[d]isobeying a court order to provide discovery.” (Code Civ. Proc., § 2023.010, subds. (d), (g).) The court’s broad discretion to impose sanctions is “ ‘ “subject to reversal only for arbitrary, capricious, or whimsical action.” ’ ” (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545–1546 [no abuse of discretion to bar defendant from introducing at trial documentary evidence he willfully withheld in discovery].)

David failed to respond to discovery requests, including interrogatories and requests for production, nor did he submit to a deposition. Khan had to make repeated motions to compel discovery. The court ordered David to comply and imposed monetary sanctions. David did not comply with the court’s discovery orders. Monetary sanctions, which he never paid, had no effect on his behavior. At the court-ordered deposition, he brought none of the requested documents, announced his intent to waste counsel’s time, shouted obscenities, and gave no testimony. The court deemed it a nonappearance.

When it becomes clear that a defendant is an obstructionist who does not intend to answer discovery or comply with court orders, and lesser remedies will not avert misconduct, the court may legitimately impose a terminating sanction. (*Del Junco v. Hufnagel* (2007) 150 Cal.App.4th 789, 799–800; *R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496–497 [terminating sanctions against a party who refused to be deposed, thwarted discovery, and violated orders].) Indeed, failure to impose a terminating sanction despite flagrant discovery misconduct can be an abuse

of discretion. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 993–994.)

Using an incremental approach, the court gave David second chances without a terminating sanction, despite Khan’s repeated requests. It was not an abuse of discretion to bar David’s testimony after his deposition fiasco or to exclude unidentified witnesses and evidence that was not produced or produced after the discovery cut-off on the eve of trial. The court found that “all of these documents and the identity of these witnesses was willfully withheld.”

Contrary to David’s arguments, discovery is used to probe a party’s defense *before* trial, not learn it for the first time in front of a jury with no opportunity to prepare rebuttal. (*Williamson v. Superior Court* (1978) 21 Cal.3d 829, 838 [discovery avoids “ ‘ “a game of blindman’s bluff” ’ ” at trial]; *Puerto v. Superior Court* (2008) 158 Cal.App.4th 1242, 1249 [discovery avoids surprise; uncovers claims and defenses to encourage settlement and expedite trial; and reduces fabrication]; Code Civ. Proc., § 2025.620, subd. (a) [party may use a deposition to impeach the deponent at trial].) It was well within the court’s discretion to create, in its words, “an even playing field.” Khan was not required to speculate about the substance of David’s testimony or about the identity of witnesses or the contents of documents. She was prejudiced by her inability, in advance of trial, to depose witnesses or prepare her case by examining documents, which could necessitate more discovery.

When, as here, a party disobeys orders “compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction.” (Code Civ. Proc., § 2025.450, subd. (h).) Because David’s persistent, flagrant discovery violations could have led to terminating sanctions, the court’s decision to impose lesser sanctions was justified. He had ample warning his misconduct would have consequences. He cannot complain on appeal that the consequences he courted impacted his defense at trial.

3. Revocation of Self-Representation

David fired his attorneys before trial. Faced with his disruptions, the court made him agree to follow court rules and its rules of conduct. When his

misbehavior continued in front of the jury, the court ended self-representation. We defer to the court’s assessment of David’s misconduct and its impact on the integrity of the trial when it terminated his self-representation to maintain the fairness of the proceedings. (*People v. Becerra* (2016) 63 Cal.4th 511, 518.)

The Sixth Amendment affords the *right* to defend oneself in criminal prosecutions. (*Faretta v. California* (1975) 422 U.S. 806, 818–819.) By contrast, the constitution “does not afford individuals a right to self-representation in civil proceedings.” (*Conservatorship of Joel E.* (2005) 132 Cal.App.4th 429, 435.)

