APPEAL NO. B341119

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

JANE DOE,

Plaintiff and Respondent,

vs.

ALKIVIADES DAVID, an Individual, et al.

Defendants and Appellant.

APPEAL FROM THE SUPERIOR COURT FOR LOS ANGELES COUNTY
Trial Court Case No. 20STCV37498
Hon. Judge Christopher K. Lui

APPELLANT ALKIVIADES DAVID OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL SECOND APPELLATE DISTRICT, DIVISION ONE	COURT OF APPEAL CASE NUMBER: B341119
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: James G. Bohm, Esq. (SBN 132430) // Cecilia Preciado, Esq. (SBN 159309) FIRM NAME: Bohm Wildish & Matsen, LLP. STREET ADDRESS: 600 Anton Blvd., Suite 640 CITY: Costa Mesa STATE: CA ZIP CODE: 92626 TELEPHONE NO.: (714) 384-6500 FAX NO.: (714) 384-6500 E-MAIL ADDRESS: jbohm@bohmwildish.com // cprediado@bohmwildish.com ATTORNEY FOR (*name*): ALKIVIADES DAVID, Defendant and Appellant.	SUPERIOR COURT CASE NUMBER: 20STCV37498
APPELLANT/ PETITIONER: ALKIVIADES DAVID RESPONDENT/ REAL PARTY IN INTEREST: JANE DOE	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): ALKIVIADES DAVID, Defendant and Appellant.

2. a. [x] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest *(Explain):*
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: December 10, 2025

James G. Bohm, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

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I. INTRODUCTION

This is a case that resulted in a travesty of justice as a result of David not having notice of trial, not being served properly with any case related documentation once his attorney withdrew. A fatal discovery order was made requests for admission admitted essentially gutting his case and putting him in a horrendous light with the jury. There were no guardrails at the trial; no court reporter; no due process protection for him. The jury was allowed to hear horrendous things about him, what harms other women have suffered and the jury punished him for it. The court failed to instruct the jury about his financial wealth and what the jury is to do with the evidence it heard about harm to other women. The jury returned a verdict of $100,000,000 in compensatory damages and $800,000,000 in punitive damages in David's absence which "shocks the conscience and virtually compels the conclusion the award is attributable to passion or prejudice." The trial court so found, but reduced the damages to $90,000 which is still excessive.

The repeated violations of David's due process rights, most structural and reversible per se warrant a reversal of the judgment.

II. NATURE OF ACTION

This action arises after an employment related complaint filed by Margarita Nicholas ("Margarita") against Alkiviades

David ("David") which was tried to a jury in David's absence pursuant to C.C.P. Section 594(a) on two causes of action: sexual assault and battery and intentional infliction of emotional distress against David only.

III. PROCEDURAL HISTORY

This action was initiated by attorney Thomas V. Girardi on behalf of Margarita on September 30, 2021. (6 AA, Tab 144, 1692.) On October 1, 2021, Margarita filed a First Amended Complaint against David and various companies with new counsel, Dordick Law Corporation ("Dordick firm") and Livingston Bakhtiar. (1 AA Tab 1 0015-48.)

On November 2, 2021 David filed an Answer containing a general denial and affirmative defenses. (1 AA Tab 3, 0060-71.)

A jury trial went forward in David's absence on June 13, 14, and 17, 2024 without a proof of service on file of notice of trial on David for the June 13, 2024 trial date. (3 AA Tab 64, 0916-920; Tab 65, 0921-23; Tab 73, 1058-1063; 6 AA, Tab 144, 1726-1730.)

On June 14, 2024, the court granted a directed verdict for Margarita on the issue of liability based in part on the Requests for Admission previously deemed admitted. (3 AA Tab 65 0921.)

On June 17, 2024 the jury deliberated for about two hours and returned a special verdict against David in the amount of

$100 Million in compensatory damages and $800 Million in punitive damages. (3 AA Tab 73, 1058-1063; Tab 72, 1054-1057.)

On July 5, 2024 the court entered Judgment on Special Verdict, ordered Clerk to give notice to Margarita's counsel. (3 AA Tab 81, 1227-1232.) Margarita's counsel was ordered to give notice of entry of judgment. (3 AA, Tab 80, AA 12231226.) On July 5, 2024, the Court clerk served notice of entry on Margarita's counsel only. (3 AA Tab 79 1221; 1223; 4 AA Tab 81, 1227-1232; Tab 82 1233.)

On July 8, 2024 David timely filed a motion for new trial and motion to set aside and vacate the judgment with supporting documentation as well as objections to trial and irregularities. (4 AA, Tab 83, 1236-1244; Tab 84, 1245-1271.) Proofs of service filed later on September 16, 2024 but they reflect timely service. (4 AA Tab 94, 1428-1430; Tab 95, 1431-1433; Tab 96, 1438, 1434-1439.) One of the proofs reflect Respondent's counsel opened the service email received from the service provider on July 8, 2024 around the time the motion was filed. (4 AA, Tab 96, 1434-1439.)

On July 16, 2024 Margarita served a Notice of Entry of Judgment. (4 AA, Tab 85, 1272-1277.)

On July 17, 2024 Margarita served a second Notice of Entry of Judgment. (4 AA Tab 86, 1277; 1286.)

On August 16, 2024 the Court set a hearing on the motion for new trial for September 13, 2024 and moved the hearing later

to September 16, 2024. (4 AA, Tab 87, 1287-1291; Tab 89, 1291-1292 .)

On September 5, 2024 Margarita filed an Opposition to the Motion for New Trial. (4 AA, Tab 91, 1295-1420.)

On September 16, 2024 David filed a Reply to Plaintiff's Opposition to Motion for New Trial Per CCP 657. (4 AA, Tab 97, 1440-1450.)

On September 16, 2024, Bohm Wildish & Matsen, LLP filed a substitution of attorney substituting in as counsel for David and presented argument on the motion for new trial. (4 AA, Tab 92, 1421-1423.)

On September 16, 2024 the Court heard oral argument on the motion for new trial and took the matter under submission. (8 RT, 2101-2134; 4 AA, Tab 98, 1451-1452.)

On September 16, 2024, David filed a timely Notice of Appeal from the underlying July 5, 2024 Judgment on Special Verdict. (4 AA, Tabs 99-104, 1453-1479.)

On September 17, 2024 the Court issued its Ruling on the motion for new trial. The Clerk of Court served notice the same day. The Court granted a new trial on damages unless Respondent accepts reduction of the damages award from $100M compensatory to $10M compensatory and from $800M punitive damages to $80M punitive damages. (4 AA Tab 109, 1488-1500; Tabs 105-108, 1480-1487.)

On September 25, 2024 Margarita served Plaintiff Jane Doe's Notice of Acceptance of Conditionally Ordered Reduction of Damages Pursuant to Cal.Civ.Proc.Code Section 662.5. (5 AA, Tab 114, 1513-1518.)

On October 16, 2024 David timely filed a Notice of Appeal from the September 17, 2024 Order. (5 AA, Tab 119, 1540-1556.)

On October 28, 2024 the Court after reviewing the case file found Margarita filed a Notice of Acceptance of Conditionally Ordered Reduction of Damages therefore, ordered David's motion to Set aside and Vacate the Judgment denied. (5 AA, Tabs 131, 132, 1608-1611.)

On December 23, 2024 the Court entered the Amended Judgment on Special Verdict Pursuant to Conditional Reduction of Damages Per California Code of Civil Procedure Section 662.5. Margarita was ordered to give notice of entry of Judgment. (6 AA, Tab 136, 1655-1662.)

On February 21, 2024 David timely filed a Notice of Appeal from the December 23, 2024 Amended Judgment on Special Verdict. On June 13, 2024, Margarita served Notice of Entry of the December 23, 2024 Amended Judgment. (6 AA, Tab 145, 1745.)

IV. STATEMENT OF FACTS

A. REQUEST FOR ADA ACCOMODATIONS AND GLASER WEIL'S WITHDRAWAL AS COUNSEL

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

The court granted Glaser Weil's motion to withdraw as David's counsel on February 9, 2024 effective upon service of the proof of service on David. (2 AA, Tab 39, 516-524.) The order states as follows: Client's current address is: "Alkiviades David, c/o Themis Sofos, Sofos & Partners, Asklepiou Str. 6-8 GR 10680 Athens/Greece +302103633322." (2 AA, Tab 39, 0516.) David did not have replacement counsel and there was no one to Glaser Weil's knowledge who was immediately intending to substitute in (5 RT 1204:24-25.)

B. DAVID IS IN PRO PER THROUGHOUT THE REMAINDER OF THE CASE

Effective February 13, 2024 David was in pro per in the case and remained in pro per until September 16, 2024 the date of the hearing on the motion for new trial when Bohm Wildish & Matsen, LLP substituted in to argue the new trial motion. (2 AA

Tab 39, 516; 6 AA, Tab 144 1723-1733, 2 AA, Tabs 40-41, 525-542.)

