

## BORDEREAU DE PIÈCES

A l'appui de la plainte pénale  
formée par

Monsieur Alkiviades DAVID

*Le Plaignant*

Contre

Madame Mahim KHAN

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POWER OF ATTORNEY

The undersigned Client

Mr David ALKIVIADES

herewith appoints and grants powers to

MC ATTORNEYS LTD (Me Béatrice STAHEL)

hereinafter referred to as 'the Attorney'

with full power of substitution to represent and to assist the client in relation to the following matter

Swiss ramifications of US criminal case

as well as for any related parallel or subsequent mandates

The Attorney shall have full power and authority to act on the client's behalf to do whatever he/she considers necessary or appropriate for the carrying out of the mandate.

More specifically, the Attorney may take any and all of the following actions:

- represent the client (i) before any court, authority, administration and arbitration tribunals, (ii) before any insurance company, and Swiss or foreign institution, (iii) within any official or private assemblies as well as (iv) towards any third parties.
- represent the client before any bank or security brokers, whereby they shall be released towards the Attorney, from their obligations related to banking or securities brokerage secrecy.
- sign any and all deeds, agreements, contracts, documents and requests on behalf of the Client.
- take any legal action, file lawsuits, conclude any arbitration agreement, accept any jurisdiction, take whatever steps may be necessary and appropriate to conduct a legal procedure until its final ruling.
- negotiate and conclude any settlements, entirely or partly waive claims or acquiesce to claims.
- receive any monies, values, securities and other objects of any kind, even those which are under dispute, as well as make and receive any payments.

This Power of Attorney shall not be terminated by the Client's death, or the latter's declaration of absence, civil incapacity or bankruptcy.

The Client undertakes to pay to the Attorney all retainers necessary for the carrying out of the mandate. The Client undertakes to reimburse to the Attorney any expenses, costs or advances incurred by the Attorney, as well as to pay his fees.

With respect to any dispute that might arise from this mandate, as well as from any related parallel or subsequent mandates, the Client explicitly accepts the jurisdiction of the Canton of Valais Courts and the application of Swiss Law.

Established in Ostaad on October 26<sup>th</sup>, 2021.

duly authorized by the Client

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# Alki David

**Alkiviades David** (born May 1968; pronounced /ˈælki/ *AL-kee*) is a Greek billionaire heir, a member of the Leventis family, whose holdings include manufacturing, bottling plants, property and shipping. In 2008 he was the majority shareholder of Leventis-David Group, which owns Coca-Cola Hellenic bottling plants in 28 countries.<sup>[1][2]</sup> His companies include the Internet-based television provider FilmOn, the home-shopping website 9021go.com, the streaming-video site BattleCam.com, and the modelling agency Independent Models. He has also appeared in feature films and on television.

<span></span>	<div><span><span></span></span></div> <div><b>Alki David</b></div>
<span></span>	<span></span> <div><span></span></div>
<b>Born</b>	Alkiviades David May 1968 <span>Lagos, Lagos State, Nigeria</span>
<b>Occupation</b>	Entrepreneur, film producer
<b>Spouse(s)</b>	Emma McAllister (m. <span> </span> 2007–2009) Jennifer Stano (m. <span> </span> 2011)
<b>Children</b>	2

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## Early life

Alkiviades David was born in May 1968,<sup>[3]</sup> in Lagos, Nigeria, to a trading and shipping family of Greek Cypriot origin.<sup>[4]</sup> His father, Andrew A. David (1934–2000), was born in Petra, Cyprus and went on to study business at Trinity College in Dublin, Ireland. In 1957, Andrew A. David joined the family business, the Leventis-David Group in Ghana, where he managed Coca-Cola Bottling Plant in Accra.<sup>[5]</sup>

David attended high school in Switzerland<sup>[6]</sup> and studied film at the Royal College of Art.

## Career

In 1998, he co-founded the London modelling agency Independent Models, whose models included Helena Christensen.<sup>[7]</sup>

In 2006, David partnered with veteran film producer Elliott Kastner to launch 111 Pictures Ltd., a UK-based independent production and international sales company. Also that year, David started FilmOn, an online streaming site.

He has appeared in films, including a 2008 motion picture, *The Bank Job*, in which David played a bank-vault expert hired by Jason Statham to help with a bank heist.<sup>[7]</sup>

He founded the nonprofit organisation BIOS to conserve, protect, and educate people on marine conservation around the Greek islands.

According to The *Sunday Times Rich List* in 2020 his net worth, combined with the Leventis family, was estimated at £2.35 billion.<sup>[8]</sup>

## Personal life

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David has been married three times and divorced twice,<sup>[9]</sup> and has two sons, Andrew and Alexander, with his first wife.<sup>[10]</sup> He met second wife Emma McAllister in 2004, marrying her in 2007, and separating in 2009.<sup>[7]</sup> As of 2011 he is married to Jennifer Stano, a swimsuit designer and former model who founded Have Faith Swimwear with David in Beverly Hills, California, in 2010.<sup>[11]</sup> In May 2019, it was reported that David was arrested in St. Kitts after US\$1.5 million of cannabis was found on his private plane.<sup>[12]</sup>

## Business

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David's projects include:

- FilmOn, a video on-demand website and mobile service which is an extension of his 111Pix distribution venture.<sup>[13]</sup>
- BattleCam.com, a peer-to-peer video streaming website and community<sup>[14]</sup> whose offerings including Fight Night and other pay-per-view tournaments built around mixed martial arts, gaming and comedy.<sup>[14]</sup> David advertised for this venture by offering cash to the first person who streaks in a legal manner in front of US President Barack Obama,<sup>[7]</sup> and by hosting a faked assisted suicide.<sup>[15]</sup>
- 9021go.com, a home shopping site founded in 2011<sup>[16]</sup>
- Hologram USA Theatre on Hollywood Boulevard.<sup>[17]</sup>

## Litigations

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CBS, ABC, NBC, Fox Broadcasting and their studios won a temporary restraining order against David's FilmOn in November 2010 to prevent unlicensed use of their broadcast signals. David sued CBS, dropped the suit, and sued CBS Interactive in November 2011, alleging copyright infringement due to the CNET website having editorially covered infringing uses of peer-to-peer file-sharing software.<sup>[7][18][19][20]</sup> In June 2013, David filed a countersuit against the four networks seeking a ruling that providing Internet technology for receiving over-the-air broadcast signals at no charge does not violate broadcasters' copyrights.<sup>[21]</sup>

In April 2019 a jury decided David should pay \$11 million in damages to a woman who accused him of sexual assault, including \$8 million in punitive damages and \$3 million in compensatory damages.

The woman accused David of firing her after she turned down his sexual advances and alleged he groped her in the workplace. Her complaint also accused him of showing lewd photos to employees and hiring a stripper in the workplace.<sup>[22]</sup>

## Filmography

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Year	Title	Character	Type
2004	<i>The Freediver</i>	Hector	Also director, producer and writer
	<i>The Grid</i>	Yusef Nasseriah	TV series (one episode)
2005	<i>Opa!</i>	Spiros Kakogiannis	
	<i>Spooks</i>	Badrak Madjid	TV series (one episode)
2006	<i>Hotel Babylon</i>	Mr. Pappas	TV series (one episode)
2007	<i>Living with Lew</i>		Co-producer
	<i>Flight of Fury</i>	Rojar	Direct-to-DVD
	<i>Voyage: Killing Brigitte Nielsen</i>	Villain	Also director, producer, writer, and editor
	<i>Fishtales</i>	Captain Mavros	Also director, producer, writer, and editor
2008	<i>The Bank Job</i>	Bambos	
2009	<i>Trial &amp; Retribution</i>	Hikmet	TV series (one episode)
	<i>Waking the Dead</i>	Coban	TV series (two episodes)
2012	<i>Secrets of a Trophy Wife</i>	Himself	TLC special
2015	<i>Bob Thunder: Internet Assassin</i>	Mr. Network	

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## External links

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- Alki David (<https://twitter.com/alkidavid>) on Twitter 
  - Alki David (<https://www.imdb.com/name/nm0202810/>) at IMDb
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Retrieved from "[https://en.wikipedia.org/w/index.php?title=Alki\\_David&oldid=1042621537](https://en.wikipedia.org/w/index.php?title=Alki_David&oldid=1042621537)"

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# Braquage à l'anglaise

*Braquage à l'anglaise* ou *Vol de banque* au Québec (*The Bank Job*) est un film britannique de Roger Donaldson, sorti en 2008.

Le film s'inspire d'un vol survenu à Londres en 1971, *Le Casse de Baker Street* <sup>(en)</sup>, après lequel l'argent et les objets précieux dérobés n'ont jamais été retrouvés.

Le film reçoit des critiques globalement positives. Sans être un succès commercial, il récolte plus de 60 millions de dollars au box-office.

## Sommaire

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Articles connexes

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## Braquage à l'anglaise

<b>Titre québécois</b>	<i>Vol de banque</i>
<b>Titre original</b>	<i>The Bank Job</i>
<b>Réalisation</b>	Roger Donaldson
<b>Scénario</b>	Dick Clement Ian La Frenais
<b>Musique</b>	J. Peter Robinson
<b>Acteurs principaux</b>	Jason Statham Saffron Burrows Richard Lintern Stephen Campbell Moore
<b>Sociétés de production</b>	Mosaic Media Group Omnilab Media Relativity Media Atlas Entertainment
<b>Pays d'origine</b>	<span><span><span></span></span></span> Royaume-Uni
<b>Genre</b>	casse
<b>Durée</b>	111 minutes
<b>Sortie</b>	2008

Pour plus de détails, voir *fiche technique* et *Distribution*

## Synopsis

Londres, 1971. Terry Leather est un voyou sans envergure qui s'est contenté de vols de voitures et de petites magouilles. Il est marié et père de famille. Un jour, l'une de ses amies, Martine, lui propose un vol avec effraction dans une banque de la ville. Pour Terry, il s'agit de la chance de sa vie.

L'enjeu : vider la salle des coffres où se trouvent argent et bijoux, en passant par un tunnel creusé depuis un commerce voisin, puis partager le butin. Martine n'a pas proposé le cambriolage uniquement pour l'argent. Récemment, à son retour du Maroc, elle a été arrêtée pour possession de drogue et s'est vu proposer un arrangement : éviter la prison et en échange récupérer des photos compromettantes concernant un personnage de la famille royale, prises par Michael Abdul Malik, militant controversé qui se fait appeler *Michael X* <sup>(en)</sup> (en référence à *Malcolm X*) afin de les remettre à une personne proche du gouvernement.

Au cours du cambriolage, disparaît aussi le carnet de comptes tenu par Lew Vogel, le propriétaire d'un club de strip-tease racketté par des policiers véreux. Celui-ci reconnaît un membre de la bande de Terry, qui avait joué dans un film qu'il avait produit. Vogel le capture et le fait torturer pour qu'il lui donne les noms de ses complices et pour récupérer son carnet de comptes, très compromettant pour certains policiers corrompus. Vogel obtient ainsi quelques noms des membres de la bande.

## Fiche technique

- Titre original : *The Bank Job*
- Titre français : *Braquage à l'anglaise*
- Titre québécois : *Vol de banque*
- Réalisation : Roger Donaldson
- Scénario : Dick Clement et Ian La Frenais <sup>(en)</sup>
- Directeur de la photographie : Michael Coulter
- Décors : Gavin Bocquet
- Musique : J. Peter Robinson
- Productions : Steve Chasman et Charles Roven
  - Coproduction : Mairi Bett
  - Producteurs exécutifs : David Alper, Alex Gartner, Alan Glazer, Gary Hamilton, Ryan Kavanaugh <sup>(en)</sup> et David Whealy
  - Producteur déléguée : Pete Ford
- Sociétés de production : Mosaic Media Group, Relativity Media, Omnilab Media, Skyline et Atlas Entertainment
- Distribution : Lionsgate (Royaume-Uni),
- Budget : 20 000 000 \$<sup>1</sup>
- Pays d'origine : Royaume-Uni
- Langue originale : anglais
- Genre : thriller, film de casse
- Durée : 111 minutes
- Dates de sortie :
  - Royaume-Uni : 28 février 2008
  - États-Unis : 7 mars 2008

## Distribution

- Jason Statham (VF : Boris Rehlinger ; VQ : Sylvain Hétu) : Terry Leather
- Saffron Burrows (VF : Déborah Perret ; VQ : Nathalie Coupal) : Martine Love
- Richard Lintern (VF : Bernard Alane ; VQ : François Trudel) : Tim Everett
- Stephen Campbell Moore (VF : Franck Capillery ; VQ : Jean-François Beaupré) : Kevin Swain
- Daniel Mays (VF : Guillaume Lebon ; VQ : Claude Gagnon) : Dave Shilling
- James Faulkner (VF : François Dunoyer ; VQ : Jean-Marie Moncelet) : Guy Arthur Singer
- Alki David (VF : Gilles Morvan ; VQ : Stéphane Rivard) : Bambas
- Peter Bowles (VF : Michel Ruhl ; VQ : Vincent Davy) : Miles Urquhart
- Alistair Petrie (VQ : Jean-Luc Montminy) : Philip Lisle
- David Suchet (VF : Gérard Rinaldi ; VQ : Manuel Tadros) : Lew Vogel
- Peter de Jersey (VF : Lucien Jean-Baptiste ; VQ : Tristan Harvey) : Michael Abdul Malik, dit Michael X (en)
- Colin Salmon (VF : Frantz Confiac ; VQ : Marc-André Bélanger) : Hakim Jamal
- Hattie Morahan : (VF : Louise Lemoine Torrès) : Gale Benson (en)
- Don Gallagher (VF : Patrick Préjean) : Gerald Pyke
- Craig Fairbrass (VQ : Jacques Lavallée) : Nick Barton
- Michael Jibson : (VF : Philippe Valmont ; VQ : Daniel Roy) : Eddie Burton
- Georgia Taylor (VQ : Stéphanie Dolan) : Ingrid Burton
- Jamie Kenna (VQ : Benoît Rousseau) : Perky
- Keeley Hawes : Wendy Leather, la femme de Terry
- Rupert Vansittart : Sir Leonard Plugge
- Sharon Maughan : Sonia Bern
- Alan Swoffer : John Lennon
- Christopher Owen : lord Mountbatten
- Mick Jagger : l'employé de banque (caméo)

Sources et légende : Version Française (VF) sur VoxoFilm<sup>2</sup>, AlloDoublage<sup>3</sup> et RS Doublage<sup>4</sup> ; Version Québécoise (VQ) sur Doublage Québec<sup>5</sup>

## Production

### Genèse et développement

Le film s'inspire d'un vol survenu à Londres dans la nuit du 11 septembre 1971 dans la Lloyds Bank du 187 Baker Street. L'argent et les objets précieux dérobés n'ont jamais été retrouvés. Les producteurs du film affirment que la presse britannique fut interdite de publication par une *D-Notice* émise par le gouvernement britannique dans le but probable de préserver la réputation d'un membre de la famille royale britannique<sup>6,7</sup>. Selon les producteurs, ce film est une tentative de révéler les faits pour la première fois<sup>8</sup>.

Le script s'intitule initialement *Baker Street*<sup>9</sup>. Harold Becker est d'abord pressenti comme réalisateur avec Elie Samaha et sa société Franchise Pictures à la production. Cependant, Franchise Pictures fait faillite.

### Tournage

Le tournage a lieu de mars 2007. Il se déroule à Londres (gares d'Aldwych et Paddington, Baker Street, Ealing Studios, Marylebone), dans les Pinewood Studios, à Chatham dans le Kent (Chatham Dockyard), ainsi qu'à Melbourne et en Sardaigne<sup>10</sup>.



La Lloyds Bank du 187 Baker Street

## Accueil

### Critiques

*Braquage à l'anglaise* rencontre un accueil favorable de la part de la critique presse, puisque dans les pays anglophones, il obtient 79 % d'avis positifs sur le site Rotten Tomatoes, basé sur cent-quarante-deux commentaires collectés et une note moyenne de 6,7/10<sup>11</sup> et un score moyen de 69/100 sur le site Metacritic, basé sur trente-deux commentaires collectés<sup>12</sup>. En France, le site AlloCiné lui attribue une note moyenne de 3,8/5 basé sur 17 commentaires collectés<sup>13</sup>.

### Box-office

Au box-office, *Braquage à l'anglaise* totalise 66 143 005 dollars de recettes mondiales, dont 30 060 660 dollars sur le territoire américain pour un budget de production de 20 millions de dollars<sup>14,15</sup>. En France, le long-métrage totalise 561 863 entrées après quatorze semaines resté à l'affiche<sup>16,17</sup>.

### Braquage à l'anglaise

Score cumulé

Site	Note
Metacritic	69/100
Rotten Tomatoes	79 %
AlloCiné	3,8/5

Compilation des critiques

Périodique	Note
------------	------

Pays ou région	Box-office	Date d'arrêt du box-office	Nombre de semaines
<span><span><span></span></span><span> </span></span> États-Unis <span><span><span></span></span><span> </span></span> Canada	30 060 660 \$	-	-
<span><span><span></span></span><span> </span></span> France	561 863 entrées	-	14
<span><span><span></span></span><span> </span></span> Total mondial	<b>66 143 005 \$</b>	-	-

## Notes et références

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## Voir aussi

### Articles connexes

- Lloyds Banking Group

### Liens externes

- Ressources relatives à l'audiovisuel : Allociné (http://www.allocine.fr/film/fichefilm\_gen\_cfilm=126279.html) - Cinémathèque québécoise (http://collections.cinematheque.qc.ca/recherche/oeuvres/fiche/85908) - (en) AllMovie (https://www.allmovie.com/movie/v388941) - (en) American Film Institute (https://catalog.aifi.com/Catalog/moviedetails/64578) - (en) BFI National Archive (http://collections-search.bfi.org.uk/web/Details/ChoiceFilmWorks/150740234) - (en) Internet Movie Database (https://tools.wmflabs.org/wikidata-externalid-url/?p=345&url\_prefix=https://www.imdb.com/&id=tt0200465) - (en) Metacritic (https://www.metacritic.com/movie/bankjob) - (en) Movie Review Query Engine (https://www.mrqe.com/movie\_reviews/the-bank-job-m100023875) - (de) OFDb (https://ssl.ofdb.de/film/138545) - (en) Rotten Tomatoes (https://www.rottentomatoes.com/m/1189844-the\_bank\_job) - (mul) The Movie Database (https://www.themoviedb.org/movie/8848)

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44 (38)	Teddy Sagi	£3.838bn	↑ £166m	Software and property
45 (40)	<u>Sir Richard Branson and family</u>	£3.79bn	↑ £165m	Transport, finance and fitness clubs
46 (28)	Baroness Howard de Walden and family	£3.722bn	↓ £594m	Property
47 (49)	Glenn Gordon and family	£3.595bn	↑ £409m	Spirits: William Grant & Sons
48 (45)	Moshe Kantor	£3.522bn	↑ £34m	Chemicals: Acron
49 (44)	Mark Scheinberg	£3.519bn	↓ £36m	Gambling: PokerStars
50= (41)	Eddie and Sol Zakay	£3.5bn	↓ £110m	Property
50= (51)	<u>Sir Michael Moritz and Harriet Heyman</u>	£3.5bn	↑ £453m	Internet
52 (47)	Mark Pears and family	£3.28bn	↓ £20m	Property
53 (37)	Laurence and François Graff	£3.2bn	↓ £585m	Diamonds
54 (New)	Yakir Gabay	£3bn	★ New entry	Property
55 (66)	Benzion Freshwater and family	£2.96bn	↑ £906m	Property
56 (51)	John Shaw and Kiran Mazumdar-Shaw and family	£2.942bn	↑ £1.134bn	Pharmaceuticals: Biocon
57 (53)	Alan Parker	£2.846bn	↑ £23m	Duty-free shopping
58 (54)	Jaime Gillinski	£2.754bn	↑ £98m	Finance
59 (59)	Alki David and the Leventis family	£2.753bn	↑ £403m	Drinks and media: Coca-Cola
50 (52)	Samuel Tak Lee and family	£2.731bn	↓ £119m	Property

# Auszug Grundstück-Informationen



Das ist ein GRUDIS-Auszug; er hat nicht die Wirkungen eines beglaubigten Grundbuchsatzuges

## Saanen / 1490-4

### Grundstückbeschreibung

Gemeinde	843 Saanen
Grundstück-Nr	1490-4
Grundstückart	Stockwerkeigentum
E-GRID	CH 12722 86436 96
Stammgrundstück	LIG Saanen 843/1490
Wertquote	675/1'000
Sonderrecht	Wohnung im OG mit Nebenräumen
Bemerkungen	

### Dominierte Grundstücke

Keine

### Amtliche Bewertung

Amtlicher Wert CHF	Ertragswert gemäss BGGB CHF	Gültig ab Steuerjahr
717'340		2015

### Eigentum

Alleineigentum  
 David Alkiviades Andrew, 23.05.1968, 4 Wilton Place, London SW1X 06.03.2015 037-2015/1090/0 Kauf  
 8RH, Vereinigtes Königreich

### Anmerkungen

06.03.2015 037-2015/1089/0 Reglement der Stockwerkeigentümergeinschaft  
 ID.037-2015/000606

### Dienstbarkeiten

06.03.2015 037-2015/1089/0 (R) Garagen ID.037-2015/000608  
 z.L. LIG Saanen 843/1490  
 06.03.2015 037-2015/1089/0 (R) Treppe ID.037-2015/000610  
 z.L. LIG Saanen 843/1490

### Grundlasten

Keine

### Vormerkungen

Keine

### Pfandrechte

22.07.1958 021-I/6930	Namen-Papier-Schuldbrief, Fr. 41'400.00, 1. Pfandstelle, Max. 6%, errichtet: 06.02.1915, Beleg I/509, Gesamtpfandrecht, mit Saanen/1490-3 Grundpfandgläubiger Credit Suisse AG, Zürich (UID: 01.05.2015 037-2015/1934/0 CHE-106.831.974)
Bemerkung:	Zins-, Abzahlungs- und Kündigungsbestimmungen sowie weitere Nebenbestimmungen zur Schuldbriefefforderung siehe Beleg 021-I/5007/0 (09.05.1945)
19.02.1934 021-I/3839	Namen-Papier-Schuldbrief, Fr. 10'000.00, 2. Pfandstelle, Max. 6%, Gesamtpfandrecht, mit Saanen/1490-3 Grundpfandgläubiger Credit Suisse AG, Zürich (UID: 01.05.2015 037-2015/1934/0 CHE-106.831.974)
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25.04.2013 037-2013/1793/0	Namen-Papier-Schuldbrief, Fr. 1'000'000.00, 7. Pfandstelle, Max. 10%, Gesamtpfandrecht, mit Saanen/1490-3 Grundpfandgläubiger Credit Suisse AG, Zürich (UID: 01.05.2015 037-2015/1934/0 CHE-106.831.974)	
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25.09.2017 037-2017/4962/0	Register-Schuldbrief, Fr. 6'880'000.00, 8. Pfandstelle, Max. 10%, Gesamtpfandrecht, mit Saanen/1490-3 Grundpfandgläubiger SIX SIS AG, Olten (UID: 05.05.2017 035-2017/4300/0 CHE-106.842.854)	
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#### Hängige Geschäfte

Geometergeschäfte bis 10.06.2018 Keine  
Grundbuchgeschäfte bis 06.06.2018 Keine

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#### ÖREB-Kataster

Öffentlich-rechtliche Eigentumsbeschränkungen siehe Stammgrundstück:

LIG Saanen 843/1490

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## Saanen / 1490-3

### Grundstückbeschreibung

Gemeinde	843 Saanen
Grundstück-Nr	1490-3
Grundstückart	Stockwerkeigentum
E-GRID	CH 11362 86472 46
Stammgrundstück	LIG Saanen 843/1490
Wertquote	325/1'000
Sonderrecht	Wohnung im EG mit Nebenräumen
Bemerkungen	

### Dominierte Grundstücke

Keine

### Amtliche Bewertung

Amtlicher Wert CHF 369'660	Ertragswert gemäss BGGB CHF	Gültig ab Steuerjahr 2015
-------------------------------	-----------------------------	------------------------------

### Eigentum

Alleineigentum  
Stano Jennifer Leigh, 17.02.1985, 57 Redington Road, London NW3 7RP, Vereinigtes Königreich 06.03.2015 037-2015/1091/0 Kauf

### Anmerkungen

06.03.2015 037-2015/1089/0 Reglement der Stockwerkeigentümergeinschaft ID.037-2015/000606

### Dienstbarkeiten

06.03.2015 037-2015/1089/0 (R) Garagen ID.037-2015/000608  
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06.03.2015 037-2015/1089/0 (R) Treppe ID.037-2015/000609  
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### Vormerkungen

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#### Hängige Geschäfte

Geometergeschäfte bis 10.06.2018 Keine  
Grundbuchgeschäfte bis 06.06.2018 Keine

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#### ÖREB-Kataster

Öffentlich-rechtliche Eigentumsbeschränkungen siehe Stammgrundstück: LIG Saanen 843/1490

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**2nd Civ. Case No. B308727 c/w B305849**  
**(LASC Case No. BC654017)**

**COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**SECOND APPELLATE DISTRICT**

**DIVISION TWO**

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**MAHIM KHAN,**  
*Plaintiff and Respondent,*

v.