Self-representation “‘is not a license to abuse the dignity of the courtroom. . . .’ [Citation.] ‘[A defendant must be] *able and willing to abide by rules of procedure and courtroom protocol.*’ [Citation.] This rule is obviously critical to the viable functioning of the courtroom. . . . [¶] Thus, a trial court must undertake the task of deciding whether a defendant is and will remain so disruptive, obstreperous, disobedient, disrespectful or obstructionist in his or her actions or words as to preclude the exercise of the right to self-representation. The trial court possesses much discretion when it comes to terminating a defendant’s right to self-representation and the exercise of that discretion ‘will not be disturbed in the absence of a strong showing of clear abuse.’” (*People v. Welch* (1999) 20 Cal.4th 701, 734–735.)

There was no abuse of discretion in this case. David engaged in scurrilous behavior before trial, shouting obscenities at a court-ordered deposition. (See fn. 1, *ante.*) The imposition of sanctions had no effect on David, who called Khan and her attorneys names in open court, shouted at prospective jurors, and reneged on his promise to abide by the court’s rules of conduct. The court warned that his disruptive conduct could result in revocation of self-representation.

David continued to violate conduct rules at trial, made threats and insulted Khan, counsel, and the court. The court found David was obstructing the trial and revoked his *propria persona* status. As David left the courtroom, he shouted at jurors in the corridor that they were wasting their time. The next day, the court gave David a chance to redeem himself: It would “reconsider” self-representation even though he was shouting at the

court. Far from responding like an adult, David laughed and made faces while Khan testified. When admonished, he repeatedly shouted, “You’re absolutely ridiculous” at the judge. He interrupted the testimony of witness Hyams and again insulted counsel and the court. Critically, when the court asked if he would follow rules of decorum and its conduct order, David replied, “Absolutely not.” He proceeded to prove the point with an outburst at the end of trial.

On this record, we conclude that David’s behavior while representing himself seriously threatened the integrity of the trial and “the court’s ability to conduct a fair trial.” (*People v. Carson* (2005) 35 Cal.4th 1, 7.) “ ‘A defendant acting as his own attorney has no greater privileges than any member of the bar. He may not disrupt proceedings or intimidate witnesses. [Citations.]’ . . . When a defendant exploits or manipulates his in propria persona status to engage in such acts, wherever they may occur, the trial court does not abuse its discretion in determining he has forfeited the right of continued self-representation.” (*Id.* at p. 9.) Courts consider “ ‘the nature of the misconduct and its impact on the trial proceedings’ ”; “ ‘the availability and suitability of alternative sanctions’ ”; “ ‘whether the defendant has been warned that particular misconduct will result in termination of in propria persona status’ ”; and “ ‘whether the defendant has “intentionally sought to disrupt and delay his trial.” ’ ” (*People v. Becerra, supra*, 63 Cal.4th at p. 518.)

David intimidated Khan by shouting at her. At one point, she had to leave the courtroom. He disparaged plaintiff’s counsel with accusations that would be actionable were they not made in court. He insulted the court, shouted at jurors, and turned his courtroom misconduct into on-line entertainment. The court had to delay proceedings and ask the jury to go outside multiple times during David’s outbursts. The record is rife with David’s misconduct.

No fair trial could be conducted under these circumstances. Despite being warned he would lose the right to represent himself, he continued his misconduct. David plainly intended to disrupt trial. He violated the court’s rules of conduct and standards of decorum. (Super. Ct. L.A. County, Local Rules, rule 3.120.) The court exercised its prerogative to control proceedings:

It rightfully observed that David’s self-representation cannot impede Khan’s right to access the court system. Revoking self-representation was not an abuse of discretion. David has only himself to blame for his outrageous misconduct.

4. Submitting Questions in Advance

David forfeited, by failing to object, his claim that the court could not require him to submit voir dire questions in advance. (Code Civ. Proc., § 222.5, subd. (b)(1).) He did not attend voir dire at all. Further, he did not object to submitting cross-examination questions in advance and mostly absented himself from the courtroom during cross-examination.³ Requiring David to submit questions in advance was an attempt to preserve his self-representation while protecting prospective jurors and witnesses from humiliation and abuse.