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

David sat for deposition on March 1, 2024 without a ruling on the accommodation and without counsel. (Ms. Sofos sat in as an observer.) (3 AA, Tab 63, p. 910; Tab 43, 44, 545-564.)

Mr. Sofos never made an appearance at any court hearing on David's behalf. (4 AA, Tab 109, 1497.) There is no filing in the record from Themis Sofos wherein he states he represents David in this California action or where he represents he is authorized to accept service on David's behalf or that he agrees to accept service. There is nothing in the record from Mr. Sofos where he confirms he was in actual receipt of any service of documents from Margarita. (6 AA, Tab 144, 1723-1733.)

There are no email communications in the record from Mr. Sofos to Margarita's counsel. (6 AA, Tab 144, 1723-1733; 4 AA, Tab 91, 1295, 1327-1410.) There is no filing by David authorizing service on him through Mr. Sofos. (6 AA, Tab 144, 1723-1733.) There is no consent to receive electronic service signed or filed by David in this case at any time that he was in pro per. (6 AA, Tab 144, 1723-1733.)

C. THE COURT GRANTED THE MOTION TO DEEM REQUESTS FOR ADMISSION ADMITTED

On March 12, 2024, Margarita served a motion to deem requests for admission on Mr. Sofos. She did not serve David. The proof of service on file for the motion reflects it was served by *email* on Mr. Sofos in Greece as "Attorney for Defendant Alkiviades David." (2 AA, Tab 48, 741-741.)

On May 7, 2024, the hearing on the motion to deem the Requests for Admission took place. (2 AA, Tab 49, 743, 745; Tab 50, 746-751. There was no opposition filed. David was not present. (2 AA, Tab 49, 743-745.) The Court granted the motion in its entirety deeming all 116 requests admitted. (2 AA, Tab 51, 752-754.)

The Order and facts deemed admitted as a result later served as a basis for the Court granting a directed verdict on the issue of liability in favor of Margarita at trial. (3 AA, Tab 65, 923.) It also served as a basis for a Special Jury Instruction at

trial wherein the jury was instructed that the 34 facts listed therein were "established facts" requiring no further proof. (3 AA, Tab 76, 1144-1146.)

The Court on its own motion continued the Final Status Conference from May 13, 2024 to May 15, 2024. Margarita was ordered to give Notice. (3 AA Tab 49, 743.) David was not served with notice of the Final Status Conference. David was in pro per. (6 AA, Tab 49, 743.)

D. CONTINUANCE OF TRIAL DATES

On May 15, 2024, the Court, on its own motion, trailed the Final Status Conference set that day to May 24, 2024. David was not present. The Court ordered Margarita to give notice. (3 AA, Tab 59, 902.) There is no proof of service in the record indicating Margarita gave David notice. 6 AA, Tab 144, 1725-1727.) There is no proof of service that any notice of the May 24, 2024 hearing was sent through any method through Mr. Sofos.

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

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

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

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

E. THE JURY TRIAL WAS HELD STARTING JUNE 13, 2024, AND CONTINUED JUNE 14, 2024 AND JUNE 17, 2024 IN DAVID'S ABSENCE AND THE JURY RETURNED A $900 MILLION VERDICT

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

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

The Minutes do not indicate evidence was taken or admitted on the issue of whether David had been given notice of the trial. The jury trial commenced and was conducted through verdict in David's absence. (6 AA, Tab 144, 1727-1729; Tab 64, 916-920.)

There was no Court reporter for any of the three trial days. (3 AA, Tab 64, 916; Tab 65, 921, Tab 73, 1064.) Margarita asserted eleven (11) challenges for cause and the Court granted 9 out of the 11 challenges. The basis for the challenge for cause and the basis for the granting of the challenge is not disclosed on the record. Margarita exercised seven (7) peremptory challenges.

A panel is selected and the Court pre-instructs the jury. There is no record of which instructions were read to the jury at this juncture. The juror names and questionnaires are sealed. (3 AA, Tab 64, 916.)

On June 14, 2024 at 9:09 a.m. (7:09 pm. Athens, Greece time), Margarita filed "Plaintiff's First Amended List of Exhibits" adding 15 new exhibits on the day 2 of trial not previously included in her May 8, 2024 exhibit list consisting of texts between David and Margarita's counsel as well as judgments/special verdicts involving other women v. David. The minutes show they were "identified." There is no indication any documentary exhibits were introduced at trial. (3 AA Tab 65, 921-923; Tab 66, 924-988.)

Also on June 14, 2024 at 9:09 a.m. (7:09 p.m. Athens, Greece time), Margarita filed a "Second Amended Witness List" paring down her list and adding two new witnesses: Dr. Craig Snyder and Kevin Cordova. (3 AA, Tab 70, 1024.) Both testified that same day on June 14, 2024. There is no indication in the record that the Court or clerk attempted to call David to find out why he was not present at trial. The trial proceeded in David's absence. The record does not reflect any evidence was admitted on the issue of whether David was served with Notice of Trial. (3 AA, Tab 65, 921-923.)

Excerpts of the video recorded deposition of David were played in open court. (3 AA, Tab 65, 921-923.) Notice of the excerpts were not served until after they were played. Margarita rested. The designation of the amended excerpts was not served on Mr. Sofos until after hours PST after the video clips had been played. (3 AA Tab 71, 1030-1053.)

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

Margarita made an oral motion to dismiss causes of action two through nine without prejudice and those were dismissed without prejudice. The clerk served notice of the dismissal, but only on Margarita's counsel. (3 AA, Tab 65, 921-923; Tab 67, 989-991.)

After Day 2 concluded and Margarita had rested on June 14, 2024, at 6:16 p.m. PST (June 15, 2024, 4:16 a.m. Athens,

Greece time), Margarita caused to be filed a notice of lodgment for a notice to appear. There is a proof of service in the file indicating service of the document was on Mr. Sofos by email only. There is no proof of service in the court file indicating David was served directly with the Notice to Appear or with the lodgment. (6 AA, Tab 144, 1728-1730; 3 AA, Tab 69, 1002-1023.)

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

The jury came back with a $900,000,000 verdict 35 minutes after the Court answered the questions, $100,000,000.00 in non-economic compensatory damages and $800,000,000.00 in punitive damages. (3 AA, Tab 72, 1054-1057.)

David filed a motion for new trial and a motion to vacate the judgment. (4 AA, Tab 83, 1236-1244; Tab 84, 1245-1271; Tabs 94-96, 1428-1439; Tab 97, 1440-1450.) The trial court

conditionally granted a new trial on the issue of damages reducing the damages to $90 million, $10 million in compensatory and $80 million in punitive damages finding the damages awarded "shocks the conscience and virtually compels the conclusion the award is attributable to passion or prejudice." (4 AA, Tab 109, 1488-1500.) Margarita accepted the reduction. (4 AA, Tab 114, 1513-1518.)

This appeal followed.

V. STATEMENT OF APPEALABILITY

David appeals from the following: (1) Judgment on Special Verdict entered July 5, 2024 (underlying judgment); (2) The September 17, 2024 Order on the Motion for New Trial and Motion to Set Aside and Vacate Judgment; and (3) December 23, 2024 Amended Judgment. The underlying judgment and Amended Judgment are appealable pursuant to C.C.P. Section 904.1(a)(1). The judgments are final judgments as to David Alkiviades David. An Order denying a new trial is reviewable on appeal from the underlying judgment. *Walker v. Los Angeles County Metro. Transp. Auth.* (2005) 35 Cal.4th 15, 18; *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, 1152, fn.1; *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 240. An order granting a new trial on some but not all issues is appealable. *Liodas v. Sahadi* (1977) 19 Cal.3d 278, 285. Discovery orders are

appealable from the final judgment. *Aixtron, Inc. v. Veeco Instruments, Inc.* (2020) 52 Cal.App.5th 360.

VI. ARGUMENT

A. THE DAMAGES AWARD SHOCKS THE CONSCIENCE AND SUGGESTS PASSION AND PREJUDICE; AND IS IN VIOLATION OF DAVID'S DUE PROCESS RIGHTS

David brought a motion for new trial on the issue of excessive damages. The trial court conditionally granted the motion reducing the damages unless Margarita accepted the reduction which she did. The trial court properly found in ruling on the motion for new trial that:

> **"the damages awarded by the jury- $100 million on compensatory damages and $800 million in punitive damages- 'shocks the conscience and virtually compels the conclusion that this award is attributable to passion or prejudice."** *LA Invs., LLC v. Spix* (2022) 75 Cal.App.5th 1044, 1063. (Emphasis added.) (4 AA, Tab 109, 1488-1500.)

The trial court reduced the damages from $100 Million compensatory to $10 Million and from $800

Million punitives to $80 Million. David contends the new trial motion should have been granted as the damage award is unconstitutional, or in the alternative, that the damages should have been reduced much further.