**HOLOGRAM USA., INC. et al.,**  
*Defendants and Appellants.*

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Appeal from Los Angeles County Superior Court  
Hon. Michelle Court Williams, Judge Presiding

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**APPELLANT'S OPENING BRIEF**

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**\*FRED D. HEATHER (SBN 110650)**  
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Attorneys for Appellant Alkiviades David

**CERTIFICATE OF INTERESTED PARTIES OR ENTITIES**

Pursuant to California Rule of Court 8.208, Appellant Alkiviades David states that he knows of no person or entity that has an interest in the outcome of this proceeding other than the parties themselves.

Dated: July 30, 2021

GLASER WEIL FINK HOWARD  
AVCHEN & SHAPIRO LLP

By: \_\_\_\_\_ /s/  
FRED D. HEATHER  
Attorneys for Appellant

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## **I. Introduction And Summary Of Argument**

Appellant Alkiviades David appeals from a judgment of more than \$60 million in favor of Respondent Mahim Khan, who worked for a year at two of David's companies, quit, and then sued for sexual harassment.

This judgment occurred because the trial court prevented David at trial from testifying in his own defense, calling key witnesses, and introducing important evidence; restricted and then revoked David's right under California law to represent himself; and allowed inadmissible and highly prejudicial expert testimony. *See* §§III(A)-(C), *infra*. Additionally, Khan's counsel committed serious misconduct during closing argument, resulting, *inter alia*, in punitive damages that are unconstitutionally excessive and based on the wrong measure of damages and inadmissible evidence. *See* §§III(D)-(E), *infra*.

These errors created a total miscarriage of justice. The judgment should be reversed in its entirety, with directions for a complete new trial.

## **II. Statement Of Facts And Procedural History**

The following is stated pursuant to the rule that on appeal from a judgment entered on a jury verdict, the facts must be stated in the light most favorable to the jury's verdict. *Blanks v. Seyfarth Shaw LLP*, 171 Cal.App.4th 336, 346 n.2 (2009).

### **A. The Parties**

Khan, of Pakistani descent, was raised in a strictly observant Muslim household with traditional gender roles. Khan was not permitted to date; have sleepovers; attend dances or parties; or socialize with non-Muslim children. She was not allowed to wear makeup, shorts, or bathing suits. Volume 8, Reporters' Transcript ("RT") 1919:17-1925:25.

Khan's father had an unpredictable, explosive temper, and would physically and verbally lash out at his wife and children with little or no provocation. He frequently choked, punched, and slapped Khan. Khan suffered her father's physical, verbal, and emotional abuse, almost daily, from the age of eight months until she left home at 20. 8RT 1927:24-1929:11, 1930:6-22, 1931:1-3; 10RT 2421:12-2422:1. When she asked her mother for help, she was told "that's just the way it is." 8RT 1929:27-1930:5.

Khan told no one else about the abuse because the subject was "taboo" and it was important to maintain the appearance of a normal family life. Nor did she deal with the abuse on an emotional level; she just blocked it out. 8RT 1929:12-26, 1930:23-28; 9RT 2237:24-2238:2; 10RT 2423:7-12. Her father's abuse left Khan with post-traumatic stress disorder predating her employment at David's companies. 12RT 3067:23-26.

After college, Khan worked at various jobs, including showing apartments, executive assistant, and "red carpet host."

8RT 1932:5-24, 1933:17-1939:22. In October 2014, she started work as a production assistant for Defendants FilmOn TV, Inc. (“FilmOn”) and Alki David Productions, Inc. (“ADP”), two companies owned by David, a successful businessman (8RT 1889:13-14, 11RT 2704:14-15, 2715:23-24, 2725:1-2, 2736:5-13). 11AA 3575, 3582-3585, 3592-3603; 8RT 1939:23-26, 1941:24-27.

Khan testified that a few months after she began her employment, David began repeatedly grabbing her breasts and vagina, rubbing her pelvic area and inner thighs, and simulating oral sex with her by forcing her head to his pelvic area. 8RT 1952:4-1960:8; 9RT 2160:20-2166:23, 2169:21-2171:27; 10RT 2447:1-12, 2452:23-2453:3.

Khan also testified David performed a sexually suggestive “lap dance” with Khan before others (9RT 2166:24-2169:20), showed her a pornographic and scatological video (8RT 1963:17-1965:15, 9RT 2149:13-2150:14, 2153:26-2154:18), and displayed the “mangina” in which he dropped his pants and underwear, tucked his penis between his legs, and waddled around the office (9RT 2147:17-2149:12).

By July 2015, Khan had become depressed, slept a lot, withdrew socially, and had suicidal thoughts. 9RT 2175:9-14, 10RT 2535:16-21, 2543:20-22. In August 2015, after ten months of employment, Khan complained about David’s conduct to her immediate supervisor, Gary Shoefield (9RT 2180:8-14), and to the

controller, Yelena Calendar (9RT 2181:1-3, 2185:16-18; 10RT 2447:19-28). 11AA 3586; 9RT 2184:25-2185:5, 2287:26-2288:2; 10RT 2455:23-2456:3. They told her David's behavior would not change and nothing could be done. 9RT 2182:17-26, 2185:1-15; 10RT 2529:2-20, 2546:11-16, 2456:27-2457:6.

Although Khan testified that she was unhappy with her work situation (10RT 2535:13-21), she remained with David's companies until her apartment lease ended in October 2015. 8RT 1949:20-28, 9RT 2190:16-2191:11, 10RT 2487:15-17, 2498:28-2499:2; 11AA 3587.

She resigned after David called her into his office and angrily accused Khan of cooperating with a fired former employee, Elizabeth Taylor, by helping Taylor with Taylor's lawsuit against David<sup>1</sup> while Khan was still employed by David's companies. 11AA 3587; 9RT 2192:9-25, 2193:10-19, 2194:17-25; 10RT 2499:28-2500:18, 2502:8-2503:4, 2533:23-26, 2535:22-2537:4.

After resigning, Khan struggled with "binge eating disorder," gaining 30 pounds; slept most of the day; and continued having suicidal thoughts. 9RT 2215:27-2216:28, 2221:6-23, 2222:13-19; 10RT 2422:22-27, 2463:13-15, 2523:17-2524:10. She obtained new employment at several different

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<sup>1</sup>*Taylor v. David*, LASC Case No. BC649025 (2017). See 1AA 328-408.

companies,<sup>2</sup> joining Netflix in summer 2017 (9RT 2228:26-2229:2). She also left that job because, she testified, her boss was derogatory towards women, rude, and controlling. 9RT 2232:26-2233:11. She quit her most recent job in spring 2019 because she wanted to go live with her mother “and not do anything.” 9RT 2233:25-2234:23, 2274:24-2275:3.

### **B. The Litigation**

On March 14, 2017, Khan filed an unverified complaint against David, ADP, FilmOn, and another of David’s companies, Hologram USA, Inc. (“Hologram”), collectively “Defendants,” for sexual harassment in violation of Govt.Code §12940; violation of the Ralph Act (Civ.Code §51.7); battery; sexual battery; constructive termination; and wrongful termination in violation of public policy. Volume 1, Appellant’s Appendix (“AA”) 112-136.<sup>3</sup> Khan sought compensatory and punitive damages, attorneys’ fees, and a jury trial. 1AA 112, 123-124.

David’s cross-complaint against Khan and her former attorneys for extortion and emotional distress, based on their pre-litigation demands, was stricken as a SLAPP suit. 1AA 143-149,

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<sup>2</sup>9RT 2208:20-2209:22, 2215:8-26, 2227:16-2229:2, 2232:26-2233:28, 2271:26-2275:28; 11RT 2855:17-2856:5, 2865:20-2867:2

<sup>3</sup>All but the sexual harassment and battery claims were dropped. 13RT 3385:13-14, 3405:3-5; 14RT 3625:24-3626:3; 7AA 2649-2661; 8AA 2762-2774.

155-165. Attorneys' fees in the reduced amount of \$19,625, without costs, were awarded against David. 1AA 165-170.

### **1. Pretrial Proceedings**

In early 2019, Khan brought several discovery motions. 1AA 459-2AA 676. In March and April 2019, the court granted Khan's motions to compel Defendants' responses to interrogatories and requests for production, ordered production of documents, and awarded monetary sanctions. 2AA 1061-1063, 1067. Khan's motion to establish admissions was ruled moot when responses to the requests for admission were subsequently served, but monetary sanctions were awarded. 2AA 1068-1081, 1091-1097.<sup>4</sup>

The court-ordered responses to the interrogatories and document requests were not provided (3AA 1153 ¶7-1155 ¶16) and David failed to appear several times for his deposition (3AA 1145:16-19, 1392 ¶23, 1441 ¶¶2-8, 1444-1472). Accordingly, Khan filed a motion for terminating sanctions ("MTS") on July 23, 2019, seeking a default judgment on liability with damages to be proven at the upcoming jury trial. 3AA 1144-1200. While the MTS was pending, an informal discovery conference was held in chambers on August 23, 2019. 3AA 1201-1206. By stipulation of the parties, David was ordered to appear for his deposition on

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<sup>4</sup>A later minute order, stating that David had admissions deemed admitted (3AA 1270), is incorrect.

September 18, 2019 at 10 a.m. *Id.* The hearing on the MTS was set for September 20. *Id.*

Following that hearing, the court found that David had appeared for his deposition at 11:15 a.m. and left at 11:37 a.m., unilaterally terminating the deposition; did not bring documents responsive to the deposition notice; and testified that he was live streaming the deposition on Instagram and had come to waste the time of Khan's counsel (3AA 1270-1271). *See also* 3AA 1222-1265; 2RT 10:15-13:27, 17:1-20:14.

After viewing the video of the deposition (2RT 7:21-25, 10:5-13, 23:21-24:28; 3AA 1266), the court found that David's demeanor was "uncooperative, discourteous and disrespectful" and his behavior "was tantamount to not appearing at all." 3AA 1271. Nevertheless, the court denied the MTS as "counter to public policy" since terminating sanctions would put Khan in a better position than if the discovery had been answered. *Id.* Although the MTS was denied, the court awarded monetary sanctions. *Id.*

Based on Defendants' discovery misconduct, the court also granted two motions *in limine* by Khan. 4AA 1922. One barred David from testifying in his own defense, although Khan was permitted to call him as an adverse witness if she chose. 3AA 1385-1408; 4RT 606:2-12, 607:7-16, 613:27-28. (She did not. 10RT 2411:21-22; 7AA 2591.)

The other barred Defendants from calling witnesses not disclosed, or introducing documents not produced, in discovery. 3AA 1409-1415; 5AA 1937-1949; 7AA 2580-2583. Among the documents excluded from evidence was Khan’s employment agreement. 7AA 2581:14. See §§III(A)(1)-(2), *infra*.

Defendants moved *in limine* to exclude, *inter alia*, any testimony, argument, or evidence concerning “(1) prior litigation involving Defendants and its outcome; (2) the damage award in any prior litigation involving Defendant (sic); and (3) Defendant Alki David’s conduct in prior litigation,” on the grounds of undue prejudice and lack of relevance. 3AA 1336-1350. This included the verdicts recently awarded against David in other sexual harassment cases, *Reeves v. Hologram USA, Inc.*, LASC Case No. BC643099 (2016) (1AA 431-453) and *Jones v. David*, LASC Case No. BC649025 (2017) (1AA 328-408). 3AA 1338:9-11, 1344 ¶2.

The court granted Defendants’ motion in part, “but it does not preclude plaintiff from introducing prior testimony in past litigation as appropriate if it’s for impeachment or to refresh recollection or anything of that nature.” 4RT 628:5-23; 4AA 1922.

## **2. The Trial**

Trial began on October 28, 2019, with David appearing in *pro per*. 4RT 601:25; 4AA 1922, 1934-1935. David told the court that he had “an awful lot of anger and hurt . . . and emotion trapped over many years” at what he believed was a conspiracy

among several women who had formerly worked for his companies (including Taylor and Khan) and their law firms (principals of which were related) to destroy David, his reputation, and his businesses with false accusations and manufactured evidence of sexual harassment.<sup>5</sup>

David's suspicions and anger were fueled when Khan's lawyers filed what purported to be a "joint" exhibit list signed by defense counsel (4AA 1771-1802). 6AA 2429:12-19. Defense counsel had not signed that document; Khan's attorneys had attached her signature page from an earlier list.<sup>6</sup> The new "joint" list deleted three of Defendants' exhibits and added one for Khan. 5AA 1956 ¶7, 2167:24-26; 6AA 2438 ¶9.

The court found that Khan's attorneys had made a clerical error not warranting court action. 6RT 1204:5-22, 1207:27-1210:7, 1211:21-25, 1212:4-16, 1213:2-8, 1238:12-24. However, David became so perturbed at what he saw as evidence tampering that he left the courtroom, shouting insults which

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<sup>5</sup>4RT 611:20-22, 625:9-627:3, 633:28-635:22, 639:15-25, 643:1-644:1, 645:12-646:12, 647:2-18; *see also* 9RT 2114:8-25, 2121:19-25, 2127:17-2128:8; 6AA 2427:26-2429:19, 2438 ¶¶11-12; 7AA 2507-2526.

<sup>6</sup>5AA 1956 ¶¶6-10, 1957- 2023, 2133 ¶7, 2166-2167 ¶11; 6AA 2429:20-2432:3, 2437 ¶2-2438 ¶10; 5RT 903:21-904:13, 905:7-906:17; 6RT 1205:6-25, 1206:6-1207:21, 1210:9-1211:20, 1212:23-1213:1.

were heard by the potential jurors waiting in the hallway for jury selection to begin. 5RT 903:21-27, 905:9- 906:20, 907:1-909:1.

As a result, Khan's counsel renewed the MTS, which the court set for hearing on November 8, 2019. 5RT 909:2-13, 911:14-18, 912:26-913:21, 915:24-26; 6AA 2325-2425. At that hearing, David became extremely agitated when he learned that the court did not intend to take any action regarding the "gross criminal violation" concerning the exhibit list. 6RT 1216:20-24, 1217:12-1218:28, 1221:10-1225:7. He moved for a mistrial, which was denied, as was Khan's renewed MTS. 6RT 1226:1-11, 1236:16-21, 7AA 2539. *See* §III(B(3), *infra*.

Opening statements took place on November 14, 2019. 7AA 2585; 8RT 1864:1-1883:25, 1888:3-1894:26. In his opening, David described himself as a family man and a Greek Orthodox Christian, and he vigorously denied that he had ever sexually harassed anyone. 8RT 1891:19-1892:4. He also reiterated his belief that Khan, other former employees, and their law firms were conspiring to "criminally extort money" from him with false accusations of sexual harassment. 8RT 1885:15-28, 1890:11-1891:7, 1893:15-17, 1894:24-26. Repeated objections to his opening, including his accusations that Khan had dealt drugs and threatened potential witnesses, were all sustained. 8RT 1890:15-1895:19. David left the courtroom and did not return that day. 7AA 2585.

Citing, *inter alia*, David's opening statement (9RT 2102:17-2104:1), Khan again renewed her MTS. 7AA 2587-2588; 8RT 1915:4-5, 1915:23-1916:27, 1966:21-23; 9RT 2127:4-10, 2129:23-25; *see* §III(B)(3), *infra*. The MTS was denied, but the court revoked David's right of self-representation due to "misconduct which continues to seriously disrupt and obstruct this trial." 7AA 2558; *see* §III(B)(3), *infra*. David's former counsel (hereinafter "defense counsel") continued representing the companies. 7AA 2588.

Khan testified at length about her childhood abuse, prior work history, experiences while employed at David's companies, and current mental state. 8RT 1918:22-1966:3; 9RT 2145:21-2196:4, 2201:10-2238:2, 2239:19-2290:27; 10RT 2414:8-2466:11, 2476:15-2510:14, 2518:1-2554:16.

On cross-examination, Khan was asked, *inter alia*, if she recalled signing an employment agreement containing an acknowledgement in capital letters that she was accepting employment "in an environment where employee may hear, see, or encounter speech or physical contact or other experienced sensations that employee may consider offensive," and she "freely and knowingly consents to be subjected to such speech, conduct, and sensation and hereby waives and releases the producer from

any claims regarding such action.” 10RT 2437:4-17. Khan stated that she did not recall that. 10RT 2437:20.<sup>7</sup>

Khan was also asked about her contacts with Taylor, the former employee with whom David had angrily accused Khan of cooperating in Taylor’s lawsuit against him. 11AA 3587. Khan testified that she did not remember if she and Taylor had discussed a letter that Taylor was drafting to Yelena Calendar about Taylor’s allegations of discrimination and harassment, if Khan had invited Taylor to Khan’s house to work on the letter, if Taylor asked Khan to speak to Taylor’s attorneys to corroborate Taylor’s story, or if Khan had ever done so. 10RT 2480:2-2482, 2498:13-17. The court refused to admit text messages between Khan and Taylor which defense counsel argued would show such contacts. 10RT 2482:14-2484:25; *see* 6AA 2438 ¶11; 7AA 2507-2522.

Khan’s attorneys called several other witnesses. 7AA 2594-2598. During one witness’ testimony, David became extremely agitated, asserting that he was being framed and begging to be allowed to take the stand and clear his name. 11RT 2726:15-2729:14; 7AA 2594. The court excluded him from the courtroom for the rest of the morning and denied David’s motion to

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<sup>7</sup>As stated above (*see* §II(B)(1), *supra*), the agreement itself had been (wrongly) excluded from evidence by *in limine* order. 7AA 2581:14. *See* §III(A)(2), *infra*.

reconsider the revocation of his *pro per* status. 7AA 2594; 11RT 2733:22-2734:20.

Khan's other witnesses included Lauren Reeves, whose own sexual harassment trial against David had just ended. 2RT 3:1-16, 5:1-19; 3RT 303:21-22; 4RT 631:18-19, 641:18-19, 661:8-9. Reeves, also represented by Khan's attorneys, testified that when she had been employed by David's companies after Khan had quit, David had also performed the "mangina" and simulated oral sex with her. 11RT 2803:21-2807:8.

Khan's expert witness, psychologist Anthony Reading, testified that Khan suffered from post-traumatic stress disorder and major depressive disorder. 11RT 2818:22-23, 2860:11-28. He opined that her experiences at David's companies caused the latter and worsened the former, although the PTSD was initially caused by her father's abuse. 11RT 2861:5-14; 12RT 3066:7-3067:26, 3070:27-3071:12, 3097:10-12. Dr. Reading further opined that Khan was unlikely to recover fully from either disorder and probably could no longer work in the entertainment industry due to its "problems, personalities, and lack of control and such." 11RT 2864:17-20, 2869:5-9, 2286:20-2887:2.

All the defense witnesses having been excluded by the pretrial orders, the companies moved for a nonsuit (which was denied) and then rested. 13RT 3318:23-25, 3361:2-3363:15 3370:2-13, 3371:13. The jury was given a special verdict with 31

questions on the battery, sexual battery, and sexual harassment claims; Khan's damages; and whether Khan had proven by clear and convincing evidence that David had engaged in harassing conduct with malice, oppression, or fraud. 7AA 2600-2612.

The jury began deliberating late on November 25, 2019. 7AA 2614. Almost immediately (*id.*), the jurors requested Khan's employment agreement (which the court refused to provide) and asked questions about the agreement's liability waiver (for which the court allowed a read back of testimony). 15RT 3915:6-10, 3931:5-3935:1. *See* §III(D)(3), *infra*.

The next day, the jury continued asking questions, *inter alia*, about how to proceed if jurors were undecided on a particular question ("E.G., Question 9") and how to complete the rest of the special verdict. 7AA 2662-2663; *see* §III(D)(3), *infra*. Since Question 9 asked whether Khan had been employed by Hologram (7AA 2603), Khan voluntarily dismissed Hologram and the court told the jury to skip questions and references to that company. 7AA 2637, 2646, 2663. *See* §III(D)(3), *infra*.

Later on November 26, 2019, the jury returned its special verdict in phase one of the bifurcated trial. 7AA 2637, 2649-2661. It found David liable for battery, sexual battery, and sexual harassment-hostile work environment. 7AA 2650-2651, 2658. On the latter claim, the jury also found FilmOn and ADP (but not Hologram) liable. 7AA 2652-2657.

The jury awarded Khan \$8,250,000 in compensatory damages: \$3,000,000 for past non-economic loss, \$5,000,000 for future non-economic 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. 7AA 2659-2660. It found that Khan had proven by clear and convincing evidence that David had engaged in harassing conduct with malice, oppression, or fraud. 7AA 2661.

Punitive damages were tried on December 2, 2019. 7AA 2664-2665; 16RT 4201-4219; *see* §III(E), *infra*. Neither David nor defense counsel appeared, and no witnesses were called. 7AA 2664-2665; 16RT 4203:21-4216:20. Khan did not introduce any evidence of David's financial condition (16RT 4205:20-4216:20), pursuant to an order relieving her of that obligation because David did not produce financial condition documents as ordered. 16RT 3992:15-20.

After argument by Khan's counsel (16RT 4205:20-4216:20), and a short deliberation, the jury returned a verdict that morning, awarding \$50,000,000 in punitive damages against David. 7AA 2664-2668. *See* §III(E)(3), *infra*. No punitive damages were sought or awarded against FilmOn or ADP. *Id.*; 15RT 3935:25-27; 16RT 4203:27-4204:4.

### 3. Post-Trial Proceedings And Appeals

Judgment was entered on the special verdicts on December 18, 2019 (the “Judgment”). 8AA 2762-2774. In addition to the damages, it awarded costs and attorneys’ fees to Khan in amounts to be determined. *Id.* Khan served notice of entry of the Judgment on January 21, 2020. 8AA 2775-2790.

Thereafter, ADP moved for a new trial on the grounds that the compensatory damages were excessive; that Khan’s counsel had committed misconduct during his closing argument by accusing Defendants of failing to call witnesses or introduce evidence because they knew it would be harmful to them, when they had been barred from doing so by the court’s *in limine* rulings; and that the companies’ motion for nonsuit should have been granted. 8AA 2791-2793; 9AA 3036-3089. The new trial motion was denied on March 27, 2020. 9AA 3303; 10AA 3307-3314.

David appealed from the Judgment on April 27, 2020, Case No. B305849 (the “Main Appeal”). 10AA 3315-3316. The Judgment is appealable and the Main Appeal was timely. CodeCiv.Proc. §904.1(a)(1); Cal.R.Ct. Rules 8.104(a)(1), 8.108(b)(1).

On February 7, 2020, Khan filed a memorandum of costs, seeking \$107,136.53 (8AA 2796-2812), and a motion for attorneys’ fees pursuant to Govt.Code §12965(b), seeking nearly \$3 million

plus the unpaid fees previously assessed for the anti-SLAPP motion and discovery sanctions. 8AA 2813-9AA 3015.

Defendants moved to tax or strike the costs and opposed the fee motion, arguing the fees sought were unreasonable. 9AA 3107-3160; 10AA 3330-3383. On September 1, 2020, the court granted in part both the motion to tax and the motion for fees (the “Order”), awarding Khan costs of \$74,165.60 and fees of \$1,398,885. 10AA 3492-3500. Khan served notice of entry of the Order on September 2, 2020. 10AA 3501-3512.

David appealed the Order on November 2, 2020, Case No. B308727 (the “Fee Appeal”). 11AA 3514-3515. The Order is appealable and the Fee Appeal was timely. CodeCiv.Proc. §904.1(a)(2), Cal.R.Ct. 8.104(a)(1).

By stipulation of the parties and order of this Court, the two appeals were consolidated, under the Fee Appeal’s number, on March 2, 2021.<sup>8</sup>

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<sup>8</sup>An amended judgment, unchanged from the Judgment except for adding the Order’s fees and costs, was entered on February 3, 2021 (the “Amended Judgment”). 11AA 3524-3560. Notice of entry of the Amended Judgment was served on February 4, 2021. 11AA 3531-3532. A separate notice of appeal from the Amended Judgment is unnecessary. *Torres v. City of San Diego*, 154 Cal.App.4th 214, 222 (2007) (amendment adding fees, costs, or interest to judgment does not “substantially change” or supersede original judgment restarting the time for appeal).

### III. Argument

Reversible error occurred throughout the proceedings.

#### A. It Was Error To Grant Khan's Motions *In Limine*.

Khan brought two motions *in limine*: one to bar David from testifying in the defense case ("Motion #1"), and the other to prevent Defendants "from (1) calling any third party witnesses who were undisclosed in discovery and/or (2) from introducing, referencing, implying, commenting and/or attempting to introduce documents not previously produced during discovery" ("Motion #2"). 3AA 1385-1408, 1409-1415. Both were made on the ground that Defendants had not responded to written discovery. 3AA 1386:12-16, 1410:8-14. Motion #1 was also based on David's conduct at his September 18, 2019 deposition. 3AA 1386:7-11.<sup>9</sup>

Over Defendants' opposition (3AA 1419-1425), the court granted Motion #1 and granted Motion #2 "to the extent that evidence was requested and not produced and willfully withheld." 4RT 614:1-3; 4AA 1922. For the latter, the court told Khan's counsel, "If you want me to exclude specific testimony or a

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<sup>9</sup>In the notice of Motion #2, Khan also cited Ev.Code §352 (3AA 1410:5) but neither briefed nor argued that ground. 3AA 1409-1415; 4AA 1715-1717; 4 RT 613:4-28. Accordingly, it has been waived. *Natkin v. California Unemployment Ins. Appeals Board*, 219 Cal.App.4th 997, 1011 (2013) (issues "must actually be litigated in the trial court – not simply mentioned in passing").

specific evidence (sic), I'm going to need to have evidence that you actually asked for it and that it was wilfully (sic) withheld." 4RT 613:16-19.