The court has “inherent power . . . to exercise reasonable control over all proceedings connected with pending litigation . . . in order to insure the orderly administration of justice.” (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967; Code Civ. Proc., § 128.) David shouted at prospective jurors, at seated jurors, at the court, at plaintiff, and at the attorneys, using profanity. The extreme circumstances obliged the court to ensure that David not mock the justice system by abusing prospective jurors in voir dire. David has not shown prejudice, in any event. Attorneys for his companies, whose interests parallel his own, conducted voir dire over several days. We cannot say voir dire was so inadequate that the trial was “fundamentally unfair.” (*People v. Fuiava* (2012) 53 Cal.4th 622, 654.)

David was properly stripped of his propria persona status before cross-examination began, mooting his complaint about being required to submit questions in advance: He was not allowed to cross-examine witnesses. Attorneys for David’s businesses cross-examined witnesses. During their cross-examination of Hyams, David harassed the witness while ignoring the court’s commands to be quiet.

³ David told the court the requirement stymied “dynamic” questions, which is not a cognizable objection that addresses the disruptive behavior giving rise to the limits placed on him.

A court must “exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment.” (Evid. Code, § 765, subd. (a).) Given David’s refusal to control himself in the courtroom and ceaseless insults, the court did not abuse its discretion by requiring him to list questions in advance. Had David not been barred from representing himself, the advance listing requirement would not preclude his due process right to be heard, or from cross-examining and confronting witnesses. Instead, he would have been confined to questions within the rules of evidence and prevented from asking irrelevant or abusive questions, to avoid harassment and embarrassment. This was a reasonable measure to curb David’s belligerence and displays of contempt for the court’s authority.

5. Evidentiary Error

David contends that the court erroneously admitted case specific factual testimony from expert Reading in violation of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). David did not object at trial.⁴ Accordingly, he failed to preserve the issue for appellate review. It is forfeited. (*People v. Espinoza* (2018) 23 Cal.App.5th 317, 320.) A verdict cannot be set aside or a judgment reversed for erroneous admission of evidence unless the party made a timely motion to exclude the evidence on a specific ground and shows on appeal that the error resulted in a miscarriage of justice. (Evid. Code, § 353.)

An expert’s use of hearsay sources when testifying does not make admission of the testimony error under *Sanchez*. “Its admission was improper only if the expert’s testimony about the case-specific facts was not otherwise supported by competent evidence in the record.” (*People v. Navarro* (2021) 12 Cal.5th 285, 310; *People v. Nieves* (2021) 11 Cal.5th 404, 440 [“When an expert testifies concerning case-specific out-of-court statements to explain the bases for his or her opinion, those statements must be properly admitted . . . through an appropriate witness”].)

⁴ Counsel for the corporate defendants made *Sanchez* objections, but David was not in the courtroom and did not join the objections.

Competent evidence demonstrated case-specific facts listed by Reading. Khan testified to the facts Reading relied on in his assessment of her mental condition. Reading’s testimony, “My understanding is Mr. David acknowledged much of this conduct,” was not an attempt to prove an out-of-court statement from David; rather, it reiterated Khan’s report to the psychologist. An “understanding” admits that Khan—who was in court and questioned—might be wrong. Corporate counsel cross-examined Reading about Khan’s reliability, and jurors could draw their own conclusions about her credibility.

David cites a case in which “experts related a significant amount of hearsay to the jury” from material describing “in lurid detail, numerous [uncharged] sex offenses,” “was exceedingly inflammatory,” and “permeated the entirety of appellant’s trial.” (*People v. Burroughs* (2016) 6 Cal.App.5th 378, 412.) Far from relying on “significant” hearsay, the jury heard direct testimony about David’s behavior from Khan, Hyams, Davis, and Reeves. The panel believed the testimony. It is not reasonably probable that one sentence from Reading’s testimony altered the outcome of the trial or caused a miscarriage of justice.