> The Court found the evidence supports a finding of compensatory damages in the amount of $10 million and that $80 Million in punitive damages is an appropriate amount to "preserve the jury's 8-to-1 ratio…" finding that amount to be within constitutionally acceptable limits. (4 AA, Tab 109, 1495, 1488-1500.)

The $90 Million award, despite the reduction, remains excessive, tainted by passion and prejudice and is unconstitutional.

B. <u>THE COMPENSATORY DAMAGES AWARD IS EXCESSIVE AND UNCONSTITUTIONAL</u>

An appellate court may interfere with a jury's compensatory damages award if the verdict is so large that it shocks the conscience and suggests passion, prejudice, or corruption. *Bigler-Engler v. Breg, Inc., supra,* 7 Cal.App.5th at 299. In *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, the

court noted that indications of improper considerations, such as inflammatory evidence, misleading jury instructions, improper arguments by counsel, or other misconduct, may lead to a finding that compensatory damages are excessive. Bigler-Engler v. Breg, Inc., *supra,* 7 Cal.App.5th 276, 299

The trial court properly found the jury's compensatory damages verdict was a result of passion and prejudice and excessive. 4 AA, Tab 109, 1495, 1488-1500.)

Even with the reduction, a $10 million compensatory damages award for this case remain excessive and unconstitutional and should be vacated or in the alternative, reduced significantly.

As the trial court pointed out, this was not a bifurcated case. The jury heard inflammatory evidence (prior judgments and verdicts against Margarita). The jury received a misleading jury instruction with a list of 35 "established facts" stating various facts have been established, including that Margarita raped several women and engaged in other sexual misconduct. The jury was not informed that those "facts" were deemed admitted as a result of discovery not being answered, as opposed to some type of adjudication the instruction implies.

Margarita's counsel in the opposition to the new trial motion described the evidence the jury heard in the case: David committed similar sexual acts against at least four other women

(women who did not testify); heard that other juries found David liable for those prior sexual assaults and awarded David's prior victims approximately $80,000,000 in damages; that he ridiculed and mocked prior victims; refused to pay a cent of the judgments owed to prior victims (without testimony from those "victims"); that the numerous prior judgments and punitive damage awards did nothing to deter him from attacking more women; that the jury was presented with excerpts of David's deposition testimony where he "launched verbal attacks on his victims and their counsel." (4 AA, Tab 91, 1323.) Despite the trial court's reduction to $10 million the award remains excessive. The compensatory damages reflect they are punitive in nature and also designed to punish David for acts toward other women.

E. Jean Carroll v. Donald J. Trump, 683 F.Supp.3d 302 (2023), although not binding on this court, is persuasive. It supports the fact the $100 million, and even the $10 million is excessive. There, the jury awarded Ms. Carroll $2 million in compensatory damages for a sexual assault after the jury found defendant deliberately and forcibly penetrated Ms. Caroll's vagina with his fingers causing immediate pain and long lasting emotional and psychological harm. *Id.* at 302.

C. THE COMPENSATORY DAMAGES AWARD IS UNCONSTITUTIONAL FOR LACK OF FAIR NOTICE OF THE SEVERITY OF THE PENALTY

In addition to being excessive the compensatory damage award is unconstitutional if there was no fair notice of the severity of the penalty. *Roby v. McKesson Corporation* (2009) 47 Cal.4th 686, 712. The court file does not reflect a Statement of Damages was served on David before trial. Margarita's pre-trial Case Management Conference Statement simply stated she was seeking damages in excess of $25,000. (1 AA, Tab 2, 51.)

Margarita failed to identify the treater, Dr. Snyder, in discovery responses which were the subject of a motion to compel and expressly represented through counsel during the meet and confer process on the discovery leading to the motion to compel that Margarita "at this time, Plaintiff will not be calling any treating physicians in connection with her emotional/psychological injuries." (1 AA, Tab 16, 223.) Margarita also represented through counsel that that Margarita did not receive any treatment for her injuries contained in her Complaint from any medical care providers other than Planned Parenthood. (1 AA, Tab 20, 285, 298.) Margarita's position prior to trial regarding her damages (no treater other than Planned Parenthood; not calling an expert on the issue at trial) does not constitute adequate notice of the risk to comport to due process nor does it comport with notions of fair play.

Dr. Snyder was not identified as a trial witness until the morning he testified on June 14, 2024. (3 AA, Tab 70, AA 1024.)

This was highly prejudicial to David given the jury's and trial court's reliance on this testimony.

David requests the Court vacate the compensatory damages award, or in the alternative, if the court finds vacating it is not appropriate, that it reduce it substantially conditioned on Margarita's acceptance and if there is no acceptance, remand for a new trial.

D. THE PUNITIVE DAMAGES AWARD VIOLATES DAVID'S DUE PROCESS RIGHTS BECAUSE THE AWARD PUNISHES HIM FOR HARM TO NON-PARTIES TO THE LITIGATION

1. STANDARD OF REVIEW:

The standard of review for review of whether the U.S. Constitution's due process clause forbids a punitive damage award against defendant for harm caused to non-parties and/or strangers to the litigation is de novo. *Phillip Morris USA v. Williams* (2007) 549 US 346, 353-354, 127 S.Ct. 1057, 1063.

E. THE PUNITIVE DAMAGE AWARD IMPROPERLY PUNISHES DAVID FOR HARM TO THIRD-PARTY STRANGERS TO THE LITIGATION

Due process bars courts from adjudicating the merits of other parties' hypothetical claims against defendant and imposing multiple punitive damages awards for the same conduct. *Philip Morris USA v. Williams* (2007) 549 US 346, 353-354, 127 S.Ct.

1057, 1063 ("Williams"). *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 US 408, 423, 123 S.Ct. 1513, 1523.

In *Williams* the U.S. Supreme Court held that punitive damage award based in part on a jury's desire to punish defendant for harming nonparties amounts to a taking of property from defendant without due process. *Williams*, supra, 549 US 346, 349. The issue before the Court was whether the Constitution's due process clause permits a jury to base that award in part upon its desire to punish the defendant for harming persons who are not before the court (i.e. victims whom the parties do not represent). The Court held such an award would amount to a taking of "property" from the defendant without due process. *Williams*, supra, 549 US at 349.

Williams is a wrongful death action arising out of the death of Mr. Williams, a heavy cigarette smoker. The jury awarded $821,000 in compensatory and $79.5 million in punitive damages. *Williams,* supra, 549 US at 350. The trial court found the punitive award excessive and reduce it to $32 million. Both sides appealed. On appeal, Phillip Morris argued the punitive damages award violated its due process because it punished Phillip Morris for conduct to third party strangers to the litigation. *Id. at* 350. Phillip Morris argued the trial court should have accepted a proposed jury instruction that specified the jury could not seek to punish Phillip Morris for injury to other persons not before the court. Phillip

Morris proposed an instruction as follows: "You may consider the extent of harm suffered by others in determining what [the] reasonable relationship is" between any punitive award and "the harm caused to Jesse Williams" by Phillip Morris' conduct, "[but] you are not to punish the defendant for the impact of its alleged misconduct on other persons, who may bring lawsuits of their own in which other juries can resolve their claims. . ."*Id.*at 350-351.

The trial court rejected the instruction. *Id.* at 351. Phillip Morris argued there was a significant likelihood that a portion of the $79.5 million award represented punishment for harm to others, a punishment forbidden by the Due Process Clause. *Id.* at 351.

The U.S. Supreme Court held the Constitution's Due Process Clause forbids a state to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, i.e. *injury that it inflicts upon those who are, essentially, strangers to the litigation." Williams, supra,* 549 US at 353. The court reasoned in part, first, the Due Process clause forbids a state from punishing an individual with an opportunity to present every available defense. *Id. at 353, 354.*

The court also recognized that harm to other victims may be relevant to the issue of reprehensibility. *Id. at 355* The Supreme Court made clear, however, 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." Id. at 355. The Supreme Court noted that given the risk of unfairness, it is constitutionally important for the court to provide assurance to the jury to avoid procedure which deprives juries of necessary guidance. *Id.* at 355.

The Court concluded "Due Process Clause requires states to provide assurance that juries are not asking the wrong question, i.e., seeking, not simply to determine reprehensibility, but also to punish for harm caused strangers." *Id. at* 355. The Supreme Court held a jury may not punish for the harm caused others. *Id.* at 357. It noted state courts cannot authorize procedures that create an unreasonable and unnecessary confusion. Where the risk of misunderstanding is a significant one, a court, upon request must protect against the risk. *Id.* at 357.