Khan submitted a proposed order excluding seven witnesses and twenty documents, including Khan's employment agreement. 5AA 1946-1949. All twenty had Bates numbers showing that they had previously been produced. 5AA 1947-1948; 5AA 1940:12-1942:20, 1955 ¶¶2-3; 2RT 8:13-26, 9:2-7, 14:25-15:1. The court signed the proposed order. 7AA 2580-2583.

1. **It Was Error To Bar David From Testifying In His Own Defense.**

Orders *in limine* excluding evidence are reviewed for abuse of discretion. *Piedra v. Dugan*, 123 Cal.App.4th 1483, 1493 (2004). However, courts look to the substance of a motion, not its title. *A.N. v. County of Los Angeles*, 171 Cal.App.4th 1058, 1064 (2009). Although styled as "motions in limine," both Khan's motions were discovery motions, noticed and brought under CodeCiv.Proc. §2030.030. 3AA 1386:2-6, 1410:2-7.

While orders imposing discovery sanctions are also reviewed for abuse of discretion (*Karlsson v. Ford Motor Co.*, 140 Cal.App.4th 1202, 1217 (2006)), that discretion is "not unlimited." *Motown Record Corp. v. Superior Court*, 155 Cal.App.3d 482, 489 (1984) (reversing sanctions).

“Of course, it is a cardinal rule of California discovery practice, probably of constitutional origin, that discovery sanctions must be suitable to enable the party seeking discovery to obtain the objects of discovery; the sanction must not put the prevailing party in a better position than if discovery had been obtained nor may the sanction be a form of punishment.” *County of El Dorado v. Schneider*, 191 Cal.App.3d 1263, 1282 (1987).

Barring David from testifying in his own defense violated these rules. Khan’s counsel stated that the object of David’s deposition was to obtain information about the case from him. 2RT 11:23-26. Barring David from testifying did not enable Khan to obtain that information. *See Motown*, 155 Cal.App.3d at 490 (reversing evidence sanctions “because they are not reasonably calculated to achieve the purpose of effecting compliance with discovery”).

Granting Motion #1 also put Khan in a better position than she would have been had she deposed David and he been allowed to testify. In that event, she would have had to assemble evidence and develop arguments to rebut his testimony and

convince the jury that Khan's version of the facts was more persuasive than his. Instead, with the granting of Motion #1, Khan's version was the only one the jury heard — as Khan's counsel stressed when lambasting David for not testifying (*see* §III(D)(1), *infra*). *See McGinty v. Superior Court*, 26 Cal.App.4th 204, 214 (1994) (reversing evidence sanction because it put defendant in better position than it would have been absent the violation).

Furthermore, discovery sanctions cannot “be a form of punishment.” *Schneider*, 191 Cal.App.3d at 1282. Motion #1 expressly argued that it should be granted to punish David not just for discovery misconduct but sexual harassment. 3AA 1388:8-18 (“Although Defendant David has been sued for sexual harassment several times, he feels invincible. Nothing has been done to correct his unlawful behavior.”) The court did so.

Granting Motion #1 was improper for other reasons. “The discovery statutes evince an incremental approach, starting with monetary sanctions and ending with the ultimate sanction of termination.” *Doppes v. Bentley Motors, Inc.*, 174 Cal.App.4th 967, 992 (2009). More severe sanctions generally should not be imposed until lesser sanctions have been tried and found wanting. *Id.*; *Lopez v. Watchtower Bible & Tract Society etc.*, 246 Cal.App.4th 566, 604-606 (2016) (same; reversing terminating

sanction because lesser sanctions were available and had not been tried).

No prior sanctions had been imposed regarding David's deposition. The MTS was filed before the deposition occurred and so was not based on David's deposition conduct. 3AA 1144-1200, 2RT 2:13-23. And the terminating sanctions were denied anyway — partly because the court found that they would put Khan in a better position than if the discovery had been taken. 3AA 1271.

Not even monetary sanctions were assessed in connection with the deposition. Those were awarded for bringing the MTS (despite its denial) and in connection with written discovery. 3AA 1148:2-14, 1171-1181, 1271. Accordingly, they do not justify granting Motion #1 as a sanction for David's deposition. *See Motown*, 155 Cal.App.3d at 491 (inappropriately severe sanctions regarding document production cannot be based on monetary sanctions for failure to answer interrogatories).

Furthermore, no further effort was made to obtain David's testimony after the September 18 deposition, although more than a month remained until trial. 2RT 6:14-16; 3AA 1266. There was no motion or order to compel further testimony. No discovery referee was appointed. 2RT 18:16-19.<sup>10</sup> Under these

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<sup>10</sup>When Khan's counsel asserted that a discovery referee had been ineffective in another case against David, the court stated that it would not "take into consideration anything that's happened in

circumstances, leaping directly to an order barring David from testifying in his own defense was an abuse of discretion.

2. **It Was Error To Bar David From Calling Witnesses Already Known To Khan And Introducing Documents Already Produced To Her.**

Courts issuing and reviewing discovery orders “should do so with the prodiscovery policies of the statutory scheme firmly in mind.” *Williams v. Superior Court*, 3 Cal.5th 531, 540 (2017). These policies include preventing surprise at trial, educating each side about the strengths and weaknesses of its case, expediting preparation and trial, pinning down testimony for impeachment at trial, and minimizing “the opportunities for fabrication and forgetfulness.” *Puerto v. Superior Court*, 158 Cal.App.4th 1242, 1249 (2008); *Kelly v. New West Federal Savings*, 49 Cal.App.4th 659, 672 (1996).

“A reviewing court may not use the abuse of discretion standard to shield discovery orders that fall short: ‘Any record which indicates a failure to give adequate consideration to these concepts is subject to the attack of abuse of discretion,’” even if

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any other cases.” 2RT 20:15-23, 20:28-21:2. *Cf.* 1AA 199 ¶5, 2AA 522 ¶14, 601 ¶14 (Khan’s counsel admits David’s deposition in another case was successfully completed with discovery referee).

the order “shows no such abuse on its face.” *Williams*, 3 Cal.5th at 540.

Granting Motion #2 was inconsistent with the purposes of the discovery statutes. First, the court excluded seven witnesses on the grounds that Defendants had not identified them in answers to interrogatories as persons with knowledge of the facts. 5AA 1938:10-1940:11, 1947:1-10; 7 AA 2581:1-10.

Providing witnesses’ names and contact information in answers to interrogatories is important because it gives the propounding party “a starting point for future investigations.” *Puerto*, 158 Cal.App.4th at 1250. But Khan did not need interrogatory responses to learn who these witnesses were: she already knew. Khan’s lawyers had just finished trying *Reeves*, in which five of these witnesses testified and there was substantial evidence concerning the others. 7 RT 1509:27-1510:7, 1510:26-1511:5; *see* Motion for Judicial Notice. In fact, Khan’s lawyers argued that *Reeves* was so similar to the present case that *Reeves* should be allowed to testify in *Khan* (which she did). 4RT 631:1-19, 633:15-18; 9RT 2125:13-16; 10RT 2555:18-26, 2558:21-24; 11RT 2802:22-2817:17.

There could be no “surprise” to Khan if the same witnesses who had just testified (or about whom evidence had been introduced) in *Reeves* testified again a few weeks later in *Khan*. 7RT 1509:27-1510:7. Indeed, when defense counsel objected to

Khan's last minute switch in witnesses, calling Reeves instead of the scheduled witness for whom defense counsel had prepared (10RT 2412:9-24), Khan's counsel dismissed her complaints: "She examined Ms. Reeves in the last trial extensively, so it's not like she doesn't know [what Reeves will say.]" 10RT 2413:8-10.

Furthermore, excluding the witnesses put Khan in a better position than she would have been with the interrogatory responses because much of their testimony in *Reeves* was favorable to David. *See* Motion for Judicial Notice. By excluding these witnesses, Khan kept their evidence away from the jury — and reaped the additional benefit of being able to disparage David in closing argument for not calling any witnesses to support his position. *See* §III(D)(1), *infra*.

It was also error to exclude the documents. The court granted Motion #2 conditioned on a showing that Khan had "actually asked for [the discovery] and it was wilfully (sic) withheld." 4RT 613:18-19. It is undisputed that all the excluded documents had already been produced to Khan. 5AA 1947-1948; 5AA 1940:12-1942:20, 1955 ¶¶2-3, 5AA 2119-2120 ¶11; 2RT 8:13-26, 9:2-7, 14:25-15:1; 6RT 1324:11-17; 7RT 1509:25-26. Thus, the court's own condition for granting Motion #2 was not met. Nevertheless, the court found that the documents had been "willfully withheld" (7RT 1515:5-7) — a finding contrary to the undisputed record.

The court acknowledged that the documents had been produced. 6RT 1324:18-20; 7RT 1509:22-24. However, the court ruled that they still should be excluded because they had been produced some months after their production had been ordered. 6RT 1324:18-20; 7RT 1509:22-24, 1515:8-14.

The documents' delayed production does not justify their exclusion. *See Motown*, 155 Cal.App.3d at 490-491 (plaintiffs' delay in providing privilege log did not warrant evidence sanctions when defendant had fully complied with order compelling production by the time of sanctions hearing and there was no prejudice to plaintiffs). These documents were produced to Khan in September (3AA 1270; 5AA 1955 ¶2), before Motion #2 had been filed and more than a month before trial began (3AA 1266, 1409-1415). *See Lee v. Lee*, 175 Cal.App.4th 1553, 1558 (2009) (promissory notes properly admitted, although produced only five days before trial).

Nor did Khan claim (or demonstrate) any prejudice from the delayed production. *Cf. Sauer v. Superior Court*, 195 Cal.App.3d 213, 2130 (1987) (sanctions warranted where production delayed until after trial scheduled to start and other party prejudiced by late tender). Excluding the documents was an abuse of discretion.

### **3. Granting Khan's Motions *In Limine* Was Reversible Error.**

When “error results in the denial of a fair hearing, the error is reversible per se. Denying a party the right to testify or to offer evidence is reversible per se.” *Kelly*, 49 Cal.App.4th at 677 (orders *in limine* wrongly excluded evidence based on plaintiffs’ discovery responses; nonsuit reversed). *See also Sinaiko v. Superior Court*, 122 Cal.App.4th 1133, 1142 (2004) (improperly excluding witnesses denied petitioner “the opportunity to present his defense” and was reversible per se).

Granting Khan’s motions denied David “the opportunity to present his defense.” He was prevented from testifying in his own defense; calling key witnesses whose prior testimony in *Reeves* had supported his denials of sexual harassment; and even introducing documents that had already been produced to Khan. *See* §§III(A)(1)-(2), *supra*. These orders, especially when combined with the rulings limiting his ability to cross-examine Khan’s witnesses and ultimately revoking his right of self-representation (*see* §§III(B)(2)-(3), *infra*), amounted to a denial of “the opportunity to present his defense” and reversible error per se.

Even if a showing of prejudice were required, it exists here. This was a classic “he said, she said” case. 8RT 1881:22, 14RT 3667:24-3668:8. But because of the *in limine* orders, the jury

heard only what “she said.” Khan’s counsel hammered on this point in closing, berating David for not testifying and not calling witnesses who might have supported his version of the case. 14RT 3667:24-3668:4, 3730:20-3731:9, 3732:17-25; *see* §III(D)(1), *infra*.

In his closing, Khan’s counsel also mocked Defendants for not introducing Khan’s employment agreement — excluded by Motion #2 (7AA 2581:14, “Ex. 502”) — intimating that Defendants must have withheld it because it was damaging to them. 14RT 3733:9-21. This clearly resonated with the jury, because it immediately asked multiple questions about the agreement. 15RT 3912:25-3913:8. None of these questions was satisfactorily answered by the court, leaving intact the insinuations by Khan’s counsel. *See* §III(D)(3), *infra*.

Had David been permitted to present a defense, it is “reasonably probable” that the result would have been more favorable to him than a \$60 million adverse judgment. *Diamond v. Reshko*, 239 Cal.App.4th 828, 849-850 (2015) (improperly excluded evidence prevented jury from assessing witnesses’ credibility and evaluating respondents’ arguments; judgment reversed).

**B. It Was Reversible Error To Repeatedly Restrict  
And Then Revoke David’s Right Of Self-  
Representation.**

“[T]he right to represent oneself in civil proceedings conducted in this state . . . is firmly embedded in California jurisprudence. The right is necessary to protect and ensure the free exercise of express constitutional rights, including the right to acquire and protect property and to access the courts.” *Baba v. Board of Supervisors*, 124 Cal.App.4th 504, 526 (2004). This right “serves a crucial function under California law” and its deprivation “can create constitutional problems.” *Id.* at 525.

David appeared for trial *in pro per*. 4RT 601:25; 4AA 1934-1935. The court was informed that David had previously represented himself successfully in *Taylor*, obtaining a hung jury of 8 to 4 in his favor. 4RT 660:18-20, 8RT 1887:14-19. Nevertheless, the court began restricting David’s right of self-representation even before jury selection began. First, the court ordered David to submit in advance his voir dire questions, then his cross-examination of Khan, then his cross-examination of all Khan’s witnesses. 6RT 1241:20-24, 1242:1-8-12,18-19; 8RT 1887:10-13. Finally the court revoked entirely David’s right of self-representation. 9RT 2132:3-10; 7AA 2588.

David unsuccessfully objected to all these rulings. 6RT 1241:25-28; 8RT 1887:18-21; 9RT 2131:18-2132:2; 10RT 2412:2-4; 11RT 2734:13-23.

1. **It Was Reversible Error To Require Advance Submission Of David's Voir Dire Questions.**

Selecting a jury is “a fluid process” (*People v. Lenix*, 44 Cal.4th 602, 623 (2008)), as David argued. 6RT 1241:25-28. Thus, CodeCiv.Proc. §222.5(b)(1) provides in pertinent part: “The trial judge shall permit counsel to conduct voir dire examination without requiring prior submission of the questions unless a particular counsel has engaged in improper questioning.” The statute applies to parties in *pro per*,<sup>11</sup> and its only exception is inapplicable here. David had not “engaged in improper questioning” of any jurors; jury selection had not even begun. 6RT 1241:10-24, 1244:1-15.

A trial court’s conduct of voir dire is usually reviewed for abuse of discretion. *Alcazar v. Los Angeles Unified School District*, 29 Cal.App.5th 86, 94 (2018). However, because this restriction on David’s voir dire violated a statute, it is *a fortiori*

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<sup>11</sup>“Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation.” *Rappleyea v. Campbell*, 8 Cal.4th 975, 984-985 (1994).

an abuse of discretion. *Horsford Trustees of California State University*, 132 Cal.App.4th 359, 393-394 (2005).

A *pro per* litigant is entitled to “the same treatment as if represented by an attorney — no different, no better, no worse.” *Nuno v. California State University, Bakersfield*, 47 Cal.App.5th 799, 811 (2020). David’s treatment was different **and** worse. No other party’s voir dire was restricted, and the court’s violation of §222.5(b)(1) prevented David from realistically or meaningfully participating in selecting the jury which ultimately awarded nearly \$60 million against him.

The court’s ruling was a deprivation of due process, denying David his constitutional and statutory right to a fair trial by a jury of his peers (*Shaw v. Superior Court*, 2 Cal.5th 983, 993 (2017)), and constituting structural error requiring automatic reversal (*Conservatorship of Maria B.*, 218 Cal.App.4th 514, 534 (2013)).

**2. It Was Reversible Error To Require Advance Submission Of David’s Cross-Examination.**

“Because it relates to fundamental fairness of the proceedings, cross-examination is said to represent an absolute right, not merely a privilege.” *Fost v. Superior Court*, 80 Cal.App.4th 724, 733 (2000). This right “is fundamental, and its denial or undue restriction is reversible error.” *Fremont*

*Indemnity Co. v. Workers' Comp. Appeals Board*, 153 Cal.App.3d 965, 971 (1984).

Cross-examination "is necessarily exploratory," requiring "reasonable latitude" to the cross-examiner "even though he is unable to state to the court what facts a reasonable cross-examination might develop." *Fost*, 80 Cal.App.4th at 733.<sup>12</sup> Thus, while a court may control the "mode of interrogation of a witness," that control must be "reasonable." Ev.Code §765(a). *See, e.g., City of Ontario v. Kelber*, 24 Cal.App.3d 959, 972 (1972) (after counsel asked same question six ways, trial court properly told counsel to move on); *Flagg v. Seng*, 16 Cal.App.2d 545, 552 (1936) (trial court reasonably restricted cross-examination which exceeded 1000 pages).

This is not a case in which repetitive or protracted questioning was eventually curtailed. The court required pre-clearance of David's cross-examination before he had asked a single question. 6RT 1242:8-12,18-19; 8RT 1887:10-13. Moreover, the court's pre-clearance requirement was more onerous than restrictions upheld as "reasonable." The court restricted David's cross-examination of all witnesses. 8RT 1887:10-13. *Cf. Kelber*, 24 Cal.App.3d at 972 (upholding restriction of cross-examination of one expert). It restricted David's cross-examination on all subjects. 8RT 1887:10-13. *Cf.*

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<sup>12</sup>David made this point, too. 8 RT 1887:20-21.

*Kelber*, 24 Cal.App.3d at 972 (“Counsel was not precluded from further cross-examination of the witness, only from repetitious questioning on one particular point”). The court restricted only David’s cross-examination. 8RT 1887:10-13. *Cf. People v. ConAgra Grocery Products Co.*, 17 Cal.App.5th 51, 146 (2017) (upholding prohibition on recross by any party).

A trial court’s exercise of its authority under §765(a) is reviewed for abuse of discretion. *People v. Chenault*, 224 Cal.App.4th 1503, 1514 (2014). Discretion was abused here. A trial court may not use its authority to control the proceedings to destroy a party’s evidentiary presentation. *Monroy v. City of Los Angeles*, 175 Cal.App.4th 248, 266-267 (2008). “Due process includes the right to be heard, adduce testimony from witnesses, and to cross-examine and confront witnesses.” *In re Armando L.*, 1 Cal.App.5th 606, 620 (2000). The court deprived David of all three. See §§III(A)(1)-(2), (B)(2), *supra*; §III(B)(3), *infra*.<sup>13</sup>

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<sup>13</sup>David is not required to show that the improper restriction of his cross-examination was prejudicial. *Fost*, 80 Cal.App.4th at 734. However, a defendant’s inability to effectively cross-examine a single witness against him surely qualifies as prejudicial. *Id.* at 733; *Fremont Indemnity*, 153 Cal.App.3d at 971.

### 3. It Was Reversible Error To Revoke David's Right Of Self-Representation.

The revocation of a party's right of self-representation for disruptive or obstructionist trial conduct is reviewed for abuse of discretion. *People v. Carson*, 35 Cal.4th 1, 12 (2005). "When determining whether termination is necessary and appropriate, the trial court should consider several factors in addition to the nature of the misconduct and its impact on the trial proceedings." *Id.* at 10. These include whether the defendant was on notice that particular misconduct would result in the termination of his *pro per* status and whether lesser, alternative sanctions were available and suitable. *Id.* at 11-12.

"Most critically, a reviewing court will need to know the precise misconduct on which the trial court based the decision to terminate. [Citation.] The court should also explain how the misconduct threatened to impair the core integrity of the trial." *Carson*, 35 Cal.4th at 11.

The court revoked David's *pro per* status on November 15, 2019 for "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." 9RT 2132:3-10. The court neither specified the conduct nor explained how that conduct threatened the trial's "core integrity." *Carson*, 35 Cal.4th at 11.

The November 15 minute order repeated the same formulation, without specifying either the conduct or the threat to the trial’s “core integrity.” 7AA 2587-2588. It stated only that revocation was ordered “for the reasons stated herein and in the record which is incorporated herein by this reference” (*id.*) – a legally inadequate reference since the record did not contain the required information.

The minute order continued: “Mr. David has stated his intention to continue this conduct despite numerous orders, admonitions and warnings, and the imposition of monetary and evidentiary sanctions.” 7AA 2588. This still does not specify what “conduct” justified the revocation. Without that information, it is impossible to tell which “orders” David allegedly ignored – or whether he did so at all.

For example, shortly before the court revoked David’s *pro per* status, it viewed a video taken by David, partly in his car and partly outside the courtroom, concerning his opening statement. 7AA 2587; 9RT 2104:9-2117:5. Afterwards, the court told David that it was “illegal to record anywhere in the courthouse.” 9RT 2117:19-20.

When David protested that he had been told by other judges that this was not the case (9RT 2117:21-24, 2119:26-2120:4), the court replied, “And I also issued an order anywhere in the courthouse.” 9RT 2117:27-28. It had not. It had restricted

photography only inside the courtroom (4AA 1703 ¶2), an order David had not violated. 9RT 2104:9-14 2117:25-26, 2119:6, 16-18; 7AA 2587.<sup>14</sup>

The prior “admonitions and warnings” cited in the minute order do not support revocation. A defendant must be warned that specified conduct may lead to the loss of *pro per* status. *Carson*, 35 Cal.4th at 10, 12; *People v. Becerra*, 63 Cal.4th 511, 518 (2016) (improper revocation of *pro per* status required “reversal of the judgment in its entirety.”)

The November 15 hearing at which David’s *pro per* status was revoked was noticed as a hearing on Khan’s renewed MTS. 7AA 2587-2588; 8RT 1915:4-5, 1915:23-1916:27, 1966:21-23; 9RT 2127:4-10, 2129:23-25. Neither the renewed nor original MTS sought revocation of David’s *pro per* status,<sup>15</sup> and hence the oppositions did not address that possibility. 3AA 1207-1213; 6AA 2426-2436).

Furthermore, the MTS were all *denied*, including the one on November 15. 3AA 1269; 7AA 2539, 2588; 6 RT 1236:16-21. The court denied terminating sanctions because it was (rightly) concerned about David’s constitutional rights of due process and

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<sup>14</sup>The court later acknowledged that filming is permitted in designated areas of the courthouse. 9RT 2118:25-2119:2, 19-20.

<sup>15</sup>3AA 1144-1200; 6AA 2325-2327; 5RT 909:4-13, 911:15-18, 912:26-27, 913:19-21, 915:24-26; 6RT 1220:11-16, 1236:16-21; 8RT 1915:4-5; 9RT 2101-2131.

access to the courts (2RT 4:2-8; 6RT 1236:13-21, 1237:25-28; 9RT 2130:27-2131:1, 2135:17-19) and because it took “very seriously Mr. David’s representation to the court this morning that his intention is to try to comply with the court’s conduct orders going forward.” 6RT 1236:9-21. Those considerations should have also precluded revocation of David’s *pro per* status which — especially when combined with the prior restrictions on David’s cross-examination, testifying and introducing other evidence — amounted to the terminating sanctions the court had found were unwarranted.

Because David did not have proper notice that his *pro per* status could be revoked at the November 15 hearing, the revocation should be reversed. That inadequate notice cannot be cured by any earlier “admonitions and warnings,” 7AA 2588, since those were also inadequate. Some did not specify the objectionable conduct, or the consequences, or both. *See, e.g.*, 4RT 627:19-21 (“there are going to be consequences if you are not able to follow the rules of decorum”), 639:1-9 (“if you don’t do it [maintain an element of decorum], there will be consequences”), 646:15-22 (David must “act in a way that’s respectful and in a way that - - that complies with the local rules and the California Rules of Court”).

Some admonished David for certain conduct (interrupting, profanity, rolling his eyes, throwing up his arms) but did not

specify the consequences. 9RT 2120:24-28, 2124:10-13. Some identified possible consequences, such as excluding David from the courtroom (4RT 639:12-14, 6RT 1225:24-25, 1237:22-24), but not revoking David's *pro per* status. *See also* 4RT 646:23-28 (call in sheriff's deputies, "talk to you about sanctions"); 6RT 1319:16-21 (reduce David's time for examination).

On November 8, the court first mentioned the possibility of revoking David's *pro per* status and identified in more detail David's alleged misconduct (*e.g.*, his behavior at his deposition, appearing late in court or leaving early, shouting in the courtroom and in the hallway in front of prospective jurors, gesturing at and directly addressing Khan's counsel, accusing counsel and Khan of unethical conduct). 6RT 1225:22-23, 1234:14-1237:13.

These comments do not support the revocation. First, the court told David that it would hold a hearing on revocation before making such an order. 6RT 1237:2-9. The November 15 proceeding was, and was noticed as, a hearing on Khan's MTS, not to revoke David's *pro per* status. 7AA 2587, 2588; 8RT 1915:4-5, 1915:23-1916:27, 1966:21-23; 9RT 2127:4-10, 2129:23-25.