6. Misconduct in Closing Argument

Though David was not in the courtroom during closing argument, he claims Khan’s counsel committed misconduct. To preserve the claim for review, a defendant must “interpose timely and specific objections to the improper argument.” (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1338.) A misconduct claim is forfeited absent a contemporaneous objection and request for jury admonition. (*People v. Gamache* (2010) 48 Cal.4th 347, 371.) David did not object, or join counsel’s objections, forfeiting his claim. In any event, the claimed misconduct was not so pervasive as to be prejudicial or affect the result.

Plaintiff’s counsel listed David’s behavior—grabbing Khan’s genitals, disrobing—arguing (without objection) “no normal employer would ever consider doing” those things but David “marches to his own drummer and thinks, perhaps, because he has money, he can do whatever he wants, to anyone he wants, whenever he wants.” This was reasonable comment on David’s sense of entitlement and refusal to follow rules. It was not an

invitation to punish him for his wealth. (See *Love v. Wolf* (1964) 226 Cal.App.2d 378, 387–388 [repeated reference to defendant’s profits throughout trial is impermissible].)

Corporate counsel attacked the credibility of Khan and her witnesses and questioned why she did not call other employees (Shoefield, Calendar, and others) or introduce her employment contract, telling the jury, “Ask yourselves why Ms. Khan didn’t show you her employment agreement. What was in the employment agreement that Ms. Khan did not want you to see?” In rebuttal, plaintiff argued, “They’re the employer. . . . Doesn’t the employer have the records of the employment agreement?” Counsel also argued that Khan’s witnesses corroborated the harassment, and the defense could have had its employees testify about its workplace.

When defense counsel questioned Khan’s failure to call more witnesses or show her contract, Khan reasonably responded that she had no obligation to do so. This was fair rebuttal. (*People v. Thomas* (2021) 64 Cal.App.5th 924, 954 [no misconduct occurs when fair rebuttal is made to a defense argument].) Though the defense was barred from introducing Khan’s contract after failing to produce it in discovery, the defense could not profit from the discovery sanction by insinuating that Khan was hiding something. Khan’s attorney correctly commented, without objection, “There was no defense” with contrary evidence from David or other witnesses. The jury could see for itself that there was no defense. Saying it aloud was not prejudicial.

Plaintiff’s counsel suggested possible amounts the jury could award. Corporate defense counsel did not address the amount of the award and instead argued that Khan and her witnesses were not credible. Plaintiff’s counsel responded that “counsel didn’t say one word on the damages. Not one word to suggest that the amount I suggested was not the right amount.” This was a reasonable inference for the jury to draw, not improper argument.

Plaintiff referred to corporate counsel’s argument as a “false presentation” because it accused Khan of failing to call more percipient witnesses or experts. The court sustained defense counsel’s objection and instructed the jury to disregard the comment. The jury is presumed to have obeyed the instruction, curing any error.

7. Punitive Damages Award

California law permits awards of punitive damages “for the sake of example and by way of punishing the defendant.” (Civ. Code, § 3294, subd. (a).) After refusing to produce evidence of his financial condition in discovery or appear for questioning in the punitive damage phase of the trial, David complains the award is grossly excessive, violates due process, and was the product of legal error and attorney misconduct. We find no error.

David was not in the courtroom and did not object when Khan’s counsel made statements that David now contends “told the jury to apply the wrong measure of damages” and referred to prior damage awards against him in harassment cases. David forfeited his right to claim misconduct on appeal by failing to object or seek an admonition at trial.