1. THE PUNITIVE DAMAGES AWARD INCLUDES PUNISHMENT FOR HARM TO THIRD PARTIES WHICH THE DUE PROCESS CLAUSE FORBIDS

There is a significant likelihood, as there was in *Williams,* that the punitive damages verdict, and the ensuing reduction to $80 million represents punishment for having harmed other women. His due process rights were violated; the punitive damages award should be vacated.

The jury heard overwhelming evidence about multiple rapes of other women, bad acts, sexual assault, other graphic sexual

misconduct and public ridicule type conduct by David toward other women. The jury was given Special Jury Instruction No. 1 which instructed the jury many such bad acts regarding other women-nonparties and strangers to the litigation, have been established.

As Margarita's counsel recounts at paragraph 23 of his declaration in opposition to the new trial motion, the jury was told: "[t]hey were also presented with evidence that he committed similar acts of sexual violence, against at least four other women. The jury was also presented with evidence that other civil juries found Defendant liable for those prior sexual assaults and awarded Defendant's prior victims approximately $80,000,000 in damages. The jury also learned that Defendant publicly ridiculed and mocked his prior victims, and that the numerous judgments and punitive damages awards did nothing to deter Defendant from attacking more women. Notably the jury was also presented with evidence that Defendant raped Plaintiff while on trial for one of his prior sexual assaults. The jury was also presented with excerpts of Defendant's deposition testimony where he refused to acknowledge any wrongdoing in connection with. . . any of his other victims, and instead launched verbal attacks on his victims. . ." (4 AA, Tab 91, 1323.) In the points and authorities, Margarita argues the jury heard defendant had not paid one cent of those judgments awarded to the other women. (4 AA, Tab 81, 1313.)

As the trial court ruled, the evidence the jury heard about these other women "aroused the passion of the jurors and their determination of damages was based **also on evidence of Defendant's economic power, mistreatment of other women, and history of losing multimillion dollar verdicts."** (4 AA, Tab 109, 1488, 1495.) This spilled over to the punitive damages award. As such, David's due process rights were violated. See also, *Merrick v. Paul Revere Life Ins. Co.* (2007) 500 F.3d 1007.

Here, the jury was not instructed as to what it was to do or not to do with the evidence that came in regarding the "other women." In fact, it was given a modified CACI 3940 instruction which did not include the CACI suggested language at the end of the instruction: "[Punitive damages may not be used to punish [name of defendant] for the impact of [his] alleged misconduct on persons other than [name of plaintiff.]" CACI 3940. The jury was not instructed it was not to punish David for the conduct toward the other women. The jury was not instructed that the information regarding the other women could be used only for a limited purpose, on the issue of reprehensibility and the reasonable relationship factor.

During deliberations, the jury submitted four questions. Question 3) and 4) were as follows:: 3)"May we know the amounts of previous awards, including breakdown of compensatory versus punitive? 4) Is the "ten times" amount for punitive statutorily

based or just a suggestion?" (3 AA, Tab 77, 1211.) The response from the Court was: "3. There was no evidence at trial on this issue, and you should not consider it during your deliberations. 4. Arguments of counsel are not evidence of damages. Instruction 3940 provides you with the instruction on how to decide whether to award punitive damages, and if so, how to determine the amount." (Id.) It appears the jury did not understand the standard and the court's response did not give the jury proper direction. The court's response is misleading and confusing because Instruction 3940 does not advise the jury it cannot punish David for the acts directed at the third parties, including the ones that got prior judgments the jury specifically asked about. The jury telegraphed by asking the "ten times" question, that it may award big damages. The Court failed to take reasonable measures, as dictated in *Williams* to ensure the jury was not confused and that David's due process rights were protected so the jury would not punish him for what they are not supposed to punish him. (3 AA, Tab 76, 1116-1117.)

The jury should have been told in response to these jury questions, pursuant to *Williams* and Due Process Clause prohibition of punishment for acts against non-parties to the litigation, that in determining the amount, they were forbidden from awarding punitive damages for acts against those third party women. Margarita's counsel stated in his opposition to the new

trial motion that the jury heard the prior awards were $80,000,000. The jury asked a question about the "10x" amount for punitive damages. The jury came back with 10x the $80,000,000 (prior judgment) amount for a punitive damages award of $800,000,000. David was punished for acts not only pertaining to Margarita, but for acts to these other women he had already been punished for in prior litigation.[1]

F. THE AWARD OF PUNITIVE DAMAGES MUST BE REVERSED BECAUSE PLAINTIFF FAILED TO SUBMIT EVIDENCE OF DAVID'S FINANCIAL CONDITION AT TRIAL

1. A JUDMENT FOR PUNITIVE DAMAGES MUST BE REVERSED IF EVIDENCE OF DEFENDANT'S FINANCIAL WEALTH WAS NOT SUBMITTED

Under California law, evidence of the defendant's financial condition is a prerequisite for an award of punitive damages. *Adams v. Murakami* (1991) 54 Cal.3d 105, 108, 109. "An award of punitive damages cannot be sustained on appeal unless the trial record contains meaningful evidence of the defendant's financial

[1] The court in *Stevens*, supra, suggested the following instruction: You must not use the amount of punitive damages awarded in other cases to determine the amount of the punitive damage award in this case, except to the extent you determine that a lesser award, or no award at all, is justified in light of the penalties already imposed." *Stevens v. Owens-Corning Fiberglas Corp.*, supra, 49 Cal. App.4th at 1663, fn. 7.

condition." *Adams v. Murakami* (1991) 54 Cal.3d 105, 112. "Without such evidence, a reviewing court can only speculate as to whether the award is appropriate or excessive." *Adams v. Murakami* (1991) 54 Cal.3d 105, 109, 112. Absent such evidence, the award must be reversed on appeal. *Adams v. Murakami* (1991) 54 Cal.3d 105, 111-116.

Without financial condition evidence, the appellate court cannot make a "fully informed determination" on that issue and is left to "speculate as to whether the award is appropriate or excessive." *Adams v. Murakami*, *supra*, 54 Cal. 3d at 111, 114. The purpose behind punitive damages is to deter; not destroy. *Adams,* supra, 54 Cal.3d at 112. It is a well-established rule that a punitive damages award is excessive if it is disproportionate to the defendant's ability to pay. *Adams*, supra, 53 Cal.3d at 112-113 .

The plaintiff bears the burden of proof at trial on the issue of a defendant's financial condition as an element of punitive damages. *Adams v. Murakami* (1991) 54 Cal.3d 105, 119. The record reflects evidence of David's financial condition was not presented at trial. There were no documentary exhibits on any issue admitted at trial. David did not testify. The jury was not instructed on David's financial condition. The jury instruction given, CACI 3940(c) implies no evidence of financial condition was given. (3 AA, Tab 76, 1116, 1117. Because evidence of

financial condition of a defendant is *absolutely required* and none was submitted, the award *must be reversed* on appeal. *Adams v. Murakami* (1991) 54 Cal.3d 105, 111-116, 284 CR 318, 321-325; *Green v. Laibco, LLC* (2011) 192 Cal.App.4th 441, 452.

2. DAVID DID NOT WAIVE THE REQUIREMENT THAT EVIDENCE OF DEFENDANT'S FINANCIAL CONDITION BE PRESENTED AT TRIAL

Margarita claims David is precluded from challenging the lack of evidence of David's financial condition claiming David failed to produce documents of his financial condition at trial: (8 RT 2129:28-2130:8.) Margarita further claims she issued multiple discovery requests regarding Defendant's financial condition, as well as a Notice to Appear at Trial and Produce Documents all of which Defendant ignored. (Oppo., p. 19:10-12; Exh. 5.)

It is Margarita's burden to produce the evidence. Second, such evidence is a constitutional requirement and absent evidence a reversal is warranted.

Margarita claims she served a Notice to Appear on David. The Notice to Appear was never served on David; the proof of service indicates it was served on Mr. Sofos, who was not David's attorney of record. David challenges the validity of the Notice to Appear, including the invalid service. David was in pro per. There is no proof of service in the court file of service of the Notice to Appear on David. (3 AA, Tab 69, 1002-1023.) The proof of service (which appears in the Court file for the first time on

June 14, 2024 after the close of the evidence) is dated May 8, 2024 addressed to "Themis Sofos, Attorney for Defendant Alkiviades David."

Further, significantly, the title of the document on the proof of service does not match the document purported to be served. (3 AA, Tab 69, 1002-1023.)

David maintains he did not receive notice of trial of the June 13, 2024 trial even though the Court ordered Margarita to give notice. Even if effective for the May 28, 2024 trial date, and even if service of the Notice had been valid through Mr. Sofos, the Notice to Appear was untimely as two court days would need to be added to the email service.

The cases that hold a defendant may be estopped from claiming a punitive damage award is improper due to a plaintiff's failure to produce evidence of a defendant's financial condition at trial are distinguishable. They either involved a specific court order to produce that was violated; service was not an issue, and/or the Order and/or Notice to Appear was not challenged at trial, and have involved significantly less court or jury verdict punitive damage awards than the case here and are therefore distinguishable. See *Mike Davidov v. Issod* (2000) 78 Cal.App.4th; *Fernandes v. Singh* (2017) 16 Cal.App.5th 932.