Second, even if any of the prior "admonitions and warnings" were sufficiently specific and complete, which David disputes, revocation was still an abuse of discretion because the

court did not first impose lesser, alternative sanctions. *Carson*, 35 Cal.4th at 11-12; *Becerra*, 63 Cal.4th at 518. For example, the court raised the possibility of temporarily barring David from the courtroom. 4RT 639:12-14, 646:28-647:1; 6RT 1225:24-25, 1237:22-24. But the court did not do so — until after it had already revoked David’s *pro per* status. *Cf.* 9RT 2132:3-10; 11RT 2733:22-2734:9, 7AA 2594.

Furthermore, the Trial Conduct Order which the court cited to David (4RT 639:28-640:6; 6RT 1218:16-20, 1220:11-22; 8RT 1897:17-22) provides that its violation is punishable by monetary sanctions pursuant to CodeCiv.Proc. §177.5. 4AA 1704:12-16. No such sanctions were imposed.

The prior “monetary and evidentiary sanctions” cited by the court (7AA 2588; 6RT 1235:7-8) do not support revocation because they were not imposed for the trial conduct at issue. The evidentiary sanctions (wrongly) imposed *in limine* were for discovery misconduct. *See* §§III(A)(1)-(2), *supra*). So were the prior monetary sanctions (and in connection with the anti-SLAPP motion).<sup>16</sup> The court acknowledged that David’s trial conduct, and the discovery misconduct giving rise to the MTS, are “two different issues.” 5RT 913:23-27.

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<sup>16</sup>1AA 168-170; 3AA 1148:2-14, 1171-1181, 1269; 4RT 605:18-24, 607:7-16, 613:2-614:3; 13RT 3313:1-4.

Improperly revoking *pro per* status has been held to be reversible error per se. *Becerra*, 63 Cal.4th at 520. The cases where the party was required to show prejudice, and failed to do so, are distinguishable. Thus, there may be no prejudice where defendant admits committing the offenses and concedes that “he had not done well” while previously representing himself. *People v. Fraser*, 138 Cal.App.4th 1430, 1450-1451 (2006). David vigorously denied sexually harassing anyone (8RT 1891:19-1892:4; 9RT 2128:10-2129:3) and had obtained a hung jury in his favor when representing himself in *Taylor* (4RT 660:18-20, 8RT 1887:14-19).

Alternatively, there may be no prejudice if the party can still present his/her case by testifying. *In re A.M.*, 164 Cal.App.4th 914, 928-929 (2008). David had no other way to present his case. The court had already prohibited him from testifying in his own defense, calling other witnesses, and introducing documents, and had made effective cross-examination impossible. See §§III(A)(1)-(2), (B)(2), *supra*.

David’s only remaining way to present his case was to act as his own attorney (*e.g.*, in closing argument). See *U.S. v. Mack*, 362 F.3d 597, 602 (9th Cir. 2004) (“as an aspect of termination of his self-representation,” defendant was “denied the right to present any closing argument at all”; termination was structural error requiring reversal). Revoking David’s *pro per* status was

the final nail in the coffin. It turned the trial from a contested proceeding into little more than a default prove-up, resulting in a judgment of nearly \$60 million.

**C. It Was Reversible Error To Admit Expert Testimony Of Uncorroborated Case-Specific Facts In Violation Of *Sanchez*.**

The court also erroneously admitted testimony by Khan’s expert, psychologist Anthony Reading, in violation of *People v. Sanchez*, 63 Cal.4th 665 (2016). While evidentiary rulings are normally reviewed for abuse of discretion, abuse exists when, as here, “the trial court makes an error of law.” *People v. Yates*, 25 Cal.App.4th 474, 484-485 (2018).

*Sanchez* holds: “When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert’s opinion, the statements are hearsay.” *Id.* at 686. “Any expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so. . . . What an expert *cannot* do is relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception.” *Id.* (italics in original).

Dr. Reading repeatedly crossed the line from permissible opinion to inadmissible case-specific facts — so often that after defense counsel’s initial objections were all overruled, counsel

was granted a continuing objection (also overruled) on the grounds of hearsay and *Sanchez*. 11RT 2835:21-24, 2836:28-2837:2, 2837:19-23, 2846:25-27, 2872:12-14; 12RT 3011:28-3012:5, 3121:11-14.

One defendant's objection preserves the issue for appeal by a co-defendant, even if the latter did not join the objection or interpose his own, where doing so would have been futile. *People v. Gamache*, 48 Cal.4th 347, 373 (2010) (where trial court overruled co-defendant's objection before appellant could join, "it would have been futile to make the same objection that had just been overruled.") It would have been futile for David to object to Dr. Reading's improper testimony, even if the court had not already (wrongly) revoked David's *pro per* status. Defense counsel objected repeatedly and every objection was overruled immediately. Thus, the *Sanchez* issue is properly before the Court.

Dr. Reading testified, *inter alia*, that "Mr. David acknowledged much of this conduct, so there's confirmation that much of what she claimed occurred - -." 11RT 2872:10-11.<sup>17</sup> This is a classic *Sanchez* violation, a case-specific fact asserted in a

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<sup>17</sup>Even with the continuing objection, defense counsel objected specifically to this statement and was again immediately overruled. 11RT 2872:12-14.

hearsay statement related by an expert as true. 63 Cal.4th at 686.

Neither of the exceptions in *Sanchez* applies to this statement. It was not “independently proven by competent evidence.” *Id.* Neither Khan nor anyone else testified to this alleged admission, and David vigorously denied that he sexually harassed anyone (8RT 1891:19-1892:1). *See Bennett v. Superior Court*, 39 Cal.App.5th 862, 879-881, 884-885 (2019) (experts’ testimony of assault inadmissible where defendant denied assault and experts lacked personal knowledge of incident).

Nor was Dr. Reading’s statement admissible under a hearsay exception. *Sanchez*, 68 Cal.4th at 686. The statement is not a party admission under Ev.Code §1220 because David’s purported acknowledgment was not made to Dr. Reading. *Cf. Yates*, 25 Cal.App.5th at 485 (under *Sanchez*, experts could testify to defendant’s statements, made directly to them, as party admissions).

Dr. Reading’s knowledge of the case came through Khan. 12RT 3022:21-3022:13, 3040:21-3041:2, 3046:3-10, 3059:1-7, 3071:13-21. Dr. Reading testifying to what Khan allegedly told him that David allegedly told her is double hearsay, inadmissible unless there is an exception for each level of hearsay. *Sanchez*, 63 Cal.4th at 674-675. There is no exception for the second level

of hearsay (Khan to Dr. Reading), making Dr. Reading's statement inadmissible.

Prejudice from testimony admitted in violation of *Sanchez* requires reversal if it is reasonably probable that a result more favorable to the appellant would have been reached absent the error. *People v. Roa*, 11 Cal.App.5th 428, 454-455 (2017) (finding prejudice; experts improperly testified about sexual assaults from uncorroborated reports not admitted into evidence); *People v. Burroughs*, 6 Cal.App.5th 378, 412 (2016) (same; experts' improper testimony permeated the whole trial "and strengthened crucial aspects of the People's case.")

Dr. Reading's (false) statement that David had acknowledged the sexual harassment, thereby "confirming" Khan's account, more than "strengthened" Khan's case — it poisoned the whole trial. This was a classic "he said, she said" case. 8RT 1881:22, 14RT 3667:24-3668:8. Dr. Reading turned it into a "she said, **and he agreed with her**" case. Nor was Dr. Reading just any witness: he was an expert. *People v. Bledsoe*, 36 Cal.3d 236, 251 (1984) (juries may be unduly influenced by testimony of experts who are clothed with "an aura of special reliability and trustworthiness").

The prejudice was exacerbated because David was barred from taking the stand to deny the alleged admission. *Cf. Conservatorship of K.W.*, 13 Cal.App.5th 1274, 1286 (2017) (no

prejudice from *Sanchez* violation because petitioner testified, denying and explaining incidents described by expert; jury heard the disputed evidence and could assess petitioner's credibility).

It is "reasonably probable" that a result more favorable to David than a \$60 million judgment would have been reached, absent a distinguished expert telling the jury that David had admitted the conduct for which he was being sued.

**D. Khan's Counsel Committed Prejudicial Misconduct In His Closing Argument In The Trial's First Phase.**

Khan's counsel began his closing on liability by emphasizing David's wealth, telling the jury that David didn't care about the sexual harassment laws because "he thinks, perhaps, because he has money, he can do whatever he wants, to anyone he wants, whenever he wants, to whoever he wants." 14RT 3666:25-3667:1.

Next, Khan's counsel told the jury that this was not actually "a classic he said/she said case" because:

"First of all, we didn't hear him say anything. We didn't hear one bit of evidence from anybody on behalf of the defense, let alone from Mr. David to deny that he engaged in any of the conduct at issue. There was no defense. There was

(sic) no witnesses. There was no ‘he said.’” 14RT 3667:24-3668:4.

After defense counsel argued in her closing that Khan’s case was based entirely on Khan’s own testimony and that of biased witnesses who were not credible (14RT 3713:5-22, 3730:8-11), Khan’s counsel declared:

“I thought I was in *Alice in Wonderland*. Like, we didn’t call these witnesses? What about the defense? Where are they? Are they sleeping? What about them calling Mr. Shoefield, them calling Ms. Calendar, them calling in witnesses to say that this didn’t happen? We didn’t call them and therefore what? . . . This is the most false presentation you can imagine.” 14RT 3730:20-3731:9.

Khan’s counsel continued:

“Where is their evidence? She’s talking about our credibility. Where’s their credibility? Not one witness. Not one person to come in here and tell us that there was something different going on at that company.

“It’s remarkable, remarkable, that, you know, this harass poster - - we didn’t bring in those two women, Alli Botto and the other woman. What about the defense? They could have brought them in to say it was some kind of joke.” 14RT 3732:17-25.

Khan’s counsel emphasized Defendants’ failure to introduce evidence supporting their case:

“They’re the employer. [Defense counsel is] talking about an employment agreement. Doesn’t the employer have the records of the employment agreement? Don’t they have the records pertaining to my client’s employment? Don’t they have the ability to bring in documents? No.

...

“They’re the ones that have the power to produce better evidence. [¶] They’re the ones that didn’t produce one piece of evidence for this jury’s consideration.”

14RT 3733:9-21.

Khan's counsel also "suggested" sums that the jury should award as damages. 14RT 3701:14-3702:26. In her closing, defense counsel did not address the specific figures, disputing that David had caused *any* of Khan's alleged damages. 14RT 3711:25-3712:15. In rebuttal, Khan's counsel claimed that "counsel didn't say one word on the damages." 14RT 3735:25-26.

"Not one word to suggest that the amount that I suggested was not the right amount. She didn't say one word about it. . . . She didn't say, well, I'm too big. . . . I think that's an admission of . . . that the damages we are asking for is the amount that makes sense." 14RT 3735:26-3736:7.

Defense counsel objected to opposing counsel's comments on both damages and Defendants' alleged failure to introduce evidence. 14RT 3731:5, 3732:26-27, 3733:15-16, 3736:5. The objections were either overruled entirely (14RT 3733:17, 3736:8) or sustained only as to the most inflammatory phrases. 14 RT 3732:6-9 ("most false presentation"); 3732:21-28 ("some kind of joke"). Defense counsel also moved for a mistrial, and a new trial, based on the misconduct by Khan's counsel during closing. 15RT 3904:12-3912:9; 9AA 3044:1-3046:9. Both motions were denied. 15RT 3912:13; 7AA 2636; 9AA 3303. Accordingly,

additional objections or motions by David would have been futile, preserving the issue for appeal. *See* §III(C), *supra*.

1. **Khan’s Counsel Committed Misconduct By Repeatedly Referring to Excluded Evidence.**

An appellate court reviews the record independently to determine whether there has been prejudicial attorney misconduct. *City of Los Angeles v. Decker*, 18 Cal.3d 860, 871-872 (1977) (reversing judgment).

It is misconduct to refer to matters excluded from evidence. *McCoy v. Pacific Maritime Association*, 216 Cal.App.4th 283, 304-305 (2013) (in sexual harassment case, repeated references by plaintiff’s attorney to matters excluded *in limine* was misconduct warranting new trial). Just this week, Division Seven of this Court affirmed an order for a new trial because counsel had repeatedly referred in closing to matters which had been excluded *in limine* – at counsel’s request. *Jackson v. Park*, 2021 W.L. 3162526, at \*\*1-2, \_\_ Cal.Rptr.3d \_\_ (July 27, 2021).

In *Jackson*, defendant Park’s counsel obtained orders *in limine* excluding evidence of Park’s blood alcohol concentration (“BAC”) and DUI arrest and conviction in connection with the subject accident. *Id.* at \*\*1-2. During his trial testimony, while answering other questions, the arresting officer referred in passing to Park’s arrest and BAC. *Id.* at \*2. The trial court

admonished the jury that there was “no evidence” of an arrest or defendant’s BAC “and there will be none.” *Id.* at \*3.

In his closing, Park’s counsel repeatedly told the jury that there was “zero evidence” of an arrest, conviction, or defendant’s BAC and Park had just made a “mistake” when hitting plaintiff. “But trying to take that act and trying to say alcohol was the reason why, where’s the evidence that alcohol caused that? There’s no evidence that alcohol caused that.” *Id.* at \*5.

Plaintiff moved for a new trial, arguing that defense counsel had engaged in prejudicial misconduct during closing argument by “exploiting” the court’s *in limine* order “to suggest falsely that Park was not intoxicated during the collision and was not arrested after the collision.” *Id.* at \*8.

The trial court agreed. *Id.* at \*9. Park’s counsel had “flipped it [the *in limine* order] around and basically used it as a sword to say . . . there was no DUI, there was no abnormal BAC, or there was no conviction.” *Id.* “The court explained that when ‘a party has been precluded from offering evidence because of an evidentiary ruling finding it inadmissible, the party asserting the evidentiary sanction should not be permitted to use the court’s ruling as a basis to make an argument that implies that the evidence is much more favorable to the asserting party than it actually is.’” *Id.*

This Court affirmed. “Defense counsel’s conduct during this whole sorry episode was improper.” *Id.* at \*12. “Evidence of Park’s arrest, conviction, and BAC level existed; the trial court had excluded the evidence at Park’s behest. It is improper for counsel to assert or imply facts not in evidence that counsel knows excluded evidence could refute.” *Id.* at \*11.

Khan’s counsel also “flipped around” the *in limine* orders he had obtained. In closing, he excoriated David for not testifying, and Defendants for not calling Calendar and Botto as witnesses and not producing Khan’s employment agreement. 14RT 3667:24-3668:4, 3730:20-25, 3732:21-25, 3733:6-19. As in *Jackson*, that evidence existed; it had been excluded at Khan’s behest.

And as in *Jackson*, Khan’s counsel drew false and impermissible inferences from the evidence he had caused to be excluded. He told the jury that Defendants, as Khan’s employer, had the “ability” and “power” to produce the agreement (14RT 3733:6-19) when they did not, because of the order *in limine*. That misstatement was compounded by drawing the improper inference that because Defendants did not produce the agreement, their credibility should be distrusted. 14RT 3733:6-19. *Cf. Jackson* at \*12 (“The common theme of defense counsel’s improper arguments was that Jackson was untruthful — that he lied about Park’s intoxication . . .”).

It is misconduct to argue inferences unsupported by the record. *People v. Hill*, 17 Cal.4th 800, 829 (1998); *Jackson* at \*1. There was no support for the inference that Defendants could not be trusted because they did not exercise their “ability” and “power” to produce the employment agreement. 14RT 3733:6-19. Defendants did not withhold the agreement as a matter of litigation strategy. They were barred from introducing it by an (erroneous) court order, obtained by Khan’s counsel. *Hansen v. Warco Steel Corp.*, 237 Cal.App.2d 870, 877-878 (1965) (counsel guilty of “serious misconduct” in arguing importance of excluded report and asking jury to draw adverse inference from its unavailability).

The references by Khan’s counsel to excluded evidence, and the inferences he drew from it, constitute reversible misconduct. *Jackson* at \*1; *Martinez v. Department of Transportation*, 238 Cal.App.4th 559, 561, 567, 570 (2015) (reversing judgment and referring counsel to State Bar for repeatedly violating *in limine* orders).

**2. Khan’s Counsel Committed Numerous Other Acts Of Misconduct In His Closing.**

Khan’s counsel also committed misconduct by telling the jury that it should consider defense counsel’s silence as an admission that the damages he suggested “is the amount that makes sense.” 14RT 3735:25-3736:7.

“An attorney is permitted to argue all reasonable inferences **from the evidence.**” *Cassim v. Allstate Ins. Co.*, 33 Cal.4th 780, 795 (2004) (internal quotation marks omitted, emphasis added). A “defense counsel’s silence is not evidence.” *People v. Blanco*, 61 Cal.App.5th 278, 288 (2021). “[I]t is misconduct to argue matters not in evidence.” *Brokopp v. Ford*, 71 Cal.App.3d 841, 861-862 (1977).

Additionally, it was misconduct to tell the jury that David did not care about the sexual harassment laws because he was so rich. 14RT 3666:25-3667:1. Evidence of a defendant’s wealth “is ordinarily inadmissible either to prove liability or an award of damages and an argument to the jury regarding the wealth of the defendant will be reversible error.” *Love v. Wolf*, 226 Cal.App.2d 378, 388 (1964). Even when the case involves punitive damages, it is misconduct to argue the defendant’s wealth for other purposes. *Id.* Counsel’s improper argument about David’s wealth occurred in the first phase of the trial, which did not involve punitive damages — as he acknowledged. 14RT 3666:25-3667:1, 3702:27-3703:4.

Finally, it was misconduct to accuse defense counsel of putting on a “false presentation.” 14RT 3731:3-4. Making derogatory remarks about opposing counsel is misconduct. *People v. Seumanu*, 61 Cal.4th 1293, 1337-1338 (2015) (asserting that “defense counsel presented a ‘sham’ defense”); *Sabella v.*

*Southern Pacific Co.*, 70 Cal.2d 311, 325 (1969) (accusing defense counsel of withholding evidence). The accusation also violated the court’s Trial Conduct Order (4AA 1704 ¶11) and applicable guidelines for attorney conduct.<sup>18</sup>

### **3. The Attorney Misconduct Was Prejudicial.**

In determining whether attorney misconduct was prejudicial, the reviewing court considers: “(1) the nature and seriousness of the misconduct; (2) the general atmosphere, including the judge’s control of the trial; (3) the likelihood of actual prejudice on the jury; and (4) the efficacy of objections or admonitions under all the circumstances.” *Martinez*, 238 Cal.App.4th at 568.

As shown above, the misconduct was serious. It was also recurrent, heightening the prejudice. *Id.* at 568 (repeated references to excluded evidence was prejudicial); *Simmons v. Southern Pacific Transportation Co.*, 62 Cal.App.3d 341, 355 (1976) (same; “repeated instances of misconduct”).

Denouncing David’s failure to testify in his own defense was especially damaging because the court had already improperly allowed Dr. Reading to testify that David had “acknowledged much of this conduct.” 11RT 2872:10-11; *see*

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<sup>18</sup>See State Bar’s California Attorney Guidelines of Civility and Professionalism, §§4(c), (f); Appendix 3.A to Los Angeles Superior Court Local Rules, §(l)(2).

§III(C), *supra*. The combination of improper closing argument by Khan’s counsel and improper testimony by Khan’s expert was deeply prejudicial. The jury was told that David had previously admitted sexual harassment **and** reminded that he had not taken the stand to deny either the alleged misconduct or the alleged admission – without being told that David was unable to testify because the court had (wrongly) precluded him from doing so. *See* §III(A)(1), *supra*.

Each instance of attorney misconduct was serious enough. Cumulatively, they clearly satisfy the first *Martinez* factor. *See Simmons*, 62 Cal.App.3d at 355 (“totality” of counsel’s misconduct was prejudicial; judgment reversed).

Second, it is likely that this serious and repeated misconduct actually prejudiced the jury. *Martinez*, 238 Cal.App.4th at 568. Prejudice exists if it is reasonably probable that the appellant would have achieved a more favorable result absent the challenged portion of the closing argument. *Cassim*, 33 Cal.4th at 802; *Jackson* at \*13 (finding prejudice; it was reasonably probable that defense counsel’s improper arguments about the alcohol evidence caused jury to reject plaintiff’s argument that Park’s intoxication demonstrated malice, fraud, or oppression).

Here, prejudice from the misconduct by Khan’s counsel is reflected in the jury’s struggles with the evidence, the special

verdict, the instructions, and the entire deliberative process.

Within thirty minutes of beginning deliberations, the jury asked for Khan's employment agreement, for the testimony concerning its liability waiver, and whether that waiver was legally binding on Khan. 7AA 2614, 15RT 3912:25-3913:8. Requesting a read back of testimony is an indication of prejudice. *People v. Gay*, 42 Cal.4th 1195, 1227 (2008).

The court permitted read back of the testimony but responded to the other questions simply by rereading CACI 106 ("Evidence"), and telling the jury it had "all the evidence that you will have to consider the case. No further evidence will be presented to you." 14RT 3931:5-3935:1. *Cf. Jackson* at \*3 (trial court told jury there was no evidence of Park's arrest or BAC, and "there will be none.")

The court telling the jury it had all the evidence it was going to get validated the improper inference drawn by Khan's counsel that Defendants were hiding something (*see* §III(D)(1), *supra*) – and had gotten away with it. *See Weaver v. Chavez*, 133 Cal.App.4th 1350, 1356-1357 (2005) (in determining prejudice, court considers effect of other instructions).

The jury's inability to examine the employment agreement that Khan's counsel told them Defendants could and should have produced (but didn't) infected the whole deliberative process, causing the jury to repeatedly ask how to complete the special

verdict. At 12:40 p.m., within two hours of recommencing deliberations on November 26, the jury asked two more questions (“the 12:40 Questions”). 7AA 2662. It asked if the votes had to total 12 (“I.e., if we have 9 yes, 1 no, 2 undecided.”) *Id.* Then it asked what to do if some jurors were “undecided” on a question (“E.G., Question 9”) and whether “we still need 9 votes for subsequent questions (E.G., Questions 10-16”). *Id.*<sup>19</sup>

The court responded that every juror had to vote yes or no on each question, and to review CACI 5012 (“Introduction to Special Verdict”). 7AA 2662; 15 RT 3939:1-3943:21. That did not resolve the jury’s confusion. Less than two hours later, at 2:34 p.m., the jury asked for “clarity for 5012. If we do not get 9 to agree and we cannot move on to the next answer. Does that mean for that one entity or all the questions” (“the 2:34 Question”). 7AA 2663 (underlining in original); 14 RT 3934:1-3949:5. Asking questions about the jury instructions is another indicia of prejudice. *Gay*, 42 Cal.4th at 1227.

Furthermore, the jury’s confusion about the deliberative process was never properly resolved. The court simply assumed

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<sup>19</sup>Question 16 concerned the sexual harassment claim against ADP. 7AA 2605. Nos. 9-15 concerned the sexual harassment claim against Hologram. 7AA 2603-2604. Whether Khan had been employed by Hologram was sharply disputed. 11AA 3575, 3582-3585, 3592-3603; 8RT 1942:3-1945, 1946:7-10; 9RT 2241:3-25, 2242:1-7; 10RT 2427:8-23, 2432:21-25, 2433:11-19, 2434:23-2435:24, 2524:17-24.

that the 2:34 Question, like the 12:40 Questions, concerned the sexual harassment claim against Hologram. 14RT 3934:1-3949:5. The 2:34 Question was not limited to that claim. It asked what the jury should do “[i]f we do not get 9 to agree and we cannot move on to the next answer.” 7AA 2663.

The court did not try to ascertain whether the jury was still concerned only about the Hologram claim — or was asking a more fundamental question about how to deliberate on all the questions, as the 2:34 Question itself stated (“all the questions”). *Id.* (underlining in original). Instead, the court accepted the facile offer by Khan’s counsel to dismiss the Hologram claim. 14RT 3934:1-3949:5. The court told the jury to “skip questions 9-15 and proceed to Question 16,” and to “ignore all references to Hologram USA in the damages section,” without ever telling the jury what to do “[i]f we do not get 9 to agree and we cannot move on to the next answer.” 7AA 2637, 2663. Without definitive guidance on how to complete the special verdict, all of the jury’s other answers are also suspect.

Counsel’s character attacks “add ballast” to the conclusion of prejudice. *Martinez*, 238 Cal.App.4th at 569 (jury could feel “comfortable” believing defense because defense counsel’s *ad hominem* attacks made plaintiff seem unworthy of relief). “The law, like boxing, prohibits hitting below the belt.” *Id.* at 566.

The remaining *Martinez* factors also indicate prejudice. Defense counsel's objections to the closing by Khan's counsel were not efficacious. *Id.* at 568. The objections were overruled entirely or sustained only as to a few limited phrases. 14RT 3732:6-9, 3732:21-28. The court never admonished Khan's counsel to cease his *ad hominem* attacks on David and defense counsel and his references to matters excluded by *in limine* orders Khan had obtained. See §§III(A)(1)-(2), *supra*.