Contrary to David’s claim, Khan did not urge the jury to impose punitive damages for David’s behavior at trial. Instead, counsel pointed out that “Mr. David is not here today, nor has he had a lawyer here on his behalf. He could have. But . . . his behavior shown throughout this trial has shown utter contempt for the court, for the jury, for my client, for me.” He urged the jury to teach David a costly lesson about sexually harassing and battering subordinates. The jury saw David’s behavior at trial. It could reasonably infer he does not respect laws or boundaries in dealing with anyone, including Khan, in deciding whether he acted with malice or oppression. The passing reference to his trial misconduct did not encourage the jury to punish him for that, only for his misconduct at work.

Defendants claiming an excessive punitive damages award must raise the issue below in a motion for a new trial; it cannot be raised for the first time on appeal. (*Bate v. Jolin* (1929) 206 Cal. 504, 508.) “When defendants first challenge the damage award on appeal, without a motion for a new trial, they unnecessarily burden the appellate courts with issues which can and should be resolved at the trial level.” (*Schroeder v. Auto Driveaway Co.* (1974) 11 Cal.3d 908, 919.) Having failed to move for a new trial, David forfeited his claim of excessive damages. “Since we conclude that [he] cannot contend that the damages awarded are excessive, we need not inquire into the evidence supporting that award.” (*Ibid.*)

David contends that an unconstitutional award is reviewable, even without a motion for new trial. “The imposition of ‘grossly excessive or arbitrary’ awards is constitutionally prohibited, for due process entitles a tortfeasor to ‘fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.’ ” (*Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1171 (*Simon*)). “[T]he constitutional ‘guideposts’ for reviewing courts are: ‘(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.’ ” (*Id.* at p. 1172.) We review the award de novo to determine if it is excessive. (*Ibid.*)

Reprehensibility is the most important factor. (*State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 419 (*State Farm*)). Reprehensible behavior may cause physical harm; shows indifference to or reckless disregard of the health or safety of others; is directed at a financially vulnerable target; occurs repeatedly; and is malicious, not accidental. (*Ibid.*; *Simon, supra*, 35 Cal.4th at p. 1180; *Mazik v. Geico General Ins. Co.* (2019) 35 Cal.App.5th 455, 471.) On the issue of reprehensibility, David concedes he has “no record with which to work.” Though he blames the court for the lack of evidence, he alone is responsible because he thwarted discovery and disobeyed orders, resulting in evidentiary sanctions.

The unrefuted evidence shows highly reprehensible conduct. In front of others, David repeatedly forced Khan’s face into his crotch while moaning and miming oral sex, at times with his pants lowered; walked up behind her and grabbed her breasts, once so forcefully that her breast came out of her dress and was exposed; touched her vagina; slapped her buttocks; displayed his naked genitals; and obliged her to watch pornography. The attacks were not isolated: They occurred 20 times a month for six months. She continued to work for David because she was financially vulnerable and needed the job to pay her rent. The torts deeply affected Khan’s mental and physical health and her career. She is depressed, unable to work, has suicidal thoughts, and

distrusts men; the expert did not expect her to ever recover. The behavior was malicious, not accidental.

David argues that the disparity between punitive damages (\$50 million) and actual damages (\$8 million), a ratio of 6 to 1, is excessive. Though there is no “bright-line ratio which a punitive damages award cannot exceed . . . few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. . . . Single-digit multipliers are more likely to comport with due process, while still achieving the State’s goals of deterrence and retribution.” (*State Farm, supra*, 538 U.S. at p. 425 [disapproving a ratio of 145 to 1]; *BMW of North America v. Gore* (1996) 517 U.S. 559, 583 (*BMW*) [disapproving a ratio of 500 to 1].)

Our Supreme Court disapproved a ratio of 340 to 1 and concluded, without remanding, that an appropriate ratio was “10 times the compensatory award” to punish unlawful conduct and deter its repetition. (*Simon, supra*, 35 Cal.4th at pp. 1183, 1188–1189.) In *Simon*, the seller made a false promise in a commercial real estate sale. The court found “low culpability” because the tort “caused only economic harm and did not show disregard of others’ health or safety”; the transaction “was an arm’s-length one upon which neither party depended for economic survival or security”; and there was “a single false promise” making it an isolated incident. (*Id.* at pp. 1180–1181.)