Here, there was no express Order from the Court; service of the Notice to Appear is challenged as is the validity of the Notice

to Appear. There was no waiver or estoppel on David's part. The lack of evidence of financial wealth dictates the punitive damages award be vacated.

G. THE LAW REQUIRES THE JURY TO BE INSTRUCTED TO CONSIDER DEFENDANT'S FINANCIAL CONDITION WHEN AWARDING PUNITIVE DAMAGES AND THE COURT FAILED TO DO SO; THIS IS PREJUDICIAL ERROR

California case law requires that juries be instructed to *consider defendant's financial condition* in arriving at the amount of punitive damages necessary to punish defendant and deter future wrongful conduct. *Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1184-1186; CACI 3940. Here, the trial court improperly modified CACI 3940(c) and failed to instruct the jury that it must consider David's wealth in determining how much to award to David, if anything. It also failed to instruct the jury that deleting the portion that instructs the jury to consider a defendant's financial condition. (3 AA, Tab 76, 1116-1117.)

H. THE PUNITIVE DAMAGES AWARD IS EXCESSIVE, SHOCKS THE CONSCIENCE, IS A RESULT OF PASSION AND PREJUDICE AND VIOLATES DAVID'S DUE PROCESS UNDER BOTH

THE CALIFORNIA AND FEDERAL CONSTITUTION

The due process clause of the Fourteenth amendment of the U.S. Constitution and the California constitution place constraints on the state court awards of punitive damages. U.S.C.A. Const. Amend. 14.; *Roby v. McKesson Corp.* (2010) 47 Cal.4th 686.

1. STANDARD OF REVIEW

In connection with a federal due process challenge, the standard of review is a de novo review. *Cooper Industries, Inc. v. Leatherman Tool Group, Inc. (2001)* 532 U.S. 424, 440, 121 S.Ct. 1678; *Boeken, supra,* 127 Cal.App.4th at 1690.

2. TEST FOR EXCESSIVE DAMAGES UNDER CALIFORNIA LAW

The test under California law for constitutionality of a punitive damages award is three-fold:

> (1) the *degree of reprehensibility* of defendant's conduct; (2) the relationship between the *amount of puntives awarded* and the *actual harm* suffered; and (3) the relationship between the *amount of punitives awarded* and *defendant's financial condition.*

Neal v. Farmers Ins. Exchange (1978) 21 C3d 910, 928; *Adams v. Murakami* (1991) 54 Cal.3d 105, 109–110. An award is presumed to be the result of passion and prejudice where it is grossly disproportionate to compensatory damages. *Neal, supra,* 21 Cal.3d at p. 928. Each of the above three factors *must* be considered. "Nothing in *Neal* suggests that any of the three is dispensable." *Adams v. Murakami* (1991) 54 Cal.3d 105, 111, fn. 2.

Here, the jury awarded 10x what all other verdicts combined had awarded against David. It exceeded well above what was needed to accomplish the goal of punishment.

3. TEST FOR EXCESSIVE DAMAGES UNDER FEDERAL LAW

The United States Supreme Court has also provided three "guideposts" for such review: "(1) the degree or reprehensibility of the defendant's misconduct, (2) the disparity between the harm (or potential harm) suffered by the plaintiff and the punitive damages award (ratio), and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.* (2001) 532 U.S. 424, 440, 121 S.Ct. 1678, 149 L.Ed.2d 674.

4. THE APPLICATION OF THE STATE AND FEDERAL GUIDE-POSTS RENDER THE

PUNITIVE DAMAGES AWARD UNCONSTITUTIONAL

While rape and sexual assault is not to be condoned, the procedural context in which the facts got to the jury is significant. This was an "uncontested" trial as the court proceeded to trial in David's absence. The first strike against David was the discovery order deeming the requests admitted- those formed a basis for the granting of the directed verdict on liability and the jury was instructed in Special Instruction No. 1 that 35 facts (highly inflammatory) and many admissible only for a limited purpose, were deemed established. Margarita's evidence went unchecked and there were no guardrails as the adversarial system was not in place. While represented by counsel, this was a fully contested matter. David filed a general denial.

The trial court kept the ratio 8-1 that the jury awarded between the punitive damages and compensatory damages. This ratio is arbitrary and too high given the compensatory damages are excessive and appear to have a punitive element to them. It appears the jury took the $80 million in prior verdicts it heard had been entered against David and multiplied it by 10 to reach the $800,000,000. This is consistent with the questions the jury posed during deliberations regarding the 10x rule and question regarding the ratio breakdown of the prior judgments.

An award of more than four times the amount of compensatory damages *might* be close to the line of constitutional impropriety. [Citation.]" *State Farm, supra,* 538 U.S. at p. 425, 123 S.Ct. 1513, italics added. Where "compensatory damages are substantial, a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." *Id.* "The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award." *Id.* at p. 427, 123 S.Ct. 1513. See also, *Gober v. Ralphs Grocery Store* (2006) 137 Cal.App.4th 204 (a sexual harassment case, punitive reduced the ratio to 6 to 1.) In *Weeks v. McKenzie* (1998) 63 Cal.App.4th1128, a sexual harassment case, the court upheld a punitive damages award against an attorney in the amount of $225,000, less than five times the compensatory damages awarded. A partner of the defendant law firm put his hand in the breast pocket of his secretary's blouse, touched her buttocks, made a grabbing gesture toward her breasts, and made sexually harassing statements. The punitive damages award against the firm was $3.5 million.

As set forth above, Margarita failed to present evidence of financial condition of David warranting reversal.

The court in *Roby* noted that had plaintiff pursued her FEHA claims administratively, the commission could have assessed a fine (in addition to compensatory damages), but the fine could not exceed $150,000 under Government Code Section

12970(a)(3) which was tiny in comparison to the jury punitive damages award of $15 million. *Roby, supra,* 47 Cal.4th at 718.

Here, this too was an employment case. Margarita had alleged ten causes of action, but went to trial on only two, the first (sexual assault and battery) and the tenth (intentional infliction of emotional distress) causes of action. She had sought penalties under Civil Code Section 52(a)-(b), 52.1(h)-(i) and 52.4(a), remedies under Civil Code section 51.7(a), 52(b), 52.1, 52.4, Government Code Section 12940 et sec. Civil penalties would be significantly lower than the $800,000,000 or even the $80,000,000. For example, the penalty under the Tom Bane Civil Rights Act under Civil Code Section 52.1(h) is $25,000. The application of the state and federal tests warrant the punitive damages award here excessive. The award should be vacated and remanded.

I. THE TRIAL COURT ERRED IN ITS INSTRUCTION TO THE JURY ON PUNITIVE DAMAGES

1. THE STANDARD OF REVIEW

A de novo standard of review applies when determining whether jury instructions were erroneous or failed to correctly state the law. *People v. Barnum* (2025) 112 Cal.App.5th 461.

2. THE TRIAL COURT ERRED IN ITS INSTRUCTION THE JURY ABOUT PUNITIVE DAMAGES AND IN ITS RESPONSE TO QUESTION NO. 4 TO THE JURY

Courts have held that denial of a proper request to instruct the jury they are not to award punitive damages for harm to third parties is reversible *error*. *Bullock v. Philip Morris USA, Inc.* (2008) 159 CA4th 655, 692-695; *Merrick v. Paul Revere Life Ins. Co.* (9th Cir. 2007) 500 F3d 1007, 1015-1017; *White v. Ford Motor Co.* (9th Cir. 2007) 500 F3d 963, 971-972; see CACI 3940, 3942, 3943, 3945, 3947, 3949; BAJI 14.72.2]

The trial court erred in instructing the jury on the issue of punitive damages in five respects: (1) By modifying Instruction 3940(c) pertaining to David's financial condition as given; (2) failing to instruct the jury that it may not increase the punitive damages award above an amount that is otherwise appropriate merely because of the amount of financial resources defendant may have; (3) Failing to instruct the jury that any award it imposes may not exceed defendant's ability to pay; (4) Answering Jury Question No. 4 without including an instruction that any award may not exceed the defendant's ability to pay; (5) failing to instruct the jury that punitive damages may not be used to punish the defendant for the impact of his alleged misconduct on persons other than plaintiff and the evidence regarding harm to the other women cannot be used for that purpose; and (6) failing to instruct the jury as to the limited purpose of the evidence regarding the harm to the other women.