The court's mild response does not ameliorate "the serious damage wrought by counsel" in appealing to the jury's passions and prejudices. *Du Jardin v. City of Oxnard*, 38 Cal.App.4th 174, 179 (1995) (judgment reversed). The court did not "control" Khan's counsel. *Martinez*, 238 Cal.App.4th at 568. Counsel's misconduct was prejudicial, requiring reversal of the Judgment.

**E. The Punitive Damages Are Grossly Excessive, Violate Due Process, And Are The Product Of Legal Error And Attorney Misconduct.**

There are exceptions to the general rule that excessive damages must be challenged first in a motion for new trial. *Schroeder v. Auto Driveaway Co.*, 11 Cal.3d 908, 918 (1974). These punitive damages are unconstitutionally excessive (see §III(E)(1), *infra*), and constitutional arguments may be raised for the first time on appeal. *Bonner v. City of Santa Ana*, 45 Cal.App.4th 1465, 1476-1477 (1996).

Additionally, the award was based on attorney misconduct, inadmissible evidence, and the wrong measure of damages. See §III(E)(2), *infra*. Such errors in the trial of damages may also be asserted on appeal without a new trial motion. *Greenwich S.F., LLC v. Wong*, 190 Cal.App.4th 739, 759 (2010).

**1. The Award Is Unconstitutionally Excessive.**

“In a series of decisions culminating in *State Farm [Mutual Automobile Ins. Co. v. Campbell]*, 538 U.S. 408 (2003), the United States Supreme Court has determined that the due process clause of the Fourteenth Amendment to the United States Constitution places limits on state courts’ awards of punitive damages, limits that appellate courts are required to enforce in their review of jury awards.” *Simon v. San Paolo U.S. Holding Co., Inc.*, 35 Cal.4th 1159, 1171 (2005).

In determining if punitive damages are unconstitutionally excessive under *State Farm*, appellate courts review the award *de novo*. *Id.* at 1172. “This exacting appellate review is intended to ensure that punitive damages are the product of the application of law, rather than a decisionmaker’s caprice.” *Id.* (internal quotation marks omitted).

The “guideposts” for appellate review of an award’s constitutionality are (1) the degree of reprehensibility of the defendant’s conduct; (2) the disparity between the actual and

punitive damages; and (3) the difference between the punitive damages awarded and the civil or statutory penalties authorized or awarded in similar cases. *Id.*

David is unable to effectively argue the first factor because the court's erroneous rulings — preventing David from testifying himself, calling other witnesses, introducing evidence, and representing himself — leave him no record with which to work. *See Haywood v. Superior Court*, 77 Cal.App.4th 949, 955 (2000) (no finding of error on a silent record).

However, the disparity between the compensatory and punitive damages awarded here demonstrates that the latter are unconstitutional. *See Grassilli v. Barr*, 142 Cal.App.4th 1260, 1290 (2006) (punitive damages were unconstitutionally excessive, despite “highly reprehensible” conduct, where other two factors shown).

Due process requires a “reasonable relationship” between the actual and punitive damages. *Simon*, 35 Cal.4th at 1181; *see also State Farm*, 538 U.S. at 426 (punitive damages must be “both reasonable and proportionate” to harm and actual damages). Ratios of 3 or 4 to 1 are “instructive” as the “due process norm.” *Simon*, 35 Cal.4th at 1182; *State Farm*, 538 U.S. at 425 (same; 4:1 “might be close to the line of constitutional impropriety”).

Here, the ratio of punitive to compensatory damages is approximately 6 to 1. Ratios of this size, and lower, have been reversed as unconstitutionally excessive in other employment cases. *See, e.g., Roby v. McKesson Corp.*, 47 Cal.4th 686, 719-720 (2009) (sexual harassment case; 4:1 ratio reduced to 1:1); *King v. U.S. Bank National Association*, 53 Cal.App.5th 675, 682-683, 731 (2020) (wrongful termination case; 2:1 reduced to 1:1); *Colucci v. T-Mobile USA, Inc.*, 48 Cal.App.5th 442, 458-460 (2020) (workplace retaliation case; 4:1 reduced to 1:5); *Tilkey v. Allstate Insurance Co.*, 56 Cal.App.5th 521, 561-563 (2020) (wrongful termination case; 6:1 reduced to 1.5 times damages for defamation).

When the compensatory damages are already substantial, “then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.” *State Farm*, 538 U.S. at 425. *See Roby*, 47 Cal.4th at 717-718 (\$15 million in punitive damages reduced to \$1,905,000; 1:1 ratio); *King*, 53 Cal.App.5th at 683, 730-731 (\$15.6 million reduced to \$8,489,696; 1:1 ratio); *Colucci*, 48 Cal.App.5th at 446-447, 449-450, 461-462 (\$4 million reduced to \$1,530,063; 1:5 ratio). Both the compensatory and punitive damages here are far larger, strongly indicating that the latter are unconstitutionally excessive.

Punitive damage awards are especially suspect when substantial compensatory damages “include an amount for emotional distress, such as humiliation or indignation aroused by defendant’s act, [so] there is no clear line of demarcation between punishment and compensation and a verdict for a specified amount frequently includes elements of both.” *State Farm*, 538 U.S. at 426 (\$1 million for emotional distress; punitive damages reversed).

Thus, in *Roby*, where \$1.3 million of the \$1,905,000 in compensatory damages was for physical and emotional distress which “may have reflected the jury’s indignation at McKesson’s conduct, thus including a punitive component,” the punitive damages were reduced from \$15 million to \$1,905,000. 47 Cal.4th at 718. *See also Colucci*, 48 Cal.App.5th at 459-460 (\$700,000 of \$1,320,042 in compensatory damages awarded for noneconomic harm and/or emotional distress; punitive damages reduced from \$4 million to \$1,530,063). Here, \$8,000,000 of the \$8,250,000 in compensatory damages was for noneconomic damages and emotional distress (96.9%). That vastly exceeds the percentages in *Roby* (68.2%) and *Colucci* (68.6%), which found the punitive damages excessive.

Finally, there are currently no civil or statutory penalties for the type of conduct alleged here.<sup>20</sup> Thus, the court may consider punitive damage caps under analogous statutes, such as Title VII's cap of \$300,000 on punitive damages, because those caps represent a "legislative judgment similar to the imposition of a civil fine." *Zhang v. American Gem Seafoods, Inc.*, 339 F.3d 1020, 1045 (9th Cir. 2003), citing 42 U.S.C. §1981a(b)(3). The punitive damages here are over 160 times the Title VII cap, reinforcing the conclusion that the award is grossly excessive.

"The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award." *State Farm*, 538 U.S. at 427. Punitive damages "must not punish the defendant simply for being wealthy." *Roby*, 47 Cal.4th at 719. But that is exactly what Khan's counsel told the jury to do.<sup>21</sup> Counsel even told the jury not to shed any "crocodile tears" for David because he was so wealthy that he could easily afford \$50 million in punitive

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<sup>20</sup>Battery is a common law tort (*McFadden v. Villa*, 93 Cal.App.4th 235, 241 (2001)), and there are no statutory penalties for sexual battery (Civ.Code §1708.5) or sexual harassment under the FEHA (Gov.Code §12940). Former Gov.Code §12970(a)(3), repealed in 2012, capped penalties at \$150,000. *Roby*, 47 Cal.4th at 718-719. The punitive damages here are over 330 times that amount, another indicator that they are unconstitutionally excessive.

<sup>21</sup>*See, e.g.*, 16RT 4207:28-4208:3 ("You get to tell the world that someone with money, someone who's rich, someone who is a multibillionaire is not above the law . . .")

damages without worrying about having enough to eat or taking the bus like ordinary people. 16RT 4212:16-20.

Both the U.S. and California Supreme Courts have warned that “wealth ‘provides an open-ended basis for inflating awards.’” *Roby*, 47 Cal.4th at 719, quoting *State Farm*, 538 U.S. at 427-428. That happened here. The punitive damages should be reversed as unconstitutionally excessive.

## 2. Khan’s Counsel Told The Jury To Apply The Wrong Measure Of Damages.

It is black letter law that punitive damages may be awarded only to punish the conduct on which liability was based in that case. “A defendant’s dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages. A defendant should be punished **for the conduct that harmed the plaintiff**, not for being an unsavory individual or business.” *State Farm*, 538 U.S. at 422-423 (emphasis added).

David was found liable for sexual harassment of Khan. 7AA 2650-2651, 2658. Khan’s counsel urged the jury to award punitive damages **based on David’s conduct during the trial**. 16RT 4208:6-9 (“his behavior shown throughout this trial has shown utter contempt for the court, for the jury, for my client, for me. Utter contempt for everything here at this trial.”) This

violates the prohibition against punitive damages for “dissimilar acts.” *State Farm*, 538 U.S. at 422.

Furthermore, “punitive damages in a tort action cannot be based on evidence on evidence of defendants’ litigation conduct occurring subsequent to the underlying tort . . . .” *Holdgrafer v. Unocal Corp.*, 160 Cal.App.4th 907, 935 at n.17 (2008). In *De Anza Santa Cruz Mobile Estates Homeowners Association v. De Anza Santa Cruz Mobile Estates*, 94 Cal.App.4th 890, 894, 920-922 (2001), the jury awarded punitive damages of \$6 million after the plaintiff’s attorney urged the jury to consider defendant’s litigation conduct in assessing punitive damages.

The appellate court reversed, stating: “[R]esorting to tort remedies is not the proper means to correct misconduct arising during litigation. . . . [T]he improper evidence of defendant’s litigation conduct so inflamed the jurors that it infected the entire trial and ‘undermine[d] the integrity of the punitive damage award’” — a conclusion fortified by a high ratio of actual to punitive damages. *Id.* at 921-922. For the same reasons, these punitive damages should likewise be reversed.

### **3. Khan’s Counsel Committed Misconduct By Referring To Prior Awards Against David.**

In his closing on punitive damages, Khan’s counsel told the jury:

“You know, this is not Mr. David’s first rodeo. You didn’t hear about it during the trial, but . . . there were two other cases this year in this very courthouse involving Mr. David. Two others. [¶] One of which involved my client Lauren Reeves, who testified in this case. In that case, the jury awarded her \$650,000 in actual damages and awarded \$4.350 million in punitive damages. [¶] In another case that involved Chasity Jones versus Alki David, the jury found against Mr. David. Awarded 2 and a half million dollars in compensatory damages, right, and \$8 million in punitive damages. So a ratio of a little more than three to one.”  
16RT 4211:3-17.

Khan’s counsel told the jurors that because they had awarded Khan compensatory damages of \$8.25 million, punitive damages would equal \$56-57 million using the *Reeves* ratio and \$25-27 million using the *Jones* ratio. 16RT 4212:2-8. The right amount, he told the jury, was \$50 million. 16RT 4214:26-27.

Counsel’s argument was misconduct for multiple reasons. First, the court had excluded evidence **and argument**

concerning prior awards against David, including *Reeves* and *Jones*. See §II((B)(1), *supra*. Violation of *in limine* orders is misconduct, as is referring to excluded evidence. *Martinez*, 238 Cal.App.4th at 559, 561, 567, 570.

Counsel's misconduct cannot be excused on the grounds that at Khan's request, the court had judicially noticed the *Jones* and *Reeves* awards. 16RT 4202:3-14; 7AA 2664. The awards, although marked for identification (16RT 4202:3-4), were never admitted into evidence. See 1RT. (Nor could they be, given their exclusion *in limine*.) Hence, the jury's only information about the prior awards was counsel's argument. "Statements and arguments by counsel are not evidence" (*Gdowski v. Gdowski*, 175 Cal.App.4th 128, 139 (2009)), and it is misconduct to argue matters not in evidence. *Brokopp*, 71 Cal.App.3d at 862.

Furthermore, even without an order *in limine* barring their use, there are strict limitations on using prior punitive damage awards to determine punitive damages in the case at issue. First, prior awards can be used only to decrease, not increase, the award in the current case. *Stevens v. Owens-Corning Fiberglas Corp.*, 49 Cal.App.4th 1645, 1662-1663 and n.7 (1996). Khan's counsel urged the jury to award more than the prior awards, not less. 16RT 4211:3-17, 4212:2-8, 4214:26-27.

Second, prior awards are relevant only if the cases "are shown to have identical issues." *Boeken v. Philip Morris, Inc.*,

127 Cal.App.4th 1640, 1701 (2005). The issues in *Jones* and *Reeves* were not “identical” to those here. Jones tried, and prevailed on, claims that Khan did not, such as wrongful discharge in violation of public policy; retaliation; gender violence; and intentional infliction of emotional distress. *Cf.* 11AA 3604-3610; 8AA 2762-2774. Jones also sued (albeit unsuccessfully) for assault, a claim that Khan never brought. *Cf.* 11AA 3608, 1AA 112-136.

*Reeves* differs, too. Reeves neither sought nor received damages for lost earnings. 11AA 3619-3621. But as Khan’s counsel argued (14RT 3689:23-27, 3702:6-24), a substantial part of Khan’s case was her inability to find stable and meaningful employment after she left David’s companies, eventually giving up employment entirely. *See* §II(A), *supra*. The jury awarded Khan \$120,000 for past and future lost earnings (8AA 2772), damages never awarded to Reeves.

It is not enough that *Jones*, *Reeves*, and *Khan* all alleged workplace harassment. *See Butte Fire Cases*, 24 Cal.App.5th 1150, 1175-1176 (2018) (utility’s liability for one wildfire could not support punitive damages for another wildfire). This jury should never have been told about the prior punitive damage awards, let alone urged to base its own award on the ratio employed by the other juries.

**IV. Conclusion**

For the foregoing reasons, the Judgment should be reversed in its entirety — including the attorneys’ fees and costs, because a fee award cannot stand after the underlying judgment has been reversed (*Merced County Taxpayers’ Association v. Cardella*, 218 Cal.App.3d 396, 402 (1990)) — with directions for a complete new trial.

Dated: July 30, 2021

GLASER WEIL FINK HOWARD  
AVCHEN & SHAPIRO LLP

By: \_\_\_\_\_ /s/  
FRED D. HEATHER  
Attorneys for Appellant



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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Boulevard, 19th Floor, Los Angeles, California 90067.

On July 30, 2021, I served the foregoing document(s) described as follows: **APPELLANT'S OPENING BRIEF** on the interested parties to this action by delivering thereof to each of said interested parties at the following address(es): **SEE ATTACHED LIST**

- (BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
- (BY ELECTRONIC SERVICE)** by causing the foregoing document(s) to be electronically filed using the Court's Electronic Filing System which constitutes service of the filed document(s) on the individual(s) listed on the attached mailing list.
- (BY E-MAIL SERVICE)** I caused such document to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.
- (BY OVERNIGHT DELIVERY)** I served the foregoing document by FedEx, an express service carrier which provides overnight delivery, as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.
- (State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on July 30, 2021 at Los Angeles, California.

  
WILLIAM MULLEN

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Alkiviades David*

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**FILED**  
Superior Court of California  
County of Los Angeles  
**02/03/2021**  
Shem R. Carter, Executive Officer / Clerk of Court  
By: C. Guerrero Deputy

Attorneys for Plaintiff, MAHIM KHAN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

MAHIM KHAN,

Plaintiff,

vs.

HOLOGRAM USA, INC.; ALKI DAVID  
PRODUCTIONS, INC.; FILMON TV,  
INC.; ALKIVIADES ("ALKI") DAVID, an  
individual and DOES 1 through 25,  
inclusive,

Defendants.

) CASE NO: BC654017

) Hon. Michelle Williams Court - Dept. 74

) **(PROPOSED) CORRECTED AMENDED**  
) **JUDGMENT**

This action came on regularly for trial on October 28, 2019, in Department 74 of the Superior Court, the Hon. Michelle Williams Court judge presiding; the Plaintiff MAHIM KHAN, appearing by Allred, Maroko & Goldberg by Nathan Goldberg and Dolores Y. Leal; and Defendants Hologram USA, Inc., Alki David Productions, Inc., and Filmon TV, Inc. appearing by Venable LLP by Ellyn Garofalo and Amir Kaltgrad, and Defendant Alkiviades ("Alki") David appearing in propria persona.

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1 A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and  
2 testified. After hearing the evidence and arguments of counsel, the jury was duly instructed by  
3 the Court and the cause was submitted to the jury (with directions to return a verdict on special  
4 issues). The jury deliberated and thereafter returned into court with its verdicts as follows:

5 **WE, THE JURY IN THE ABOVE-ENTITLED MATTER, FIND AS FOLLOWS:**

6 As soon as nine or more jurors have agreed upon each answer, mark down the answer.

7 **BATTERY**

8 **Question No. 1:**

9 Did Alki David touch Mahim Khan with the intent to harm or offend her? Yes

10 **Question No. 2:**

11 Did Mahim Khan consent to be touched? No

12 **Question No. 3:**

13 Was Mahim Khan harmed or offended by Alki David's conduct? Yes

14 **Question No. 4:**

15 Would a reasonable person in Ms. Khan's situation have been offended by the touching? Yes

16 **SEXUAL BATTERY**

17 **Question No. 5:**

18 Did Alki David intend to cause a harmful or offensive contact with Mahim Khan's breasts and/or  
19 buttocks and/or groin? Yes

20 **Question No. 6:**

21 Did Mr. David's conduct result in a sexually offensive contact either directly or indirectly? Yes

22 **Question No. 7:**

23 Did Mahim Khan consent to the touching? No

24 **Question No. 8:**

25 Was Mahim Khan harmed or offended by Alki David's conduct? Yes

26 ///

27 ///

28 ///



1 **Question No. 19:**

2 Would a reasonable woman in Mahim Khan's circumstances have considered the work  
3 environment to be hostile, intimidating, offensive or abusive? Yes

4 **Question No. 20:**

5 Did Mahim Khan consider the work environment to be hostile, intimidating, offensive,  
6 oppressive, or abusive? Yes

7 **Question No. 21:**

8 Did a supervisor engage in the harassing conduct? Yes

9 **Question No. 22:**

10 Was the harassing conduct a substantial factor in causing harm to Mahim Khan? Yes

11 **SEXUAL HARASSMENT - HOSTILE WORK ENVIRONMENT**  
12 **(FILMON TV, INC.)**

13 **Question No. 23:**

14 Was Mahim Khan an employee of FilmOn TV, Inc.? Yes

15 **Question No. 24:**

16 Was Mahim Khan subjected to unwanted harassing conduct because she is a women? Yes

17 **Question No. 25:**

18 Was the harassment severe or pervasive? Yes

19 **Question No. 26:**

20 Would a reasonable woman in Mahim Khan's circumstances have considered the work  
21 environment to be hostile, intimidating, offensive or abusive? Yes

22 **Question No. 27:**

23 Did Mahim Khan consider the work environment to be hostile, intimidating, offensive,  
24 oppressive, or abusive? Yes

25 **Question No. 28:**

26 Did a supervisor engage in the harassing conduct? Yes

27 **Question No. 29:**

28 Was the harassing conduct a substantial factor in causing harm to Mahim Khan? Yes

1 SEXUAL HARASSMENT - HOSTILE WORK ENVIRONMENT  
2 (ALKIVIADES ("ALKI") DAVID)

3 **Question No. 30:**

4 Did Alki David engage in the harassing conduct? Yes

5 **Question No. 31:**

6 Was the harassing conduct a substantial factor in causing harm to Mahim Khan? Yes

7 DAMAGES

8 **Question No. 32**

9 What are Mahim Khan's damages?

10 A. Past Non-Economic loss, including physical pain/mental suffering.

11 Enter the amount below if you find that Hologram USA, Inc. and/or Alki David  
12 Productions, Inc., and/or FilmOn TV, Inc., and/or Alkiviades David is/are liable to Mahim Khan  
13 for one or more of her claims.

14 \$3,000,000.

15 B. Future Non-Economic loss, including physical pain/mental suffering.

16 Enter the amount below if you find that Hologram USA, Inc. and/or Alki David  
17 Productions, Inc., and/or FilmOn TV, Inc., and/or Alkiviades David is/are liable to Mahim Khan  
18 for one or more of her claims.

19 \$5,000,000.

20 C. Past Economic losses:

21 Enter the amount below if you find that Hologram USA, Inc. and/or Alki David  
22 Productions, Inc., and/or FilmOn TV, Inc., and/or Alkiviades David is/are liable to Mahim Khan  
23 for one or more of her claims.

24 Lost earnings \$ 40,000.

25 Medical expenses \$ 0

26 D. Future Economic losses:

27 Lost earnings \$ 80,000.

28 Medical expenses \$ 130,000.

1 **PUNITIVE DAMAGES**

2 **Question No. 33:**

3 Did Mahim Khan prove by clear and convincing evidence that Mr. David engaged in harassing  
4 and/or violent conduct with malice, oppression, or fraud? Yes

5 **(VERDICT PHASE II)**

6 What amount of punitive damages, if any, do you award Mahim Khan against Alkiviades David?

7 **\$50,000,000.**

8  
9 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that Plaintiff  
10 Mahim Khan recover from said Defendants Alki David Productions, Inc., Filmon TV, Inc., and  
11 Alkiviades (“Alki”) David, jointly and severally for damages in the amount of:

12 **\$8,250,000** with interest thereon at the rate of ten percent (10%) per annum from the date  
13 of the entry of the Judgment on January 21, 2020 until paid;

14  
15 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that Plaintiff Mahim  
16 Khan recover from said Defendant Alkiviades (“Alki”) David for damages in the amount of:


17 **\$50,000,000** with interest thereon at the rate of ten percent (10%) per annum from the date  
18 of the entry of the Judgment on January 21, 2020 until paid;

19  
20 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that

21 Pursuant to the Court’s Order of September 1, 2020, Plaintiff Khan shall have and recover  
22 from Defendants Alki David Productions, Inc., Filmon TV, Inc., and Alkiviades (“Alki”) David,  
23 jointly and severally:

24 Attorneys’ fees in the amount of **\$1,398,885**, and costs in the amount of **\$74,165.60**, plus  
25 interest thereon at the rate of ten percent (10%) per annum from the date of entry of this Corrected  
26 Amended Judgment until paid.

27 DATED: 02/03/2021

28   
Hon. Michelle Williams Court  
Judge of the Superior Court

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 6300 Wilshire Boulevard, Suite 1500, Los Angeles, California 90048.

On December 7, 2020 I served the foregoing document described as **(PROPOSED) CORRECTED AMENDED JUDGMENT** on interested parties in this action


Ellyn S. Garofalo, Esq.  
Amir Kaltgrad, Esq.  
**VENABLE LLP**  
2049 Century Park East, Suite 2300  
Los Angeles, CA 90067  
[esgarofalo@venable.com](mailto:esgarofalo@venable.com)  
[amir.kaltgrad@venable.com](mailto:amir.kaltgrad@venable.com)

**BY ELECTRONIC TRANSMISSION ONLY:** Only by e-mailing the document(s) to the persons at the e-mail address(es) listed above based on notice provided on March 16, 2020 that, during the Coronavirus (COVID-19) pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. Pursuant to California Rules of Court, Appendix I, "Emergency Rules Related to COVID-19," Emergency Rule 12 Electronic Services - "A party represented by counsel, who has appeared in an action or proceeding, must accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission." No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

Executed on **December 7, 2020** at Los Angeles, California.

**State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

**Federal** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

  
\_\_\_\_\_  
ANGIE O. PAZ

BREAKING NEWS: AMG PART OF \$1.1 BILLION DOLLAR RECORD SETTING SETTLEMENT OF SEXUAL ASSAULT CLAIMS AGAINST THE UNIVERSITY OF SOUTHERN CALIFORNIA. [CLICK HERE](#)

**ALLRED, MAROKO & GOLDBERG**  
323-287-9852

BREAKING NEWS: AMG PART OF \$1.1 BILLION DOLLAR RECORD SETTING SETTLEMENT OF SEXUAL ASSAULT CLAIMS AGAINST THE UNIVERSITY OF SOUTHERN CALIFORNIA. [CLICK HERE](#)

**AM&G**

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BREAKING NEWS: AMG HAS RECENTLY OBTAINED TWO BACK-TO-BACK SINGLE PLAINTIFF SEXUAL HARASSMENT AND SEXUAL BATTERY VERDICTS AGAINST BILLIONAIRE ALKI DAVID FOR \$58.25 MILLION AND \$5 MILLION. DETAILS CAN BE FOUND [HERE](#).

AM&G

Employee Rights,  
Discrimination  
& Harassment

**323-287-9852**

Employment Law

Discrimination Law

Sexual Harassment

Personal Injury



# Standing Up for Your Rights in the Workplace

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**Tenacious Employment Rights Lawyers Ready to Fight for You**

Gloria Allred, Michael Maroko and Nathan Goldberg founded our law firm 45 years ago. It has grown to be one of the pre-eminent employment law firms in the country.

The firm has participated in numerous important civil rights actions. Our prominent national visibility, however, never detracts from the personal service and aggressive advocacy we provide all clients. We are focused on helping clients who are the victims of sexual assault, harassment, discrimination, retaliation, wrongful termination, and other employee rights violations.

In the past twenty years, we have won over half a billion dollars in settlements and verdicts on behalf of our clients in employment cases.

## **Our Focus Is on Your Rights**

After 40 years advocating on behalf of employees, we remain one of the largest and most respected employment law firms nationwide. Our firm has vindicated the rights of thousands of individuals by securing significant compensation.