David cites *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686 (*Roby*) reducing a 4:1 damages ratio to 1:1. *Roby*, a long-time employee, developed a panic disorder; the company’s attendance policy disadvantaged employees with medical conditions that caused them to unexpectedly miss work. *Roby* was disparaged by her supervisor, then terminated. (*Id.* at pp. 694–696.) A jury awarded *Roby* \$3.5 million in compensatory damages and \$15 million in punitive damages against *McKesson*. (*Id.* at pp. 699–700.) The court wrote that *McKesson*’s act of adopting a flawed attendance policy “was at the low end of the range of wrongdoing that can support an award of punitive damages under California law, notwithstanding the seriousness of *Roby*’s emotional injury and her financial vulnerability.” (*Id.* at pp. 717–718.)

David's conduct is distinguishable from that described in *Simon, supra*, 35 Cal.4th 1159, and *Roby, supra*, 47 Cal.4th 686. In those cases, our Supreme Court found "low" levels of reprehensible behavior. *Simon* involved an arm's-length real estate transaction. The corporate defendant in *Roby* adopted an unfair attendance policy and did not react to complaints about Roby's situation. No one was battered.

Here, we have repeated physical attacks designed to demean and degrade an employee. To increase the humiliation, David attacked Khan in front of coworkers and clients. He always approached her from behind, often when she was seated, to prevent her from seeing and evading him, underscoring the malicious and frightening nature of the attacks. Eyewitnesses saw Khan react in a startled and fearful way. David did not have a human resources department for reporting misconduct; on the contrary, he destroyed a harassment manual in front of employees and cultivated an environment in which misconduct was normalized and supervisors shrugged indifferently when told of his attacks. He called women "cunt," "bitch," and commented on their breasts; he had strippers perform at the office; exposed his penis; and made employees watch pornography.

We conclude that the 6 to 1 ratio in this case was warranted. Given David's highly reprehensible, degrading and outrageous behavior, the award meets the overarching standard of "reasonableness." (*BMW, supra*, 517 U.S. at pp. 582–583.) David took advantage of a low-wage entertainment industry worker, knowing it would be difficult for her to find paying work elsewhere or avoid homelessness unless she tolerated his abuse. His indecent conduct deserves the harshest community condemnation to serve as deterrent and punishment.

David asserts that because the jury awarded Khan \$8 million in noneconomic compensatory damages, punitive damages were redundant. The awards are not duplicative. The underlying verdict compensates Khan for emotional damage she sustained and is unlikely to ever recover from. Exemplary damages go to the state of mind and evil motive of the defendant: malice (despicable conduct carried on with a willful and conscious disregard of the rights of others) and oppression (despicable conduct that subjects another to cruel and unjust hardship in conscious disregard of the person's

rights). (Civ. Code, § 3294, subd. (c).) Malice denotes ill will, a desire to harm for the mere satisfaction of doing so. (*Simmons v. Southern Pacific Transportation Co.* (1976) 62 Cal.App.3d 341, 368.) “The primary purposes of punitive damages are punishment and deterrence of like conduct by the wrongdoer and others.” (*Grimshaw v. Ford Motor Co.* (1981) 119 Cal.App.3d 757, 810, overruled on other grounds in *Kim v. Toyota Motor Corp.* (2018) 6 Cal.5th 21, 38, fn. 6.) David has not shown that the jury’s \$8 million quantification of Khan’s noneconomic harm was intended to be punitive.