The trial court gave a modified version of the CACI 3940 instruction failing to instruct the jury about David's financial condition and how that is to be applied in assessing a punitive damage award. 3940(c) as given misstates law and is unsupported by the record. Further, the court was required to instruct the jury as the unmodified CACI 3940 (c) provides. It erred in not instructing the jury that it cannot punish David for the harm to third parties. (3 AA, Tab 76, 1116-1117.0

The failure to instruct appropriately was prejudicial error. It appears probable that the improper instruction and failure to properly instruct misled the jury and affected the verdict. *Lundquist v. Reusser* (1994) 7 Cal.App.4th 1193, 1213.

This was a run-away verdict designed to punish David not only for acts against Margarita but against third parties that he was already punished for. The jury deliberated for about two hours. Thirty-five minutes after their questions were answered, they returned their verdict. The punitive damages award was exactly 10x the $80,000,000 they had heard the juries in other cases combined had awarded to these other women. The trial court already found "the damages awarded by the jury- $100 million in compensatory damages and $800 million in punitive damages- "shocks the conscience and virtually compels the conclusion the award is attributable to passion or prejudice."

(Ruling, p. 7.) The award remains excessive even after the reduction.

J. DAVID WAS DENIED HIS DUE PROCESS RIGHT TO A FAIR HEARING WARRANTING REVERSAL OF THE JUDGMENT

The due process clauses of the United States Constitution (Fourteenth Amendment) and the California Constitution (Article I, Section 7) establish that no person may be deprived of life, liberty, or property without due process of law. Constitutional due process requires that parties be given a fair hearing. Errors infringing on this right, sometimes called "*structural error*" in the "trial mechanism," are presumptively prejudicial and thus "reversible per se." See *Conservatorship of Person & Estate of Maria B.* (2013) 218 Cal.App. 4th 514, 534, 13; *Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 292-293.

K. DUE PROCESS REQUIRES NOTICE AND OPPORTUNITY TO BE HEARD AT TRIAL

The due process clause of the United States and California Constitutions require that a party be given reasonable notice of a judicial proceeding. U.S.C.A. Const.Amend. 14; Cal.Const. Art. 1, Sections 7, 15; *Marriage of Goddard* (2004) 33 Cal.4th 49, 54; The failure to give the mandatory and jurisdictional notice of trial is a proper ground for the granting of a new trial. C.C.P. Section 657(1); *Simon v. Tomasini* (1950) 97 Cal.App.2d 115.

L. C.C.P. SECTION 594(a) APPLIES TO THE CONTINUED TRIAL DATES

A litigant's notice of a trial date pursuant to Code of Civil Procedure Section 594(a) is mandatory and jurisdictional and a judgment entered following a trial conducted in violation of this requirement is void. *Au-Yang v. Barton* (1999) 21 Cal.4th 958, 963; *Marriage of Goddard* (2004) 33 Cal.4th 49; *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857; *Bird v. McGuire* (1963) 216 Cal.App.2d 702, 713. As the error is jurisdictional warranting reversal.

Section 594(a) is applicable to the continued trial dates of May 31, June 11 and June 13, 2024. David did not get Notice of Trial for those dates. (6 AA Tab 144, 1723-1733.) Margarita was ordered to give him notice of the trial dates. (3 AA, Tab 59, 0902, Tab 60, 0904, Tab 61, 908.) There is no proof of service in the file that he got notice of trial notices for any of those three dates, nor was there any such proof when the Court proceeded with the trial in David's absence. (6 AA, Tab 144, 1723-1733.) The trial court acted in excess of its jurisdiction.

Proof of service or other competent evidence must be provided to the court *before* proceeding in the party's absence. *Marriage of Goddard* (2004) 33 Cal.4th 49, 54. This was not done.

M. THE STANDARD OF REVIEW IS A DE NOVO STANDARD

The standard of review on appeal regarding the interpretation of a statute is de novo as statutory interpretation is a question of law, not fact. *People v. McKean* (2025) 115 Cal.App.5th 46; *Gann v. Acosta* (2022) 76 Cal.App.5th 347; *Ververka v. Department of Veteran Affairs* (2024) 114 Cal.App.5th 187. The appellate court independently reviews the legal question without deferring to the trial court's interpretation.

N. THE PLAIN LANGUAGE OF C.C.P. SECTION 594(a) AND CALIFORNIA LAW SUPPORTS THE FACT NOTICE FOR THE CONTINUED JUNE 13, 2024 TRIAL DATE WAS REQUIRED.

The plain language in Section 594 supports the interpretation that notice was required in this case for the continued trial dates of May 31, June 11 and ultimately June 13, 2024. Here, the statute contains the term "trial." It does not qualify the term "trial" to the initial trial date, to an advancement, to a continuance, or to a trailed date. It does not exclude, by its plain language continuances, advancements or trailing. Had the legislature wanted to make those qualifications or exclusions, it could have done so like it has done in other statutes in the Code of Civil Procedure. See C.C.P. Section 2024.020, Section 2034.230 and Section 2034.210-expert demand

is triggered by "initial trial date" examples where the legislature qualified trial to the date initially set for trial. C.C.P. Section 594(a) provides in part that:

> "either party may "**bring an issue to trial**". . ., "in the absence of the adverse party". . . but "proof shall first be made . . the adverse party has had 15 days' notice of **such trial**. . ."

The phrase "such trial" refers back to the "trial" that is before the court that the party is wishing take place at that time without the other party. The California Supreme Court in *Au-Yang v. Barton* (1999) 21 Cal.4th 958 held that the trial court exceeded its authority when it conducted the trial in defendant's absence where the trial court had advanced the trial date 14 days leaving insufficient time to provide the 15-day mandatory and jurisdictional statutory notice to defendant under C.C.P. Section 594(a). The California Supreme Court rejected the argument that the statute applies only to the initial trial date noting:

> "Section 594(a) makes no exception for advancements of trial. Its language prohibits in all cases a trial in the absence of a party,. . " *Au-Yang v. Barton*, supra, 21 Cal.4th at 963 (Emphasis added.)

The Supreme Court further noted:

> "The dissent asserts that section 594(a) applies only to the *first* time a case is set for trial. The statutory language does not support this assertion. Had the legislature wished to limit the applicability of Section 594(a) to the first trial date, it could easily have done so. It did not." *Au-Yang v. Barton*, supra, 21 Cal.4th at 965.

Public policy considerations as expressed in *Au-Yang, that* that trials should be tried on their merits not like defaults, also support the interpretation that Section 594 applies to trial continuances. *Au-Yang v. Barton, supra,* 21 Cal.4th at 962.

"Section 594(a) expressly puts the burden on the party seeking to proceed with the trial in the absence of the opposing party, to prove that the absent party received the 15-day statutory notice. The legislature does not require the absent party to prove that it did not receive the statutory notice. *Au-Yang v. Barton, supra,* 21 Cal.4th at 962; *Marriage of Goddard*, *supra,* 33 Cal.4th at 55.

In *Au-Yang,* the plaintiff did not contend she complied with Section 594(a) by giving defendant 15 days' notice. It would have been impossible for her to do so because the trial court set the new trial date on a date that was less than 15 days out. Because there was no compliance with 594(a), the California Supreme Court held the trial court exceeded its authority when it proceeded with the trial in defendant's absence warranting

reversal of the judgment taken in defendants' absence. *Au-Yang v. Barton, supra,* 21 Cal.4th at 966, 967. The same is true here.

Appellate decisions have applied the C.C.P. Section 594(a) notice requirement to continuances of trial. The California Supreme Court has not addressed the issue square on. See *Wilson v. Goldman* (1969) 274 Cal.App.2d 573, 577-578 (Section 594 (a) held applicable where plaintiff's counsel came back for day 2 months later to put on damages case); *Hurley v. Lake County*, supra, 113 Cal.App. at 292, 297; *Bird v.* McGuire (1963) 216 Cal.App.2d 702; *Simon v. Tomasini* (1950) 97 Cal.App.2d 115; *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 864; *Simon v. Tomasini* (1950) 97 Cal.App.2d 115 (applying C.C.P. Section 594 to a continued trial date and holding "oral notices of trial" and so close to proximity of trial date not sufficient.)

Margarita failed to meet her burden before trial started that David had Notice of Trial, she failed to meet her burden before the trial started. She failed to meet her burden even during the new trial motion because there was no evidence that: 1) Mr. Sofos received that June 11, 2024 email; 2) no evidence that David received it; 3) The email is suspect as it does not contain the firm or attorney signature; and 4) No proof of service was filed indicating notice of trial was sent; 5) Two-days' notice is not reasonable notice.

Margarita relied on *San Francisco Bay Conservation etc. Com. v. Smith* (1994) 26 Cal.App.4th 113 in the opposition to the new trial motion claiming notice of trial for the June 13, 2024 trial date was not required because that was a continuance date and because David had "actual notice" of "a prior trial date." *Smith* is an outlier, is distinguishable, should not be followed, and is limited to its facts. As a court of equal dignity, a court of appeal is free to disagree with the holding in another court of appeal district or division, and may even decline to follow the previous court of appeal opinion. *Baron v. Fire Ins. Exchange* (2007) 154 Cal.App.4th 1184, 1198. Smith imposed a due diligence standard to the pro per, putting him on "inquiry" or "constructive notice." The Court in *Au-Yang* rejected such a due diligence requirement.