# We've Obtained 700 Million Dollars On Behalf Of Our Clients

Below is a sampling of some of our historic results:

**\$81.65**  
MILLION

**\$15**  
MILLION

SEXUAL HARASSMENT

**\$3.6**  
MILLION

AGE DISCRIMINATION

**\$1.68**  
MILLION

RACIAL DISCRIMINATION

GENDER DISCRIMINATION

SEE ALL RESULTS →

Employment  
Law

Discrimination  
Law

Sexual  
Harassment

Personal  
Injury

A Vast Majority  
of Our Clients  
Are Everyday  
People.

*You don't have to be a celebrity to hire  
us as counsel*

## Attorneys Protecting the Rights of Individuals

Allred, Maroko & Goldberg has a formidable record of success whether securing a confidential prelitigation settlement, or at trial, or on appeal. From our offices in California and New York, we help clients across the U.S. seek justice. Our attorneys have built a reputation as aggressive advocates for clients at every stage of the legal process. Since the firm's inception, we have recovered more than half a billion dollars for our clients.

Our attorneys are internationally recognized authors and lecturers on complex legal issues for both our peers and the public at large. In addition, they are frequent commentators for national broadcast media and have been instrumental in developing new legislation designed to protect the rights of employees and individuals nationwide.



*I understand how injustice is impacting people's lives economically, psychologically, often physically. It's all personal. For me, if one person is denied their rights, we're all*

*being denied our rights.*

*- Gloria Allred*

Jews





## Allred, Maroko & Goldberg Launches New Facebook Live Series: Know Your Rights! with Gloria Allred

We are pleased to announce the launch of a new Facebook Livestream called, “Know Your Rights! with Gloria Allred” as well as a Spanish counterpart called, “¡Conoce Tus Derechos! con Gloria Allred.” Our firm’s attorneys answer frequently asked questions on topics directly relevant to our firm’s practice areas. A complete list of episodes, in both English and Spanish, can be viewed [here](#).

# Contact Us for a Confidential Review of Your Case

Do you believe you are a victim of an employee rights violation or other injustice? Contact our firm for a case evaluation. Ask about our experience with confidential pre-litigation settlements and our previous courtroom successes.

We can be reached in Los Angeles at 323-287-9852 and New York at 212-202-2966.

Se Habla Español

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Email Address\*

Brief description of your legal issue

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BREAKING NEWS: AMG PART OF \$1.1 BILLION DOLLAR RECORD SETTING SETTLEMENT OF SEXUAL ASSAULT CLAIMS AGAINST THE UNIVERSITY OF SOUTHERN CALIFORNIA. [CLICK HERE](#)

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AM&G

# 323-287-9852

☰ IN THIS SECTION

## Significant Cases in Employment and Civil Rights Law

Allred, Maroko & Goldberg is a nationally recognized employment law firm established 40 years ago. Since our founding, we have been committed to protecting the civil rights of California employees and private citizens, regardless of their public stature. We are proud of the very real difference we have made in the lives of people throughout these years.

We believe the best method for effecting social change after experiencing harassment or discrimination is to expose the violation and inflict real, financial damages on the offender. This is often the only way to ensure that the offense is corrected and never repeated. Our client policy has been instrumental in changing both public policy and public perception.

### Successful Settlements and Awards

Allred, Maroko & Goldberg is known for its ability to get results. We have secured about \$200 million for clients in just the past five years. Read more about some of our victories in the areas below:

[Sexual harassment](#)

[Age discrimination](#)

[Race/ethnicity/country of origin discrimination](#)

[Gender discrimination](#)

[Disability discrimination](#)

[Civil rights](#)

[Retaliation](#)

[Arbitration](#)

[National Origin](#)

[Discovery Issues in Discrimination Cases](#)

[Sexual Abuse](#)

[Sexual Orientation Discrimination](#)

[Personal Injury](#)

[Same Sex Marriage](#)

[Discovery Issues During Litigation](#)

[Representing Clients in High-Profile Matters](#)

## **Sexual Harassment**

### **\$1.1 Billion Verdict – Against the University of Southern California**

“The Staggering Sum. . . set a record for collegiate sex abuse payouts, compensating a generation of young U.S.C. woman.” – NY Times March 25, 2021. Click the attached links for further information about Allred Maroko & Goldberg’s prominent role in this historic result.

<https://www.dailymail.co.uk/news/article-9403939/USC-agrees-852-million-payout-sex-abuse-lawsuit.html>

<https://www.nytimes.com/2021/03/25/us/usc-settlement-george-tyndall.html?referringSource=articleShare>

### **Nathalie Fontanez v. City of Boston**

AMG helped obtain a \$3.2 million settlement on behalf of Nathalie Fontanez, a former Boston firefighter, who alleged she was sexually harassed by male colleagues while on the job, ostracized when she complained to her superiors,

and sexually assaulted in a firehouse by a colleague. The colleague was later convicted of criminal charges. Ms. Fontanez also alleges that the City of Boston retaliated against her by denying her a better job after she reported the sexual harassment. Additional information can be found here: [Statement of Gloria Allred I](#), [Statement of Gloria Allred II](#), [Revised Statement NF](#)

### **\$18.4 Million Verdict – James Stevens v. Vons**

Mr. Stevens was employed in the receiving department of Vons supermarkets for more than 25 years. After complaining to the company about ongoing sexual harassment by his female supervisor, he was transferred to a less desirable store location and subjected to a two-year campaign of retaliation, ending in his termination. At trial, a jury awarded Mr. Stevens \$1.67 million in compensatory damages and over \$16 million in punitive damages for a total of \$18.4 million plus attorney's fees.

### **Over \$5 Million Verdict – Straight Male**

In an unusual case, a straight male sued another straight male for sexual harassment occurring at his workplace. A jury awarded our client in excess of \$5 million.

### **\$5 Million Dollar Verdict – Lauren Reeves v. Hologram USA, Inc., Alki David Productions, Inc. and Alkiviades (“Alki”) David**

A Los Angeles jury found that our client Lauren Reeves was subjected to sexual harassment and sexual battery by Alkiviades (“Alki”) David while she was employed by Defendants. On October 11 and 15, 2019, a Los Angeles jury found in favor of Ms. Reeves on her claims and also found that Mr. David acted with malice. The jury awarded Ms. Reeves \$4,350,000 as punitive damages in addition to the \$650,000 they awarded her for compensatory damages for a total award of \$5 million dollars against Mr. David.

### **\$2.5 Million Settlement – A Group of Women Employees**

We represented numerous young women who were sexually harassed by a manager while applying for a job with a national chain. The company resolved our clients' claims after litigation commenced, prior to trial.

## Age Discrimination

### **\$15 Million Settlement for Circuit City Employees**

In 2007, Circuit City terminated thousands of workers nationwide because they earned 51 cents or more above the established pay rate; they were then told they could reapply for jobs earning far less. We filed a class action suit on behalf of 217 former California employees contending that these layoffs discriminated against older employees who tended to be the higher wage earners, a violation of California law. Los Angeles Superior Court agreed and approved a settlement of \$15 million.

### **Over \$5 Million – Dr. Fawzy Salama v. King/Drew Medical Center**

At age 49, Dr. Fawzy Salama, a medical doctor born and trained in Egypt, was accepted as an intern in the anesthesiology department at the medical center. The center subsequently rescinded the offer. Shortly after being told of his rejection, Dr. Salama suffered a heart attack. The matter proceeded to trial and a Los Angeles jury returned a verdict of over \$5 million in favor of Dr. Salama on his age discrimination claim.

### *Cummings v. Benco Building Services*, (1992) 11 Cal.App.4th 1383

The California Court of Appeal held that our client's claim of age discrimination was neither frivolous, nor unreasonable, nor groundless.

## Race/Ethnicity/Country of Origin Discrimination

### **\$3.6 Million Verdict – Group of Minority Male Employees**

We represented a group of men of different races and ethnicities who were subjected to offensive racial slurs, epithets and racially based drawings. The men had repeatedly complained to upper management and to the company's human resources department. The company failed to take action. The matter was vigorously litigated and was ultimately resolved for \$3.6 million.

## Gender Discrimination

### **\$1.68 Million Settlement – Women Farm Workers**

A group of experienced female farm workers applied to pick table grapes for a Delano, California, grower, but were told that the business did not want women and that all women are lazy. Although the grower filled approximately 300 positions each year between 1998 and 2002, no women were hired in that time period. Our partner, Tomás Olmos, filed a class action suit and won a historic victory.

*Bass v. Great Western Savings, (1976) 58 Cal. App.3d 770*

Represented Bass who sued for gender discrimination. The California Court of Appeal agreed that Plaintiff Ms. Bass was discriminated against since her employer paid its male salespersons more compensation, yet they were not more qualified than Plaintiff Ms. Bass who performed substantially the same work.

*Fernandez v. Wynn Oil, (1981) 653 F.2d 1273*

Represented Delia Fernandez who alleged she was not promoted because of her gender. The Employer defended by arguing that its Latin American clients would react negatively to a woman vice-president of International Operations. The Ninth Circuit Court of Appeal agreed with Plaintiff Fernandez that customer preference in an international business setting is not a justification for sex discrimination.

*Thorne v City of El Segundo, 726 F.2d 459 (9<sup>th</sup> Cir. 1983)*

Represented a female who applied to be a police officer. The Ninth Circuit Court of Appeal held that a refusal to hire a woman because of sex-stereotyped view of her physical abilities is discrimination. The Court further found that the Employer violated Plaintiff Ms. Thorne's constitutional right of privacy by relying on private non job-related information of her sexual life.

## **Disability Discrimination/Violation of ADA**

### **Close to \$1 Million Settlement – Disabled Employee**

A woman was employed by a company for 25 years and helped the company grow into a prosperous enterprise. She began suffering from a disability and the

company terminated her employment due to her disability. The matter was resolved prelitigation for close to \$1 million.

## Civil Rights

### **Same-Sex Marriage, March 4, 2008 – ‘The Biggest Civil Rights Case in Decades’**

For almost four hours, the California Supreme Court heard arguments regarding the rights of same-sex couples to marry. Gloria Allred and Michael Maroko were prominent among the advocates appearing before the court, representing clients Robin Tyler, Diane Olson, the Rev. Troy Perry and Phillip Ray DeBlicek.

#### *Engel v. Worthington* (1997) 60 Cal.App.4th 628

The Court of Appeal held that a prevailing plaintiff in an Unruh Civil Rights Act case is entitled to an attorney fees award as a matter of law.

#### *In Re: Marriage Cases*, (2008) 43 Ca1.4th 757

Represented same sex couple who sought to be married. The California Supreme Court held that California law limiting marriage to heterosexual couples was unconstitutional and ordered the State of California to license same sex marriages

#### *Jasperson v. Jessica's Nail Clinic*, (1989) 216 Cal.App.3d 1099

Represented person with AIDS in an action against a pedicure salon for salon's violation of a municipal ordinance prohibiting discrimination against persons with AIDS.

## Retaliation

### *Birtell v. Lockheed*, (2988) 201 Cal. App.3d 293, cert. denied, (1989) 109 S. Ct. 869

Represented Kurt Birtell who alleged he was fired for being a whistleblower. The California Court of Appeal ruled that Federal law does not prevent a worker from filing suit for a wrongful termination arising out of a claim by a union member against an employer, and reaffirming a legitimate state interest in enforcing a "whistle blower" statute. Mr. Birtell was able to proceed with his lawsuit.

## Arbitration

*Cap Gemini Ernst & Young, U.S., L.L.C. v. Nackel* 346 F.3d 360 (2d Cir. 2003)

The Federal Court of Appeal reversed a lower court order requiring the plaintiff to arbitrate his claims because the lower court did not assess conflicts between California law and New York law on the enforceability of the arbitration agreement.

*Prudential Ins. Co. of America v. Lai* 42 F.3d1299 (9th Cir. 1994)

The Federal Court of Appeal reversed an order compelling a plaintiff to arbitrate claims and held that a plaintiff cannot be compelled to arbitrate unless he or she knowingly agree to arbitrate.

## National Origin

*Gutierrez v. County of Los Angeles*, 1985 WL 6450 (C.D. Cal)

Obtained an Order prohibiting the Municipal Court requiring employees to communicate only in the English language during working hours.

## Discovery Issues in Discrimination Cases

*Knoettgen v. The Superior Court*, (1990) 24 Cal.App.3d 11

Successfully defeated an employer's effort to obtain discovery concerning sexual attacks on our client during her childhood.

## Sexual Abuse

*Rita M. v. Roman Catholic Archbishop* (1986) 187 Cal.App.3d 1453

Represented Rita M who was sexually abused by clergy.

## Sexual Orientation Discrimination

*Rolon v. Kulwitsky*, (1984) 153 Cal. App.3d 289

Represented two lesbian women who sued a restaurant for unlawful

discrimination on the basis of sexual orientation. The California Court of Appeal confirmed the Unruh Civil Rights Act allowed a preliminary injunction against the business.

## Personal Injury

*State ex rel. Dept. of California Highway Patrol v. Superior Court*, (2015) 60 Cal.4th 1002

The California Supreme Court held for the first time that the California Highway Patrol may be held liable for the negligence of a tow truck driver who was not its employee but was under its control at the time of an accident.

## Same Sex Marriage

*Strauss v. Horton*, (2009) 46 Cal. 4th 364

Represented same sex couple challenging the enforceability of Proposition 8, which took effect on November 5, 2008, which stated that "Only marriage between a man and a woman is valid or recognized in California."

## Discovery Issues During Litigation

*Tylo v. The Superior Court of Los Angeles County*, 55 Cal. App.4th 1379 (1997).

Represented an actress suing Spelling Television. This was a significant victory for persons suing their employers; the California Court of Appeal made it clear that it will not allow employers to engage in "fishing expeditions" during the discovery phase of litigation.

## Representing Clients in High-Profile Matters

Our lawyers represent clients throughout California involved in discrimination, sexual harassment and high-profile legal matters such as cases for the following clients:

Amber Frey, key witness in *People v. Scott Peterson*

The Nicole Brown Simpson family in People v. O.J. Simpson  
Photographer Henry Trappler v. Tommy Lee (of the rock group Mötley  
Crüe)  
Actress Hunter Tylo v. Aaron Spelling/Spelling Productions

Most of our cases, however, involve everyday people whose rights have been violated in the workplace or elsewhere. We help them stand up against their employers to protect their rights under state and federal employment law. [Contact our employment law attorneys](#) to learn how we may be able to help you.

### Contact Our Employment Law Firm

We invite you to learn more about how Allred, Maroko & Goldberg can help you. Fill out our [online form](#) to schedule a consultation. You can also call us at [323-287-9852](tel:323-287-9852) or [212-202-2966](tel:212-202-2966).

## In This Section

[Nathan Goldberg Named Top 75 Labor and Employment Attorneys in California](#) →

[Nathan 2011 Daily Journal Article](#) →

SEE ALL CASE RESULTS →

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We can be reached in Los Angeles at 323-287-9852 and New York at 212-202-2966.

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Phone

Email Address\*

Brief description of your legal issue

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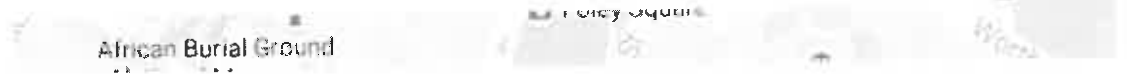
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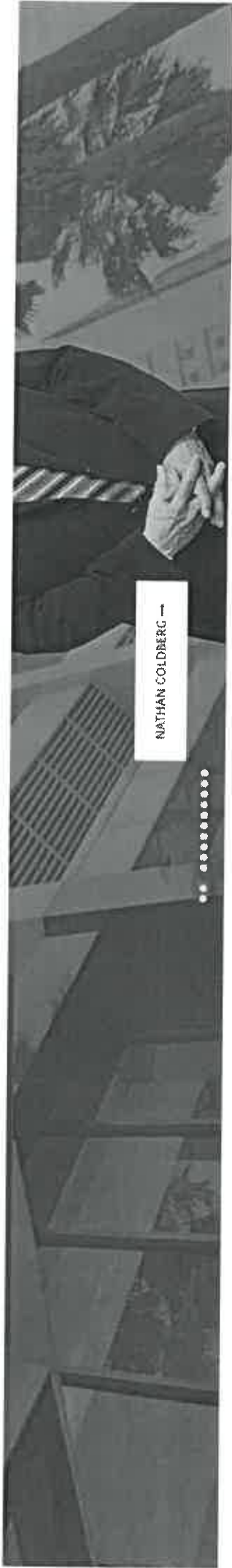
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**BREAKING NEWS: AMG HAS RECENTLY OBTAINED TWO BACK-TO-BACK SINGLE PLAINTIFF SEXUAL HARASSMENT AND SEXUAL BATTERY VERDICTS AGAINST BILLIONAIRE ALKI DAVID FOR \$58.25 MILLION AND \$5 MILLION. DETAILS CAN BE FOUND [HERE](#).**

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THE POWERLESS STORY

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EINGEGANGEN  
05. Nov 2021

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Partner

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Emilie THEINTZ  
Associate

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EINSCHREIBEN

Regionalgericht Oberland  
Verwaltungsgebäude Selve  
Scheibenstrasse 11B  
3600 Thun

14. 10. 21

Genf, 14. Oktober 2021

**GESUCH UM ARRESTBEWILLIGUNG**  
(Art. 271 Abs. 1 Ziff. 6 SchKG)

In Sachen

Frau Mahim KHAN, c/o Baker & Hostetler, LLP, 45 Rockefeller Plaza, New York, New York 10111,  
vertreten durch Rechtsanwalt Marc Gilliéron, Chabrier Avocats SA, rue du Rhône 40, Postfach 1363,  
1211 Genève 1 (Beilage 0).

Gesuchstellerin

gegen

Herr Alkiviades DAVID, 23768 Malibu Road, Malibu, CA, 90265 USA.

Gesuchgegner

In Höhe von:

- CHF 7'647'800 (was dem Gegenwert von USD 8'250'000 zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Schadenersatz gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% per annum seit 21. Januar 2021;
- CHF 46'350'300 (was dem Gegenwert von USD 50'000'000 zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Strafzuschlag zum Schadenersatz gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% per annum seit 21. Januar 2021;
- CHF 1'296'780 (was dem Gegenwert von USD 1'398'885 zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Parteientschädigung gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% per annum seit 3. Februar 2021;
- CHF 68'752 (was dem Gegenwert von USD 74'165.60 zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Parteientschädigung gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% per annum seit 3. Februar 2021.

## I. RECHTSBEGEHREN

Betreffend Arrest stelle ich namens und im Auftrag der Gesuchstellerin folgendes:

### ARRESTGESUCH

ein mit folgendem

### RECHTSBEGEHREN

Es sei zugunsten der Arrestgläubigerin der folgende Arrest zu bewilligen und der Arrestbefehl dem zuständigen Betreibungsamt Oberland West, Scheibenstrasse 11, 3600 Thun, bzw. dem Betreibungsamt Schwyz, Herrengasse 23, Postfach 23, 6431 Schwyz und dem Betreibungsamt Zug, Gubelstrasse 22, Postfach, 6301 Zug zum Vollzug zuzustellen:

- 1) Es sei die Herr Alkiviades DAVID gehörende Stockwerkeinheit von der in Wispilenstrasse 37, 3780 Gstaad gelegene Liegenschaft, Grundstücksnummer 1490-4 zu arrestieren,
- 2) Es seien sämtliche Ansprüche, Forderungen, Kontoguthaben, Barschaften in in- und ausländischer Währung, Edelmetalle, Edelsteine, Wertschriften, Depots, Herausgabeansprüche aus Depotverträgen und Treuhandverhältnissen, Safe- und Schliessfachinhalte und andere Vermögenswerte von Herrn Alkiviades DAVID gegenüber bzw. bei der Bank
  - a. CREDIT SUISSE AG, Postfach 363, 6431 Schwyz (insbesondere Kontonummern 30834 und 0823-1143507-42-1);
  - b. CREDIT SUISSE AG, Postfach 357, 6301 Zug (insbesondere Kontonummern 1523208-72, 1523208-72-1, 1523208-72-2 und 1523208-72-3),

zu verarrestieren, bis zur Deckung der Arrestforderung von:

- CHF 7'647'800 (was dem Gegenwert von USD 8'250'000 zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Schadenersatz gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% *per annum* seit 21. Januar 2021;
  - CHF 46'350'300 (was dem Gegenwert von USD 50'000'000 zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Strafzuschlag zum Schadenersatz gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% *per annum* seit 21. Januar 2021;
  - CHF 1'296'780 (was dem Gegenwert von USD 1'398'885 zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Parteientschädigung gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% *per annum* seit 3. Februar 2021;
  - CHF 68'752 (was dem Gegenwert von USD 74'165.60 zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Parteientschädigung gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% *per annum* seit 3. Februar 2021.
- 3) Alles unter Kosten- und Entschädigungsfolgen zulasten des Arrestschuldners.
  - 4) Der Arrest ist ohne Sicherheitsleistung anzuordnen.

## II. TATSÄCHLICHES

### A. Forderungen der Arrestgläubigerin

1. Mit Urteil vom 3. Februar 2021 (nachfolgend: « das Urteil ») verurteilte der Superior Court of the State of California Herrn Alkiviades DAVID (nachfolgend: «Herr DAVID» oder «der Gesuchgegner») wegen sexueller Belästigung von Frau Mahim KHAN (nachfolgend: «Frau KHAN» oder «die Gesuchstellerin»).

Beilage 1          *Corrected Amended Judgment* vom 3. Februar 2021

2. Das Dispositiv des Urteils lautet wie folgt:

*« NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff Mahim Khan recover from said Defendants Alki David Productions, Inc., Filmon TV, Inc., and Alkiviades ("Alki") David, jointly and severally for damages in the amount of:*

*\$8,250,000 with interest thereon at the rate of ten percent (10%) per annum from the date of entry of the Judgment on January 21, 2020 until paid;*

*NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff Mahim Khan recover from said Defendant Alkiviades ("Alki") David damages in the amount of:*

*\$50,000,000 with interest thereon at the rate of ten percent (10%) per annum from the date of the entry of the Judgment on January 21, 2020 until paid;*

*IT IS FURTHER ORDERED, ADJUDGED AND DECREED that*

*Pursuant to the Court's Order of September 1, 2020, Plaintiff Khan shall have and recover from Defendants Alki David Productions, Inc., Filmon TV, Inc., and Alkiviades ("Alki") David, jointly and severally:*

*Attorneys' fees in the amount of \$1,398,885, and costs in the amount of \$74,165.60, plus interest thereon at the rate of ten percent (10%) per annum from the date of entry of this Corrected Amended Judgment until paid.»*

#### In freier Übersetzung:

*«DARUM WIRD ANGEORDNET, ERKANNT UND BESCHLOSSEN, dass der Klägerin Mahim Khan von den Beklagten Alki David Productions, Inc., Filmon TV, Inc., and Alkiviades ("Alki") David, gesamtschuldnerisch, Schadenersatz in Höhe von:*

*\$8'250'000 zuzüglich Zinsen in Höhe von zehn Prozent (10%) pro Jahr ab dem Datum des Urteilseintritts am 21. Januar 2020 bis zur Zahlung;*

*DARUM WIRD ANGEORDNET, ERKANNT UND BESCHLOSSEN, dass der Klägerin Mahim Khan von dem Beklagten Alkiviades ("Alki") David Schadenersatz in Höhe von:*

*\$50'000'000 zuzüglich Zinsen in Höhe von zehn Prozent (10%) pro Jahr ab dem Datum des Urteilseintritts am 21. Januar 2020 bis zur Zahlung;*

*ES WIRD FERNER ANGEORDNET, ERKANNT UND BESCHLOSSEN, dass*

*Gemäss Gerichtsentscheid vom 1. September 2020 die Klägerin Mahim Khan von den Beklagten Alki David Productions, Inc., Filmon TV, Inc., and Alkiviades ("Alki") David, gesamtschuldnerisch:*

*Anwaltshonorare in Höhe von \$1'398'885 und Kosten in Höhe von \$74'165.60 zuzüglich Zinsen in Höhe von zehn Prozent (10%) pro Jahr ab dem Datum des Urteilseintritts dieses Corrected Amended Judgment bis zur Zahlung.»*

**Beilage 1**      *Corrected Amended Judgment* vom 3. Februar 2021

3. Die Rechtsanwälte von der Gesuchstellerin sind das Anwaltskanzlei BakerHostetler. Gegen das Urteil hatte Herr DAVID ein Rechtsmittel eingereicht. Gemäss der *California Code of Civil Procedure* steht allerdings ein Rechtsmittel der Vollstreckbarkeit nur entgegen, wenn der Beschwerdeführer eine Sicherheit geleistet hat:

*«Furthermore, California Code of Civil Procedure § 917.1 provides:*

*(a) Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for any of the following:*

*(1) Money or the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action.»*

**Beilage 2**      Schreiben von BakerHostetler vom 6. Oktober 2021, S. 2

4. Herr DAVID sowie die anderen Beklagten haben keine Sicherheit geleistet. Daher ist das Urteil endgültig und rechtskräftig und kann damit vollstreckt werden.