David cites a \$300,000 federal cap on punitive damages in Title VII cases. There is no similar cap in California for battery, sexual battery, or violating FEHA. Moreover, the case David cites allowed a \$2.6 million punitive damage award and a damages ratio of 7 to 1 because it was reprehensible for the defendant to discriminate against the plaintiff on the basis of ethnicity. (*Zhang v. American Gem Seafoods, Inc.* (9th Cir. 2003) 339 F.3d 1020, 1042–1045.) There are no comparable civil penalties, so this factor does not affect our analysis. (*Tilkey v. Allstate Insurance Co.* (2020) 56 Cal.App.5th 521, 559.)

David maintains that Khan could not refer to his billionaire status at the punitive damage phase of the trial. “It is certainly relevant for a reviewing court to consider the wealth of a defendant when applying federal constitutional limits to an award of punitive damages, thereby ensuring that the award has the appropriate deterrent effect, but the punitive damages award must not punish the defendant simply for being wealthy.” (*Roby, supra*, 47 Cal.4th at p. 719.) The jury was instructed in the manner prescribed in *Roby*. It was told, “In view of Alkiviades David’s financial condition, what amount is necessary to punish him and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because Alkiviades David has substantial financial resources.” We presume the jury followed the instruction and did not punish David for his wealth.

The court took judicial notice of the judgments in sexual harassment cases against David brought by Khan’s coworkers. Counsel cited them in argument, saying Lauren Reeves received \$4.3 million and Chasity Jones was awarded \$8 million but the verdicts had no impact on David’s attitude.

By failing to object or seek an admonition, David forfeited his claim that Khan improperly referred to coworkers' damage awards. He forced Khan to make this argument by refusing to produce financial evidence or be questioned about his assets during phase two of the trial.

Judicial notice establishes a fact as indisputably true, eliminating the need for formal proof of the matter. (*Post v. Prati* (1979) 90 Cal.App.3d 626, 633.) David agrees the two judgments arose from his sexual harassment in the workplace but notes that Jones prevailed on claims Khan did not bring (wrongful discharge, retaliation, gender violence, emotional distress) and Reeves did not seek damages for lost earnings. These are distinctions without a difference. The lawsuits show David's sexual misbehavior was a common practice, allowing an "enhanced punishment for recidivism" to "deter continued or repeated conduct of the same nature." (*Johnson v. Ford Motor Co.* (2005) 35 Cal.4th 1191, 1206, fn. 6; *Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, 560 [defendant's "similar wrongful conduct toward others" may be considered in determining the amount of punitive damages].)

Courts have upheld punitive damage awards "where the dearth of evidence of the defendant's financial condition is attributable to the defendant's failure to comply with discovery obligations or orders." (*Soto v. BorgWarner Morse TEC Inc.* (2015) 239 Cal.App.4th 165, 194.) David's obstructionist tactics waived his right to complain of the lack of financial evidence. (*Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 608–609; *Garcia v. Myllyla* (2019) 40 Cal.App.5th 990, 994–997 [plaintiff excused from proving defendant's net worth after he refused to produce financial documents]; *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1337–1338 [defendant estopped from challenging punitive damages after he failed to comply with an order to produce financial evidence, which prevented plaintiff from proving her case].)

CONCLUSION

David complains that he was unable to tell the jury his side of the story. He squandered the opportunity. First, his repeated discovery violations restricted his right to present a defense. He skipped three deposition dates, then appeared at a court-ordered deposition and gave no

substantive testimony. By refusing to provide financial information, or appear at phase two of the trial, he forfeited his right to complain that Khan presented no evidence about his ability to pay punitive damages. Second, David's misconduct at trial led to revocation of his self-representation. Though he could have rehired counsel (who continued to represent the corporate defendants), he chose not to have an attorney make objections, cross-examine witnesses, or argue. He now faces the consequences of having chosen this path. Third, David could have had the jury hear his side but walked out of the courtroom when he was supposed to testify, though Khan subpoenaed him as her first witness. The prejudice David claims was self-inflicted. There was no miscarriage of justice. (Cal. Const., art. VI, § 13.)

DISPOSITION

The judgment is affirmed. Mahim Khan is entitled to recover her costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.