In *Smith*, defendant had personally attended a settlement conference in pro per where the case was ordered to the master trial calendar and was given a continued trial date on that date; here, David did not. Further, unlike in *Smith*, notice of trial was left with Smith's housemate at his residence and that was corroborated by Sheriff's notes. The court felt those efforts comported with at least making a reasonable effort to serve defendant with notice. Here, the trial court had no evidence before it that Notice of Trial was given to David, not even in

compliance with the Court's last three Orders in the case to give David notice.

David was deprived of the court ordered notice of those three hearing dates where continued dates were set; no efforts were made by Margarita to give David direct notice of the trial continuance dates despite Margarita's counsel having direct knowledge of David's phone number and knowledge of David's direct email address. (3 AA, Tab 58, 0878; 2 AA, Tab 41, 539; Tab 34, 481-489.) Lastly, the case upon which *Smith* relies, *Parker v. Dingman* (1975) 48 Cal.App.3d 1011, 1016, unlike this case, dealt with a continuance of a trial that had already commenced and was in progress. *Au-Yang,* supra, 21 Cal.4th at 966. That is not the case here. The trial never started prior to June 13, 2024.

David's interpretation of Section 594(a) is the better reasoned interpretation and the one in line with the constitutional right to a fair trial which includes adequate notice and opportunity to be heard. It would be a travesty of justice, just as it was in *Simon,* to interpret the statute otherwise particularly given the prejudicial outcome resulting from David's absence from the proceeding.

O. DAVID DID NOT HAVE ACTUAL OR CONSTRUCTIVE NOTICE OF THE JUNE 13, 2024 TRIAL DATE

The record does not support the trial court's finding that David had "constructive if not actual knowledge" of the June 13, 2024 trial or the other two trial dates. (Ruling, p. 9.)

There is no communication in the record which shows David was given direct notice of the June 13, 2024 date of trial or of any of the two prior trial dates. Margarita chose not to serve David with anything directly; not even to give him functional notice through text message or email, which her counsel had at their disposal.

The May 14, 2024 text message from Attorney Dordick to David telling David to sign the pretrial documents and that his failure to complete the pretrial documents may result in the court sanctioning him. The reference to "a trial" does not translate to notice of the actual trial date. *Au-Yang* rejected a constructive knowledge theory (duty to go out and investigate what the trial date is) of notice. The December 18, 2023 email from David to Attorney Heather indicating he is fired (but no reference to any trial date). This mentions no trial date.

The email from Attorney Heather to Mr. Sofos with general reference to a May 15, 2024 hearing, and a potential "trial continuance" does not show actual notice as there is no specific reference to a trial date and there is no evidence as to when or how David obtained a copy of that email. The aforementioned documents pre-date the date the Court continued the May 28,

2024 trial date. Hence, they shed no light on David's knowledge of the June 13, 2024 trial date.

Mere knowledge of "a trial date" without the actual date is insufficient notice. See *Bird v. McGuire* (1963) 216 Cal.App.2d 702, 717 ("At best these telegrams merely indicate that McGuire had knowledge of some trial date, but they do not indicate what trial date. Mere knowledge of a probable date of trial is not sufficient.") Hence, mere knowledge of an unspecified "probable trial date" is insufficient notice of trial pursuant to C.C.P. Section 594(a). *Id;* see also*, Payer v. Mercury Boat Co.* (1961) 195 Cal.App.2d 659, 661; *Hurley v. Lake County* (1931) 113 Cal.App.291.

David did not have constructive knowledge either. Courts have held that "knowledge" of a trial date is not synonymous or equivalent with "notice." *Bird v.* McGuire, supra, 216 Cal.App.2d at 713. Notice refers to the formal legal instrumentality by which knowledge is conveyed and it must emanate from an authentic source and be served in a manner prescribed by statute. *Id.* " The trial court acknowledges in its September 17, 2024 Ruling at p.9 that Mr. Sofos was not counsel and never made an appearance and the court did not consider him to be such. Mr. Sofos simply attended David's deposition on March 1, 2024 as an observer. (4 AA, Tab 109, 1497.)

An agency cannot be unilaterally established by the opposing party. The record does not support an agency relationship between Mr. Sofos and David for purposes of notice. The formation of an agency relationship is a bilateral matter requiring the manifestation of consent by both the principal and the agent. The principal must indicate, through words or conduct, that the agent is authorized to act on their behalf, and the agent must consent to act accordingly. See *Lombardo v. Gramercy Court* (2024) 107 Cal.App.5th 1028. The conduct of the principal is essential in creating an agency relationship. The agent's conduct alone cannot establish the relationship. *Hoffman v. Young* (2022) 13 Cal.5th 1257.

The record does not contain any correspondence, emails, or other communications **from** Mr. Sofos to Margarita's counsel or any appearance at all by Mr. Sofos in the litigation. All the communications go the other way-from Margarita's counsel to Mr. Sofos with no response or from Mr. Heather, after being relieved as counsel to Mr. Sofos. As stated by the court in *Simon*, oral notices, and particularly to an attorney that does not represent the party do not meet the notice requirement.

Exhibit 7 to Mr. Moaven's declaration purports to be a June 11, 2024 at 10:00 a.m. email from Mr. Moaven to Mr. Sofos asking Mr. Sofos to let David know that the trial has been continued to June 13, 2024 at 10:00 a.m. Such notice is ineffective

and does not bind David. First, the email does not constitute notice to David as Mr. Sofos was not his attorney or agent for service. Second, this purported email does not comport with Section 594(a) notice requirements as it is not a 15-day notice. It is a 2-day notice if there were no time difference, but in effect, Greece being 10 hours ahead, it is functionally a one-business day notice of a jury trial. Such does not comport with due process. Courts have emphasized that the notice must be sufficient to make necessary arrangements, including scheduling witnesses and preparing evidence. *Au-Yang,* supra, 21 Cal.4th 958; *Marriage of Goddard* (2004) 33 Cal.4th 49, 54.

Third, this email is suspect as there is no proof of service on file with the Court purporting to have served notice of trial in this fashion. There is no evidence the trial court was presented with this before the trial started, which is what Section 594(b) provides, or that it was part of the court file. There is no proof of service on file indicating this is how notice was given.

The trial minutes are silent regarding this email. Neither the trial minutes nor the judgment say David was given notice of trial. This June 11, 2024 email was only presented post-trial. It also does not comport with other Dordick firm emails as it does not have the firm logo and information or formal signature line. Fourth, there is no confirmation of receipt by Mr. Sofos. There is

no evidence in the record that Mr. Sofos communicated the message to David.

Before the trial court proceeds with a trial with an absent party, at that time, pursuant to Section 594, it must confirm proper notice was given or it cannot go forward in the defendant's absence. The court failed to do so and the result was devastating to David. David's due process right to notice and opportunity to be heard was violated. The failure to comply is jurisdictional warranting the reversal of the judgment.

P. THE TRIAL COURT VIOLATED DAVID'S DUE PROCESS RIGHTS BY ISSUING AN ORDER DEEMING REQUESTS FOR ADMISSION ADMITTED WITHOUT VALID SERVICE OF THE MOTION ON DAVID

The trial court granted Margarita's motion to deem requests admitted without a valid proof of service on David. The proof of service on file was a proof of service by email on Mr. Sofos. There was no proof of service of the motion on David directly on file. Mr. Sofos was not counsel of record for David. David was not present at the hearing. His new trial motion indicates he did not get the case file from Glaser Weil until after the trial was over. Margarita served this discovery one day before the motion to withdraw hearing. She filed her motion one day after the responses were due. There is no evidence Margarita tried to get any responses even from Mr. Sofos who she claims

was acting for David. They were designed to get an unfair windfall to David's prejudice.

The due process clauses of the United States Constitution and the California Constitution mandate that a party receive reasonable notice of a judicial proceeding and an opportunity to be heard before any significant rights are affected. This is a principle rooted in procedural due process protections designed to ensure fairness in judicial proceedings. *Skinner v. Superior Court* (1977) 69 Cal.App.3d 183. California statutes and Rules of Court regarding discovery motions reinforce the necessity of notice and an opportunity to be heard. A noticed motion is required as well as valid service. C.C.P. Section 2033.280; California Rules of Court, Rule 3.1300. C.C.P. Section 1005.

Q. <u>THE TRIAL COURT'S FAILURE TO RULE ON DAVID'S ACCOMODATION REQUEST IS REVERSIBLE ERROR</u>

David made a request for accommodation for deposition and for trial by filing three ADA requests in 2023 and early 2024 due to a traumatic brain injury. The court failed to rule on the requests as required by California Rules of Court, Rule 1.100(e). The failure to rule on the ADA request is "structural error" that does not require a showing of prejudice for reversal. The failure of the party to appear at a subsequent hearing on which the accommodation was requested does not render the issue moot.