**Beilage 2**      Schreiben von BakerHostetler vom 6. Oktober 2021, S. 2

5. Trotz der fälligen Beträge von:

- USD 8'250'000 als Schadenersatz gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% *per annum* seit 21. Januar 2021;
- USD 50'000'000 als Schadenersatz gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% *per annum* seit 21. Januar 2021;
- USD 1'398'885 als Parteientschädigung gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% *per annum* seit 3. Februar 2021;
- USD 74'165.60 als Parteientschädigung gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% *per annum* seit 3. Februar 2021,

hat Herr DAVID bis heute nichts bezahlt.

**Beilage 1**      *Corrected Amended Judgment* vom 3. Februar 2021  
**Kein Gegenbeweis**

**B. In der Schweiz gelegenen Gegenständen vom Arrestschuldner**

6. Herr DAVID ist Alleineigentümer von einer Stockwerkeinheit des in Saanen gelegenen Grundstücks Nummer 843/1490-4.

**Beilage 3**      Grundbuchauszug bezüglich Grundstücknummer 1490

7. Zudem gehören dem Gesuchgegner folgenden Bankkonten:

- i. Kontonummer 308341 bei der Bank CREDIT SUISSE AG, Postfach 363, 6431 Schwyz;
- ii. Kontonummer 0823-1143507-42-1 bei der Bank CREDIT SUISSE AG, Postfach 363, 6431 Schwyz;
- iii. Kontonummer 1523208-72 bei der Bank CREDIT SUISSE AG, Postfach 357, 6301 Zug;
- iv. Kontonummer 1523208-72-1 bei der Bank CREDIT SUISSE AG, Postfach 357, 6301 Zug;
- v. Kontonummer 1523208-72-2 bei der Bank CREDIT SUISSE AG, Postfach 357, 6301 Zug;
- vi. Kontonummer 1523208-72-3 bei der Bank CREDIT SUISSE AG, Postfach 357, 6301 Zug.

8. Damit bestehen dem Schuldner gehörenden Vermögensgegenstände in der Schweiz.

### III. FORMELLES

#### A. Vollmacht

9. Die unterzeichnenden Rechtsanwälte sind gehörig bevollmächtigt.

#### B. Örtliche Zuständigkeit

10. Zuständig zur Anordnung vorsorglicher Massnahmen sind die schweizerischen Gerichte und Behörden am Ort, an dem die Massnahme vollstreckt werden soll (Art. 10 lit. b IPRG).
11. Art. 272 Abs. 1 SchKG sieht für das Gesuch um Arrestbewilligung einen alternativen Gerichtsstand vor: der Arrestgläubiger kann einen Arrest wahlweise am Betreibungsort (Art. 46 ff. SchKG) oder am Belegenheitsort eines zu verarrestierenden Vermögenswerts legen lassen.
12. Hat der Gesuchgegner keinen Wohnsitz in der Schweiz, ist der Arrest dort zu verlangen, wo der Arrestgegenstand liegt.<sup>1</sup>
13. Der Arrestbefehl entfaltet schweizweite Wirkungen. Das zuerst angerufene Gericht verhängt daher den Arrest über sämtliche Vermögenswerte in der Schweiz.<sup>2</sup>
14. Im vorliegenden Fall hat Herr DAVID seinen Wohnsitz in den USA. Deshalb ist der Arrest am Ort des Arrestgegenstandes zu verlangen.
15. Das zu verarrestierenden Grundstück von Herrn DAVID liegt am Gemeinde Saanen, Bern.
16. Den Gerichten von Bern Oberland sind damit sowohl für den Arrest des Grundstückes in Saanen als auch für den Arrest weiteren Vermögensgegenstände (hier Bankkonten) in anderen Kantonen örtlich zuständig.

#### C. Sachliche Zuständigkeit

17. Nach Art. 12 EGSchKG entscheidet das Regionalgericht als Einzelgericht in allen Fällen, in denen das Bundesrecht den Gerichten eine Entscheidung oder Verfügung zuweist, sofern nicht das SchKG, die schweizerische Zivilprozessordnung etwas anderes bestimmen.
18. Im vorliegenden Fall ist das Regionalgericht Oberland sachlich zuständig.

#### D. Einleitung Verfahren

19. Das Verfahren über die Arrestbewilligung ist summarisch (Art. 251 lit. a ZPO).
20. Nach Art. 198 lit. a ZPO entfällt das Schlichtungsverfahren in Summarangelegenheiten.
21. Das Arrestbegehren ist damit direkt bei dem Regionalgericht Oberland einzureichen.

<sup>1</sup> GESSLER/THEUS SIMONI, Kommentierte Musterklagen zur Zwangsvollstreckung und zu den Rechtsmitteln, Band V, 2016, S. 59.

<sup>2</sup> BSK SchKG II-STOFFEL, Art. 272 N 44.

## **E. Beweislast und -mass**

22. Es obliegt dem Arrestgläubiger, das Vorliegen der Arrestvoraussetzungen darzulegen, das heisst Arrestforderung, Arrestgrund und Arrestgegenstände. Insbesondere hat der Arrestgläubiger die Arrestgegenstände zu bezeichnen und deren Standort anzugeben.<sup>3</sup>
23. Ein strikter Beweis ist nicht erforderlich. Das Glaubhaftmachen der Arrestvoraussetzungen genügt (Art. 272 Abs. 1 SchKG).<sup>4</sup>

## **F. Übersetzungen von Dokumenten**

24. Die ZPO schweigt sich über die Übersetzung von Beweismitteln aus. Andererseits verbietet Art. 129 ZPO die Einreichung von Beweismitteln in eine andere Sprache nicht.
25. Die Lehre erkennt die Verpflichtung der Parteien an, eine Übersetzung der zur Stützung ihres Vorbringens vorgelegten und in einer anderen Sprache abgefassten Dokumente vorzulegen. Eine Teilübersetzung kann jedoch ausreichen, sofern die betreffenden Passagen übersetzt werden, die Übersetzung nicht angefochten wird und nicht behauptet wird, dass nicht übersetzte Passagen im Widerspruch zu den übersetzten stehen.<sup>5</sup>
26. Angesichts der jüngsten Rechtsprechung befürwortet ein Teil der Lehre mehr Flexibilität bei der Übersetzung von Dokumenten in der englischen Sprache.<sup>6</sup> Nach der Rechtsprechung des Obergerichts des Kantons Zürich vom 11. September 2012 (Geschäfts Nr. PS120155) kann auf eine Übersetzung verzichtet werden, soweit das Gericht der verwendeten Fremdsprache ausreichend mächtig ist. Dies gilt gemäss Entscheid des Obergerichts des Kantons Zürich vom 25. November 2014 (Geschäfts Nr. PS140248) insbesondere in Bezug auf die englische Sprache.
27. In dem vorliegenden Fall ist das amerikanische Urteil auf englischer Sprache verfasst. Die für dieses Verfahren einschlägigen Textstellen sind übersetzt worden.
28. Soweit Übersetzungen ins Deutsche notwendig sind, ist die Gesuchstellerin jederzeit bereit, solche nachzuliefern.

## **IV. MATERIELLES**

### **A. Arrestvoraussetzungen**

#### **i. Arrestforderung**

29. Lässt sich die Forderung direkt von der im Verfahren eingereichten Urkunde ableiten – das ist der Fall beim Arrestgrund des Vorliegens eines definitiven Rechtsöffnungstitels gemäss Art. 271 Abs. 1 Ziff. 6 SchKG –, muss der Arrestgläubiger seine Forderung nicht glaubhaft zu machen.<sup>7</sup>
30. Die geltend gemachten Arrestforderungen der Gesuchstellerin ergeben sich aus dem Dispositiv des Urteils vom 3. Februar 2021. Die Arrestforderungen von Frau KHAN liegen daher vor.
31. Zudem ist die bestehende Forderung nicht pfandgesichert (Art. 271 Abs. 1 SchKG).

<sup>3</sup> VOCK/MEISTER-MÜLLER, SchKG-Klagen nach der Schweizerischen ZPO, 2. Auflage, 2018, § 29, S. 312.

<sup>4</sup> VOCK/MEISTER-MÜLLER, SchKG-Klagen nach der Schweizerischen ZPO, 2. Auflage, 2018, § 29, S. 313.

<sup>5</sup> PJA 2009, S. 844-845; JdT 2010 III S. 213.

<sup>6</sup> HOFMANN/LUSCHER, *Le Code de procédure civile*, Berne 2009, S. 33-34.

<sup>7</sup> Bundesgerichtsentscheid vom 11. April 2018 5A\_953/2017, Erw. 3.2.2.

ii. Arrestgrund

32. Gemäss Art. 271 Abs. 1 Ziff. 6 SchKG kann der Gläubiger für eine fällige Forderung Vermögensstücke des Schuldners, die sich in der Schweiz befinden, mit Arrest belegen lassen, wenn er gegen den Schuldner einen definitiven Rechtsöffnungstitel besitzt.
33. Zum Arrest berechtigen im Rahmen von Art. 271 Abs. 1 Ziff. 6 SchKG als definitive Rechtsöffnungstitel sowohl schweizerische als auch ausländische staatliche Urteile, sei es ein ausländischer Entscheid aus einem LugÜ oder aus einem Nicht-LugÜ-Staat.<sup>8</sup>
34. Ein vorgängiges Exequatur ist nicht erforderlich. Bei den Nicht-LugÜ-Urteilen kann der Arrestrichter aufgrund einer summarischen rechtlichen Würdigung und auf der Grundlage der glaubhaft gemachten Tatsachen vorfrageweise die Vollstreckbarkeit des Titels prüfen.<sup>9</sup>
35. Der Gesuchsteller muss nur *prima facie* beweisen, dass keine Einwendungen der Anerkennung und der Vollstreckung entgegenstehen.<sup>10</sup>
36. Die Anerkennungsvoraussetzungen von Art. 25 ff. IPRG werden vorfrageweise vom Richter überprüft. Das Bundesgericht hat entschieden, dass die Prüfung dieser Voraussetzungen später vorzunehmen ist, und zwar während des Einspracheverfahrens gegen den Arrestbefehl i.S.v. Art. 278 SchKG.<sup>11</sup>
37. Vorliegend wurde das Urteil vom zuständigen amerikanischen Gericht getroffen, und zwar der Superior Court of the State of California. Obwohl ein Rechtsmittel gegen den Entscheid eingereicht wurde, hat aber weder Herr DAVID noch die anderen Beklagten eine Sicherheitsleistung erbracht. Damit ist das Urteil vom 3. Februar 2021 vollstreckbar (Beilage 2).
38. Zudem sind alle Voraussetzungen zur Anerkennung und Vollstreckung erfüllt und es liegt keine Verweigerungsgründen im Sinne von Art. 27 IPRG vor.
39. Das Urteil stellt damit einen definitiven Rechtsöffnungstitel gemäss Art. 271 Abs. 1 Ziff. 6 SchKG dar.

iii. Arrestgegenstände

40. Der Gläubiger muss glaubhaft machen, dass Vermögensgegenstände vorhanden sind, die dem Schuldner gehören (Art. 272 Abs. 1 Ziff. 3 SchKG).
41. In dem vorliegenden Fall ist der Gesuchgegner Alleineigentümer von einer Stockwerkeinheit des in Saanen gelegenen Grundstücks Nummer 843/1490-4 (Beilage 3).
42. Als das Grundbuch die durch es bezeugten Tatsachen vollen Beweis erbringt (Art. 9 ZGB), hat die Gesuchstellerin die Existenz von dem Schuldner gehörenden in der Schweiz gelegene Vermögensgegenstände glaubhaft gemacht.
43. Zudem gehören die folgenden Bankkonten Herrn DAVID (Beilage 4):
  - i. Kontonummer 308341 bei der Bank CREDIT SUISSE AG, Postfach 363, 6431 Schwyz;
  - ii. Kontonummer 0823-1143507-42-1 bei der Bank CREDIT SUISSE AG, Postfach 363, 6431 Schwyz;
  - iii. Kontonummer 1523208-72 bei der Bank CREDIT SUISSE AG, Postfach 357, 6301 Zug;
  - iv. Kontonummer 1523208-72-1 bei der Bank CREDIT SUISSE AG, Postfach 357, 6301 Zug;

<sup>8</sup> VOCK/MEISTER-MÜLLER, SchKG-Klagen nach der Schweizerischen ZPO, 2. Auflage, 2018, § 29, S. 303; BGE 139 III 135, Erw. 4.5.1.

<sup>9</sup> VOCK/MEISTER-MÜLLER, SchKG-Klagen nach der Schweizerischen ZPO, 2. Auflage, 2018, § 29, S. 303-304; BGE 139 III 135, Erw. 4.5.2.

<sup>10</sup> BGE 139 III 135, Erw. 4.5.2.

<sup>11</sup> BGE 139 III 135, Erw. 4.5.2.

- v. Kontonummer 1523208-72-2 bei der Bank CREDIT SUISSE AG, Postfach 357, 6301 Zug;
- vi. Kontonummer 1523208-72-3 bei der Bank CREDIT SUISSE AG, Postfach 357, 6301 Zug.

44. Die Gesuchstellerin hat damit die Existenz von dem Gesuchgegner gehörenden Vermögenswerten glaubhaft gemacht.

**B. Sicherheitsleistung**

- 45. Gemäss Art. 273 Abs. 1 Satz 2 SchKG kann der Richter den Arrestgläubiger zur Sicherheitsleistung verpflichten.
- 46. Das Auferlegen einer Arrestkaution gemäss Art. 273 SchKG ist bei dem Arrestgrund von Art. 271 Abs. 1 Ziff. 6 SchKG ausgeschlossen.<sup>12</sup>
- 47. Vorliegend sei der Gesuchstellerin daher zu keiner Sicherheitsleistung verpflichtet.

\* \* \*

Mit vorzüglicher Hochachtung



*Erst.* Marc Gilliéron

Beilage: Beweismittelverzeichnis

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<sup>12</sup> VOCK/MEISTER-MÜLLER, SchKG-Klagen nach der Schweizerischen ZPO, 2. Auflage, 2018, § 29, S. 303.

Regionalgericht  
Oberland

Zivilabteilung  
Gerichtspräsident  
Knecht

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## Verfügung und Entscheidung

CIV 21 2670 KNSWAN

Thun, 18. Oktober 2021

EMPFANGEN  
05. Nov. 2021

Gerichtspräsident           Knecht  
Gerichtsschreiberin       Waldburger

Zivilverfahren

**Khan Mahim**, c/o Baker & Hostetler, LLP, 45 Rockefeller Plaza, New York, New York  
10111, USA,  
vertreten durch Rechtsanwalt Marc Gilléron, Chabrier Avocats SA, rue du Rhône 40, Post-  
fach 1363, 1211 Genève 1

Gesuchstellerin

gegen

**David Alkiviades**, geb. 23.05.1968, 23768 Malibu Road, Malibu, Kalifornien, USA,  
Zustelladresse: Gstoehl Matthias, LALIVE SA, Stampfenbachplatz 4, Postfach 212,  
8042 Zürich  
vertreten durch Rechtsanwalt Alexander Troller, LALIVE SA, 35 rue de la Mairie, 1207  
Genf, und/oder Matthias Gstoehl, LALIVE SA, Stampfenbachplatz 4, Postfach 212,  
8042 Zürich

Gesuchsgegner

betreffend **Arrestgesuch mit Schutzschrift**



**Erwägungen:****I. Prozessgeschichte**

1. Mit Schutzschrift vom 04.08.2021 (Postaufgabe gleichentags, Eingang: 05.08.2021) stellte der Gesuchsgegner [als Gesuchsteller 1] folgende Rechtsbegehren:
  - «1. Ein allfälliges Arrestgesuch der Gesuchsgegnerin gegen den Gesuchsteller 1 und/oder die Gesuchstellerin 2 und/oder die Gesuchstellerin 3 sei abzuweisen.
  2. Eventualiter sei ein allfälliger Arrest nicht ohne vorgängige Anhörung der Gesuchsteller zu bewilligen.
  3. Subeventualiter sei ein allfälliges Arrestgesuch höchstens im Umfang der nachfolgenden Beträge zu bewilligen.
    - a) Äquivalent in Schweizerfranken von USD 260'000.00 zuzüglich Zinsen von 5 % seit 21. Januar 2020,
    - b) CHF 35'400 zuzüglich Zinsen von 5 % seit 3. Februar 2021,
    - c) CHF 5'000 zuzüglich Zinsen von 5 % seit 3. Februar 2021.
  4. Die Gesuchsgegnerin sei im Falle der Anordnung eines Arrests ohne Anhörung der Gesuchsteller zu einer Sicherheitsleistung in Höhe von mindestens CHF 1 Mio. zu verpflichten.»
  5. Unter Kosten- und Entschädigungsfolgen zu Lasten der Gesuchsgegnerin.»
2. Mit Gesuch um Arrestbewilligung vom 14.10.2021 (Postaufgabe gleichentags, Eingang am 15.10.2021) stellte die Gesuchstellerin folgende Rechtsbegehren:
  - « Es sei zugunsten der Arrestgläubigerin der folgende Arrest zu bewilligen und der Arrestbefehl dem zuständigen Betreibungsamt Oberland West, Scheibenstrasse 11, 3600 Thun, bzw. dem Betreibungsamt Schwyz, Herrengasse 23, Postfach 23, 6431 Schwyz und dem Betreibungsamt Zug, Gubelstrasse 22, Postfach, 6301 Zug zum Vollzug zuzustellen:
    - 1) Es sei die Herrn Alkiviades DAVID gehörende Stockwerkeinheit von der in Wispilenstrasse 37, 3780 Gstaad gelegene Liegenschaft, Grundstücksnummer 1490-4 zu verarrestieren,
    - 2) Es seien sämtliche Ansprüche, Forderungen, Kontoguthaben, Barschaften in in- und ausländischer Währung, Edelmetalle, Edelsteine, Wertschriften, Depots, Herausgabeansprüche aus Depotverträgen und Treuhandverhältnissen, Safe- und Schliessfachinhalte und andere Vermögenswerte von Herrn Alkiviades DAVID gegenüber bzw. bei der Bank
      - a. CREDIT SUISSE AG, Postfach 363, 6431 Schwyz (insbesondere Kontonummern 30834 und 0823-1143507-42-1);
      - b. CREDIT SUISSE AG, Postfach 357, 6301 Zug (insbesondere Kontonummern 1523208-72, 1523208-72-1, 1523208-72-2 und 1523208-72-3), zu verarrestieren, bis zur Deckung der Arrestforderung von:

- **CHF 7'647'800** (was dem Gegenwert von **USD 8'250'000** zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Schadenersatz gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% per annum seit 21. Januar 2021;
  - **CHF 56'350'300** (was dem Gegenwert von **USD 50'000'000** zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Strafzuschlag zum Schadenersatz gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% per annum seit 21. Januar 2021;
  - **CHF 1'296'780** (was dem Gegenwert von **USD 1'398'885** zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Parteientschädigung gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% per annum seit 3. Februar 2021;
  - **CHF 68'752** (was dem Gegenwert von **USD 74'165.60** zum heutigen Wechselkurs von CHF 0,92701 entspricht), als Parteientschädigung gemäss dem Urteil des Superior Court of the State of California vom 3. Februar 2021 nebst Zins zu 10% per annum seit 3. Februar 2021.
- 3) *Alles unter Kosten- und Entschädigungsfolgen zulasten des Arrestschuldners.*
- 4) *Der Arrest ist ohne Sicherheitsleistung anzuordnen.»*

## II. Formelles

3. Das Regionalgericht Oberland ist örtlich (Art. 10 lit. b IPRG; Art. 272 Abs. 1 SchKG i.V.m. Art. 46 ZPO), sachlich (Art. 12 EG SchKG i.V.m. Art. 8 Abs. 1 EG ZSJ) und funktionell (Art. 198 lit. a i.V.m. Art. 251 lit. a ZPO) zur Beurteilung des vorliegenden Gesuchs zuständig.
4. Die übrigen Prozessvoraussetzungen geben zu keinen Bemerkungen Anlass. Auf das Gesuch ist einzutreten.
5. Die vorgängig eingegangene Schutzschrift vom 04.08.2021 erfüllt die Voraussetzungen gemäss Art. 270 i.V.m. Art. 130 ff. und Art. 221 f. ZPO (HESS-BLUMER, in: Basler Kommentar Schweizerische Zivilprozessordnung (ZPO), 3. Aufl., 2017, Art. 270 N 11 ff. [nachfolgend: BSK ZPO-AUTOR]). Die Aufbewahrungsdauer von sechs Monaten gemäss Art. 270 Abs.3 ZPO ist noch nicht abgelaufen, womit die Schutzschrift für das vorliegende Verfahren beachtlich ist.

## III. Materielles

6. Gemäss Art. 271 Abs. 1 i.V.m. Art. 271 Abs. 1 Ziff. 6 SchKG kann der Gläubiger für eine fällige Forderung, soweit diese nicht durch ein Pfand gedacht ist, Vermögensstücke des Schuldners, die sich in der Schweiz befinden mit Arrest belegen, wenn der Gläubiger gegen den Schuldner einen definitiven Rechtsöffnungstitel besitzt, wobei die Voraussetzungen durch den Gläubiger zumindest glaubhaft zu machen sind (BGer 5A\_569/2018 vom 11. September 2018 E. 3). Da es sich beim Arrest um eine vorsorgliche Massnahme handelt, darf sich das Gericht bei der Prüfung der rechtlichen Fra-

gen auf eine summarische Prüfung beschränken (zur Prüfungskognition vgl. BGE 139 III 86 E. 4.2).

7. Glaubhaftmachen ist weniger als beweisen, jedoch mehr als das blosses Behaupten. Glaubhaft gemacht ist eine Tatsache dann, wenn das Gericht sie aufgrund einer plausiblen Darlegung des Gläubigers für wahrscheinlich hält. An die Wahrscheinlichkeit sind keine überhöhten Anforderungen zu stellen. Für den Wahrscheinlichkeitsbeweis genügt, wenn der Richter aufgrund der ihm vorgelegten Elemente den Eindruck gewinnt, dass der behauptete Sachverhalt wirklich vorliegt, ohne ausschliessen zu müssen, dass es sich auch anders verhalten könnte (KREN KOSTKIEWICZ, in: Kommentar zum Bundesgesetz über Schuldbetreibung und Konkurs SchKG, 4. Aufl. 2017, Art. 272 N. 7 m.w.N., [nachfolgend: SK SchKG-AUTOR]).
8. Vorliegend stützt die Gesuchstellerin ihr Arrestgesuch auf Art. 271 Abs. 1 Ziff. 6 SchKG und reicht als definitiven Rechtsöffnungstitel das Corrected Amended Judgment vom 03.02.2021 des Superior Court of the State of California for the County of Los Angeles (Beilage 1) ein, welches die zu verarrestierenden Beträge im Dispositiv aufführt. Es handelt sich dabei um einen Entscheid aus einem Nicht-LugÜ Staat.  
  
Grundsätzlich können als definitive Rechtsöffnungstitel u.a. auch ausländische Entscheide gelten, die ausserhalb des Anwendungsbereichs des LugÜ erlassen wurden (SK SchKG-KREN KOSTKIEWICZ 2017, Art 271 N 83).  
  
Der von der Gesuchstellerin vorgelegte Entscheid, welcher in Kalifornien und damit ausserhalb des Anwendungsbereichs des LugÜ gefällt wurde, stellt somit grundsätzlich einen möglichen definitiven Rechtsöffnungstitel nach Art. 271 Abs. 1 Ziff. 6 SchKG dar (BGE 139 III 135 E. 4.5).
9. Infolge Bejahung der grundsätzlichen Titelqualität ist einem nächsten Schritt vorfrageweise zu prüfen, ob der ausländische Entscheid in der Schweiz voraussichtlich anerkannt und vollstreckt werden kann.
  - 9.1. Entscheide aus Nicht-LugÜ-Staaten müssen, damit der Arrest gemäss Art. 271 Abs. 1 Ziff. 6 SchKG gelegt werden kann, nicht formell für vollstreckbar erklärt werden. Die Prüfung der Vollstreckbarkeit erfolgt vorfrageweise (inzident) und die Voraussetzungen sind vom Gläubiger nur glaubhaft zu machen (BGE 139 III 135 E. 4.3; FRENKEL, Informationsbeschaffung zur Glaubhaftmachung der Arrestvoraussetzungen sowie Auskunftspflichten im Arrestvollzug, 2012, S. 102 f.; vgl. BOLLER, Arrest gestützt auf ausländische Entscheide, ZZZ 25/2011, S. 41). Der Arrestentscheid erwächst dann auch nicht in materielle Rechtskraft. Über die Vollstreckung des ausländischen Titels wird gemäss Art. 25 ff. IPRG bzw. nach den Bestimmungen eines entsprechenden Staatsvertrags im Rahmen des Prosequierungsverfahrens endgültig entschieden (SK SchKG-KREN KOSTKIEWICZ, 2017, Art 271 N 92; ferner: BAUER, in: Ergänzungsband zur 2. Auflage des Basler Kommentars, 2017, Art. 271 ad N 109).
  - 9.2. Gemäss Art. 25 IPRG wird eine ausländische Entscheidung in der Schweiz anerkannt, wenn (a) die Zuständigkeit der Gerichte oder Behörden des Staates, in dem die Entscheidung ergangen ist, begründet war, (b) gegen die Entscheidung kein ordentliches Rechtsmittel mehr geltend gemacht werden kann oder wenn sie endgültig ist, und (c) kein Verweigerungsgrund im Sinne von Artikel 27 IPRG vorliegt. Gemäss Art. 27 Abs.