Biscaro v. Stern (2010) 181 CA4th 702, 709-710. The error is reversible per se.

Parties with disabilities may request accommodations under the Americans with Disabilities Act (ADA) (42 USC Sections 12101 et. seq.); California Rules of Court, Rule 1.100(a), (c). The request may be made ex parte and must be made as far in advance as possible, but no later than 5 court days before the requested implementation date, although the court may waive this requirement. California Rules of Court 1.100(c)(1), (3).

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

In the present case, David submitted a Disability Accommodation Request for deposition and trial on June 5, 2023, August 28, 2023 and a follow up request providing additional

information on or about December 28, 2023. (1 RT 5:20-22.) The requests were submitted through counsel. The trial court never ruled on the requests, although the court did state on several occasions it would not allow a deposition by written question.

The Court held several *Vesco* hearings, pursuant to *Vesco v. Superior Court of Ventura* (2013) 221 Cal.App.4th 275. The court shared its thoughts on what it was amenable to doing for the deposition, but never ruled on the accommodations. Specifically, hearings were held on August 23, 2023 (1 AA, Tab 18, 254; 1 RT 5:20-22; 11:16. 21; 1 RT 12:19-28), September 25, 2023, January 5, 2024, and February 13, 2024; (2 AA, Tab 28, 461; 1 RT 19:23-28.) (3 RT 617:2:21; 2 AA, Tab 33, 478; 4 RT 617:20-21.)

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

The accommodation for trial was a request for breaks and/or a remote appearance and advising the jury of the disability, and also having him not be present if he does not have

to because of outbursts. This assumed, of course, he would have counsel representing his interests. (RT v.1, p.13:1-4.)

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

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

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

The accommodation would be to allow him to not have to be in the courtroom when he does not need to be and the jury would have to be told something as to why he is not in the courtroom. Counsel expressed that there is high risk with David being in the courtroom the entire time. (RT v. 3, p. 612:17- p. 613: 3.) (RT v. 3, p. 613: 27-614:7.)

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

David sat for deposition on March 1, 2024 without an accommodation request. The case proceeded to trial without David present and without any Order made by the Court on the requests for accommodation. The deposition was on video and turned out to be highly prejudicial. Excerpts were played to the jury to David's prejudice.

What counsel was concerned about manifested itself and was used against David at trial. David's deposition was taken without accommodation and on video. David was triggered and his conduct became dysregulated as a result. Margarita took David's deposition, without an accommodation, got him on camera, and video clips where he exhibits dysregulated behavior were played to the jury. Without the knowledge of the traumatic brain injury, that behavior is interpreted adversely and is highly prejudicial to David. (RT, v.1, p. 15:16-p. 16:17.)

R. THE ERRORS BELOW RESULTED IN A "MISCARRIAGE OF JUSTICE" WARRANTING REVERSAL OF THE JUDGMENT

Except in the case of a "structural error" or where the error is "reversible per se" that requires no showing of prejudice, the California Constitution permits reversal only if an error resulted

in a *miscarriage of justice.* Cal.Const., Art. VI, § 13; *F.P. v. Monier* (2017) 3 Cal.5th 1099.

A miscarriage of justice" will be declared only when the appellate court, after examining the entire case, 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. A probability in this context does not mean more likely than not, but instead, a mere reasonable chance, something more than an abstract possibility. *College Hosp., Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715.

Multiple errors can be found *cumulatively* prejudicial, thus warranting reversal, even though they independently would have been otherwise been deemed harmless. *Delzell v. Day (1950)* 36 Cal.2d 349, 351; *Johnson v. Tosco Corp.* (1991) 1 Cal.App.4th 123, 141. Multiple "insubstantial" errors are ground for reversal only if *together* they had a prejudicial effect on the outcome at trial. *Dam v. Lake Aliso Riding School* (1936) 6 Cal.2d 395, 399.

The lack of proper notice of trial and/or reasonable notice of the actual trial date and proceeding to trial in his absence, without even trying to find out his whereabouts or establishing proper notice was given, despite Margarita was ordered three times to provide notice as the trial was continued the last three times subsequent to the May 28, 2024 date was prejudicial. It resulted

in his absence, effectively a denial of his constitutional right to an impartial jury (as he had no say in its selection), his right to examine and cross-examine witnesses, present evidence, object to evidence, object to late documents, object to belatedly disclosed witnesses (such as Dr. Snyder who was identified as a trial witness the morning he testified). He could have asked for a continuance to hire counsel. It deprived him of the right to object to jury instructions, prepare and propose his own. It deprived him of the right to make evidentiary objections, limit evidence and object to highly inflammatory evidence such as the evidence regarding the harm to other women.

The lack of a court reporter at trial is also prejudicial error as it limited his ability to prevail on a new trial motion based on insufficiency of the evidence, and it deprives him of meaningful appellate review on issues that require substantial evidence standard of review, errors in jury selection, evidentiary rulings, if any, and even instructional error if the entire record needs to be examined. *Dogan v. Comanche Hills Apartments, Inc.* (2019) 31 Cal.App.5th 566.

The court had authority to order a reporter under C.C.P. Section 269 and did not do so to preserve the record of how the case was tried in David's absence and what due process was afforded to him, in his absence and in the interests of justice. A settled statement cannot be prepared as he was not present and he did not

have counsel. It precludes meaningful appellate review on issues with a substantial evidence standard of review. *Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476.

David has a due process right to an impartial jury. Because there is no transcript of the oral proceedings available.

The granting of the motion to deem Requests for Admission (Set Two) without proper service was prejudicial error. The deemed admissions served as a basis for the trial court's granting of Margarita's motion for directed verdict at the conclusion of the evidence on the issue of liability. In addition, at least 35 of the 116 requests that were deemed admitted served as the basis for a Special Instruction to the jury (Special Jury Instruction No.1) instructing the jury that those facts were deemed established. These facts essentially proved Plaintiff's case and gutted any defense.

The inadequate instruction on the question of punitive damages, modified CACI 3940 constitutes prejudicial error. The jury was not properly instructed on defendant's financial condition and the fact that it could not punish defendant for the harms to the other women. The errors regarding the Special Jury Instruction No. 1, in failing to instruct the jury that the facts on that list of "35" established facts pertaining to other women could be considered only for a limited purpose.

The excessive nature of the compensatory damages and punitive damages award was not cured by the trial court reducing the amounts to $90 million as opposed to $900,000,000. The $90 million is nonetheless excessive and remains tainted by the jury's bias, prejudice and passion resulting from the cumulative effect of the trial court errors, including the failure to instruct properly on the issue of punitive damages, the failure to give advisement on the limited use of the evidence regarding the other women.

The erroneous denial of a party's right to testify or present evidence establishing its case is reversible per se. Likewise, it is reversible error per se to deny or unduly restrict a party's right to cross-examine witnesses. *Freemont Indemnity Co. v. Worker's Compensation App.Bd.* (1984) 153 Cal.App.3d 965, 971.

David's absence and the errors below starting with when the Court failed to rule on his ADA accommodation and granted his counsel's motion to withdraw, resulted in a devastating unprecedented a $900 million judgment which the trial court found "shocks the conscience" and virtually compels the conclusion the award is attributable to passion or prejudice." (Ruling, p. 7.) The reduction to $90 million has not cured the prejudice. David respectfully requests that the judgment be reversed and the case remanded for a new trial on all issues, or in the alternative, on the issues of damages.

David was prevented from having his day in Court. As stated in his motion for new trial, he had defenses to present and evidence to present, including text messages that show that some of the alleged victims fabricated testimony against him.

VII. CONCLUSION

David's due process rights were violated. The violations are reversible error per se. David respectfully requests that the Court vacate the judgment for the reasons set forth herein. In the alternative, on the issue of damages, if the Court finds vacating the judgment is not warranted, David seeks a significant reduction of both the compensatory and punitive damages.

Dated: December 11, 2025 Bohm Wildish & Matsen, LLP

By: _____

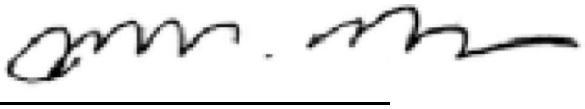
James G. Bohm, Esq.
Cecilia Preciado, Esq.
Attorney for Appellant
Alkiviades David

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.204(c)(4))

I, JAMES BOHM, counsel for David, certify pursuant to the California Rules of Court, rule 8.204(c)(1)), that the text of this brief consists of 13,782 words as counted by the word-processing program used to generate this opening brief.

Dated: December 11, 2025 Bohm Wildish & Matsen, LLP

By: 

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PROOF OF SERVICE

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Antonia Leseth

Antonia Leseth