1 IPRG wird eine im Ausland ergangene Entscheidung in der Schweiz nicht anerkannt, wenn die Anerkennung mit dem schweizerischen *Ordre public* offensichtlich unvereinbar wäre. Eine im Ausland ergangene Entscheidung wird gemäss Art. 27 Abs. 1 IPRG ebenfalls nicht anerkannt, wenn eine Partei nachweist, dass (a) sie weder nach dem Recht an ihrem Wohnsitz noch nach dem am gewöhnlichen Aufenthalt gehörig geladen wurde, es sei denn, sie habe sich vorbehaltlos auf das Verfahren eingelassen, (b) die Entscheidung unter Verletzung wesentlicher Grundsätze des schweizerischen Verfahrensrechts zustande gekommen ist, insbesondere dass ihr das rechtliche Gehör verweigert worden ist, (c) ein Rechtsstreit zwischen denselben Parteien und über denselben Gegenstand zuerst in der Schweiz eingeleitet oder in der Schweiz entschieden worden ist oder dass er in einem Drittstaat früher entschieden worden ist und dieser Entscheid in der Schweiz anerkannt werden kann. Im Übrigen darf die Entscheidung in der Sache selbst nicht nachgeprüft werden (Art. 27 Abs. 3 IPRG).

9.3. Was mit den Begriffen «ordentliches Rechtsmittel» und «endgültig» gemeint ist, bestimmt sich nach schweizerischem Recht. Ob gegen die ausländische Entscheidung kein ordentliches Rechtsmittel (mehr) offensteht bzw. ob diese endgültig ist, bestimmt sich hingegen nach dem Recht des Erststaates (DÄPPEN/MABILLARD, in: Basler Kommentar Internationales Privatrecht, 4. Aufl., 2021, Art. 25 N 43 [nachfolgend: BSK IPRG-AUTOR]; MARKUS, Internationales Zivilprozessrecht, 2. Aufl., 2020, N 1516). Über den Begriff des ordentlichen Rechtsmittels herrscht in der Doktrin und Rechtsprechung keine Einigkeit. Nach der Auffassung, welcher sich das Gericht vorliegend anschliesst, steht ein ordentliches Rechtsmittel gegen eine Entscheidung, die noch nicht in Rechtskraft erwachsen ist, zur Verfügung - es ist an eine Frist gebunden, deren ungenutztes Ablaufen das Rechtsmittel unzulässig macht und den Eintritt der formellen Rechtskraft herbeiführt (BSK IPRG-DÄPPEN/MABILLARD, 2021, Art. 25 N 46 m.w.H.; vgl. BUCHER, in: Commentaire Romand LDIP, 2011, Art. 25 IPRG N 15). Solange ein solches ordentliches Rechtsmittel zulässig bzw. noch nicht rechtskräftig erledigt wurde, treten die formelle und damit auch die materielle Rechtskraft noch nicht ein. Auf den Suspensiveffekt des Rechtsmittels kommt es nicht an, denn Art. 25 IPRG knüpft nicht an die Vollstreckbarkeit der ausländischen Entscheidung an (BSK IPRG-DÄPPEN/MABILLARD, 2021, Art. 47 N 43). Die Konzeption des Art. 25 lit. b IPRG weicht somit von der im LugÜ verwendeten ab, muss dort gemäss Art. 38 LugÜ die ausländische Entscheidung im Erststaat (lediglich) vollstreckbar sein. Art. 37 Abs. 1 LugÜ gibt dem Vollstreckungsgericht denn auch (als Korrektiv) die Möglichkeit, ohne Rücksicht auf die Frage der aufschiebenden Wirkung die Vollstreckung solange zu versagen, als das ordentliche Rechtsmittelverfahren pendent ist (BSK IPRG-DÄPPEN/MABILLARD, 2021, Art. 25 N 48). Der alternativen Bedingung «endgültig» kommt im Rahmen von Art. 25 lit. b IPRG keine selbständige Bedeutung zu, da in der Schweiz der Begriff «endgültig» für den Tatbestand verwendet wird, dass gegen eine Entscheidung kein (weiteres) Rechtsmittel zur Verfügung steht (BKS IPRG-DÄPPEN/MABILLARD, 2021, Art. 25 N 49).

9.4. Vorliegend geht aus den Beilagen der Schutzschrift hervor, dass der Gesuchsgegner ein Rechtsmittel gegen das Corrected Amended Judgment vom 03.02.2021 des Superior Court of the State of California for the County of Los Angeles eingereicht hat (vgl. insb. Beilage 4). Der Gesuchsgegner legt in seiner Schutzschrift sodann glaubhaft

dar, dass es sich hierbei um das ordentliche Rechtsmittel an die nächsthöhere Instanz handelt (Appeal nach kalifornischem Recht innert einer gesetzlichen Frist von 60 Tagen) und das Corrected Amended Judgment vom 03.02.2021 des Superior Court of the State of California for the County of Los Angeles somit noch nicht formell in Rechtskraft erwachsen ist bzw. die Voraussetzung nach Art. 25 lit. b. IPRG nicht gegeben ist. Dass das Corrected Amended Judgment vom 03.02.2021 des Superior Court of the State of California for the County of Los Angeles gemäss den übereinstimmenden Aussagen der Parteien aufgrund der nicht erfolgten Leistung einer Kauti- on und trotz des eingelegten Rechtsmittels bereits vollstreckbar ist, vermag daran nichts zu ändern. Wie zuvor dargelegt, knüpft Art. 25 IPRG anders als Art. 38 LugÜ nicht an die Vollstreckbarkeit der ausländischen Entscheidung an. Es ist zudem nicht ersichtlich, weshalb die Anerkennungsvoraussetzungen gemäss Art. 25 ff. IPRG nicht bereits bei der Prüfung des Arrestgesuchs berücksichtigt werden sollten, wenn vom Gesuchsgegner bereits vorgängig eine Schutzschrift beim Gericht hinterlegt wurde, in welcher Ausführungen zu diesen Voraussetzungen gemacht werden, und das Gericht bereits aufgrund einer ersten summarischen Prüfung des Arrestgesuchs zum Ergebnis gelangt, dass diese Voraussetzungen von der Gesuchstellerin nicht genügend glaubhaft gemacht wurden bzw. der Gesuchsgegner glaubhaftere Ausführungen dazu in seiner Schutzschrift macht.

- 9.5. Nach dem Gesagten ist von der Gesuchstellerin nicht genügend glaubhaft gemacht, dass das Corrected Amended Judgment vom 03.02.2021 des Superior Court of the State of California for the County of Los Angeles die Voraussetzung von Art. 25 lit. b IPRG erfüllt, weshalb es bereits aus diesem Grund an einem glaubhaft gemachten definitiven Rechtsöffnungstitel gemäss Art. 271 Abs. 1 Ziff. 6 SchKG fehlt und das Arrestgesuch abzuweisen ist. Ob das als definitiver Rechtsöffnungstitel eingereichte Corrected Amended Judgment vom 03.02.2021 des Superior Court of the State of California for the County of Los Angeles einer weitergehenden Prüfung betreffend Vereinbarkeit mit dem formellen und materiellen Ordre Public standhalten würde, braucht deshalb nicht weiter geprüft zu werden. Ebenso kann auf die Prüfung der weiteren Voraussetzung von Art. 272 Abs. 1 SchKG verzichtet werden (fällige Arrestforderung, Arrestgrund und Bestand von Vermögenswerten, die dem Schuldner gehören).

#### **IV. Kosten und Eröffnung an Gesuchsgegner**

10. Die Prozesskosten sind der Gesuchstellerin als unterliegende Partei aufzuerlegen (Art. 106 Abs. 1 ZPO).
11. Die Prozesskosten bestehen vorliegend aus den Gerichtskosten und der vom Gesuchsgegner in seiner Schutzschrift beantragten Parteientschädigung (Art. 95 Abs. 1 ZPO). Die Gerichtskosten bestehen im vorliegenden Fall aus der Pauschale für den Entscheid (Entscheidgebühr; Art. 95 Abs. 2 lit. b ZPO) und sind aufgrund des Zeitaufwands sowie der Bedeutung der Streitsache auf CHF 2'000.00 festzusetzen (Art. 96 ZPO i. V. m. Art. 48 ff. GebV SchKG). Sie sind von der Gesuchstellerin mit separater Rechnung nachzufordern (Art. 111 Abs. 1 ZPO). Die Gesuchstellerin zu zudem antragsgemäss zu verurteilen, dem Gesuchsgegner eine Parteientschädigung für den Aufwand betreffend das Erstellen und Hinterlegen der Schutzschrift auszurichten. Die

Höhe der Parteienschädigung wird nach Eingang der Kostennote der Rechtsvertretung des Gesuchsgegners festgelegt werden.

12. Das Arrestgesuch vom 14.10.2021 sowie der vorliegende Entscheid sind dem Gesuchsgegner vorerst nicht mitzuteilen (vgl. Urteil BGer 5A\_712/2010 vom 02.01.2011 E. 1.4). Nach Ablauf der Rechtsmittelfrist der Gesuchstellerin ist dem Gesuchsgegner der vorliegende Arrestentscheid aufgrund der von ihm eingereichten Schutzschrift und der vorgenommenen Kostenverteilung zu eröffnen.

**Der Gerichtspräsident verfügt:**

1. Vom Eingang des Gesuchs um Arrestbewilligung vom 14.10.2021 (Postaufgabe gleichentags, Eingang am 15.10.2021) samt Beilagen wird Kenntnis genommen.
2. Die Akten des Schutzschriftverfahrens CIV 21 2027 werden beigezogen.
3. Das Doppel der am 05.08.2021 beim Regionalgericht Oberland eingegangenen Schutzschrift vom 04.08.2021 wird der Gesuchstellerin zugestellt.

**und entscheidet:**

4. Das Gesuch um Arrestbewilligung vom 14.10.2021 wird abgewiesen.
5. Die Gerichtskosten, bestimmt auf CHF 2'000.00, werden der Gesuchstellerin auferlegt und ihr mit separater Post in Rechnung gestellt.
6. Die Gesuchstellerin wird verurteilt, dem Gesuchsgegner eine Parteientschädigung für das Erstellen und Hinterlegen der Schutzschrift zu bezahlen. Die Höhe der Parteientschädigung wird nach Eingang der Kostennote der Rechtsvertretung des Gesuchsgegners festgesetzt, wobei dem Gesuchsgegner nach Ablauf der Rechtsmittelfrist der Gesuchstellerin die Frist zur Einreichung der Kostennote angesetzt werden wird.
7. Zu eröffnen:
  - der Gesuchstellerin (LSI unter Zustellung eines Doppels der Schutzschrift inkl. Beilagen)
  - dem Gesuchsgegner, nach Ablauf der Rechtsmittelfrist der Gesuchstellerin (LSI, unter Zustellung eines Doppels des Arrestgesuchs inkl. Beilagen)

Regionalgericht Oberland  
Zivilabteilung

Der Gerichtspräsident:

  
Knecht

Die Gerichtsschreiberin:

  
Waldburger

**Rechtsmittelbelehrung:**

Der vorliegende Entscheid kann – vom Gesuchsgegner einzig betreffend Kostenentscheid – innert 10 Tagen seit Zustellung mit Beschwerde beim Obergericht des Kantons Bern, Zivilabteilung, Hochschulstrasse 17, Postfach 7475, 3001 Bern, angefochten werden. Die Frist kann nicht erstreckt werden (Art. 144 Abs. 1 ZPO). Der Fristenstillstand gemäss Art. 145 ZPO gilt nicht.

Die Beschwerde ist in Papierform in je einem Exemplar für das Gericht und jede Gegenpartei oder elektronisch in einer anerkannten Form einzureichen. Sie ist zu unterzeichnen (Art. 130 und 131 ZPO). Der angefochtene Entscheid ist beizulegen (Art. 321 Abs. 3 ZPO).

Die Beschwerdeschrift hat Anträge und eine Begründung zu enthalten. In der Begründung ist anzugeben, inwiefern eine unrichtige Rechtsanwendung oder eine offensichtlich unrichtige Sachverhaltsfeststellung vorliegt (Art. 320 ZPO). Neue Anträge in der Sache, neue Tatsachenbehauptungen und neue Beweismittel sind ausgeschlossen (Art. 326 Abs. 1 ZPO).

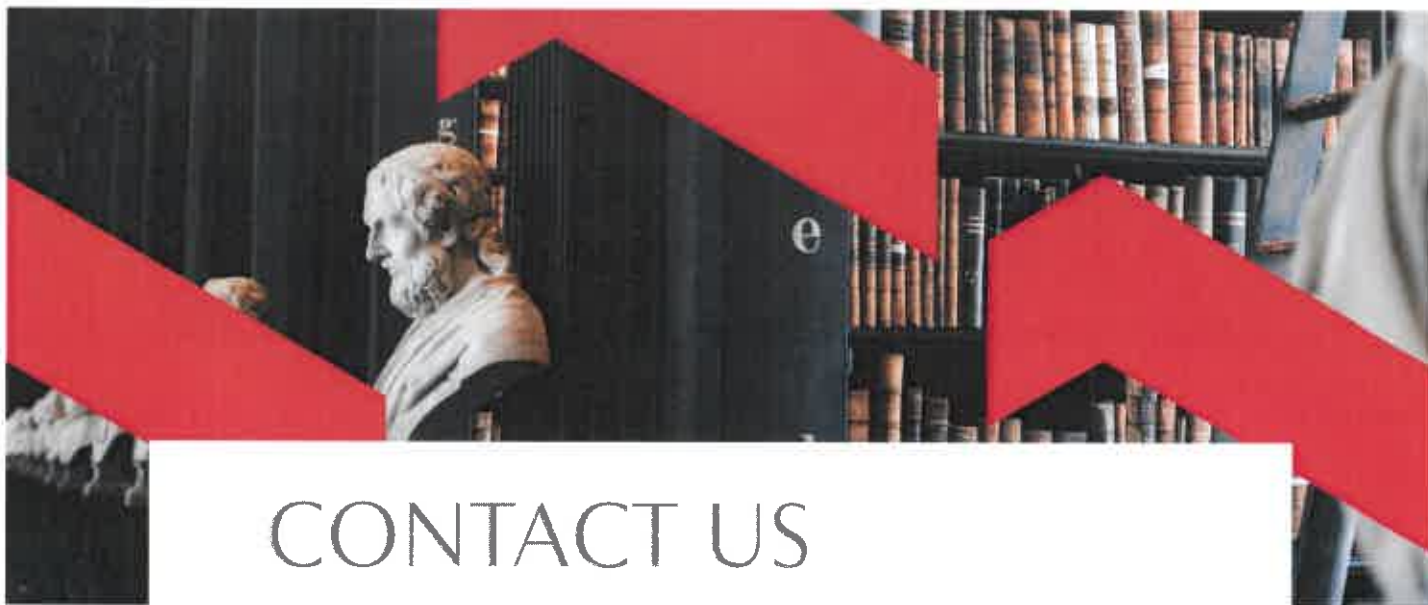
**Hinweise:**

Eingaben müssen spätestens am letzten Tag der Frist beim Gericht eingereicht oder zu dessen Händen der Schweizerischen Post oder einer schweizerischen diplomatischen oder konsularischen Vertretung übergeben werden (Art. 143 Abs. 1 ZPO).

Eingaben per Fax und E-Mail sind nicht rechtsgültig und haben keine fristwahrende Wirkung.

Unter bestimmten Voraussetzungen können Eingaben elektronisch erfolgen. Genauere Angaben hierzu finden Sie auf der Internetseite der Berner Justiz (<http://www.justice.be.ch/elektronische-eingaben>).

Bei Eingaben ist jeweils die Dossinummer (CIV 21 2670) anzugeben.



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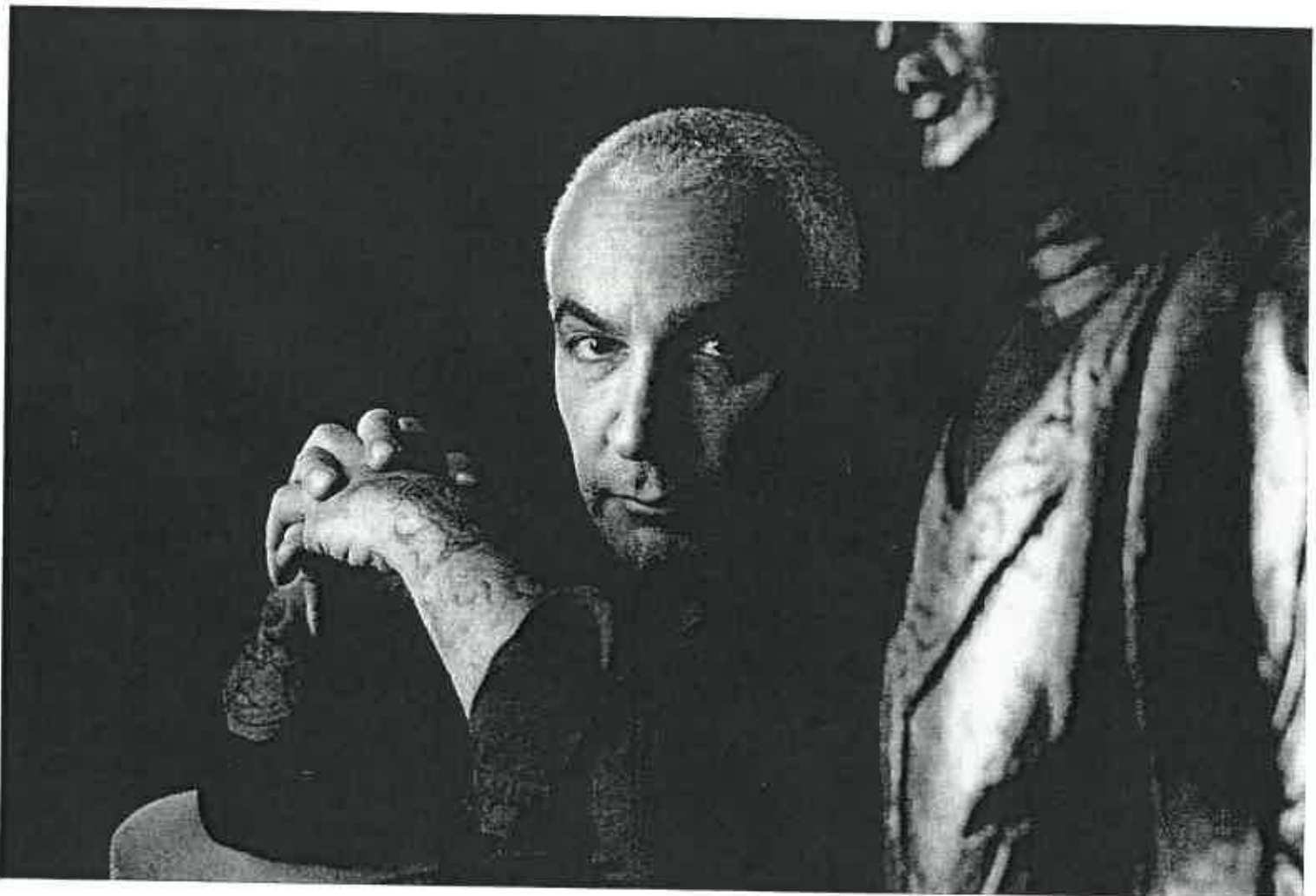
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COMPANY TOWN

# Self-appointed ambassador for 'wronged men' of #MeToo Alki David faces criminal complaint



Controversial hologram executive Alki David has been hit with nearly \$74 million in civil verdicts this year for a variety of sexual misconduct claims.

(Carolyn Cole / Los Angeles Times)

BY STACY PERMAN | STAFF WRITER

DEC. 16, 2019 4:15 PM PT



Mahim Khan, who won a \$58-million civil verdict against billionaire Alki David for sexual battery, plans to file a criminal complaint against the controversial hologram entrepreneur, her attorney said.

Khan met with two officials at the Beverly Hills Police Department on Monday and will have a follow-up meeting Tuesday, when she plans to lodge a sexual battery complaint against David, said her attorney Gloria Allred.

“People think of sexual harassment as a civil matter, which it is but in some cases it may also constitute a crime,” Allred said. “We think an investigation should be opened into Mr. David.”

A spokesperson for the Beverly Hills department confirmed the meeting with Khan; she said a police report filing was in progress.

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Earlier this month a jury awarded Khan, a former production assistant who worked at David’s media companies, including FilmOn TV and Alki David Productions Inc., \$50 million in punitive damages and \$8.25 million in compensatory damages.

The award is among the highest ever for an individual employment case.

Among the allegations in Khan's lawsuit, she said that in 2014 David, heir to a Greek Coca-Cola bottling fortune, thrust his pelvic area into her face, simulated oral sex, moaned, zipped up his pants and walked away saying, "Thanks, M.K."

The ruling was the third verdict this year against David, who has been accused of numerous acts of inappropriate behavior by former employees.

Calling the legal system "broke and biased," David responded to Allred's announcement in a statement saying, "Gloria Allred and Mahim Khan don't realize they just made a huge mistake with this stunt." He also added, "Let's settle this now: I challenge their client to a public polygraph test. Let's do it live on TV. I have nothing to hide — do you, MK?"

Khan's recent award has brought the amount of verdicts against David to nearly \$74 million.

A California jury in April ordered David to pay another employee, Chasity Jones, \$11.1 million. She said he fired her after she refused to have sex with him. Jones later agreed to a reduction in compensatory damages by \$437,120. Punitive damages remained at \$8 million.

In October, a jury found in favor of Lauren Reeves, a former comedy writer at Hologram USA, awarding her \$650,000 in compensatory damages and \$4.35 million in punitive damages. In 2016, Reeves alleged David put his hands on her throat and pushed her chair into a wall, banging her head, among other claims. According to her suit, David told Reeves that he needed to buy supplies for his "rape room."

In September, a jury deadlocked in former FilmOn account executive Elizabeth Taylor's case and the judge declared a mistrial. A suit filed in 2016 was settled out of court.

David has disputed the allegations of sexual misconduct, saying, "I never touched any of these women."

David represented himself in the Taylor trial. His disruptive and defiant behavior earned him nearly \$10,000 in sanctions; he was ejected from the courtroom on several occasions.

The judge in the Khan trial revoked David's right to represent himself, prompting him to bolt from the courtroom.

David who has been highly critical of his accusers, their attorneys and the legal system, issued a statement following the Khan verdict, protesting his innocence, saying, "How is it justice if I'm not allowed to present any defense at all?" he said.

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Stacy Perman is an enterprise staff writer for Company Town covering the business of the film industry at the Los Angeles Times.

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# Milliardaire condamné pour harcèlement sexuel

Le milliardaire grec Alki David devra payer 58 millions de dollars à une assistante qui l'accuse de harcèlement sexuel.

Publié: 03.12.2019, 03h49



Alki David le 19 août 2019 à Los Angeles.

Keystone



Le milliardaire grec Alkiviades «Alki» David a été condamné à payer 58 millions de dollars d'indemnités à l'une de ses assistantes qu'il harcelait sexuellement, une sanction parmi les plus élevées de l'histoire judiciaire des Etats-Unis, a déclaré lundi l'avocate de la victime.

Alki David, héritier d'une famille d'industriels qui s'est également lancé dans les hologrammes et le streaming, a été reconnu coupable par un tribunal de Los Angeles de violences et d'agressions sexuelles à l'encontre de Mahim Khan, qu'il a employée dans sa société de production entre 2014 et 2015. Ce jugement «rappelle aux prédateurs, où qu'ils se trouvent, qu'ils ne peuvent pas faire du mal impunément», a dit Mahim Khan dans une déclaration à l'AFP.

Avec le mouvement MeToo, «les femmes comme Mme Khan n'acceptent plus de souffrir en silence», a ajouté son avocate, Gloria Allred, pour qui les 58 millions de dollars d'indemnités accordées à la jeune femme comptent parmi les plus élevées de l'histoire judiciaire américaine.

## **Il nie les faits**

Preuves à l'appui, les défenseurs de Mahim Khan ont affirmé au tribunal qu'Alki David saisissait plusieurs fois par semaine son employée par le cou pour l'obliger à simuler une fellation. Selon eux, le milliardaire avait aussi l'habitude de l'attraper par les parties intimes et a dénudé sa poitrine au moins une fois.

Alki David a nié tout harcèlement sexuel à l'encontre de la jeune femme. Il n'était pas présent lundi au tribunal, qui lui a retiré le droit de se défendre lui-même car il a plusieurs fois pris à partie la plaignante et ses avocats.

Le milliardaire de 51 ans a publié un communiqué critiquant un système judiciaire américain «faussé» et «en état d'urgence», dans lequel il accuse son accusatrice et les témoins d'avoir menti. Il a déjà été accusé à plusieurs reprises de harcèlement et a notamment dû payer un total de 14 millions de dollars à deux plaignantes cette année.

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